

NEW MINISTRY OF FINANCE GUIDANCE ON DIVERTED PROFIT TAX

On 9 September 2025 the Polish Ministry of Finance published Guidance on Diverted Profit Tax ("DPT"). The document clarifies the scope, conditions, and compliance obligations related to DPT, which targets cross-border payments made to related entities in low-tax jurisdictions or structures lacking economic substance.

Diverted profit tax definition

Under Article 24aa (2) and (3) of the CIT Act, certain costs are taxed as diverted profits if all of the following apply:

- the costs relate to intangible services, licence fees or debt financing;
- they were deducted as tax-deductible expenses in the relevant year;
- the total of such costs paid to related parties exceeds 3% of the tax payer's total deductible costs (safe harbour threshold);
- the payments were made to a related entity based outside Poland; and
- the foreign entity is low-taxed, earns most of its income from Polish entities and passes on a significant part of the payments to another related party.

Additionally, under Article 24aa (14) and (15), the diverted profit tax may also apply to:

- costs not paid directly to a related entity meeting the above conditions, but routed through an intermediary that passes the payments to such an entity; and
- costs paid to entities located in tax havens.

For entities based in the EU or EEA, the diverted profits tax applies only if the related entity does not conduct substantial genuine economic activity in its country of residence.

To determine whether a cost is subject to the diverted profits tax, the taxpayer should first verify three basic conditions:

- (i) whether the cost falls under a specified category;
- (ii) whether it was deducted in the tax year; and
- (iii) whether the 3% threshold was exceeded.

Key issues

- Diverted profit tax definition
- Criteria for recognizing diverted profits
- Conditions on the side of the foreign related entity
- Definition of substantial economic activity
- Indirect payments and tax havens
- Tax returns and settlement

If all these conditions are met, the taxpayer must then assess whether the foreign related entity meets the three income-shifting criteria or whether other specific conditions apply.

Criteria for recognizing diverted profits

Categories of costs

Intangible services

This includes advisory, market research, advertising, management, data processing, insurance, guarantees, and similar services. Classification depends on the actual nature of the service. IT services are generally excluded unless they involve significant advisory or data processing elements.

Licence fees and payments for IP rights

Covers payments for the use of or right to use copyright, licences, patents, trademarks, industrial designs, and know-how. It does not apply to full transfers of ownership.

Credit risk transfer costs

Applies to costs related to transferring the risk of debtor insolvency (e.g. via credit default swaps), excluding loans from banks or credit unions.

Debt financing costs

Includes interest, fees, commissions, leasing interest, late payment penalties, and costs of securing obligations (including derivatives).

Payments for transfer of functions, assets or risks

Typically linked to business restructurings (e.g. exit fees), where profit potential is shifted to another group entity. Routine commercial transactions are excluded unless they involve a transfer of key business functions.

Costs incurred for foreign related entities

Diverted profits tax applies primarily to cross-border payments made to foreign related entities that do not have their registered office or management in Poland. The aim is to target aggressive tax planning structures involving foreign jurisdictions, while excluding domestic transactions benefiting from Polish tax preferences.

The tax applies only to related parties as defined in Article 11a of the CIT Act. This includes entities under significant influence (e.g. holding 25% or more of the shares or voting rights), partnerships and their partners, and foreign permanent establishments.

Importantly, individuals are not treated as related entities for the purposes of diverted profits tax. Therefore, payments to non-resident individuals (e.g. board members) are not subject to this tax.

However, if a foreign related entity passes payments to another party, that recipient can be any entity or individual. This ensures the rules remain effective even in complex structures.

The rules also apply to foreign permanent establishments, both those located in Poland and abroad, if the payment is attributed to them.

Tax-deductible costs

Only costs that are actually deducted as tax-deductible expenses in a given year can be treated as diverted profits. This includes depreciation and amortization of intangible assets acquired after 1 January 2022.

If a cost is incurred in one year but deducted in another (e.g. through amortization or upon sale of an asset), it is treated as diverted income in the year it is deducted. The conditions related to the foreign entity are assessed based on the year in which the cost was incurred.

For debt financing, only interest and related costs that are actually deducted (e.g. within the limits of Article 15c) are included in the tax base. Deferred deductions (spread over 5 years) are included in the relevant years in which they are recognized.

The diverted profits tax may also apply to costs allocated to a taxpayer from a non-corporate partnership (e.g. a limited partnership or general partnership). Under Article 24aa(4)(2) of the CIT Act, such costs are included if they are attributed to the taxpayer under Article 5 of the CIT Act. This means that partners in partnerships may be subject to the diverted profits tax on their share of the partnership's costs, provided that the general conditions for diverted profits (as set out in Article 24aa(2) and (3)) are met.

