Rödl & Partner

EXPERT ADVICE

2024

REAL PROPERTY COMPANIES

INTRODUCTION

Dear Readers

This publication addresses the challenges faced by real property companies from both accounting and tax perspective.

Investments are defined in the Accounting Act as assets held by an entity to derive economic benefits from increases in the value of those assets or to earn income (e.g. in the form of rents from leases or rentals, recharge of costs, interest, dividends or other benefits).

Investment properties differ from real properties classified as tangible assets primarily in that they do not serve the needs of the entity (i.e. they are used neither to fulfil operational tasks arising from the entity's business model nor in the entity's ordinary course of business, in which case they would be treated as tangible assets). Investment properties are primarily intended to generate direct economic benefits.

From the perspective of the Corporate Income Tax (CIT) Act, a real property company is also a special type of entity on which the legislation imposes tax and information obligations, and restrictions. To be considered a real property company, an entity must meet additional criteria such as asset structure or revenue it generates. These criteria vary depending on the company's seniority in the market.

The individual topics discussed here provide a brief overview of key areas that accountants may find useful to ensure that companies' accounting and reporting comply with applicable legislation.

This publication is also intended to help owners of real property businesses to carry out a sound and professional assessment of their financial performance, because financial statements of real property companies provide valuable information for, among others, potential investors.

Enjoy the read!

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1. ACCOUNTING POLICY – SPECIFIC PROVISIONS FOR REAL PROPERTY COMPANIES

Basics

Maintaining and updating the adopted accounting principles, known as the accounting policy, is a statutory obligation of all entities keeping books of account and rests with the entity's management.

The adopted accounting principles, including the simplifications used, the methods of valuing assets and liabilities and the method of calculating the profit or loss, are disclosed in the introduction to the financial statements. **This information should be provided on the basis of an up-to-date and complete accounting policy.**

The accounting policy of real property companies should primarily include detailed information about:

1. investment property valuation principles,
2. revenue recognition,
3. FIT-OUT costs / OPEX / CAPEX accounting,
4. accounting for the costs of finding a tenant (letting fee),
5. accounting for a cash contribution (additional payment most often related to ensuring the expected level of fit out of the leased space),
6. accounting for rental incentives – different treatment depending on the agreement,
7. accounting for costs over time,
8. impairment test,
9. methods of recognising financing costs.

Accounting is easier if it has been clearly defined how these transactions should be recognised. Most of these issues will be described in detail in this brochure.

MORE

An important aspect of the operation of real property companies is a complex workflow and multiple systems used. Various parties are involved in addition to accountants and tax advisers; these are, for example, the Investment Fund, the Property Manager or the Asset Manager.

The main features of that workflow, the systems used and the related internal control in the area of financial reporting should be part of the accounting policy (or should be described in a separate dedicated document).

OTHER IMPORTANT ISSUES

Please note that when revenue authorities come for an inspection to check the submitted JPK_KR files, they often want to see an up-to-date accounting policy, if only to have a look at the structure of accounts. The accounting policy is also explored by the auditor of the financial statements, as his/her opinion includes a note on the conformity of the financial statements with the adopted accounting principles.

REMEMBER

By adopting the accounting policy, the entity chooses the right solution from among the various possibilities offered by accounting law. The accounting policy should be seen as a master document containing information about the accounting principles used.

Author’s opinion

You should apply the adopted accounting policy on a continuous basis so that the figures included in the financial statements for a given year are comparable to those for subsequent periods. The adopted principles should allow you to reliably prepare the financial statements, and meet tax requirements and management objectives. The rules and guidelines contained in this document will let you organise information and, in consequence, streamline the accounting system as well as control and management process of your company.

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2. REAL PROPERTY DISCLOSURE IN THE FINANCIAL STATEMENTS, PRESENTATION IN THE BALANCE SHEET

Basics

Investment properties are assets held by an entity to derive economic benefits. The question of whether a real property is an investment is important from a financial statement perspective, as its valuation may trigger major changes to both the balance sheet and income statement.

In the balance sheet, investments in real properties are presented in in item IV.1. “Non-current investments – real properties” of the entity's Non-Current Assets section.

In the income statement, they are disclosed as:

- rental income and property-related expenses,
- revaluation of real property – either as income or expense (other operating activities),
- sale or liquidation of real property – as profit or loss on disposal of non-financial tangible assets (other operating activities).

The notes to the financial statements, should primarily describe what affects the value of the real property as of the balance sheet date (opening balance, increases/decreases, revaluation of the real property, other changes in value, e.g. change in prepayments/accruals, depreciation). The notes should also include information on the nature and form of liabilities secured on the entity's assets, e.g. a mortgage.

OTHER IMPORTANT ISSUES

If the company has in place other detailed regulations on real properties that could affect the assessment of the company's financial standing, you can mention them later in the notes.

REMEMBER

The entity's accounting policy should describe in detail how the real property is to be disclosed in the financial statements as of the balance sheet date. In most cases, the financial statements of commercial property companies are subject to audit. This is because they are often owned by investment funds, which, due to certain requirements, opt for an optional audit, even if they do not exceed the mandatory audit thresholds.

