

Information on the recent changes in the withholding tax mechanism scheme

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The information provided below is of a general nature and is based exclusively on the legal regulations in force at the time when this information was prepared.

The information on taxation contained below does not constitute legal or tax advice but is of a general nature, selectively presenting particular problems and does not address all situations in which investor may find himself. Potential investors are recommended to seek professional advice of tax and legal advisors with regard to tax consequences occurring in their individual cases.

This information generally describes the new rules relating to the withholding tax (“WHT”) mechanism in Poland introduced by the act of 23 October 2018 on amendments to the act on personal income tax, the act on corporate income tax, the act – Tax Ordinance and certain other legal acts, which generally entered into force on 1 January 2019.

Pursuant to the specific provisions of the Polish tax law (i.e. art. 21.1.130a of the Personal Income Tax Act with respect to natural persons and art. 17.1.50a of the Corporate Income Tax Act with respect to legal persons) interest or discount from covered bonds earned by foreign tax residents are exempt from income tax. These rules have not been changed by the new law.

However, it should be noted that under the new law a WHT relief which is applicable on specific provisions of law may, in general, apply only to non-tax resident investors who receive less than PLN 2 million of dividends or interests (or discount) yearly from a given tax remitter (in case of covered bonds held on the securities accounts – as a tax remitter should be regarded custodian maintaining the securities account where the covered bonds are registered). Subject to certain exceptions, if the amount of interest (or discount) paid to the particular non-tax resident investor exceeds the PLN 2 million thresholds, the excess will be taxed based on a general statutory tax rate, that is 20% for interests (or discount). Similarly, if the custodian is not able to track the PLN 2 million threshold in case of a particular investor, all payments will be taxed at the above standard rate.

If the standard rate is applied by a tax remitter, the WHT relief will be available only through the dedicated tax reclaim process (a request for refund of the collected WHT), which may be initiated by a taxpayer (i.e. non-tax foreign investor). The new tax reclaim procedure should last no longer than six months with an option of extension.

The documentation for the reclaim application must include, among others, Certificate of Tax Residence, confirmation of money transfers and beneficial ownership statement. The reclaim form is standardised in order to facilitate the process and is submitted electronically.

Given that the obligation to collect WHT in accordance with the new rules by the tax remitter may have a negative cash-flow effect for non-tax resident investors, we recommend that the investors have a closer look at the changes and new requirements for the exemption at source.