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Tax avoidance clause will be used also for activities prior to the amendment of regulations

Tax Alert

19 May 2016, the Senate adopted the act passed by the Sejm dated 13 May 2016 on amending the tax regulations act and some other acts (hereinafter: "Act", "legal act") implementing, inter alia, the tax avoidance clause. At present, the revised legal act is awaiting the signature of the President of the Republic of Poland. We already informed you on the works conducted in this area in one of our previous tax alerts ([Tax Alert](#)). However, in the current version of the Act, as compared to the draft discussed at that time, quite significant changes have been introduced specifying that new regulations on tax avoidance are to refer to tax advantages obtained after the aforementioned act entered into force, and not only to the activities performed after that date, as it was initially planned. This means that from the point of view of the clause application, it is not relevant when the activity carried out by a taxpayer actually took place, but it is important that the taxpayer benefits from the previously introduced solution already under the new regulations.

The idea behind the introduction of the aforementioned clause boils down to counteracting actions carried out by taxpayers only intended to achieve a specific tax advantage and characterised by an artificial nature. It is, above all, about taking such actions that in the circumstances are not justified by any determinants of economic or business nature or such conditions are of little significance. The Act lists an exemplary catalogue of features that may prejudice the artificial nature of taxpayer's activities, e.g. unjustified splitting of a business transaction or the occurrence of high risk, inadequate to the potential advantage other than a tax advantage. The Act also specifies how to understand a tax advantage – for instance, it can be the lack of occurrence of the tax obligation. It also specifies the threshold amount (PLN 100,000) which, if exceeded, provides the tax authority with the right to apply the tax avoidance clause.

Application of the clause in practice is to consist in a different determination of tax effects of a performed activity than what would result from the action taken by the taxpayer or in deeming a given activity to be null and void in the light of the tax law. Introduction into the Polish law of the discussed institution does not automatically mean the lack of possibility to perform tax optimisation – its assumption is primary the specification of acceptable optimisation limits. The Act also provides for the possibility of the taxpayer verifying through the so-called security opinion issued by the Minister of Finance, if the actions taken by the taxpayer correspond to applicable tax regulations.

The clause itself shall not apply to tax on goods and services, as in this case separate provisions are provided for – the supplement to the Vat Act with the provisions relating to the abuse of law. In this case, the legislator also refers to activities which principal aim is to achieve a tax advantage.

Pursuant to the provisions of the Act, it is to enter into force upon 30 days from the date of its announcement. This is a very short period to review the already existing optimisation structures or to modify planned business ventures. However, a thorough analysis of economic and business conditions of conducted activities appears to be necessary. In case of any possible disputes with tax authorities, any analyses or other documents confirming the economic validity of adopted solutions may prove to be useful.

RSM Poland may support you in adaptation of your adopted or planned business solutions to the requirements of new legal regulations. In particular, we are able to guarantee the identification and analysis of the associated tax risk, as well as propose the most appropriate tax solutions which will also be consistent with your expectations.

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Should you wish to discuss the above mentioned amendments in detail, feel free to contact us:

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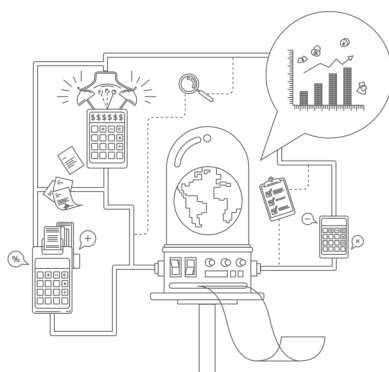
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