SEE ALSO

ACCOUNTING POLICY

Author’s opinion

As of the balance sheet date, investment properties can be valued either according to the principles applicable to tangible assets or at market price or fair value. Specific methods of real property valuation should be described in the introduction to the financial statements. There is no obligation to provide information on how the market price or fair value of the real property has been determined. What is important, however, is that the adopted principles described in the introduction to the financial statements are not treated as an accounting policy, but the other way around – this part of the financial statements should reflect the accounting policy.

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Basics

Investment activity requires the use of debt financing. A popular form is borrowing in Polish zloty and in foreign currency. In the latter case, the loan is taken out in a currency other than the income currency. This form of debt financing is subject to currency risk.

- The Supreme Administrative Court's judgment of 10 January 2024, file no. II FSK 449/21, has established case law in this regard. The cap on debt financing costs is now calculated by adding 30% of EBITDA to 3 million zloty. (Previously, revenue authorities believed that taxpayers were obliged to exclude from tax deductible expenses that part of debt financing costs that exceeded the higher of these two amounts.)
- Loan interest is tax-deductible when paid or capitalised.
- When a foreign currency loan is repaid, exchange rate gains or losses arise, which affects the tax outcome.

MORE

Currency risk, also known as exchange rate risk, is borne by the borrower and is associated with changes in the exchange rate. This is because the value of a foreign currency loan expressed in Polish zloty on the date of its disbursement may differ from its value on the date of repayment.

OTHER IMPORTANT ISSUES

Make sure that transactions between associated enterprises do not bear the hallmarks of a loan. This may be the case when associated enterprises set off mutual debts or an enterprise settles debts on behalf of its associated enterprise.

REMEMBER

Debt financing may trigger withholding tax when interest is paid or capitalised.

Loans also trigger transfer tax.

A loan agreement made with an associated enterprise may also require transfer pricing documentation.

Author's opinion

When borrowing, you should keep in mind how it will impact your tax outcome. The loan principal is not tax deductible, while the cost of debt financing may reduce the taxable base if certain conditions are met.

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4. VALUATION OF INVESTMENT PROPERTIES

Basics

Entities measure investment properties they use to derive economic benefits according to the tangible asset valuation principles or at market price or otherwise determined fair value.

Once chosen, the valuation method should be applied continuously every year. The accounting policy should detail additional rules for:

- classifying a real property as an investment property,
- specifying the point in time when the real property is brought into use for both tax and accounting purposes,
- identifying the costs that can be capitalised,
- specifying the method for determining the fair value of the real property and how the difference in property valuation should be recognised in the entity's profit or loss.

The valuation of real property at fair value is more complex and requires updating its value at least once at the end of the financial year. The primary concern in measuring an investment property at fair value is to find the right person to do it. This can be either an in-house expert with relevant property valuation expertise or an external property appraiser.

A valuation made by an in-house expert may only be used for the company's internal needs and may not be shared with third parties. Such internal valuation is only permitted where investment properties are not a material component of the financial statements or where the sale price is already known and confirmed by the buyer.

In any other case, investment properties should be measured by a property appraiser. These rules are consistent with International Accounting Standard 40, which recommends that an entity should use a qualified and independent property appraiser when determining the fair value of an investment property.

The most important thing that the chief accountant should do before posting the valuation received from the property appraiser is to check the valuation method and the cash flows that were the basis for that valuation (the so-called cash-generating unit). Any sales commissions paid, rent holidays granted or expenses incurred for tenants are already partially reflected in the financial statements by accounting for them over time at the effective interest rate. It is therefore incorrect to recognise the valuation of an investment property directly at the amount shown in the appraisal report as market value, without adjusting that value for balance sheet items that have already been considered in the valuation prepared by the property appraiser. Such an adjustment is to preclude the above assets from being shown twice in the financial statements.

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International Accounting Standards also provide two options for the valuation of investment properties, i.e. at fair value or at acquisition cost (historical cost).

OTHER IMPORTANT ISSUES

Companies may at any time change the purpose of the real properties they own and reclassify them as investment properties. It is wrong to think that the total difference from reclassifying tangible assets to investment properties will affect the entity's profit or loss for the period. This is because the initial reclassification of tangible assets to investment properties is disclosed in the revaluation reserve as set out in Article 35(4) of the Accounting Act. Consequently, the first revaluation does not affect the profit or loss for the period but only the revaluation reserve. The entity's profit or loss for the period will only be affected by the difference in the fair value valuation of the real property between the revaluation date and the balance sheet date.

4. VALUATION OF INVESTMENT PROPERTIES

REMEMBER

The valuation of real property using the principles applied to tangible assets involves the initial recognition of tangible assets at historical cost and their depreciation over their useful life, taking into account impairment losses.

Author’s opinion

Irrespective of the investment property valuation methods chosen, you should always explore the opportunities and risks associated with the particular valuation method.

The valuation of investment properties using the principles applicable to tangible assets is easy to carry out and does not require a lot of money. The fair value method is more costly, but brings tangible economic benefits, mainly because it yields a higher value of assets and equity, and often better financial performance of the entity. The fair value method is also risky when real property transaction prices tend downwards, as an unfavourable valuation places an additional burden on the entity's financial performance. The fair value method is an example of an aggressive balance sheet valuation, which is mostly chosen by listed companies striving to optimise reported profits and received dividends.

