Changes in taxes in 2019

17.12.2018

Year 2019 will bring numerous changes in tax regulations that will have impact on your activity as well as personal settlements with the tax authorities. Below we have presented a summary of the most significant tax changes. If you are interested in more detailed information in the scope of the said changes, do not hesitate to contact us.

1. INCOME TAXES

1) Innovation box

- Preferential taxation of 5% in relations to income obtained by a taxpayer from qualified intellectual property rights owned of which the taxpayer is owner, co-owner, user or with reference to which holds the right to use on the basis of a licence agreement, and which are protected on the basis of applicable national or international laws.
- Qualified intellectual property rights include in particular:
  - patent,
  - protection right for a utility model,
  - registration right of the industrial model,
  - registration right of integrated circuit topography,
  - auxiliary protection right for a patent for a medicinal product or a pesticide,
  - registration right of a medicinal product or a veterinary medicinal product admitted to trading,
  - an exclusive right referred to in the Plant Variety Protection Act,
  - copyright to the computer programme.
- The Innovation Box can also be used in the case of purchase of qualified intellectual property rights on condition that the buyer will incur costs connected with their development or improvement.
- Income qualifying for the Innovation Box includes income obtained on account of licence receivables/fees or other receivables connected with the use of qualified intellectual property right, income from the sales of qualified intellectual property right and income from such asset taken into account in the selling price or service determined based on the market price.
- The preference can be used on condition of selecting qualified income in the accounting records.

2) In-kind contribution of loan and trade receivables

- Starting 1 January 2019, tax deductible expenses in the case of providing loan or trade receivables to the company will be determined as:
  - The value corresponding to the amount of the loan (credit) that was provided by the entity contributing to the payment account of such company,

JP Weber sp. z o.o.
Rynek 39/40
PL 50-102 Wrocław
NIP: PL 897 17 13 155
REGON: 020248434

Sąd Rejonowy we Wrocławiu
Wydział VI Gospodarczy Krajowego
Rejestru Sądowego
KRS: 0000253773
Kapitał zakładowy: 50.000,00 zł

    - The value of receivables in the part previously classified as the income due by the entity making in-kind contribution.
- The change dispels any doubts in the scope of the possibility of recognizing tax deductible expenses in the case of conversion of debt into capital with reference to which the existing opinion of tax authorities and administration courts was not unambiguous.

3) Loss settlement

- Starting 1 January 2019, loss in the amount of 5 million zloty, instead of the existing 50% of the tax loss generated in each of the past 5 tax years can be settled on a one-off basis in a tax year.
- The remaining part of the tax loss exceeding 5 million zloty can be settled within consecutive 5 tax years, however, the amount settled in a given year still cannot exceed 50% of the loss.

4) Company car

- Limits related to the value and insurance of cars that can be classified as tax deductible expenses by depreciation write downs have been changed:
    - Increase in the limit related to electric cars from 30,000 euro to 225,000 zloty, and for the other passenger cars from 20,000 euro to 150,000 zloty;
    - Increase in the limit of expenses for car insurance that can be classified as tax deductible expenses from 20,000 euro to 150,000 zloty (in proportion in which such amount is versus the value of the car adopted for the purpose of insurance).
- Depreciation limits do not apply to cars to be provided by lessors to be the subject of leasing contracts.
- Tax deductible expenses on account of the sale of cars against payment have also been limited to the amounts limiting the value of the car on which depreciation write downs constitute tax deductible expenses, taking into account depreciation write downs made until the date of sale against payment (excluding cars provided by lessors to be the subject of leasing contracts).
- The limit of 150,000 zloty (225,000 zloty for electric cars) has also been introduced up to which tax deductible expenses can constitute fees on account of rental, lease, leasing (in proportion in which such amount is to the value of the car; in the case of leasing the amount constituting the repayment amount of the car is subject to the limit).
- Taxpayers will exclude 25% of expenses from tax deductible expenses for using cars in their business activity that are used for purposes not connected with such activity (this provision also applies if service charges are a part of the rental, lease or a leasing payment in the part concerning such charges.

