

Tax aspects of the amendment to Poland's Code of Commercial Companies in domestic company reorganisations

Warsaw, 07 November 2023 – The recent amendments to the Code of Commercial Companies (CCC) introduced on September 15, 2023, have prompted a review of the Polish Tax Ordinance System Act, stemming from concerns raised by tax advisers regarding potential discrepancies in the tax laws that may lead to interpretational disputes between taxpayers and authorities.

One of the most notable modifications introduced by the amendments is the inclusion of a new method of dividing commercial companies known as division by separation. This new approach streamlines the process by focusing on the entity's share rights through the principle of general succession, eliminating the complexities associated with in-kind contributions. However, the application of the Corporate Income Tax (CIT) Act provisions to division by separation gives rise to practical issues and interpretational uncertainties.

Challenges primarily arise from two key issues. Firstly, the absence of the issuance of shares by the recipient company during the division by separation presents complexities in applying Article 12(1)(8d) of the CIT Act. As a result, the application of this provision to the division by separation becomes ineffective, potentially leading to non-neutral tax implications, which in turn is deemed unacceptable. Secondly, the determination of whether the remaining activity in the company being divided exhibits an organised and independent nature adds to the complexity of the situation, leading to varied interpretations and queries.

Similar concerns emerge in relation to the simplified merger of sister companies, as outlined in the recent CCC amendment. The taxation provisions designed for the merger between a parent company and a daughter company, as defined in Article 12(1)(8f) of the CIT Act, do not seem to appropriately apply to the new simplified merger of sister companies. Consequently, the relevant tax provisions demand a comprehensive reassessment and potential modification to ensure the accurate and fair treatment of such company reorganisations.

The implications outlined above highlight the necessity for an alignment between the recent amendments to the CCC and the corresponding tax laws to ensure clarity, coherence, and fair taxation within the scope of domestic company reorganisations.

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