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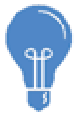
5. ACCOUNTING FOR COSTS OVER TIME

Basics

Costs accounted for over time can be recognised as either prepaid or accrued expenses. We will focus here on prepayments, i.e. expenditures and costs incurred in advance that relate to future periods and future revenues. In addition to granting discounts and rebates, real property companies often decide to incur various types of costs to attract new tenants – these costs may be related, for example, to rental agency services, reimbursing the tenant's removal costs, or various commissions and bonuses. Companies may also adapt the space to the needs of new tenants – this is known as fit-out and is described in more detail in a separate section.



REMEMBER

Please note that the classification of prepayments as non-current investments must be justified and in line with the accounting principles and the adopted accounting policy. In addition, not all prepayments relating to a real property will increase its carrying value.

SEE ALSO

FIT-OUT

ACCOUNTING FOR RENT INCENTIVES

Author's opinion

Costs related to attracting new tenants should be recognised as prepayments over the agreed lease period. Depending on the adopted method of real property valuation, these prepayments may either increase the value of non-current investments (real properties) or be presented as prepayments on the asset side as of the balance sheet date.

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6. ACCOUNTING FOR DISCOUNTS AND RENT INCENTIVES OVER TIME

Basics

In the commercial real property industry, some companies choose to give various discounts, rebates or rent holidays to attract new tenants. Discounts may apply to both rent and service charges, which should be specified in the lease.

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Depending on the property valuation method, a discount accounted for over time may be relevant for identifying the profit or loss of the property rental company, as it may affect its sales revenue. In addition, a discount accounted for over time may change the carrying value of the real property as disclosed in the annual financial statements. Accounting for a discount over time is also commonly referred to as "flattening" or "linearising" of revenue.

EXAMPLE

The lease is for 5 years, the rent is 5,000.00 zloty per month (indexation not included). According to the lease, the tenant will pay no rent for the first six months (the rent for these months will be 0 zloty).

Revenue for the entire lease term:	**5 x 12 x 5,000 – 6 x 5,000 (discount granted) = 270,000.00 zloty**
Average monthly revenue:	**270,000 / (5 x 12) = PLN 4,500.00**

1st year:	**posting of Prepaid expenses/Sales revenue (non-taxable)**
Subsequent years:	**posting of Sales revenue (non-taxable)/Prepaid expenses**

Prepayments should be split into current and non-current.

REMEMBER

Accounting for the discount over time should only be considered when significant discounts are given to tenants. When a company is audited, it is important that auditors are informed about the discounts granted.

Author's opinion

In order to properly account for the discount granted, the average revenue over the entire lease term should be calculated at the beginning of the lease. The books of account should contain accurate and clear accounts of discounts. The discounts and rebates granted should be accounted for by posting the difference between the rent or service charge from sales invoices and the calculated values to prepayments.

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7. FIT-OUT

Basics

There is no clear definition of fit-out. The term is usually used to refer to complex interior work to create space in buildings that will meet the individual needs of future tenants. 'Complex work' means work ranging from design and selection of finishing materials and contractors to supervision.

Fit-out expenditures qualify as an improvement provided that all of the following conditions are met (as set out in Article 16g(13)):

- the improvement must be the result of conversion, extension, reconstruction, adaptation or upgrade,
- total expenditures incurred on the improvement exceed 10,000 zloty in a tax year,
- the improvement increases the value of the tangible asset in relation to its value on the date it was brought into use.

If the work performed is not an improvement, but merely consisted in adapting the space to the individual needs of the tenant, the expenditures will generally be recorded as indirect expense.

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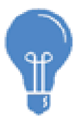
Considering the scope and nature of the work performed, fit-out is recognised as:

a) CAPEX

- new tangible assets
- improvements to tangible assets
- leasehold improvements
- non-building structures on third party's land

b) OPEX

- recognised in profit or loss on a one-off basis
- accounted for as prepaid expenses



REMEMBER

When accounting for the costs of fit-out, you should check whether the work improves the value of the building or whether it is typical adaptation work for a specific tenant.

Author’s opinion

The accounting and tax treatment of the costs of fit-out work requires detailed analysis and review. To recognise it correctly, you should consider the contractual provisions, the technical scope of the work performed and the method of financing. Each case must be assessed on its own facts.

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8. PRICE INCENTIVES – CASH CONTRIBUTION

Basics

To make its market offer more attractive, a lessor may pay a cash contribution to those who sign or extend the existing lease.

A cash contribution may be in various forms, such as:

- an incentive to change the existing commercial property (also to cover the lessee's expenses for premature termination of lease);
- money given to the lessee for fit-out;
- compensation for the lessee to buy out its capital expenditures for the fit-out.

REMEMBER

Every accounting treatment of a cash contribution should be based on an analysis of the itemised list of purchased capital expenditures. To this end, the lessor should get invoices and acceptance records from the lessee.

The lessor then includes the expenditures in its own tangible assets on that basis.

Author's opinion

A cash contribution may be accounted for in two ways.

It may be recognised directly in profit or loss if the lease does not say that the lessor has purchased the capital expenditures (capex).

Depending on the contractual provisions, the expense may be one-off or, where the expense spans across tax years – it may be accounted for as prepaid expense pro rata to the lease duration.

