Sofia Ferreira Enriquez

sfenriquez@raposobernardo.com

Maria Syrek

msyrek@raposobernardo.com

In this Edition:

AMENDMENTS TO ACT ON POLISH CORPORATE INCOME TAX

New amendments to the Act on Corporate Income Tax (CIT) will enter in force in January 2015, foreseeing a new mechanism allowing the taxation of controlled foreign companies` (CFC) derived income.

The main purpose of this new regime is to prevent taxpayers that, for tax purposes, are considered to be Polish residents, from shifting income to subsidiaries and other controlled entities registered in countries with more favorable tax systems.

The Amendment imposes on Polish residents (both individuals and legal persons) the obligation to report the CFC derived income in a separate tax return. That income will be subject to tax at the rate of 19%.

I. Tax base

The tax base for income derived from CFC is the income obtained in the period of time in which the Polish taxpayer controls the company (see reference below), and after the deduction of:

a) dividend obtained by the Polish taxpayer from this company;
b) amount obtained from payable disposal of shares in this company by the Polish taxpayer.

However, the tax base of income derived from CFCs which have its registered seat or managing staff in a country or territory considered to be 'tax haven' is, generally, its global income.

Although it is not specified in the provisions of the amendment if the dividends and amounts that can be deducted from the income of the CFC are the ones obtained in a given fiscal year or in all of them, regardless of the moment in which it were obtained, it is understood that the deductible ones are those obtained in the fiscal year for which the tax base is established.
Those from the preceding years can only be deducted if it was not possible to deduct it in the years in which it were obtained. It is possible to deduct the above mentioned dividends and amounts within a term of 5 years from the fiscal year in which they were obtained.

II. Tax rate

The income derived from CFCs is subject to the general tax rate of 19%.

Whenever there is an agreement on the avoidance of double taxation or other ratified international agreement in which the Republic of Poland is a party (allowing to obtain tax information from the tax authorities of the country in which the CFC pays taxes on its total income), the amounts paid in the country of residence of the CFC can be deducted from the due tax amount.

Meaning, the income derived from CFCs resident in countries considered to be 'tax havens' and in the countries that do not have agreements on avoidance of double taxation with Republic of Poland are subject to taxation in its origin country and in Poland.

III. What are controlled foreign companies (CFC)?

For the purposes of this Act a CFC is a company:

1) Which registered seat or managing body is in a territory or in a country listed in the regulation of the Minister of Finance regarding the list of countries and territories applying harmful tax competition in terms of corporate income tax (black-list);
or,

2) Which registered seat or managing body is in a territory or in a country other than those indicated in point 1 above that does not have any international agreement, in particular an agreement on the avoidance of double taxation, or does not have any international agreement concluded with the European Union allowing to obtain tax information from that country or territory;
or,

3) That meets simultaneously all of the following criteria:
a) in which the Polish taxpayer has constantly for a period not shorter than 30 days, directly or indirectly, at least 25% of the share capital or 25% of the voting rights in the company's bodies or 25% of the shares granting the right to participate in the profits;

b) in which at least 50% of the company's revenue obtained in the fiscal year is from a passive nature, such as dividends and other revenue coming from share in profits of legal persons, revenue coming from disposal of shares, receivables, interest, benefits from all kind of loans and guarantees as well as revenue coming from copyright, industrial property, in particular from the disposal of these rights as well as from the disposal and realization of financial instruments:

c) In which at least one type of the revenue from point 3 paragraph b) is subject to taxation, in the country of its registered seat or managing body, that is at least 25% lower than the tax rate in Poland or to tax exemption, unless these revenue is subject to tax exemption on the grounds of the directive of European Council 2011/96/EU regarding the common system of taxation in case of parent companies and subsidiaries of different Member States (also known as the Parent-Subsidiary Directive).

IV. Exclusions

I. This regime will not be applicable to foreign companies controlled by Polish taxpayers that conduct a real business activity in the country of its residence if this country is a member state of the European Union or of the European Economic Area.

Although the definition of 'real business activity' is provided in the amended Act, it still allows different interpretations. To decide whether a given company can be considered as conducting a real business activity it is analyzed if:

1) the company is not only registered, but has also a material activity within the scope of its business, in particular has an office, qualified staff and equipment used for the purpose of conducting the business activity;

2) the company does not create structures not connected with the economic dimension of the business;

3) there is a proportion between the scope of the business activity conducted and the company's office, equipment and staff;

4) the agreements concluded are consistent with the economic reality and are not, in a patent way, contrary to the economic interests of the company;

5) the CFC is able to perform its basic economic functions independently, using its own resources, namely managing staff.

II. The new regime will not also be applicable to the CFC if its revenue per fiscal year does not exceed 250.000 euro, converted to Polish currency at the average rate of Polish National Bank (NBP) for the last day of the previous fiscal year or the following criteria are simultaneously met:

1) The CFC conducts its real business activity on the territory of a country other than a member state of the European Union or of the European Economic Area, where it is subject to CIT cove ring its total income;

2) The CFC's income does not exceed 10% of revenue gained from the real business activity con ducted in this country;

3) There is an agreement on the avoidance of double taxation or other ratified international agreement in which the Republic of Poland or in which the European Union is a party , providing the legal basis to obtain tax information from the tax authorities of the country where the CFC's total income is subject to corporate income tax.

EUROPE PORTUGAL SPAIN POLAND ROMANIA AFRICA ANGOLA CAPE VERDE GUINEA BISSAU MOZAMBIQUE SÃO TOMÉ
Av. Fontes Pereira de Melo, Ed. Aviz, nº 35, 18º, 1050-118 LISBOA - PORTUGAL Tel: (00351) 21 312 1330 Fax: (00351) 21 356 2908 • E-mail: lisboa@raposobernardo.com
Paseo de la Castellana, nº 126, 8º Izquierda, 28046 MADRID - SPAIN Tel: (0034) 91 745 0874 • Fax: (0034) 91 561 1850 • E-mail: madrid@raposobernardo.com
Ul. Grzybowska 2, Lokal 106, 00-131 WARSZAWA - POLAND Tel: (0048) 22 126 9212 • Fax: (0048) 22 486 9109 • E-mail: warsaw@raposobernardo.com
Zona Piata Victoriei, Str. Louis Blanc, nr. 2, bloc I - 1, Et. 4, Ap. 22, Sector 1, 011752 BUCURESTI - ROMANIA Tel: (0040) 31 810 7740 • Fax: (0040) 31 811 2316 • E-mail: bucharest@raposobernardo.com