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Amendments to Poland's Income Tax Laws Effective Jan. 1, 2018

December 5, 2017

Poland recently amended its Corporate Income Tax law, effective Jan. 1, 2018. The Polish Government announced that the objectives of the amendment are to ensure that taxes paid by large companies, especially multinational companies, are linked to the actual source of their earned income, and to implement the EU's Anti-Tax Avoidance Directive ("ATAD Directive"). The most significant provisions include the following:

- New thin capitalization rules: The deduction of financing costs will be limited to 30% of an entity's adjusted tax basis (instead of a debt-to-equity ratio). This limitation applies also to financing provided by non-related entities. However, the annual safe harbor amount for financing costs has been increased to PLN 3 million, and the new rule does not apply to financial institutions.
- Controlled foreign company: The definition of a controlled foreign company was changed by broadening the scope and a definition of a subsidiary, but also by raising the required level of shareholding and voting rights from 25% to 50%. Also, a new provision was introduced to establish a definition for an "affiliated entity" and to modify the conditions that must be met by a foreign entity to be considered a controlled foreign company.
- Tax capital groups: The conditions required to establish "tax capital groups" were somewhat relaxed by lowering the average share capital needed to be held by each company to PLN 500,000 and by lowering the percentage of share capital for companies to 75%.
- Capital gains: A separate income basket for capital gains was introduced, and offsetting capital gains or losses against other sources of income is not allowed.
- Limitation on deductibility of certain intercompany charges. Certain expenses are no longer deductible in excess of an annual safe harbor amount of PLN 3 million, subject to (a) the ability to deduct such excess amount up to 5% of tax-adjusted EBITDA (earnings before interest, taxes, depreciation and amortization) and (b) the limitations shall not apply to the expenses related to services, fees and charges included in the expenses of obtaining revenue directly related to the production or purchase of goods or providing services. The types of expenses subject to the above limitations are:
  - Advisory services, market research, advertising services, management and control, data processing, insurance, guarantees and any similar services
  - Use of or the right to use intangible assets (royalty payments, license payments, payments for the use of know-how or trademark, etc.)
  - Transfer of the borrower’s default risk from loans, other than those provided by banks and credit unions, including derivatives and similar benefits
- Minimum tax on commercial real estate: A minimum income tax on earnings from commercial buildings (such as shopping mall or large shop) or office buildings with an initial value exceeding PLN 10 million was introduced, at a rate of 0.035% per month of the excess of the initial tax value of the building.

The new amendments introduce some important changes to Poland’s previous corporate income tax regime. Thus, it is advisable for companies operating in Poland to review these changes carefully. Please contact Miller Canfield’s Polish Desk in the U.S. or any of the firm's three offices in Poland.