If the capital expenditures are bought back and the title passes on the lessor, the value of the cash contribution will be included in the tangible asset's initial value. Decisive here are the contractual provisions that stipulate that the capital expenditures bought back are permanent, "improve the asset" and are non-dismantlable.

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9. DEFERRED TAX IN REAL PROPERTY COMPANIES

Basics

Income tax is inherent in every business, including that of real property companies. Deferred income tax is a term often used in accounting – it results from the difference between the value of individual assets and liabilities for accounting and for tax purposes.

Deferred tax appears when an entity recognises revenues and expenses for tax purposes in different periods to when it recognises revenues and expenses for accounting purposes. Deferred tax requires companies to identify either deferred tax assets or deferred tax liabilities whenever there are deductible and taxable temporary differences.

Taxable temporary differences occur when the taxable base will have to be increased in future reporting periods. Such differences occur when the assets' carrying value exceeds their tax base or when the carrying value of liabilities is lower than their tax base.

Deductible temporary differences reduce the tax base in future reporting periods. Such differences occur when the assets' carrying value is lower than their tax base or when the carrying value of liabilities exceeds their tax base.

OTHER IMPORTANT ISSUES

temporary differences in assets:

1. Tangible assets

When it comes to tangible assets, temporary differences may be taxable or deductible. They most often result from different depreciation rates for accounting and for tax purposes, different depreciation methods as well as asset impairment.

2. Investments – market (fair) value

Whenever an investment property is appraised at fair value, there will be temporary differences between the asset's value for accounting and for tax purposes.

An appraisal as of the balance sheet date, whether it increases or reduces the investment value, is not recognised as taxable revenues or tax-deductible expenses in the valuation period. They do not become taxable revenues or tax-deductible expenses until the property is sold or settled.

An appraisal changes the property's carrying amount against the acquisition cost, while the value for tax purposes remains at the level of the acquisition cost. The difference is temporary and may be either taxable or deductible.

Investment properties (office buildings) are appraised according to the adopted accounting rules (policy) at fair value (determined by a property appraiser).

3. Rent receivables and liabilities

When receivables and liabilities emerge, they are initially measured at nominal value as shown in the underlying source document.

Their accounting value is determined as of the balance sheet date and it may differ from the historical value (the tax base of those receivables and liabilities). The definitions of assets and liabilities require that the balance sheet shows only the accounts that are unquestionable, recoverable and certain as to the amount and date. Therefore, entities have to assess their receivables for recoverability. The principle of prudence requires value adjustment write-downs of receivables whenever their recoverability is at risk.

Value adjustment write-downs of the principal receivable are added to other operating expenses, while the interest part is recognised in financial expenses.

When the reason for the value adjustment of the receivables disappears, their value is written up by increasing other operating income or financial revenues.

The balance sheet valuation should also take account of late payment interest, which is another cause of temporary differences. As regards receivables and liabilities, deferred income tax may arise for the following reasons:

1. loss in tax-deductible value;
2. accrued but not-yet-paid interest.

Another reason for temporary differences in receivables and liabilities is the currency exchange gains/losses as of the balance sheet date.

4. Deferred tax liabilities

Deferred tax liabilities (and accruals) result from events that have not materialised in the meaning of tax laws, meaning that no tax-deductible expenses have been incurred.

The type of liability decides whether there will be a temporary difference and deferred income tax. It will occur only if the expense related to the liability is recognised as a tax-deductible expense, which means that once incurred, it will be deducted from income. In respect of liabilities, the temporary difference may be deductible only.

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Basics

The company's status as a real property company is determined by the structure of its assets. The CIT Act explicitly defines real property companies:

- in the case of start-up companies – **as of the first day of the tax year** at least **50% of the market value of the assets** is (directly or indirectly) attributable to the **market value of real properties** located in Poland (or the value of rights to such real properties), and the **market value** of those real properties is **higher than 10 million zloty**,
- in the case of companies continuing their business – **as of the last day of the year** preceding the tax year, at least **50% of the carrying amount of the assets** was (directly or indirectly) attributable to the **carrying amount of real properties** located in Poland (or the value of rights to such real properties), and **the carrying amount** of such real properties **was higher than 10 million zloty**, and in the previous tax year the taxable revenue from such real properties (rights to real properties) was earned, e.g. from lease, sublease, constituting at least **60%** of the total taxable revenue earned.

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A distinction should be made between a real property company and a company covered by the so-called real property clause regulated in the CIT Act and in a number of double taxation treaties concluded by Poland. The latter case refers to companies in which at least 50% of the value of the assets is directly or indirectly attributable to real properties located in Poland. The sale of shares in such companies is taxable in Poland. It should be noted that not every company covered by the real property clause will be a real property company.

REMEMBER

The new obligations are:

- transfer of the obligation to account for capital gains tax on, among others, the transfer of shares in a real property company, from the transferor to the real property company itself,
- filing information on shareholders with the Head of the National Revenue Administration by the end of the third month after the end of the financial year; the obligation applies both to the real property company and to taxpayers holding directly or indirectly at least 5% of the shares (voting rights) in the real property company,
- appointment of a tax representative where there is no registered office or management in the EEA. Failure to comply with this obligation may result in an administrative fine of up to 1 million zloty,
- preparation of a tax strategy report (if the company is part of a tax-consolidated group or exceeds the threshold of 50 million euro in revenue).