Safe harbour (3% of tax-deductible costs)

Article 24aa(2)(4) of the CIT Act introduces a safe harbour threshold. If the total amount of specified costs (listed in Article 24aa(3)) incurred in a tax year for related parties and recognized as tax-deductible accounts for less than 3% of the taxpayer's total deductible costs for that year, the diverted profits tax does not apply.

This threshold is assessed at the taxpayer's level. For tax capital groups, the 3% test is applied to the combined costs and combined deductions of all member companies.

Taxpayers may first check whether the 3% threshold is exceeded. If it is, they must then assess whether the foreign related party meets the diverted income conditions.

Conditions on the side of the foreign related entity

Once the basic conditions for diverted profits are met (i.e. the cost comes under Article 24aa(3), is paid to a foreign related entity, is tax-deductible, and exceeds the 3% safe harbour), the taxpayer must assess whether the foreign related entity meets all three conditions listed in Article 24aa(2)(1–3) of the CIT Act, which would be:

Low taxation

The income from the relevant transaction is taxed at a rate below 14.25% or is exempt or excluded from income tax in the entity's country of residence.

Main source of income

At least 50% of the entity's total income originates from transactions listed in Article 24aa(3) with the Polish taxpayer or its related entities.

Income transfer

At least 10% of that income is passed on to another related entity, either as deductible expenses or as profit distributions (e.g. dividends).

If any one of these conditions is not met, the cost is not treated as diverted income. The taxpayer must be able to document this, and the burden of proof lies with the taxpayer (typically the Polish company). Alternatively, the taxpayer may demonstrate that the foreign entity, if based in the EU or EEA, conducts substantial economic activity.

These conditions are assessed for the year the cost was incurred, regardless of when it was deducted. In practice, preliminary statements from the foreign entity may be used, but the taxpayer remains responsible for their accuracy and updates.

Low taxation of the foreign related entity

One of the key conditions for applying the diverted profits tax is that the foreign related entity is subject to low taxation. Under Article 24aa(2)(1) of the CIT Act, this condition is met if the income from relevant payments (e.g. services, royalties and interest) is:

- taxed at a rate below 14.25%; or
- exempt or excluded from income tax in the entity's country of residence.

How the 14.25% threshold is calculated:

- The nominal tax rate is used, adjusted for specific tax preferences (e.g. deductions or refunds) related to the revenue in question.
- However, costs related to that revenue are not taken into account.
- Actual tax paid is not relevant.
- Costs incurred by the foreign entity are not considered in the calculation.

Special cases:

- If the entity is based in an EU or EEA country and conducts substantial genuine business activity, the diverted profits tax does not apply, even if the nominal tax rate is below 14.25%.
- For tax-transparent entities, the tax rate is assessed at the level of the partners, including individuals.
- Partial exemptions reduce the effective rate proportionally.
- Full exemptions (e.g. for pension funds or entities in tax-free zones) automatically meet the low-tax condition.

Practical notes:

- The tax rate must be assessed per income type (e.g. interest, royalties).
- Preferential regimes in specific regions (e.g. Delaware in the US) must also be considered.
- The taxpayer must base the assessment on the rules in force in the year the cost was incurred.
- If full financial data are not yet available, estimates may be used with later corrections.

Countries with distribution-based tax systems

In countries where corporate income tax is only levied upon profit distribution (e.g. Estonia, Latvia and Georgia), the fact that income is not taxed in the year

it is earned does not mean it is taxed at a rate below 14.25%. The Polish CIT Act focuses on the applicable tax rate, not the timing of taxation. Therefore, entities in such jurisdictions do not automatically meet the low-tax condition. Each case must be assessed individually, especially if additional tax reliefs or exemptions apply.

Multiple payment types

If a taxpayer incurs costs under multiple categories (e.g. royalties and interest), the low-tax condition must be assessed separately for each type. Similarly, if different payments under the same category are taxed differently, each payment must be analysed individually.

Tax-transparent entities

For transparent entities, the tax rate is assessed at the level of the partners or shareholders (Article 24aa(5) CIT). If a partner holds less than 5% of profit rights, the low-tax condition is not assessed, and the cost is not treated as diverted income. For others, the tax rate is determined based on the partner's jurisdiction and applicable reliefs or exemptions.

Foreign permanent establishments ("PE")

If the payment is made to a foreign PE, the tax rate is assessed based on the country where the PE is located.

If the PE is located in Poland, the Polish CIT rate applies, and any reliefs or refunds must be considered.

