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REPORT

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Code of Conduct Group (Business Taxation) – Report to the Council = Endorsement

Poland's 9% corporate income tax for taxpayers with revenues not exceeding EUR 1.2 million (PL010)

The following description of the regime was agreed by the Code of Conduct Group on 11 April 2019:

Background

By Act of 5 September 2016 Poland amended the Corporate Income Tax Act and Personal Income Tax Act and introduced a reduced tax rate of 15% for small companies and start-up companies. The Code of Conduct Group assessed this amendment last year and concluded that it was not harmful, as it only concerned small and medium sized enterprises[1]

[1] Assessed by the Code of Conduct Group at the meeting of 24 July 2018; see WK 8763/2018 INIT of 13 July 2018.

By Act of 23 October 2018 Poland introduced a further reduction of the tax rate to 9%. The law entered into force as of 1st January 2019.

Policy rationale

The reduced taxation for small taxpayers and start-up taxpayers aims at accelerating growth and development and creating favourable conditions for increasing entrepreneurship, especially for young people, for whom obtaining outside financing for business activity is often a significant barrier and who have a less competitive position than large companies. The tax burden, measured by the nominal rate, is the same for such a taxpayer as for the largest taxpayers, regardless of the type of activity. This may affect the competitiveness of small taxpayers (taxpayers starting their business activity) compared to other taxpayers, who usually have bigger possibilities of raising funds for development and investments than small entities or entities starting their business activity.

The regime

The regime provides for a reduced tax rate of 9%. The general CIT rate is 19%.

The reduced rate applies to income other than capital gains. The 9% tax rate applies to taxpayers with revenues not exceeding the equivalent in PLN of EUR 1 200 000 in the current tax year. However, the preference is available to those taxpayers who have the status of a small taxpayer (determined based on gross sale revenues from the previous tax year – not exceeding the equivalent in PLN of EUR 1 200 000), unless it is their first tax year.

In the situation where, in a given tax year (regardless of whether it is the start year or another year of business activity), taxpayers (both starting business activity and small taxpayers continuing such activity) exceed the above mentioned 1 200 000 revenue threshold, they lose the right to apply the reduced rate.

The provisions are also applicable to PE's of foreign companies, as long as the taxpayer meets the conditions for the application of the provision. A PE is not treated as a separate entity, so in the case of the application of the 9% tax rate the tax authorities should look at the company as a whole. As a consequence a small PE of a large non-resident company would not benefit lower tax rate.

The application of the reduced rate is not limited to any specific type of business or activities. It applies to the same income as the general rate.

In order to prevent tax optimisation, it provides for limiting the application of the 9% rate for taxpayers starting their activity, which were created as result of transformation of one company (CIT taxpayer) into another company (also a CIT taxpayer) or company division or contribution to another subject (including as capital contribution) the enterprise previously operated by this taxpayer, an organized part of this enterprise or component assets of this enterprise – of the specific value. Such taxpayers will be able to apply a reduced tax rate only from the third fiscal year, provided that the requirement to remain a small taxpayer this year is maintained.

This limitation is introduced to prevent taxpayer's restructuring operations - by changing the formula of activity or artificial adjustment of its size – in order to benefit from the reduced rate.

There are no special administrative procedures for the application of the reduced tax rate. Taxpayers are obliged to make advance payments and submit annual tax returns in application of general principles.

Statistics

The number of taxpayers subject to CIT in Poland in 2017 was 509,029.

According to the tax returns the average revenue of the Polish corporate income taxpayers for 2017 amounted to approximately 11 000 000 PLN (approximately 2,5 million EUR). The average income (i.e. revenue minus tax deductible costs) of Polish corporate income taxpayers for 2017 amounted to 1 731 000 PLN (approximately 0,4 million EUR).

In the 2014 impact assessment preceding the adoption of the initial regime the number of taxpayers who achieved revenue in the amount not exceeding the equivalent in PLN of EUR 1 200 000 was estimated at 393 000 (for 2017 was 460 000). Furthermore, during the five years preceding the introduction of this regulation, an increase in the total number of taxpayers was observed on average by 7% (i.e. by 23 000 taxpayers per year), as well as taxpayers reporting a tax due on average by 8% (i.e. by 10,000 taxpayers per year).

Conclusion

The Code of Conduct Group concluded at its meeting on 11 April 2019 that this regime does not need to be assessed.