Author’s opinion

The introduced provisions on real property companies entail additional obligations for enterprises. The new provision is expected to tighten up the tax system. In practice, it can be problematic to determine the “market value” of company's assets in the first year of operation. It needs to be verified every year whether the company meets the conditions for being considered a real property company. We recommend that you familiarise yourselves with your statutory obligations and remain vigilant when entering into certain transactions.

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Basics

New rules on withholding tax on so-called passive payments, i.e. royalties, interest or dividends, have been in effect for two years now. The legislation sets a payment threshold of 2 million zloty, above which withholding agents have additional obligations. In such a case, the tax pay & refund procedure applies – the withholding agent generally deducts tax in full but then may claim a refund from revenue authorities.

MORE

If, after exceeding the threshold, the withholding agent wishes to enjoy preferential treatment and not to deduct tax in full, it is required to file a WH-OSC statement. The withholding agent's management board represents in that statement that, having exercised due care, it is not aware of any circumstances that would preclude the application of a reduced tax rate, the exemption from tax, or the non-collection of tax. The management board is liable for making a false statement.

Alternatively, you may apply for a certificate of preferential WHT treatment from the revenue authority to confirm that you are eligible for an exemption or a reduced tax rate.

REMEMBER

You should:

- check the amounts of payments you have made,
- check the documentation you have,
- develop a contractor verification procedure,
- if you have any concerns – apply for an advance tax ruling or a certificate from the revenue authority to make sure that you may enjoy a tax exemption or a preferential tax rate.

You should also check if you have correctly assessed the facts, in particular, you should identify the beneficial owner of interest, dividends or royalties.

The “beneficial owner” concept is defined in the statute and assumes, among other things, that such an entity carries on a genuine business in the country where it is established and is not obliged (under various contracts/agreements) to transfer the payments it receives to other entities.

You need to identify the beneficial owner to know which international treaty applies and which entity should be disclosed as the payee in IFT information returns filed with revenue authorities.

Author’s opinion

The legislation is highly controversial – it imposes additional obligations on Polish companies, such as verifying contractors and collecting additional documentation. There is also no clear information on the scope of actions an enterprise should take and the method it should apply in this process to enjoy the preferential treatment with respect to withholding tax. Numerous advance tax rulings or judgments of administrative courts do not provide clear answers. We therefore recommend that you review and assess the procedures you currently have in place and regularly check the payments you make.

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Basics

Tax on income from buildings applies to owners or co-owners of buildings located in Poland which are let out under a rental [*najem*], lease [*najem, dzierżawa*], leasing [*leasing*] or similar agreement. When a building is let out under a leasing agreement, tax is paid by the entity making depreciation charges (the one that has the building in its tangible asset records).

Therefore, this tax applies to all commercial buildings: offices, shops, warehouses, car parks which are located in Poland and are rented or otherwise let out.

However, it does not apply to buildings used for the owner's own purposes.

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The taxable base is the sum of income from individual buildings.

Income is the initial value of the real property determined on the basis of the tangible asset records kept by the taxpayer. The value is determined as of the first day of each month. The initial value is generally a fixed value and should be determined excluding reductions for depreciation charges (case law).

However, the value may:

- increase as a result of the improvement and modernisation of a building (conversion and extension) or
- decrease as a result of the detachment of a component (hall, room).

Revenue authorities point out that shared parts of buildings, such as, for example, shared kitchens, laundry facilities, public toilets, back rooms or recreation rooms, and administrative premises, which by their nature are not subject to letting, should not be taken into account when determining the usable floor area let out or the total area of the building.

If a part of the building is **rented out,** income is determined in proportion to the share of the usable floor area let out to the building's total usable floor area. A building in which the total share of the usable floor area let out does not exceed 5% of the total floor area of that building is excluded from taxation.

In the month in which a building is sold or let out under a leasing agreement, income from that building is determined solely by the taxpayer who has sold or leased the building.

The legislation provides for a **"tax-free" amount** of **10 million zloty**.

Note: the tax-free amount applies to the taxpayer and not to each building separately. The taxpayer may deduct a maximum of 10 million zloty from the total initial value of leased buildings owned by him.

Note: when determining the taxable base, the taxpayer is required to take into account not only its own real properties, but also buildings owned by its associated entities, let out under rental or lease agreements. In such a case, the tax-free amount for each associated entity is determined in the proportion of the income from the buildings of that entity to the total income from the buildings of all associated taxpayers.

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However, it is not clear who should be taken into account as the taxpayer's associated entity in this context.

In its judgment of 15 December 2022, file no. II FSK 1172/20, the Supreme Administrative Court stated that the term “associated entities” should refer not to broadly understood entities associated with the taxpayer (listed in Article 11a(1)(4) of the CIT Act) but to entities in whose capital the payer of tax on income from buildings holds (directly or indirectly) a significant share (i.e. a share within the meaning of Article 11a(1)(4) of the CIT Act to the extent referred to in Article 11a(4)(1) of the CIT Act).

This means that neither the taxpayer's parent company nor such of its sister companies in which the taxpayer does not hold “significant” shares are taken into account when identifying a group of associated entities for the purpose of tax on buildings.

