

UHY ECA

TAX NEWSLETTER
CORPORATE INCOME TAX

06.03.2018

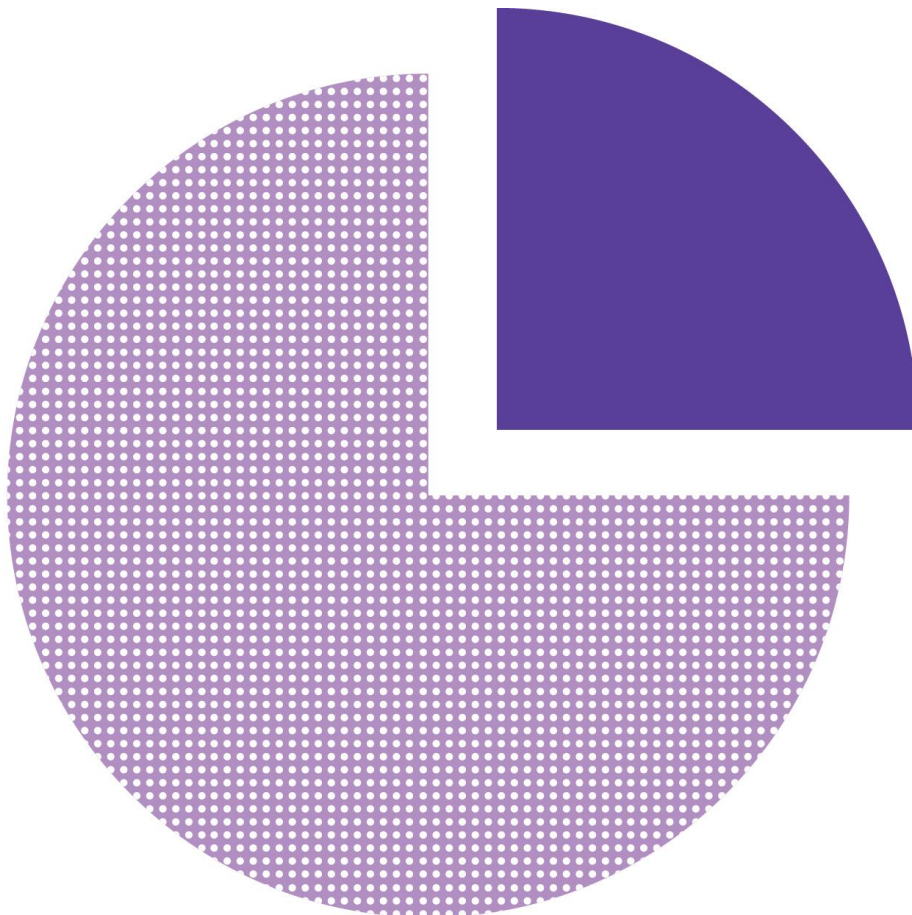


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Dear Sirs and Madams,

As of 1 January 2018, a number tax law provisions have been amended. In order to systematize those changes made by the legislator, we would like to present you our summary of selected amendments of the Corporate Income Tax Act.

1. LIMITATION IN CALCULATING TO TAX DEDUCTIBLE COSTS

- The restrictions apply to the costs exceeding amount of PLN 3,000,000 in a tax year which are incurred either for affiliated entities or for those entities that have their headquarters in a country that applies a harmful tax competition (“tax heavens”).

Taxpayers are not allowed to include to tax deductible costs the costs incurred on: consulting services, advertising, licenses, insurance, etc., in the part in which these costs exceed 5% EBITDA in a tax year. The limitation applies to costs that exceed PLN 3 million in a given tax year. However, the restrictions do not apply to a taxable person who obtained an “APA” decision (“advance pricing agreements”)

2. LIMITATION IN DEBT FINANCING COSTS

- The legislator revoked the provisions concerning thin capitalization and added new regulations on the basis of which all taxpayers are allowed to include amount of debt financing costs which does not exceed 30% of the EBIDTA in a given year to tax deductible costs.

The new regulations, however, apply neither to taxpayers whose surplus of debt financing costs do not exceed PLN 3,000,000 nor to financial enterprises.

The legislator introduced also a provision that allows tax authorities to estimate the income or the tax loss if only the debt financing costs exceed the financial value that a taxpayer would have received in the case such financing was granted by non-related party (market creditworthiness).

3. CAPITAL GAINS – A SEPARATE SOURCE OF REVENUE

- On 1 January 2018 the legislator identified a new source of revenue in the form of revenue from capital gains. Taxpayers are therefore currently obliged to settle their income according to two sources of revenues – revenue from economic activity (operating activity) and from capital gains.

