PKGT Audit Tax Update – changes in 2015

As work continues on changes to the Tax Administration legislation (Ordynacja Podatkowa) important changes have been implemented to corporate and personal tax and to VAT. Let us hope that the President's proposal for changes to the Tax Administration legislation that where the tax legislation is unclear the authorities have to decide in favour of the taxpayer is eventually enacted. However in practise most interpretation issues relate to VAT and the continuing complication of the VAT legislation by EU decree. It is clear that both the EU and national legislators have long ago forgotten that the burden should fall on consumption and not entrepreneurs!

The good news is that increasingly tax inspectors are becoming "user friendly" and that control visits and investigations are concentrating on key issues rather than minor discrepancies. The Ministry of Finance telephone help line is also able to answer most routine questions from taxpayers.

PLEASE NOTE THAT TO BE ABLE TO BENEFIT FROM THE PROVISIONS OF THE ALTERNATIVE METHOD OF CALCULATING TAX ALLOWABILITY OF INTEREST PAID ON CONNECTED ENTITY LOANS AS SET OUT BELOW THE TAXPAYER HAS TO LODGE AN ELECTION WITH THEIR TAX OFFICE BY THE END OF THE FIRST MONTH OF THE NEW TAX YEAR. FOR MOST TAXPAYERS THIS IS 31st JANUARY 2015.

Interest on loans from connected entities ("thin capitalisation")

The definition of connected entities has been extended and is now in line with the definition adopted for transfer pricing purposes.

In addition the old limit of tax allow ability has been changed from 3 times basic share capital to 1 times net equity (share capital plus undistributed reserves less losses). This means that only that part of interest charged and actually paid attributable to the proportion of related entity total loans equal to net equity will be tax allowable (subject of course that under transfer pricing rules the interest does not exceed market rates).

Transitional arrangements apply for loans taken out prior to 1st January 2015.

Alternatively the taxpayer may elect for an alternative basis which applies to the total of interest paid on connected entity as well as third party loans. The limit for allow ability is the lower of:

- National interest at a rate of the Central Bank of Poland reference rate of interest (currently 2%) plus 1.25 percent (giving a current effective rate of interest of 3.25%) applied to the balance sheet total of assets excluding intangible assets as shown by the financial statements for the end of the relevant tax year and,
- 50% of operating profit for year as calculated in accordance with the relevant accounting legislation.

Any interest paid but not tax allowed can be carried forward for a period of five years, however the limits apply in each subsequent year.

To be able to apply the alternative method the taxpayer has to lodge an election by the end of the first month of the tax year in which it is to apply. The election must stay in place for at least 3 consecutive tax years.

Controlled Foreign Corporations (CFC)

Polish taxpayers who have an interest in a CFC meeting any of the below criteria will be subject to Polish tax on the profits of the controlled entity:

- Entities registered in a tax haven included in the Ministry of Finance "black list" or,
- Entities registered in a jurisdiction with which Poland does not have in place an Avoidance of Double Taxation Treaty or,
- Entities in which the Polish taxpayer has 25% or more controlling rights and where the applicable local rate of corporation tax is lower than 14.25%

Tax residence certificates

These are required where payments are made abroad and where an appropriate Avoidance of Double Taxation Treaty allows for a lower rate of withholding tax.

Where the tax residence certificate does not clearly show the time limit these will now be deemed to expire 12 months from date of issue.

Please note that for most major jurisdictions the Polish and local tax authorities have approved dual language wordings for such certificates.

Taxation of retained profits in entities being transformed into "tax transparent" entities not subject to Corporation Tax

Upon transformation into a limited liability partnership or civil partnership of an entity previously taxable in its own right the owners will be taxed as if a dividend had been declared. In most cases where the owner is an EU corporation we suggest a “dividend strip” prior to transformation to take advantage of the Directive exemption on withholding tax.

The legislation does not contain transitional provisions and there will therefore be many cases involving the taxability of retained earnings realised prior to 2015.

Taxation of dividends in kind and other settlements in kind

Where an entity settles a liability in kind rather than in cash the recipient will be taxed on the difference between the market value of the asset transferred and the monetary (nominal) value of the liability being satisfied in kind.

Taxation of private use of company motor vehicle

Ending years of differing interpretations of the value of the benefit in kind a new monthly deemed benefit has been established:

- PLN 250 per month on vehicles with a cc of up to 1.6 litres,
- PLN 400 per month on vehicles of larger engine size.

Fiscal (VAT) cash registers

The list of activities which require the installation of a fiscal register has been extended. As previously the issue can be avoided if VAT invoices are issued as a matter of course to all customers.

The information contained above is of a general nature, is not exhaustive and should not be relied upon without establishing the applicability in individual cases. We will be pleased to advise on your particular circumstances.

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PKGT Audyt Sp.z o.o. Sp.k specialises in serving the advisory and compliance needs of owner managed and mid corporate foreign owned entities operation in Poland.