For a tax-consolidated group, the taxable base is the total value of the rented/leased buildings of all its members.

The tax rate is **0.035%** on the excess of the total initial value of all buildings over the “tax-free amount” of 10 million zloty.

REMEMBER

Tax is payable for each month in which buildings are let out. The payment deadline is the 20th of the following month, just like the CIT advance.

If the tax on income from buildings is higher than the CIT advance in a given month, the advance CIT is reduced by the amount of this tax.

If the tax on income from buildings is lower than the CIT advance in a given month, the taxpayer does not have to pay the tax on income from buildings.

The amount of tax on income from buildings paid and not deducted in a tax year is deducted from tax in the annual return. If the annual return shows undeducted tax on income from buildings, the taxpayer is entitled to a refund of the undeducted amount. A simplified tax refund procedure has been in place since 2023 – if the request for a refund of the undeducted part of tax on income from buildings raises no doubt, the requested amount is refunded without issuing a decision.

Author’s opinion

The tax on income from buildings, which is a property tax, is a kind of minimum tax. It has been left in the CIT Act despite introducing in 2024 the minimum tax for companies generating losses or minimum income. This is because the tax on income from buildings is deductible from the CIT advance. The taxpayer will not bear the actual economic burden of that tax if his annual CIT is higher than the tax due on income from buildings.

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Basics

The domestic minimum tax is imposed under Article 24ca of the CIT Act. The tax is levied on businesses that show tax losses or very low profitability. It is imposed on companies that are established or have a management board in Poland, are subject to CIT, and on tax-consolidated groups; it may also be charged to non-residents who conduct a business through a permanent establishment in Poland.

The tax is levied on CIT payers who:

- have incurred a **loss** from the source of income other than capital gains (that is, a loss on operating activities) or
- whose ratio of net operating income to operating revenues is not higher than **2% (profitability).**

The tax is payable one-off at the end of the tax year. Companies will have to pay it for the first time by 31 March 2025 following the CIT-8 return filing for 2024.

Some entities are exempt from the minimum tax, such as:

- new taxpayers (for up to 3 years of starting business); this exemption does not apply to companies formed through a transformation, merger, division or other restructuring measures;
- financial companies;
- taxpayers who have experienced revenue decline by 30% compared to the previous year;
- small CIT payers;
- taxpayers put into bankruptcy, liquidation or undergoing restructuring proceedings;
- taxpayers being parties to a cooperative compliance agreement;
- taxpayers who have achieved profitability of at least 2% in one of three tax years immediately preceding the tax year for which the minimum tax is due;
- groups composed of at least two companies in which one company holds, for the entire tax year, directly or indirectly, at least 75% shares in the share capital of the other companies which belong to the group;
- companies having simple organisational/legal structure, without extensive links, in which all shareholders or partners are natural persons.

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The statute provides for a number of exclusions at various stages of tax calculation:

- in the calculation of the profitability/loss, items such as depreciation charges, leasing expenses, some taxes and fees (excise duty, retail sales tax, gambling and lottery tax, fuel fee and emission fee), 20% of tax-deductible expenses for wages and salaries, social insurance contributions and contributions to Employee Capital Plans, do not count;
- in the calculation of the taxable base;
- in the calculation of the tax itself.

REMEMBER

The minimum tax rate is 10% of the taxable base. The taxable base may be calculated in two ways:

I. as a sum of three components:

- 1.5% of the company's operating income;
- debt financing costs incurred for associated enterprises exceeding 30% of the taxpayer's EBITDA;
- the costs of services (such as consultancy, market research and advertising) or of intangible rights incurred for associated enterprises exceeding 3 million zloty plus 5% of EBITDA for tax purposes.

II. as 3% of the operating revenues (taxable revenue other than from capital gains) earned by the taxpayer in the year.

The minimum tax is independent of CIT. When the minimum tax and CIT become chargeable, this does not mean double taxation: the amount of CIT payable will be reduced by the amount of the minimum tax.

Any minimum tax paid will be deductible from CIT in tax returns filed for 3 subsequent tax years.

Author's opinion

The minimum tax is designed to seal the tax system in Poland. It may apply to companies operating in industries characterised by low profitability or periodical losses.

The regulations are quite complicated and the calculation is different than CIT. Therefore, every company should check if it is subject to this tax.

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10. 4. TAX ON SHIFTED PROFITS

Basics

This tax is payable exclusively by payers of Polish CIT who have their registered office or management in Poland or who pursue their activities through a permanent establishment located in Poland.

The tax is payable on certain payments (i.e. qualifying expenses) which are included in the taxpayer's tax-deductible expenses. Such expenses are then referred to as shifted profits.

They include expenses incurred on:

- advisory services, market research, advertising, management and control, data processing, insurance, guarantee and surety services and similar,
- all kinds of fees and amounts due for the use or the right to use copyrights or related property rights, licences, rights specified in the Industrial Property Act, value equivalents of disclosed industrial, commercial, scientific or organisational knowledge (know-how),
- transfer of the risk of debtor's insolvency on account of loans other than loans granted by banks and credit unions, including under derivatives agreements and similar,
- obtaining funds and using those funds, in particular interest, fees, commissions, bonuses, interest portion of a lease instalment, penalties and charges for late payment of liabilities and costs of hedging liabilities, including costs of derivative financial instruments (debt financing costs),
- charges and fees for the transfer of functions, assets or risks.

