

Poland's Supreme Administrative Court confirms pre-2017 services purchased by Polish clients are subject to withholding tax, even if performed outside of Poland

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As of 1 January 2017, based on the Polish *Corporate Income Tax (CIT) Act*, revenue earned by nonresidents is considered as earned in the territory of Poland if payment is settled by individuals, legal persons or other entities without legal personality, having a place of residence, registered office or place of management in Poland, regardless of the place where the agreement was concluded or services performed.

Accordingly, as of 1 January 2017, a broad range of services, including advisory, legal, marketing or management services could be subject to 20% withholding tax in Poland, if remuneration is settled by a Polish tax resident.

Prior to 1 January 2017, Polish law lacked specific regulation on this matter and there were various interpretations by the administrative courts. There were court rulings which confirmed that no withholding tax was due in Poland if the service was provided abroad.

On 15 May 2017, a resolution by a panel of seven judges of the Supreme Administrative Court (SAC) ruled that the place where services are performed is not relevant if remuneration is paid by a Polish entity. Such revenue should be subject to tax in Poland, unless a tax treaty exemption applies.

The SAC ruling is not formally binding; however it provides guidance for other courts. Taking this into account, foreign service providers should assess their Polish withholding tax exposure for the period prior to 1 January 2017 and after that date (based on amended *CIT Act* provisions, effective 1 January 2017).

If the type of service performed falls within the scope of the Polish *CIT Act*, a 20% withholding tax may be due. In certain cases, tax treaties may provide an exemption if conditions are met.

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