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Changes facilitating business activities for entrepreneurs

Tax Alert

Dear Readers,

On 28 December 2016, the President of Poland signed a law amending some laws to improve the legal environment of entrepreneurs (Journal of Laws of 2016, item 2255; hereinafter the “Amending Act”). The Amending Act amends several acts, including the Act of 29 August 1997 Tax Code (i.e. Journal of Laws of 2015 item 613; as amended; hereinafter: the “Tax Code”), the Act of 29 September 1994 on Accounting on Accounting (i.e. Journal of Laws of 2016 item 1047; as amended; hereinafter: the “Accounting Act”) and the Act of 20 November 1998 on Lump Sum Income Tax on Certain Incomes Earned by Natural Persons (i.e. Journal of Laws of 2016 item 2180; as amended; hereinafter referred to as: “Act on lump-sum income tax”). Changes in the above-mentioned Acts entered into force on 1 January 2017.

Tax explanations

One of the changes in the Tax Code is the introduction of the institution called 'tax explanations'. The tax explanations, in addition to individual interpretations and general interpretations, will be the explanations provided by the minister responsible for public finance (hereinafter the “MF”) in the application of the tax law. The explanations will be issued only ex officio by the MF and published in the Bulletin of Public Information at the MF page under the name “Tax Explanations” with the date of their publishing. The tax explanations are not contestable (similar as the current general interpretations).

The tax explanations will provide general explanations of tax law provisions relating to the application of these provisions. They will contain practical examples of the tax law application. The legislation does not define what should be included in a tax explanation, or in what situations it should be issued.

Observing the guidelines of a tax explanation by an interested entity (e.g. a taxpayer or payer) will give it the same legal protection as provided by the general interpretations and individual interpretations (art. 14n §4 of the Tax Code). For example, observing the tax explanations that will be changed later on, will exempt the entity from the obligation to pay tax to the extent resulting from the content of the explanations, provided that the obligation has been performed correctly as a result of the explanations and the tax effects have occurred after the publication of the tax explanations.

The tax explanations will have significant importance in cases where the facts are simple and the economic significance of the transactions is small. The explanatory memorandum to the Act assumes that the explanations will significantly reduce the number of requests for individual interpretations on issues already covered by the tax explanations. Achieving such effect will depend on the precision and direct applicability of the future tax explanations.

Established practice of interpretation

The amending act also introduces the institution of the so-called “established practice of interpretation” of the MF. The “established practice of interpretation” should be understood as explanations of the scope and manner of application of the tax law prevailing in individual interpretations published for the same facts and for the same future events and with the same legal status, during the accounting period and within 12 months before its start (art. 14n §5 of the Tax Code).

Observing the guidelines of the “established practice of interpretation” of the MF, similarly to the explanations, will provide the entity concerned with the same legal protection as the general and individual interpretations. A taxpayer who applied the “established practice of interpretation” will not bear the risk of additional taxes in case of changes in the interpretation of legal provisions.

The legislator did not use specific concepts and defined the “established practice of interpretation” in a general way. It seems more than likely that in the conditions of frequent changes of interpretation, the pro-tax approach of tax authorities and a lack of dialogue with the taxpayer, the existence of the “established practice of interpretation” in a particular case will become another source of disputes between taxpayers and tax authorities. Demonstrating to the tax authority the existence of the established practice will require a broad analysis of interpretations issued by the Ministry of Finance on a given topic.

Charging interest on late payments

The amendment changed the provision in art. 54 §3 of the Tax Code. It defines when no interest is charged for delayed payments in case of repealing a decision and transferring the case for reconsideration or annulment of the decision. According to the introduced change, the deadlines must be calculated by adding periods of the proceedings at individual stages.

Repeated tax audit

The change applies to repeated tax audits on tax on goods and services. As a rule, the tax authority shall not initiate tax proceedings when the repeated tax audit of a given accounting period reveals irregularities involving only the application of a tax rate on goods or services, which is different than the basic rate, if the previous audit did not reveal any irregularities in the application of the rate (art. 165c §1 of the Tax Code).

This change implements the principle of trustworthy tax authorities. It is a response to the frequent practice of the authorities that performed tax audits and recognized that the taxpayer was entitled to apply a reduced tax rate and after that (due to changing its position on a given tax issue) they initiated another audit and stated that the transaction should be subject to the basic tax rate. In this situation, special attention will be paid to: the description of the position of the tax authority specified in the report prepared after the first tax audit and the role of the professional authorized person during this audit (when e.g. the original version of the report does not contain the appropriate position).

The discussed provisions will not apply in certain situations, e.g. when evidence relevant to the case proved to be false or when the inspection report has been drawn up as a result of a crime.

Increasing the income threshold for the lump sum taxation

A change was also introduced to the income threshold, which entitles taxpayers to pay a lump sum tax on recorded income. Its value has been increased to EUR 250,000 (art. 6 par. 4 sec. 1 and par. 6 of the Act on lump-sum income tax).

Increasing the income limit for maintaining the tax revenue and expense ledger

The income limit up to which the payers of personal income tax may maintain the revenue and expense ledger has been increased to EUR 2,000,000 (art. 2 par. 1 sec. 2, par. 2 and par. 2a of the Accounting Act).

Due to the fact that costs of maintaining full accounting are higher than the costs of keeping a tax revenue and expense ledger, the increased threshold will not only facilitate running a business, but will also allow for significant savings. However, if taxpayers reaching revenues of less than EUR 2,000,000 want to run accounting books, they are required to file a notice informing about this intent by 31 January 2017.

As indicated by the title of the Amending Act, its purpose is to improve the legal conditions for conducting business in Poland. Improvement is expected as a result of clarifying the issues causing discrepancies in interpretation, as well as due to reduction of certain obligations. Let us hope that the amendments will positively influence the development of Polish entrepreneurship.



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

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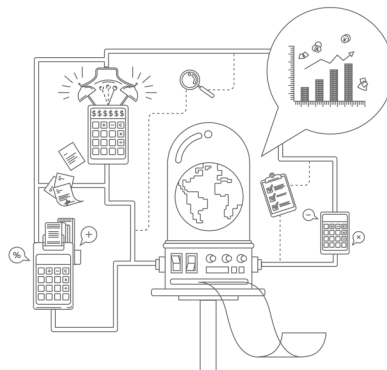
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