The Act provides for a safe harbour.

The tax is not due if the sum of all payments the taxpayer made to associated enterprises (Polish and foreign) for the purchase of qualifying services and included in its tax-deductible expenses in the tax year is less than 3% of the taxpayer's total tax-deductible expenses for that year.

The tax is payable on qualifying expenses incurred for foreign associated enterprises which:

- are subject to tax on their entire income in a country/territory outside the EU or the European Economic Area (Norway, Liechtenstein, Iceland) – note: these are for example UK, Swiss companies,
- are from the EU or EEA and do not pursue genuine business activity in the EU or EEA.

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The regulations on the tax on shifted profits apply to both qualifying services which the Polish taxpayer purchases from foreign associated enterprises directly and those purchased through the intermediation of a third party.

Foreign tax haven entities associated with a Polish taxpayer are considered qualifying entities (no further conditions need to be examined).

The payee must meet all of the following conditions for a payment (an expense) to qualify as shifted profit:

- the tax rate applicable to the income which the associated enterprise receives from Poland in the country where it is established, registered, and has its management board is lower than 14.25% (effective tax rate),
- the qualifying entity earns at least **50% of revenues** from transactions with Polish tax residents associated with that entity which recognise qualifying expenses from those transactions,
- the qualifying entity transfers, in any form, at least 10% of revenues generating qualifying expenses in Poland to another associated enterprise, by e.g. including those amounts in tax-deductible expenses, deducting them from income, taxable base or tax, or paying them out in the form of a dividend.

REMEMBER

Shifted profits do not combine with any other income (revenues) of the taxpayer.

Tax on shifted profits may be reduced by the flat-rate WHT deducted from payments included in the taxable base for the purposes of tax on shifted profits. The amount deducted must not be higher than the amount of tax on shifted profits. The tax on shifted profits is not payable if the amount of deducted WHT is equal to it or higher.

The tax is to be disclosed in the annual tax return (attachment to CIT-8 return, CIT/PD form) and is payable upon filing the tax return.

The tax rate is 19%.

Author's opinion

Tax on shifted profits is designed to eliminate the possibility of obtaining a tax advantage through tax arrangements that aim to transfer income to a tax jurisdiction with a very low effective tax rate.

Compliance with this taxation is checked in a complex, multi-stage procedure.

The taxpayer must gather evidence showing that they have made sure that the expenses are not shifted profits. Without such evidence the entity is presumed to shift profits to another entity.

The provisions on tax on shifted profits represent excessive formalisation bordering on impossibility to fulfil the demands of revenue authorities.

To comply with those provisions, taxpayers must obtain detailed information about accounts of other entities from the group and heavily engage foreign associated enterprises to ensure compliance.

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Basics

Companies may be required to exclude debt financing costs in excess of the statutory limit from tax-deductible expenses.

List of costs

The limit applies to any and all costs incurred in connection with:

- obtaining funds from other entities, both associated enterprises and independent entities,
- using these funds.

The list of costs recognised as debt financing costs is non-exhaustive. They include without limitation:

- interest, including interest capitalised and included in the initial value of tangible and intangible assets,
- fees and charges, commission fees, bonuses,
- the interest portion of lease instalment,
- fines/penalties and late payment fees,
- costs of securing/hedging liabilities, including costs of derivatives.

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Leasing

Bearing in mind the purpose of introducing EU legislation (the Anti-Tax Avoidance Directive, ATAD) regarding the tax-deductibility of debt financing costs, it should be concluded that the term 'interest portion of the lease instalment' should refer only to **financial lease** (Article 17f CIT Act) when amortisation or depreciation charges are made by the lessee and the normal consequence of the contract performance is the transfer of ownership. Such a contract is similar in its design to hire purchase or a bank loan for the purchase of assets.

According to revenue authorities, the limit applies also to operating leases (advance tax ruling of 12 June 2023, file no. 0111-KDIB1-2.4010.165.2023.2.AW). However, administrative courts present a different view (the Supreme Administrative Court in its judgment of 26 April 2022, file no. II FSK 2197/19): the interest part of the operating lease instalment is not a debt financing cost and is fully tax-deductible for the lessee.

Costs that are tax-deductible without limitations

- Costs of loans and borrowings used to finance a long-term public infrastructure project.

Costs of loans and borrowings taken on for the construction of a wind turbine may be classified as such (the Supreme Administrative Court in its judgment of 8 February 2023, file no. II FSK 1615/20). The court was of the opinion that this project will “serve public purposes (general public interest) in that it ensures access to power which, in addition, is generated from renewable energy sources for an unlimited number of consumers”.

- Interest cost payable on the basis of agreements between companies being members of a tax-consolidated group.

WHAT YOU NEED TO KNOW

Legislative change

The amended version of the CIT Act dated 26 October 2022 (Polish Deal 3.0) introduced more elaborated tax deductibility rules, which are still causing doubts. The amendment applied retroactively to debt financing costs for 2022.

