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REVOLUTION IN CIT 2021 FOR THE REAL ESTATE SECTOR

The widely commented draft amendments to the income tax acts published on September 15, 2020 provides for a number of, sometimes revolutionary, changes in the taxation of entities. Below we summarize those that we believe will have a significant impact on the real estate sector.

CIT taxation of limited partnerships (and in some cases also general partnerships)	The amendment provides for CIT taxation of limited partnerships (so far tax-transparent) and in some cases also general partnerships. This means a significant increase in taxation of the income of the partners of these companies (from the standard 19% rate to the level of approx. 34.5% with compound interest and taxation once at the level of the company, the second time at the level of partners). Additionally, in the justification, the legislator refers to the identified tax scheme regarding the use of limited liability partnerships to real estate development activities in order to offset tax losses with income from the sale of real estate.
Definition of a real estate company	The legislator introduces a definition of a real estate company to which further changes in the law will apply. Such a company shall be deemed to be entities, including non-corporates, in which at least 50% of the market value of assets in any period of consecutive 12 months were real estate located in Poland or rights to such real estate.
Share deal - a real estate company being subject of transaction acting as a tax remitter	One of the most revolutionary changes provides for the necessity to tax the seller's income realized on the sale of the real estate company in the hands of this real estate company being transferred, acting as a tax remitter. The current wording of the regulations provides for this regime also in the case when the seller is a Polish entity and the buyer is a foreign entity. For entities outside the EU and EEA, it will be necessary to appoint a tax representative.
Reports on the implementation of the tax strategy	Real estate companies, irrespective of their turnover or affiliation to tax capital groups, will be required to publish annual reports on the implementation of tax strategies on their websites. The necessary information includes the policy of cooperation with KAS, applications for tax rulings or binding tariff and rate information, procedures for managing the tax function , MDR reporting scope or significant transactions (over 5% of the sum of assets) with related entities.

Reporting obligations on the ownership structure	In addition to the necessity to publicly report on the implementation of the tax strategy, the amendment imposes an additional obligation on real estate companies to provide the Head of KAS (National Fiscal Administration) with information on entities holding directly or indirectly shares, participation units, all rights and obligations and similar rights in such a real estate company.
Taxation of liquidation dividends in kind	Real estate (and other assets) transferred to a shareholder as a liquidation proceeds will be taxed twice. Once at the level of the company as a deemed sale of such real estate, the second time at the level of the shareholder as profits from the liquidation dividend. Until now, such an interpretation of the provisions has been rejected by the administrative courts.
Extended exemption from paying minimum CIT	A change favourable for taxpayers is a continuation of the exemption from the obligation to pay the minimum CIT (income tax on commercial real estate) also in 2021 until the epidemic state in Poland is resolved.
Changing the rules for increasing and lowering depreciation rates	The amendment limits the possibility of reducing and increasing the depreciation rates for taxpayers with respect to their business activities for which income is tax-exempt (e.g. for economic zones). In addition, the possibility of applying individual rates for used real estate is limited, as it will be necessary to prove their use by an entity <u>other than the taxpayer</u> at least for 60 months before the acquisition.
Limitations in settling tax losses after the acquisition of enterprises	The possibility of settling tax losses will be limited if the taxpayer takes over another entity or acquires an enterprise / its organized part, or receives a cash contribution for the acquisition of such an enterprise / its organized part, and as a result of such acquisition, the subject of basic business activity changes, in whole or in part. The restriction will also apply to an in-kind contribution of the enterprise if, as a result, the new entity acquires at least 25% of shares in the company. The change may therefore affect companies that are used for joint ventures.

HOW CAN WE HELP YOU?

Stay updated	Our team constantly monitors legislative process of the planned changes. Due to its dynamics, we encourage you to follow our websites: Blog and Transfer Pricing (PL) and to contact our experts.
Analyze and get ready	Real estate companies are facing a revolution - both in the area of administration and reporting obligation, as well as tax compliance. We can support you in analysing the impact of changes on the your group, as well as in designing and implementing solutions that respond to planned changes.

This document has been prepared for information purposes only and covers general nature. Before taking any action based on the above information, we recommend that you obtain a valid opinion of TPA experts.

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