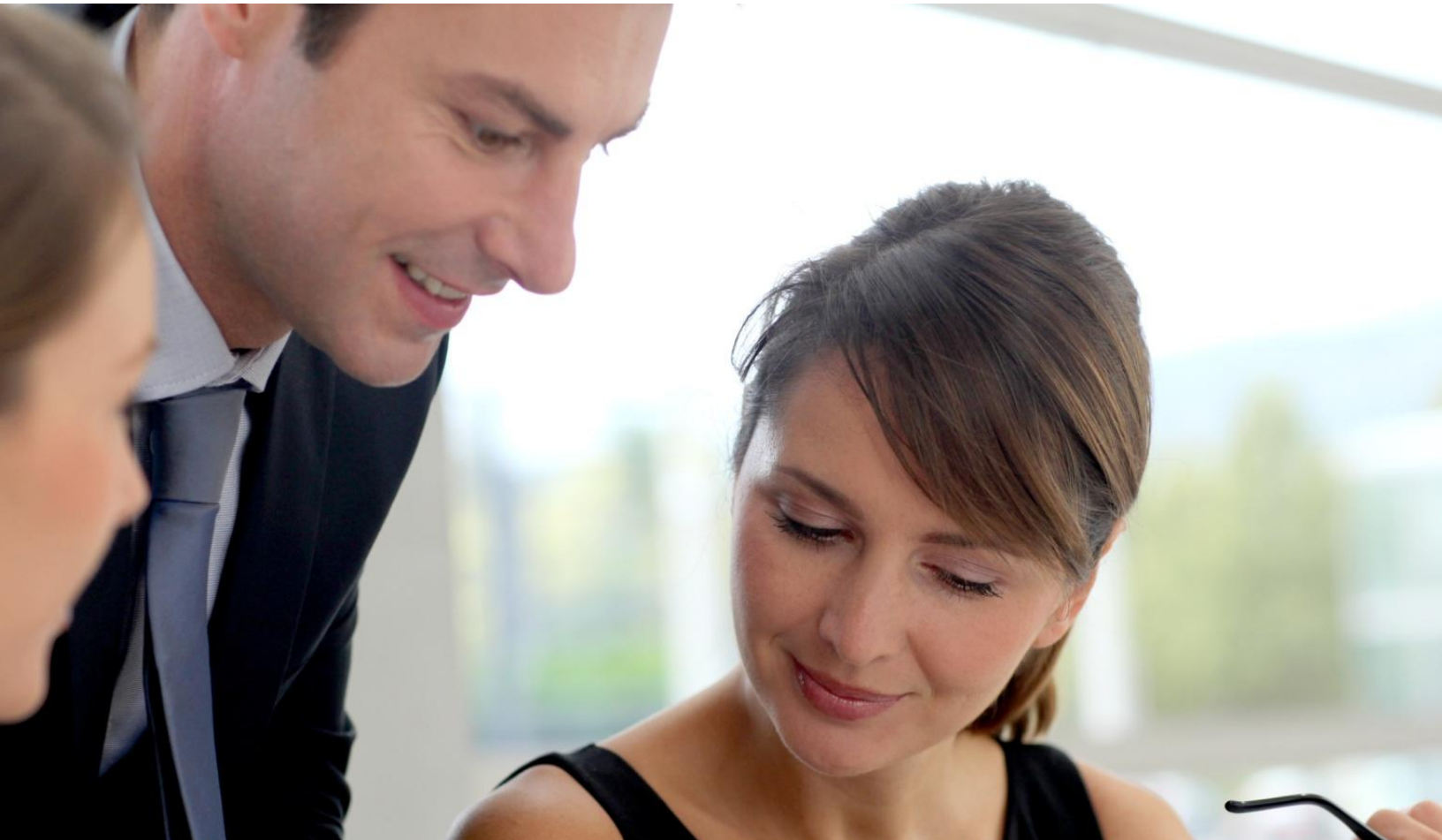


# News Flash

January, 2015



**Important amendments to CIT and  
VAT law starting January 1, 2015  
in Poland**

## Important amendments to CIT and VAT law applicable from January 1, 2015

### New documentation obligations in transfer pricing

Significant changes have been made in the area of transfer pricing rules. By extension of the related parties definition, the documentary obligation was introduced in case of articles of incorporation of a company which is not a legal person, joint venture agreements or contracts of a similar nature. The obligation to draw up the documentation in case of abovementioned agreements occur also when one party of the agreement is an entity with the place of residence, registered seat or have management board on the territory or a country engaged in harmful tax competition. Additionally, from January 1, 2015, the transfer pricing provisions are applicable appropriately to the Polish taxpayers conducting business activity by foreign company and to non-resident conducting business activity by the company located in Polish territory, in the transactions between these taxpayers and their foreign company, assigned to this foreign company.