Six income groups as a part of new source ("capital gains") can be distinguished (and the CIT Act specifies them precisely). In a large simplification, within that source a taxpayer should recognize a revenue e.g. from the sale of shares, shares in the profits of corporations, capital dividend and from proprietary rights (copyrights, know-how etc.).

Due to changes made, taxpayers are now obliged to settle their revenue on the basis of two sources of revenues – from capital gains and other revenues (including operating activity). Such distinction shall be done during a tax year when income tax advances are being estimated. It is also necessary to allocate the costs to an appropriate source of revenue – in certain cases a use of proportion may be required. As a result, a taxable person has no longer the right to settle both sources together, i.e. profits from one source cannot be reduced by losses from the other.

4. MINIMUM TAX ON COMMERCIAL PROPERTY

→ A taxable person who is an owner of certain commercial properties the initial value of which exceeds PLN 10,000,000 is obligated to pay a minimum property tax.

The Act provides for taxation on a fixed asset that is located on the territory of Poland in the form of a commercial and service building classified as: a shopping centre, department store, an independent shop and boutique or other retail and service property, as well as a commercial and service building classified as an office building. The monthly tax has been set at 0,035% of the tax base for each month. The tax basis creates the income that corresponds to the initial value of the fixed asset on the first day of each month (resulting from the records) that is being reduced by amount of 10 million PLN. Taxpayers are obligated to calculate monthly tax advances and to pay them to the tax office.

5. CHANGES TO DEPRECIATION – THE NEW LIMIT

→ The limit of the value of fixed assets and intangible assets that allows the cost of purchasing such assets to be directly included as tax-deductible costs has been raised to PLN 10,000 from previous PLN 3,500.

Taxpayers who purchase fixed assets and intangible assets the initial value of which is lower than PLN 10,000 will not have to make depreciation write-downs from them. The expenses for their acquisition may become tax deductible costs at once – in the month of putting them to use.

6. DATA OF THE LARGEST COMPANIES WILL BE EXPLICIT

→ Data of the companies the annual income of which exceeds the equivalent of EUR 50,000,000 will be the subject to publication.

The new provisions provide for the possibility of publication the selected information that results from companies tax returns. The finance ministry is now able to publish the information about tax capital

groups (irrespective of taxable revenue) and about others taxpayers the generated income of which in the financial year exceeds the amount of EUR 50 million.

The unique data of taxpayers, such as: company and tax identification number, tax year, information concern the amount of revenue, tax-deductible expenses, profits or losses, tax base, tax amount due shall be made public for a period of 5 years.

7. CHANGES IN REGULATIONS CONCERNING RESEARCH AND DEVELOPMENT WORKS

- ➔ On 1 January 2018, further simplifications and incentives for taxpayers who conduct research and development works were introduced.

As part of the amendment, the concept of costs that generate an income for supplier from personal activity was extended by expenses incurred under specific task contract and contract of mandate. In addition, the legislator specified that the salaries and contributions to insurance and also for cooperating persons constitute a cost in the part which this work is a research and development activity. At present, there is therefore no doubt that the employee (co-worker) can also do other work than the one dedicated to research and development.

Starting from 2018, taxpayers (other than research and development centres) apply the R&D bonus rate of 100%, regardless of the size and type of costs. The maximum amount of deductions, that results from tax rebate for research and development centres, was increased to 150% of the costs.

8. PROBLEM OF TAXATION ON CASH CONTRIBUTION

- ➔ As a result of amendment of the provision of Art. 12 para. 1 point 7 of the CIT Act, that concerns the taxation of contributions in kind, it might currently be argued that the cash contribution is also subject to taxation.

The Ministry of Finance explained that amendment to that provision is only a legislative amendment (referring to the deletion of a reservation regarding an organized part of an enterprise). Meanwhile, the tax consequences resulting from the literal wording of the new provision are much more serious. In this case the legislator seemed to overlook that matter and it was not a deliberate action.

9. TAX CAPITAL GROUPS

- ➔ On 1 January 2018, the average limit of the share capital for companies creating Tax Capital Groups (*pł. PGK*) was halved from PLN 1,000,000 to PLN 500,000. In turn, the required direct share of the dominant company in share capital was decreased from 95% to 75%.

In addition, PGK's profitability level was reduced from 3% to 2% and the deadline for submitting the conclusion of the PGK contract was shortened to 45 days. The legislator also imposed additional information obligations on the dominant company. The amended regulations provided that in case of changes in the factual state or legal state resulting in violation of the conditions on the bases of which PGK can be deemed a taxpayer (when the agreement is legally binding) results in the loss of taxable person status from the day preceding the day when such changes occurred.

