

TAX ON INCOME FROM UNREALISED GAINS

The Ministry of Finance published a draft Amendment to the Act on Personal Income Tax (further the "PIT"), Corporate Income Tax (further the "CIT") and the Tax Code. The draft provides for numerous material changes in taxation, one of the most important of which is the introduction of the so-called exit tax, i.e. a tax on income from unrealised gains. The introduction of the new tax results from the need to implement the EU Anti-Tax Avoidance Directive (2016/1164) (the "ATAD") into the Polish legal system.

Key issues

- Exit tax
- Tax rate
- Tax base
- Effective date

EXIT TAX

According to the draft Amendment, the tax on income from unrealised gains should be understood as the taxation of capital gains unrealised due to the transfer of assets by a taxpayer to another state without a change of the owner of the assets, or due to a change of the taxpayer's tax residence. This concerns the transfer of assets as a result of which a country (Poland) is deprived of its right to impose a tax on the increase in the value of the assets effectively generated before the transfer. The new tax will apply to legal persons and to natural persons, whether or not conducting any business activity, in the event of the transfer of their assets out of the territory of the Republic of Poland without a change of the owner of the assets or the taxpayer's tax residence.

Examples

The tax may be imposed, for example, in the following situations where Poland would lose, in full or in part, its right to impose tax on income from the sale of assets:

- the transfer by a Polish tax resident, to a foreign establishment (e.g. a branch), of an asset hitherto related to the activity conducted in Poland;
- the transfer by a non-resident, to the state of its tax residence or to another state, of an asset hitherto related to the activity conducted in Poland;
- the transfer by a non-resident, to another state, of all or part of the activities conducted by the establishment located in Poland (e.g. a branch);
- the transfer of an asset, free of charge, to another entity located in Poland;
- the contribution of an asset to an entity other than a company/partnership or a cooperative (e.g. to a foundation).

In addition, in the case of personal assets of PIT taxpayers (natural persons), i.e. assets unrelated to business activities, the tax will only apply to: all rights and obligations in a partnership without legal personality, shares in a company, stocks and other securities, derivatives and participation units in capital funds. This means, for example, that an increase in the value of a currency comprising personal assets will not be subject to the tax on unrealised gains.

TAX RATE

The draft provides for different CIT and PIT rates. When it comes to legal persons, the tax on unrealised gains will be 19% of the tax base. In the case of natural persons, the rate of 19% of the tax base is to apply when the tax value of an asset is to be determined, otherwise the rate will be 3%. In addition, it is planned that in the case of PIT taxpayers the tax on unrealised gains will not apply to assets with a value not exceeding PLN 2 million.

TAX BASE

According to the proposed amendments, the tax base both for PIT and CIT taxpayers is to be the sum of the income on unrealised gains determined for individual assets. In the case of a transfer of the enterprise or an organised part thereof, income on unrealised gains is to apply to the entire enterprise (or an organised part thereof).

Income has been defined as the surplus of the market value of the asset being transferred, including as a result of a change of tax residence, determined as at the date of the transfer thereof, over its tax value. The date of transfer should be understood as the day preceding the day on which an asset is no longer allocated to the activities conducted in the territory of the Republic of Poland, including through a foreign establishment.

EFFECTIVE DATE

The implementation deadline for the ATAD expires on 31 December 2019 but, pursuant to the draft Amendment, the provisions on the tax on unrealised gains are to come into force as of 1 January 2019.

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