Poland: Overview of controlled foreign company regime

Poland introduced its first controlled foreign company (CFC) regime on 1 January 2015. Under the regime, a Polish tax resident that is a corporate income tax or a personal income tax taxpayer will be subject to the 19% Polish tax on the income earned by its CFCs, even if the income is not distributed by the foreign company. The rules also apply to foreign permanent establishments of Polish residents.

The CFC rules should be applied by a Polish taxpayer with respect to a particular CFC from the beginning of the CFC’s first tax year beginning after 31 December 2014. Where the CFC’s tax year is longer than 12 months or where it is not possible to determine the CFC’s tax year, the Polish taxpayer should start applying the rules from the beginning of the Polish taxpayer’s first tax year beginning after 31 December 2014.

A foreign company for purposes of the CFC rules includes legal persons (e.g. limited liability companies, joint stock companies) and nontax-transparent partnerships (i.e. the rules apply to a partnership that has its registered office or place of management in another country, where the partnership is treated as legal person under the tax law provisions of that country and is subject to taxation on its worldwide income).

The CFC rules will apply if any of the following conditions are fulfilled:

- The foreign company has its registered office or place of management in a jurisdiction included on the black list issued by the Polish Minister of Finance.
- The foreign company has its registered office or place of management in a jurisdiction that has not concluded an agreement with Poland or the EU that allows an exchange of tax information; or
- The foreign company has its registered office or place of management in any other jurisdiction and all of the following conditions are satisfied:
  - The Polish taxpayer holds, directly or indirectly, at least 25% of the share capital, voting rights or rights to participate in the profits of the foreign company for an uninterrupted period of at least 30 days;
  - At least 50% of the foreign company’s revenue in a tax year is derived from passive income, such as dividends (and other income from a share in the profits of a legal person), interest (and other benefits from loans, sureties and guarantees), revenue from the sale or exercise of financial instruments, revenue from the sale of shares and royalties; and
  - At least one of the types of passive income is subject to tax in the country of its registered office or place of management at a rate that is at least 25% lower than the Polish corporate income tax rate of 19% (i.e. equal to or less than 14.25%), or is exempt from corporate income tax (unless the income is exempt under the EU parent-subsidiary directive).

Certain documentation and reporting obligations may apply to a Polish taxpayer, including the following:
• A requirement to maintain a register of its affiliated foreign companies fulfilling one of the following conditions (which may include certain companies that do not qualify as a CFC):
  o The registered office or place of management is in a jurisdiction included on Poland’s black list;  
  o The registered office or place of management is in a jurisdiction that has not concluded an agreement with Poland or the EU that allows an exchange of tax information; or 
  o The registered office or place of management is in any other jurisdiction and the Polish taxpayer holds, directly or indirectly, at least 25% of the share capital, voting rights or rights to participate in the profits of the foreign company for an uninterrupted period of at least 30 days, even if the criteria described above relating to passive income are not fulfilled;  
• A requirement to maintain separate tax records for each CFC (as well as separate records of fixed assets and intangible assets), in accordance with the Polish tax rules; and 
• A requirement to file a separate tax return for each CFC within nine months of the end of the tax year in which the income is earned by the CFC (or, in certain cases, within nine months of the end of the Polish taxpayer’s tax year), reporting the amount of income derived from the CFC, and to pay the tax due on such income.

The Polish taxpayer must present the register and tax records within seven days of a request from the tax authorities. Failure to comply with the deadline could result in the tax authorities assessing the income by using the “estimation approach.”

The CFC regime does not apply in the following cases:

• The CFC’s income in the tax year does not exceed EUR 250,000 (or the equivalent in another currency);  
• The CFC is subject to tax on all of its income in an EU or European Economic Area (EEA) country in which it carries out genuine business activities; or 
• The CFC is subject to tax on all of its income in a country outside the EU or EEA; it conducts genuine business activities in that country (the CFC rules specify certain criteria that should be taken into account in determining whether the CFC conducts genuine business activities) and its income does not exceed 10% of all revenue resulting from genuine business activities conducted in that country; and there is a legal basis for the exchange of information between Poland and the CFC’s country of residence.

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