### New concept of undistributed profits

Particular attention for changes in the scope of CIT should pay entrepreneurs who transform capital companies into partnerships. By giving the new wording to art. 10 sec. 1 pt. 8 of the Act on Corporate Income Tax, the new concept of undistributed profits was introduced. As the law now stands income is deemed as the value of undistributed profits in the company and the value of the profit transferred to other capital than share capital in

transformed company. In case of transformation of the company into the company other than legal entity, the income is determined on the day of transformation.

### The new moment of occurrence of income

New provisions are in force also in the field of derivative financial documents. The legislator added art. 12 sec. 3f to the Act on Corporate Income Tax, which clarifies the issue of taxable revenue from exercising the rights from derivative financial documents. Since the new year the date of the revenue shall be deemed as the moment of realization of these rights.

### Regulations concerning controlled foreign companies

From January 1, 2015, the provisions introduced in art. 24a of the Act on Corporate Income Tax concerning controlled foreign companies are applicable. Controlled foreign company is a foreign company with seat or management board located on the territory or a country engaged in harmful tax competition or with which Poland or EU has not concluded an agreement for obtaining tax information. Additionally, as a controlled foreign company should be considered foreign company, whose revenue is a subject to taxation in the state of registered office or

management, with tax rate of income tax lower by 25% than 19% (i.e. tax rate of 14,25% or lower), exemption or exclusion from the tax. The income of the company is allocated to the Polish taxpayer according to its participation in profits. Income tax of controlled foreign company collected in Poland amounts to 19%.

### **New regulation regarding payment in kind**

If the taxpayer by performing non-pecuniary benefits settles whole or part of liability on account of taken loan (credit), dividend, remission or disposal in order to redemption of shares, the revenue of such taxpayer is the value of settled liability. However, if the market value of non-pecuniary benefit is higher than value of liability settled by this benefit, the revenue is determined in amount of market value of non-pecuniary benefit.

### **New regulation concerning thin capitalization**

On January 1, 2015 regulations concerning thin capitalization refer also to loans from indirect shareholders. The basis for calculation of limit is an equity, not share capital as previously. However the proportion in which the liabilities are calculated in comparison to equity was decreased, beginning with January 1, to 1:1.

### **Alternative for thin capitalization**

Amendments have been made also in the field of thin capitalization, by introduction of an alternative method of calculation of limit. The new principles may be applied by companies and cooperatives, which have received a loan or loans from related entities. Tax deductible costs in tax year can be interests on a loan, including granted by non-related entities, in amount not exceeding the value corresponding to the product of NBP reference rate value applicable on the last day of the year proceeding tax year increased by 1,25 percentage point and assets' tax value in accordance with accounting provisions, except for intangible and legal assets. In case of choosing the alternative method of settlement tax deductible costs of the interest from loans, a taxpayer is obliged to apply this method for at least 3 tax years, including the tax year, when he began to apply the method.

### **New provisions about the certificate of residence**

By introducing art. 26 sec. 1i to the Act on Corporate Income Tax, the legislator has solved the existing problems applied to validity of the certificate of residence. Currently, if taxpayers place of establishment has been documented by the certificate of residence without validity period, the remitter at the collection of the tax, takes into account the certificate for a period of twelve months from the date of its publication.

## Change of the principles regarding the place of supply the electronic and related services. Mini one-stop-shop special scheme

According to art. 28k of Act on Tax on Goods and Services, since the new year, the place of supply telecommunication, broadcasting and electronic services for the benefit of non-taxable entities, is place where these entities possess: registered

office, permanent place of residence or the place of usual residence. In connection to the above, the special scheme (mini one-stop-shop) was introduced, which facilitate VAT reporting of telecommunication, broadcasting and electronic services provided by the entities, who established their business on the territory of EU, but don't have registered seat in Member State of consumption, supplied to non-taxable entities.

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