# NEW METHOD OF TAXATION OF EUROBOND ISSUES.

This Client Briefing summarizes amendments to the taxation of eurobonds proposed by the Ministry of Finance which might change the way eurobonds are issued by Polish issuers from an indirect issuance via a special purpose vehicle to a direct issuance. The new regulations are set out in a draft amendment to the Act of Personal Income Tax, Corporate Income Tax and the Tax Code, which is currently under consideration in the Parliament (the "**Draft Act**"). It is therefore, still subject to change. It is expected that the Draft Act will come into force from 1 January 2019.

**Key issues**

- No withholding tax on interest and premium
- Possibility to elect the method of taxation

## TAX EXEMPTION OF INTEREST AND PREMIUM

The Draft Act provides that no withholding tax will apply to any interest or premium (i.e. discount) received by non-Polish tax residents in respect of:

- bonds issued and admitted to trading on a regulated market (such as the Warsaw Stock Exchange or London Stock Exchange); or
- bonds issued and admitted to trading on an alternative trading system (for example multilateral trading facilities such as Turquoise).

Each of these regulated markets and alternative trading systems has to be located either in Poland or a country with which Poland has signed a double tax treaty with, which covers amongst others all members of the EU.

Tax exemption only applies to bonds:

- with a redemption period of 1 year or longer; and
- where, at the point in time when the bonds are redeemed, related entities do not hold more than 10% of the value of such bonds; that is, they are widely distributed.

This is to apply to both payers of personal income tax and corporate income tax.

However, the Draft Act only concerns bonds issued after 31 December 2018. As regards bonds issued before 1 January 2019, the Ministry is proposing an alternative method for taxing income derived from such bonds (in the form of a lump sum as described further below).

## OPTION TO ELECT THE METHOD OF TAXATION

The new provisions stipulate that in the case of bonds issued prior to 1 January 2019, issuers will be able to choose the current method of taxation of such proceeds (i.e. with tax withheld at source) or take advantage of a new form of taxation which assumes that the obligation to pay tax will be shifted to the issuer (the "lump sum" method as described below).

The amendments under discussion are also to apply to mortgage banks, with respect to covered bonds issued by those banks in accordance with the Act on Covered Bonds and Mortgage Banks. However, in this case, no restrictions have been introduced as to the terms and conditions of the bonds which will give the right to opt for the alternative method of taxation. That is, the minimum redemption period and 10% concentration rule will not apply. Moreover, taxpayers who do not have their registered office or head office in the territory of Poland will be able to take advantage of the new method of taxation, if the bond issue is related to the activity of the permanent establishment of that taxpayer in Poland and the receivables and liabilities under the bonds will constitute assets attributed for tax purposes to that permanent establishment.

Such entitlement will also apply to Polish taxpayers paying tax on financing originating from a bond issue via a foreign special purpose vehicle of which the taxpayer is the sole owner, if the proceeds from the issue made by the special purpose vehicle are loaned to the Polish taxpayer based on a loan agreement or the issuance of bonds with a repayment/redemption period of not less than 5 years. The taxpayer will be entitled to benefit from the lump-sum form of taxation in those cases where: up to the end of 2022 the taxpayer extinguishes or takes over the commitments arising under any bonds issued by the special purpose vehicle or deems that the vehicle issuing the bonds is not the beneficial owner of interest or discount paid by the taxpayer.

## INTERIM PROVISIONS

The Draft Act contains interim provisions which provide for the possibility to apply the lump-sum taxation method to bond issues made prior to 1 January 2019 and sets out the rules of taxation applicable to such issues which were made using special purpose vehicles.

A taxpayer that opts for the lump-sum method of taxation is obliged to inform the competent head of the tax office in writing of such election, not later than by 31 March 2019. The notification should contain, in particular, the details of the taxpayer (the issuer), information to enable the relevant bond series to be identified, where the bonds were issued and the terms and conditions determining when any interest or premium is to be paid. Moreover, when electing for the method of taxation, by 30 June 2019 the taxpayer is obliged to determine a tax base to which lump sum tax applies by calculating:

- the aggregate amount of interest and premium payments (including those to the special purpose vehicle) made from 1 January 2014 to 30 June 2019; and
- the aggregate amount of interest and premium payments (including those to the special purpose vehicle) that are to be made from 1 July 2019 to the date of redemption of the bonds or repayment of the loan.

CLIFFORD CHANCE

The rate of the lump-sum income tax is to be 3% of this tax base which is to be paid by 31 July 2019 on the aggregate of the interest/discount paid in respect of the period running from 1 January 2014 to 30 June 2019, and on the interest/premium which is to be paid starting from 1 July 2019 up to the date of redemption of the bonds by the deadline for filing the annual tax return for the relevant tax year with respect to the interest/premium paid in that year.

## SUMMARY

- Bonds issued after 31 December 2018 - withholding tax exemption applicable to bondholders who are not Polish tax residents.
- Bonds issued before 1 January 2019 (including bond issues via special purpose vehicles):
  - subject to withholding tax on the current basis; or
  - subject to a 3% lump-sum tax.

In the latter case the lump-sum tax is payable by 31 July 2019 and by the deadline for filing the annual tax return for the given tax year respectively.

## CONTACTS

**Grzegorz Namiotkiewicz**
Partner

T +48 22 627 11 77
E grzegorz.namiotkiewicz
@cliffordchance.com

**Tomasz Szymura**
Counsel

T +48 22 627 11 77
E tomasz.szymura
@cliffordchance.com

**Grzegorz Abram**
Counsel

T +48 22 627 11 77
E grzegorz.abram
@cliffordchance.com



www.cliffordchance.com

Norway House, ul. Lwowska 19, 00-660 Warsaw, Poland



Clifford Chance, Janicka, Krużewski, Namiotkiewicz i wspólnicy spółka komandytowa

Abu Dhabi • Amsterdam • Barcelona • Beijing • Brussels • Bucharest • Casablanca • Dubai • Düsseldorf • Frankfurt • Hong Kong • Istanbul • London • Luxembourg • Madrid • Milan • Moscow • Munich • Newcastle • New York • Paris • Perth • Prague • Rome • São Paulo • Seoul • Shanghai • Singapore • Sydney • Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.