5) Transfer prices

- Starting 1 January 2019, new value thresholds will apply for the transactions requiring transfer price documentation to be prepared:
    - 10 million zloty for transactions concerning tangible assets and financial transactions,
    - 2 million zloty for service-related and other transactions;
    - 100,000 zloty for the transaction with entities from the so-called „tax heavens".
- Thresholds are established separately for each controlled transaction of a homogenous nature, irrespective of assignment of the transaction to commodity, financial, service and other transactions, and separately for the cost and revenues side. New provisions also specify assessment criteria of the homogenous nature of the transaction, as well as the method of

establishing its value for each separated type of the transaction (e.g. for sureties and guarantees the guarantee sum constitutes the value of the transaction), and the basis for establishing its value (invoices, agreement etc.).

- Starting 1 January 2019, preparation of group documentation (master file) will be mandatory for taxpayers making consolidated financial statements the consolidated income of which will exceed 200 million zloty.
- New provisions account for exemptions from the documentation obligation for transactions between Polish related entities meeting statutory conditions (e.g. lack of the tax loss at neither of the parties).
- New provisions also provide for the so-called safe harbours – tax authorities will not estimate profits of the taxpayers in transactions in the scope of low value added services and loans using the method of establishing prices provided for in the law (e.g. margin of 5% for low value added services).
- Time limit for preparation of local transfer price documentation amounts to 9 months after the end of the tax year (it is also the time limit for information obligation in the scope of transfer prices), and 12 months for the group documentation after the end of the tax year.
- Conditions provided for in the act allow transfer price adjustment to be made by the taxpayers (TP adjustment / true-up etc.), specifying that they should be settled in annual tax returns.

6) Commercial property tax

- Starting 1 January 2019, new rules concerning taxation of commercial properties will go into effect that was implemented in 2018 as regards, among other things, taxpayers being owners of shopping centres and office buildings, and especially the group of such taxpayers has increased.
- The method of establishing the tax base has basically changed, e.g. by referring the amount of 10 million zloty on which the taxi s paid to the sum of the value of buildings of a taxpayer, instead of each single building individually, as well as summing up of the value of real properties of various entities from the group within capital groups.

7) Solidarity imposition

- In 2019 the Disability Support Solidarity Fund will be established that is to be financed from payments of the taxpayers of income tax in the amount of 4% on income over 1 million zloty.
- The tax base of the solidarity imposition encompasses the sum of income from paid employment, capital profits (with some exceptions, e.g. for dividends), non-agricultural business activity, including the activity in form of participation in personal companies, and income from the controlled company, reduced by paid social insurance contributions.
- Solidarity imposition will be payable as at the end of April for the previous year, with no necessity of making advance payments. Therefore, the first solidarity imposition will be paid until the end of April 2020 for year 2019.

8) The other changes

- CIT and PIT acts regulate taxation of income and settlement of losses on account of turnover of virtual currencies that will be established separately on income and losses from other sources of revenues, whereas for the purpose of CIT they will be regarded as revenues from capital profits, and in the case of PIT – as revenues from capital gains.
- Starting 1 January 2019, in the case of purchase as part of one transaction of at least 100 receivables without separating the purchase price of individual receivables (package of

receivables), income from the package of receivables consists in the surplus of revenues obtained from receivables being a part of the package of receivables over the cost of purchase, which means that income will come into existence only when repayments from receivables purchased exceed the costs of purchase of the package (in the case of purchase of fewer than 100 receivables, costs of each of them should be established individually but the principle of revenue generation date is the same).

- *Exit tax* has been introduced, i.e. taxation of unrealised capital gains on account of transferring assets to another country by the taxpayer, including assets being a part of a foreign institution, or in connection with the change of tax residence.
- CIT rates have been lowered to 9% for small taxpayers.
- In PIT regulations new forms and dates for submitting tax returns and tax information have been introduced, as well as simplifications in filing obligations (e.g. in the case of revenues from private rental there is no obligation keep register of revenues – it is sufficient to keep proof of payment).

