

NEW GUIDANCE ON THE BENEFICIAL OWNER CLAUSE FOR WITHHOLDING TAX PURPOSES

On 3 July 2025 the Polish Minister of Finance published Guidance on the Beneficial Owner clause ("BO") for the purposes of withholding tax ("WHT"). The new Guidance clarifies the interpretation of regulations such as CIT, PIT and double taxation treaties ("DTT"), especially with respect to preferential WHT rates and exemptions arising under DTT and EU directives.

Key issues

- Beneficial owner status
- Payments subject to beneficial owner verification
- Beneficial owner verification criteria
- Special cases of beneficial owner assessment

Beneficial owner status

According to the definition of beneficial owner set out in Article 4a (29) of the Polish CIT Act, a beneficial owner should be understood as an entity that meets all of the following conditions:

- It receives the given payment for its own benefit, including having the autonomy to decide how to use it and bearing the economic risk associated with the loss of that payment or part thereof.
- It is not an intermediary, representative, trustee or other entity obliged to transfer all or part of the payment to another entity.
- It conducts genuine business activity in the country of its registered office, if the payments are received in connection with its business activity, whereby the assessment of whether the entity conducts genuine business activity takes into account the nature and scale of the activity carried out by that entity in relation to the payment received.

The condition of conducting genuine business activity refers to the characteristics of the entity, requiring that it possess sufficient resources (human, informational or infrastructural) appropriate for the type of activity. Failure to meet any of the above conditions prevents the qualification of the entity as the beneficial owner of the payment.

Payments subject to BO verification

Passive payments

Under Polish CIT and PIT regulations, the beneficial owner (BO) condition must be verified when applying preferential WHT rates, exemptions or non-collection of tax. This requirement applies specifically to passive payments.

To qualify for WHT relief under the pay-and-refund system, the taxpayer must declare BO status, including conducting genuine business activity related to the payment.

The BO condition is not required for other types of payments, such as service fees classified as business profits under DTTs.

Intangible services

For payments other than passive payments listed in Art. 26(1) CIT – such as fees for intangible services (e.g. advertising and consulting) – the BO condition does not apply. These payments are typically classified as business profits under Double Tax Treaties (DTTs), and therefore the payer is not required to verify beneficial owner status.

Dividends under Article 22 (4) CIT – EU parent – subsidiary directive

The parent – subsidiary directive (PSD) aims to ensure tax neutrality within the EU by eliminating double taxation of profit distributions between parent and subsidiary companies. In chain structures, only the ultimate parent company receiving the profit may be considered the beneficial owner.

According to a CJEU ruling (C-116/16 and C-117/16), the exemption under the PSD does not apply if the dividend recipient is a tax resident of a third country. To benefit from the PSD, the recipient must be a tax resident of the EU and qualify as the beneficial owner of the profit distributed.

Dividends, interest and royalties under DDTs without an explicit BO clause

Even if a DTT does not explicitly mention the beneficial owner clause, the BO condition still applies. This is based on the Vienna Convention's principle of treaty interpretation and the OECD Model Convention evolution.

Relief from WHT should not be granted to intermediaries acting on behalf of another entity that is the actual income recipient. Therefore, the payer must verify BO status regardless of whether the DTT uses the term “beneficial owner” or a similar phrase such as “paid to a resident.”

BO verification criteria

Under Article 8 of the Tax Ordinance Act, the withholding agent is legally obliged to calculate, collect, and remit tax correctly and on time. Article 30 outlines the scope of liability, which may only be excluded in specific cases. When applying a tax preference depends on the BO condition, the agent must verify whether the recipient meets the statutory definition of a beneficial owner. This requires a factual and legal assessment.

Payments to related parties

For payments to related entities, Article 30 §5a of the Tax Ordinance Act and Article 26(7a) of the CIT Act require enhanced verification. The agent must confirm, with due diligence, that there is no knowledge suggesting circumstances that would exclude the application of tax preferences. This includes:

- reviewing not only declarations and certificates,
- but also financial statements and contracts proving economic substance and control over the payment.

Payments to unrelated parties

If the payer and recipient are not related, the verification may rely on:

- a valid tax residency certificate; and
- a BO declaration from the recipient.

However, the agent must still assess the formal correctness of these documents (e.g. validity period and format). Failure to examine broader circumstances does not automatically mean lack of due diligence, even if the tax authority later finds that the BO condition was not met.

Special cases

Technical withholding agents

For agents acting in a purely technical role (e.g. intermediaries handling securities), verification is based on a predefined list of documents. The required documents include:

- a tax residency certificate;
- a BO declaration; and
- additional declarations depending on the type of exemption.

