

Polish real estate: the impact of withholding tax rules

Sylwia Toczyska at Vistra in Poland looks at the withholding tax rules in the country, examines how further clarification is needed and the action that companies may need to take



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Real estate investment in Central and Eastern Europe (CEE) continues to break records. Investment volume across the region in 2018 amounted to €13bn, which represents an 11% increase on the previous year and a record for the third year running.

Poland remains the dominant CEE investment market with 54% of the total volume recorded – equating to €7.02bn. And with more than 100 transactions completed, 2018 was another record year for the country.

Based on the forecast for 2019, the strong interest in real estate assets in Poland looks set to continue. However, despite the optimism around the sector, domestic and international tax developments are having an impact on the structure of real estate transactions and must not be overlooked.

Indeed, any tax analysis of transactions should focus on recent changes to withholding tax (WHT), the General Anti-Avoidance Rule (GAAR), Mandatory Disclosure Rules (MDR) and others which may significantly change the return rate of the investment.

The need for clarification

It has been the new WHT rules which have arguably caused many concerns. January 1 2019 saw the introduction of an obligation for Polish payers to

maintain due care when making international payments – including interest, royalties, dividends and payments for intangible services.

On 19 June, the Polish Ministry of Finance published clarifications concerning the application of provisions regarding the newly implemented WHT rules.

In these clarifications, the Ministry stated its position regarding the new definition of beneficial owner; due diligence requirements at verification of requirements for a lower tax rate, tax exemption or not withholding tax; as well as points regarding WHT refund and calculations of the statutory threshold of PLN 2M (approximately €465,000).

Unfortunately, the Ministry's announcement did not bring as much clarity as hoped, owing to the general nature of the explanation of some topics, which left doubts over how they should be interpreted.

More challenges to come

Additionally, a further set of unfavourable changes with regard to WHT will come into force on January 1, 2020 (the initial deadline was July 1, 2019). The new procedure which will apply to foreign payments above PLN 2 million per year means that, in many cases, the Polish company making the payment will have to bear the tax burden in Poland (19% or 20%). There is the

possibility of applying for a refund from the tax authorities, but a 60-day deadline applies and the refund can only be made after submission of the specific application in electronic form along with a wide list of attachments.

Thankfully, it is not all bad news, as the legislation provides the possibility of mitigating these tax burdens by submitting an appropriate statement signed by board members, which confirms that the remitter's entity possesses relevant documents and knowledge entitling it to preferential rates or exemption. However, such a sign-off may not be possible in every case.

Importantly, the Polish regulations provide for a very wide scope of fiscal penal liability of board members resulting from the making of a false statement or inaccurate verification of the contractor or conditions for applying reduced tax rates or exemptions.

Bearing in mind the above, it is recommended that efforts be put in place which ensure that changes to the law on WHT do not affect a company's cash flow and still guarantee the desirable return rate of investment. In order to be able to apply a lower tax rate, tax exemption or not withholding tax at all, it may be concluded that a proper due diligence process will be required.



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