2. WITHHOLDING TAX

1) Limitation of applying exemptions and reduced rates

- Starting 1 January 2019, withholding tax exemption has been limited on the basis of double taxation agreements and the provisions of the act on corporate income tax - revenues obtained in the territory of Poland by non-residents on account of interest, dividends and royalties.
- If the revenue paid in a given tax year for the same non-resident on all accounts being subject to withholding tax does not exceed in aggregate the amount of 2 million zloty, the existing provisions will apply. Otherwise, the entity making payment of receivables will be obliged as a taxpayer to collect the withholding tax as per the statutory rate with no possibility of applying preferences resulting from double taxation agreements or the CIT act.
- Taxpayers are allowed not to apply the aforementioned limitation if the unit manager submits a relevant statement to tax authorities, whereas CIT taxpayers can additionally obtain an opinion from tax authorities on possible exemption to be applied for by an entity which, according to contractual provisions, bear the economic burden related to the tax, i.e. either the taxpayer (recipient of receivables) or the payer.
- If in the case of disbursements over 2 million zloty the payer collects the withholding tax in its full amount, the taxpayer or the payer, i.e. the entity which, according to contractual provisions, bear the economic burden related to the tax will be able to apply for tax reimbursement. Upon tax reimbursement, the tax authority will verify whether prerequisites are met that enable tax exemption as regards disbursements made, on the basis of documents submitted by the interested party as well as by exchange of information with tax authorities of the country of the beneficiary of disbursements.
- In the case of payment of interest and royalties between related entities, exemption provide for in the CIT act cannot be applied in the case of transactions the conditions of which will be deemed by the tax authorities as diverging from the conditions that would be established by independent entities in such type of transactions.

2) Actual owner of receivables

- Following the modified definition implemented in income tax acts, the actual owner refers to the entity that jointly meets the following conditions:
  - Receives the amount due for its own benefit, decides independently on allocating it and bears economic risk connected with loss of such amount or its part;

- Is not an agent, representative, trustee or other entity legally or actually obliged to transfer the whole amount or its part to other entity;
- Conducts real business activity in a country of its registered office, if receivables are obtained on account of the conducted business activity.

- Starting 1 January 2019, payers will be obliged to verify whether the entity for which they pay receivables being subject to withholding tax can be deemed to be their actual owner – if the aforementioned prerequisites have not been met, withholding tax will have to be collected in its full amount, without taking into account preferences resulting from double taxation agreements.

3. Tax on civil-law transactions

- As regards loan agreements concluded after 31 December 2018, tax on civil-law transactions will amount to 0.5% (currently 2%).
- Starting 1 January 2019, there will also be a possibility of submitting collective monthly tax returns covering all civil-law activities being subject to tax on civil-law transactions in this period, instead of the existing necessity of submitting individual returns for each taxable activity.

4. VAT

- Regulations to come into effect starting 1 January 2019 provide for shortened period, from 150 to 90 days, of unrecoverability of receivables rendered credible, providing the creditor with the right to adjust the tax due resulting in the obligation to adjust the tax calculated by the debtor – the new period of applying „relief for bad debts" also concerns receivables that arose before 1 January 2019, unrecoverability of which will be made probable after this day.
- The obligation to attach a justified motion for VAT reimbursement and a motion for the accelerated reimbursement to the VAT return specifying the amount to be reimbursed has been cancelled.

5. Tax ordinance

- New regulations impose on tax advisors, advocates, legal counsellors, employees of banks or other financial institution giving advice to the customers, and in specific circumstances also on the persons using the so-called tax schemes, the obligation of reporting tax schemes. Regulations provide detailed definitions of prerequisites defining a tax scheme and implement sanctions for the failure to report schemes.
- A general clause on avoiding taxation provided for in art. 119a of the Tax Ordinance, the limit of 100,000 zloty has been abolished for the benefit obtained, as a result of which cases of obtaining benefits below this amount will also be subject to this action. The definition on avoiding taxation and the list of circumstances indicating that the transaction was fictitious have also been changed, and sanctions for taxpayers applying an aggressive tax optimization or actions covered by other special clauses have been implemented.
- Giving a decision, tax authorities will be able to impose additional tax obligations in situations concerning the use of the clause of avoiding taxation, provisions concerning remedies limiting contractual benefits, special clauses concerning benefits obtained in the case of merger of the companies (when tax avoidance was the main purpose), a special clause related to disbursement of dividends and exclusion of the exemption, in the scope of regulations concerning transfer prices and statements submitted on account of payment of the withholding tax. In principle, additional obligation amounts to 10%, in specific cases 40%, and in the case of individual situations it can be multiplied.
- Starting 1 January 2019, it will not be possible to obtain an individual interpretation of tax regulations in the scope of actual status or future events with reference to which the regulation

concerning the clause of avoiding taxation may apply. If the taxpayers want to obtain confirmation that they do not apply aggressive tax policy, they will have to apply for an advance protective ruling, which is more costly procedure than obtaining interpretations.

In case you have any questions please do not hesitate to contact us.