Agents must also verify that no contradictory facts arise from:

- commercial register extracts; and
- the latest audited financial statements.

Special cases of BO assesment

Look-through approach (LTA)

The LTA allows the payer to apply WHT relief even if the beneficial owner is not the direct recipient, provided the payment is passed through intermediaries. This concept is recognized in OECD commentary, Polish administrative courts, and CJEU case law.

Conditions for applying the LTA:

- Identifying the actual beneficial owner.
- Confirming that the BO recognizes the income in their jurisdiction.
- Ensuring the payment type remains consistent throughout the chain.
- Verifying that all the conditions for the applicable tax preference are met.

LTA under the parent – subsidiary directive

Each entity in the payment chain must meet the conditions of Article 22(4–4d) CIT, which include:

- the requirement of direct ownership of at least 10% of the shares for two years; and
- the BO must be in the EU/EEA or the payment must be taxed at least once within the EU/EEA.

Partial relief is possible if only part of the payment reaches a qualifying BO.

LTA under the interest and royalties directive

No entity in the chain may benefit from a full income tax exemption. Effective taxation must occur in each jurisdiction. Direct ownership of at least 25% of the shares for two years is required, or entities must be sister companies.

LTA and dividends under DDTs

When applying the LTA under a DTT, the payer must verify whether the treaty conditions for reduced WHT rates or exemptions are met. DTTs may define shareholding requirements for the beneficial owner in three ways:

Variant 1: Direct Shareholding Required

The DTT requires the beneficial owner to hold shares directly in the dividend-paying company, for example company X (jurisdiction X) owns 100% of company Y (jurisdiction Y), which owns 100% of Polish company A.

Company A pays dividends to Y, which passes them to X. If the DTT between Poland and X offers 5% WHT for a direct shareholding, 15% WHT otherwise, then 15% applies, as X does not directly hold shares in A.

Variant 2: Direct or Indirect Shareholding Allowed

The DTT allows either direct or indirect ownership, for example if the DTT between Poland and X allows indirect ownership, then 5% WHT may apply, even though X does not directly hold shares in A.

Variant 3: No Specification of Shareholding Type

The DTT does not specify whether ownership must be direct or indirect, for example if the DTT between Poland and X offers 5% WHT for shareholding without specifying the type, then 5% may apply.

LTA and interest and royalties under DDTs

For interest and royalties, DTTs typically do not require shareholding by the beneficial owner in the paying entity. For example, a company Z (Poland) pays interest to company Y (Canada), which passes it to company X (UK), the beneficial owner. Company X recognizes the income and the payment retains its character. Company Z may apply the reduced WHT rate under the Poland–UK DTT, using the LTA.

Extended scope of BO assessment

Payments subject to extended entity-based BO analysis

In certain cases, the direct recipient of a payment is not its beneficial owner, and the LTA cannot be applied due to lack of information about further payment transfers. However, if both the recipient (Entity B) and the potential BO (Entity C) are located within the same legal framework (e.g. the EU in the case of directives or the same treaty country in the case of DTTs), the Polish payer (Entity A) may consider applying tax preferences based on an extended entity-based BO assessment.

Criteria for establishing BO status under an extended assessment

To confirm BO status under this approach, two steps must be satisfied:

(i) Intermediary Condition Based on Hypothetical Payment

B is not the BO due to C's rights over the payment.

B acts as an intermediary and does not benefit economically from the payment.

Example: B is obliged to transfer interest or dividends to C under contractual terms, and does not conduct genuine business activity.

(ii) BO Status of Entity C

C must be able to decide how the payment is used, from the level of B.

C must bear the economic risk and operate genuine business activity related to the payment.

C must not be obliged to pass the payment to another entity.

Presumption of BO status under the parent - subsidiary directive

Based on the purpose of the PSD (see Section 3.3), which is to ensure tax-neutral profit distributions within the EU, the BO condition does not need to be verified if the profit distribution is taxed at least once within the EU. This presumption complements the due diligence obligations of the payer.

Key points

The presumption applies only if the payment chain involves entities within the EU and the profit is taxed at least once. The payer may apply this presumption voluntarily. It does not override formal obligations, such as BO declarations required for passive income under Article 28b CIT. The presumption is based on a hypothetical LTA chain and does not require proof of income recognition by the BO. If the ownership structure appears artificial or tax-driven (e.g. sudden changes without economic justification), the presumption may be challenged under Article 22c CIT.

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