

DRAFTS OF NEW POLISH REGULATIONS ON TAXATION OF FINANCIAL INSTITUTIONS AND LARGE RETAILERS

This briefing gives an overview of recent developments in the area of tax law which the new government plans to implement. The Act on Tax on Certain Financial Institutions has already been adopted by the lower house of the Parliament, while the draft Act on Tax on Large Retail Stores in the Republic of Poland is still subject to governmental and parliamentary discussion and therefore, it may be subject to changes affecting both the details or even some of the more fundamental principles of the new regulation. The government estimates that these taxes may contribute almost PLN 7 billion in tax revenue (PLN 4-5 billion from the tax on certain financial institutions and PLN 2 billion from the tax on large retail stores) to the State budget. The new law is expected to come into force at the beginning of 2016 (i.e. in the case of Act on Tax on Certain Financial Institutions – from 1 February 2016 and in the case of Act on Tax on Large Retail Stores – from 1 March 2016).

Act on Tax on Certain Financial Institutions (Ustawa o podatku od niektórych instytucji finansowych) – act of 29 December 2015

Basic assumptions:

- The tax applies in principle to domestic banks (including cooperative savings and loan societies as well as consumer lending institutions) and insurers (reinsurers) as well as domestic branches of foreign banks and insurers (reinsurers).
- The tax is calculated on the gross value of assets exceeding a threshold of PLN 4 billion in the case of banks, PLN 2 billion in the case of insurers/reinsurers and PLN 200 million in the case of consumer lending institutions.
- The tax rate is 0.0366% per month.

Details

The tax on certain financial institutions will apply to the following entities carrying out financial activities in Poland: domestic banks, branches of foreign banks, branches of credit institutions, cooperative savings and loan societies (SKOKs), consumer lending institutions, domestic insurers, domestic reinsurers, branches of foreign insurers and reinsurers and the main branches of foreign insurers and reinsurers. The tax will not apply to state banks (currently the only "state bank" in the meaning of Polish Banking Law is BGK – Bank Gospodarstwa Krajowego). Moreover, the tax will not apply to investment funds (including mutual funds) or EU-located credit institutions performing banking activities on a cross-border basis under the European passport (i.e. directly by the credit institution, without using branch).

The taxable basis will be the surplus of the sum of assets over the tax-free amount, which is PLN 4 billion (approximately EUR 950 million) in the case of banks, PLN 2 billion (approximately EUR 475 million) in the case of insurers and reinsurers and PLN 200 million (approximately EUR 47.5 million) in the case of consumer lending institutions. In the case of taxpayers other than insurance companies or reinsurance companies and consumer lending institutions, the taxable basis will be further reduced by the value of specific own funds (as defined in the Polish Banking Law) and Treasury bonds. The taxable basis is to be determined by the taxpayer at the end of each month, pursuant to separate accounting regulations. The taxable basis for branches of foreign banks and foreign insurers/reinsurers is to be determined based on the branches' assets only.

Taxpayers will be obliged to pay the tax on a monthly basis at the rate of 0.0366% of the taxable basis.

Act on Tax on Large Retail Stores in the Republic of Poland (Ustawa o podatku od wielkopowierzchniowego handlu detalicznego na terytorium Rzeczypospolitej Polskiej) – draft of 15 September 2015

Basic assumptions:

- The tax applies, subject to certain exemptions and reductions, to large retailers, i.e. taxpayers conducting retail sales in a store exceeding 250 sq. m. in size.
- The taxable basis is the amount due on the supply of goods and services.
- The tax is 2% of turnover (unless an alternative option is applied).
- A central register of the entities obliged to pay this tax (the "Central Register") will be established in order to monitor the tax obligations.

Details

Anyone carrying on business activity consisting of retail trade in large stores located in Poland is subject to the tax. A large retail store comprises retail space in a shopping outlet exceeding 250 sq. m. located in Poland (although the space criterion may be changed or replaced by another one). Retail space comprises all or some of the space accessible to the public, constituting, in technical terms and in terms of use, an entirety intended to be used for commercial activity and to which direct delivery of goods is made and services related to such delivery are provided, and includes also storage space (warehousing) and display space. This means that in most cases the 250 sq. m. threshold will be calculated in respect of the whole area of any store.

The tax will be levied on the supply of goods to entities that do not carry out business activity in Poland (i.e. to consumers), and also on the provision of services relating to the delivery of goods to such entities, including, in particular, warehousing, transporting, assembling and repairing any goods purchased from the taxpayer. The taxable basis is the amount due on the supply of goods and services. The amount due does not include any value added tax.

Two options for the tax rate have been presented so far (in the second option, tax is paid quarterly):

- a flat rate of 2% of the relevant taxable basis, OR
- progressive tax rates, with a tax-free amount included, as per the table below:

Taxable Basis		Tax rate
Above	Up to	
-	PLN 700.000,00	Tax-free amount
PLN 700.000,00	PLN 1.300.000,00	0.5% of the excess over PLN 700,000.00
PLN 1.300.000,00	PLN 3.500.000,00	PLN 3,000.00 plus 1.5% of the excess over PLN 1,300,000.00
PLN 3.500.000,00	-	PLN 36,000.00 plus 2.0% of the excess over PLN 3,500,000.00

However, the taxable basis will be reduced by, in particular, rebates and price discounts and the value of goods returned, subject to reimbursement by the taxpayer of the payment received in full, unless payment is to be made at a later date, as well as by amounts invoiced to undertakings acquiring goods and services for the purpose of their business activity.

The following activities are non-taxable:

- supply of goods exported by or at the request of the taxpayer, except for any delivery constituting remote sale of goods out of Poland (as defined in the Act on Value Added Tax);
- supply of goods constituting intra-Community supply of goods (in the meaning of VAT regulations);
- supply of goods, for no consideration, at the place where the acquiring taxpayer carries out commercial activity, for charitable purposes, provided that the value of the goods supplied does not exceed 0.1% of the taxable basis during the previous settlement period;

- provision of services for no consideration;
- sale of motor fuel through a petrol pump;
- sale of diesel fuel through a petrol pump;
- sale of LPG; and
- sale of heating oil.

Every taxpayer has to submit an application to register in the Central Register, which must include certain information about the taxpayer (in particular, the amounts of other taxes paid in previous years). In the event of failure to submit an application or an update which the taxpayer is obliged to submit, the tax liability for the period not covered by such notification is increased by 1/10 of the value of the tax due in respect of the taxable activity.

Taxpayers must submit tax returns in respect of each month to the competent tax authority by the 25th day of the following month. The tax liability is determined based on the tax return, unless the tax relevant authority specifies a different amount of tax should be paid (which may apply if the tax due was incorrectly calculated by the taxpayer). If the taxpayer fails to declare or understates its taxable basis, the tax payable will be increased by one-fifth of the value of the tax payable on the undeclared or understated amount of the tax liability.

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