Main source of income

To apply the diverted profits tax, the foreign related entity must derive at least 50% of its total income from payments listed in Article 24aa(3) (e.g. royalties, interest and intangible services) made by the Polish taxpayer and other Polish related entities. This condition ensures the tax targets entities that primarily earn income from Polish group companies. It also includes payments from Polish permanent establishments of foreign entities.

The 50% threshold is calculated based on either tax or accounting records, depending on availability. If the threshold is met under either method, the condition is considered fulfilled. If the foreign entity is part of a foreign tax group, the 50% test applies only to that entity, not the entire group.

In practice, the foreign entity may provide preliminary data or estimates when the Polish taxpayer files its return. If final figures later change the outcome (e.g. from 45% to 51%), the taxpayer must file an adjustment and pay any interest due.

Income transfer by the related entity

The third condition for applying the diverted profits tax targets intermediary entities used in aggressive tax planning. Under Article 24aa(2)(3) of the CIT Act, the foreign related entity must transfer at least 10% of its income (from Polish related parties) to another entity, in either of the following forms:

(a) as deductible expenses or amounts reducing income, tax base, or tax liability; or

(b) as profit distributions (e.g. dividends or similar income from profit participation).

What qualifies as “income transfer”?

Any form of payment, compensation, deferred settlement or other transaction that results in a transfer of value, including cascade structures, such as back-to-back loans or sublicensing chains.

It applies even if the transferred income is used for different types of expenses, unless the taxpayer proves there is no link between the income received and the payments made.

What is excluded

Transfers that do not involve costs listed in Article 24aa(3) (e.g. rent or admin services) do not meet this condition. If the foreign entity does not distribute the income or use it in deductible transactions, the condition is not met.

Substantial economic activity

Under Article 24aa(10) of the CIT Act, the diverted profits tax does not apply if the cost is paid to a related entity that:

- is a tax resident of an EU or EEA country; and
- conducts substantial genuine economic activity in that country.

Key criteria for genuine activity (Article 24aa(11)):

- The entity operates a real business, with premises, staff and equipment.
- It has control over how it uses the payments received.
- It bears the economic risk associated with those payments.

To determine whether the activity is substantial, the ratio of income from real business operations to total income is considered (Article 24aa(12)).

Important clarifications:

- Holding companies without staff or office space typically do not qualify.
- The test focuses on operational substance, not the scale or type of business.
- For tax-transparent entities, the test applies to the entity itself (e.g. a partnership), not its partners.
- For foreign permanent establishments, the test applies to the permanent establishments in their country of location.

Special cases – indirect payments and tax havens

To prevent circumvention of the diverted profits tax, Articles 24aa(14) and (15) extend the rules to indirect payments and high-risk jurisdictions.

Indirect payments via intermediaries (Art. 24aa(14))

The tax applies even if the cost is not paid directly to a qualifying foreign related entity, but instead:

- is paid to a Polish partnership (non-corporate), which then transfers the income to a foreign related entity meeting the diverted income conditions; or
- is paid to a foreign related entity that does not meet the conditions, but passes the income to another related entity that does.

In such cases, the diverted profits tax is assessed based on the final recipient of the payment. The taxpayer must verify whether that entity meets the conditions set out in Article 24aa(2).

Tax havens and non-cooperative jurisdictions (Art. 24aa(15))

If the payment is made to an entity located in a tax haven or a country without a tax treaty or exchange of information agreement, the diverted profits tax applies automatically, with no need to assess the standard conditions (low tax rate, income source, income transfer).

However, this does not apply if the recipient qualifies as a controlled foreign company (CFC) under Polish rules and the income has already been taxed in Poland under CFC provisions.

Tax returns and settlement

Autonomous tax – applies even in loss years

Diverted profits are taxed separately from other income. Even if the taxpayer reports a loss, the diverted profits tax still applies (Article 24aa(6) CIT).

Tax rate and filing

The tax is calculated at 19% of the diverted income base. It is reported in the annual CIT return and must be paid by the filing deadline (Article 24aa(9) CIT).

CIT/PD attachment

Taxpayers must complete the CIT/PD form (attachment to CIT-8), listing the tax base by category (e.g. royalties, interest). For tax groups, the equivalent form is attached to CIT-8AB.

Withholding tax set-off

If WHT was withheld on the same payments, the diverted profits tax is reduced by the WHT amount (Article 24aa(8) CIT). However, the reduction cannot exceed the diverted profits tax due. If WHT is later refunded or reduced, the taxpayer must adjust the diverted profits tax accordingly.

Documentation and recordkeeping

Taxpayers must maintain:

- detailed records of costs per related entity;
- evidence of WHT paid and any refunds;
- amortization schedules for costs incurred in prior years (only for costs from 2022 onward); and
- proof that diverted income conditions were or were not met in the year the cost was incurred.

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