

Poland: Advanced Pricing Agreement to remove new limitation on tax deductibility of intra-group charges

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Parliament revises draft bill amending *Corporate Income Tax Act*

On 24 October 2017, Poland's Public Finance Commission of the Lower Chamber of Parliament debated and passed significant amendments to the current draft bill that proposes very significant changes to the *Polish Corporate Income Tax Act*.¹ Specifically, charges that would be subject to limitation under the draft bill, will not be subject to restriction if the taxpayer obtains an Advance Pricing Agreement (APA) with the Polish Ministry of Finance.

Under the draft bill issued by the Government in July and debated since then, tax deductibility of various intercompany charges would be significantly limited. In particular, charges for the following items would be subject to limitation:

- ▶ Advisory services, market research, advertising services, management and control, data processing, insurance, guarantees and any similar services
- ▶ Use of or the right to use intangible assets (royalty payments, license payments, payments for the use of know-how or trademark, etc.)
- ▶ Transfer of the borrower's default risk from loans, other than those provided by banks and credit unions, including derivatives and similar benefits

The above charges can be tax deductible within the safe harbor of PLN3m annually (approx. US\$800k), while the excess would be deductible up to 5% of tax-adjusted EBITDA (earnings before interest, taxes, depreciation and amortization). While there are additional exceptions from this general limitation for certain types of costs, the impact on taxpayers across all industries could be very substantial and lead to a significant increase of the effective tax rate and return on investment in Poland.

However, with today's amendment approved by the Commission, the above restrictions would not apply to transactions for which a taxpayer obtains an APA with the Polish Ministry of Finance.

In addition to the well-known advantages of an APA, such as certainty of the arm's-length price on intra-group transactions, if the proposed change is passed in the Parliament, an APA

would lift this limitation and allow taxpayers to significantly increase the amount of the tax deductible costs on intra-group transactions. Based on the proposed change, a taxpayer who incurred tainted costs exceeding the threshold, would still be allowed to deduct such expenses provided it has obtained an APA.

The bill amending the *CIT Act* is still subject to a vote in Parliament, but it is very likely that it will be effective as of 1 January 2018. According to the proposed change, in order for an APA to remove the above limitation as of 1 January 2018, a taxpayer would need to obtain the APA by the end of 2019. Given the time required to negotiate an APA with the Ministry of Finance, taxpayers who have identified that the new limitation may impact the tax effectiveness of their business in Poland should consider promptly applying for an APA.

Endnotes

1. See EY Global Tax Alert, [Polish Ministry of Finance publishes revised draft bill significantly amending Corporate Income Tax Act](#), dated 27 September 2017.

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