10. A NEW CLASSIFICATION OF FIXED ASSETS - 2016

➔ From 1 January 2018, the new classification of fixed assets (*pl.* "KŚT 2016") shall be used for tax and accounting settlements.

„KŚT 2016” was adopted within the ordinance of October 3, 2016, but its application was postponed until the very beginning of current year. In the new KŚT 2016, the changes in the numbering and naming of groups, subgroups and types of fixed assets and in related classifications (“PKWiU”, land registry for building) were done. The above change is reflected in the CIT and PIT tax amendment of October 27, 2017, which granted new symbols and adapted the names of sub-groups of fixed assets in the depreciation rates list, which is an annex to both laws. Depreciation rates have not been modified.

11. LIMITATION TO DEPRECIATION

➔ On 1 January 2018, the depreciations write-downs made from the initial value of some intangible assets (*pl.* “WNIP”) cannot be included in tax-deductible costs if they were previously either acquired or created by the taxpayer and then sold by it, in the part that exceeds the income earned from that sale.

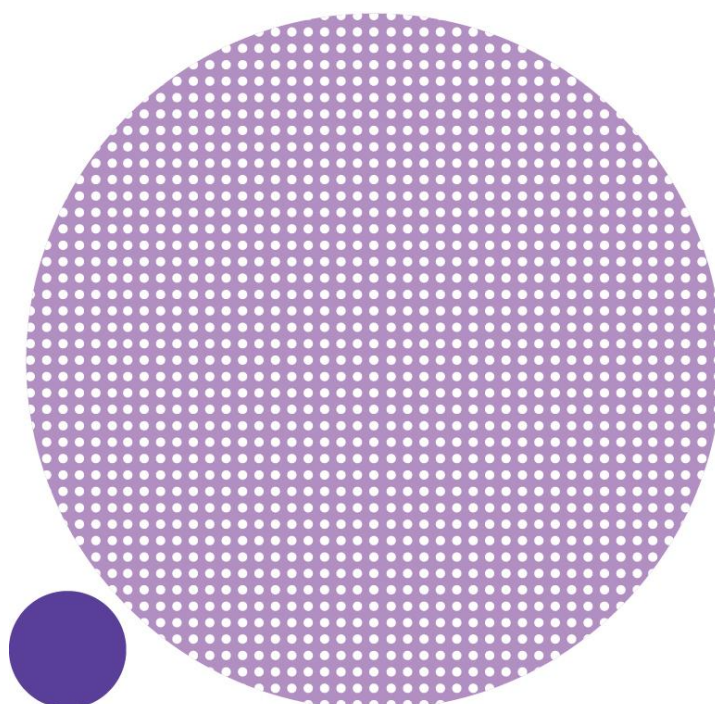
The legislator provided for an exclusion under of which depreciation from the initial value of the WNIP, such as proprietary and related property rights, licenses, rights specified in the Industrial Property Law, „know-how”, cannot be included to tax deductible costs if they were previously either acquired or created and then sold by the taxpayer or by company with no legal personality which that taxpayer is a partner – in a part that exceeds the income earned from that sale.

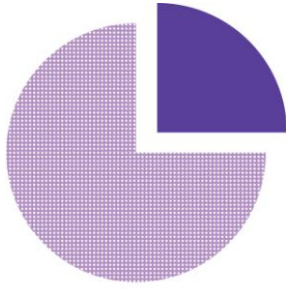
In addition, to the same extent all kinds of fees and charges for the use or right to use the above-mentioned rights or values (acquired or created and then sold) have been excluded from tax deductible costs.

12. CONTRIBUTION IN KIND IN FORM OF THE ENTERPRISE OR ORGANIZED PART OF THE ENTERPRISE MAY BE SUBJECT TO TAXATION.

- According to amended act, the value of a non-cash contribution made to a company or to a cooperative the subject of which is an enterprise or its organized part (so called „ZCP“) become an income, if the main or one of the main objectives of merging or dividing companies, exchanging shares or making a non-cash contribution is to avoid or to evade taxation.

As a rule, the contribution in a kind in the form of enterprise or its organized part does not generate revenue (tax-neutral action). However, in the case the activities, referred to above, have not been carried out for justified economic reasons, it is presumed that their objective was to avoid taxation. In that situation such restructuring shall generate an income for acquiring company or newly-established company, as well as for partners of company being divided or combined.





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