How the limit is determined

Taxpayers are obliged to exclude from tax deductible expenses a part of the debt financing costs above:

1. **the amount of 3 million zloty, OR**
2. the amount calculated according to the following formula:

30% x EBITDA for tax purposes [(sum of taxable income from all sources LESS interest income) LESS (sum of tax-deductible expenses including debt financing costs LESS depreciation and amortisation charges included in tax-deductible expenses LESS all debt financing costs included in tax-deductible expenses irrespective of any limits)]

Non-deductible debt financing costs do not expire. Debt financing costs which are non-deductible in a given tax year can be carried forward within the next five consecutive tax years. Therefore, these costs are tax-deductible in the following years within the applicable limits. This rule does not apply to companies in the process of transformation, merger or demerger, as well as to former tax-consolidated group members with regard to debt financing costs that are non-deductible during the existence of the tax-consolidated group.

These costs are accounted for according to the FIFO method – costs incurred first are deducted first.

Additional exclusion that should be born in mind

The Polish Deal introduced a new non-tax-deductible item to Article 16 of the CIT Act: costs of debt financing obtained from an associated enterprise in the portion in which they have been allocated directly or indirectly to equity transactions, in particular:

- acquisition or taking of shares,
- acquisition of all rights and obligations in a partnership,
- making additional capital contributions,
- share capital increase, or
- buy-out of own shares to cancel them.

The restriction aims at counteracting situations where taxable income is reduced in groups of companies as a result of transforming debt financing (e.g. in the form of a loan) to equity. Such situations leads to CIT base erosion because interest on debt financing reduces the income of the taxpayer receiving it while, at the same time, this taxpayer does not recognise any income from debt financing due to reclassification of the debt financing into equity financing.

Author's opinion

This is a good change because the amendment has put an end to long-standing disputes between taxpayers and revenue authorities. Currently, companies may exclude from tax deductible expenses a part of the debt financing costs above any of the amounts specified above.

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6. REAL PROPERTY TAX – DEADLINES

Real property tax is no less important for owners of real properties or structures.

Who has to pay real property tax?

Real property tax is payable by individuals, legal persons, non-corporate entities, including partnerships, that:

- own real properties or structures,
- are autonomous possessors of real properties or structures,
- are perpetual usufructuaries of land.

Furthermore, real property tax is payable by possessors of real properties or their parts or of structures or their parts which are owned by the State Treasury or local government units, if:

- the possession results from a written agreement with the owner, the Agricultural Property Agency or from another legal document, except where individuals are in the possession of residential premises which do not constitute separate real properties,
- the right of possession has not been agreed in writing.

Remember: if the land, building or non-building structure is jointly owned or possessed by two or more entities, all the co-owners or co-possessors are jointly and severally obliged to pay the tax.

What does it mean? In such a case, revenue authorities may demand payment of the full tax from one, some, or all of the real property owners or possessors.

What is subject to taxation?

The tax is due on: land, buildings or their parts, non-building structures or their parts, connected with carrying out business activity.
Of course, the legislators have also provided for a number of exclusions or exemptions from this tax.

When does the tax obligation arise?

If circumstances giving rise to tax liability have arisen, for example in connection with the purchase of land, a building or a non-building structure, then the tax liability arises on the first day of the month following the month of the transaction.

However, if the tax is payable on a newly constructed building or non-building structure or parts thereof, the tax liability arises on 1 January of the year following the year in which the construction is completed or in which the building o non-building structure or parts thereof start to be used before being finished. In turn, the tax liability expires at the end of the month in which the underlying circumstances cease to exist.

It should be borne in mind that if the tax liability arises or expires during the year, the tax for that year is pro rated to the number of months for which the tax is due.

What are the real property tax rates?

Rates of tax on land and buildings or parts thereof are specific amounts and are adopted by municipal councils. However, their upper limits are set and announced annually by the Minister of Finance.

In the case of non-building structures, the tax rate is expressed as a percentage and it is 2% of the value of the structure.

10. 6. REAL PROPERTY TAX – DEADLINES

What are the tax payment deadlines?

Individuals are obliged to pay the tax by instalments by 15 March, 15 May, 15 September and 15 November of a given year, in the amounts determined on the basis of a decision issued by revenue authorities.

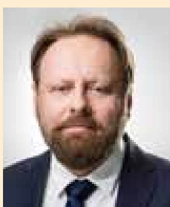
Other real property tax payers are obliged to pay the tax in monthly instalments, by 15th day of each month, and for January – by 31 January.

They determine the tax amount themselves.

Author's opinion

In general, the issue that remains the biggest challenge for taxpayers is defining non-building structures for property tax purposes and calculating the tax on such structures. The current definition of a 'non-building structure' in the Local Taxes and Fees Act is ambiguous and refers taxpayers to construction law. As a result, current or future taxpayers have no guaranteed tax stability and are at risk of numerous disputes with revenue authorities.

It is worth noting that the Ministry of Finance is currently working on a new stand-alone definition of a non-building structure, which is to take effect from 1 January 2025.



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Basics

A real property company, like any taxpayer, may be required to disclose reportable arrangements. The company may be the user implementing the arrangement made available to it. It can also act as a promoter by developing the arrangement and sharing it with others. It is least likely to act as a facilitator in the development or implementation of the arrangement.

The MDR regulations provide for the obligation to disclose various types of arrangements, among others:

- those resulting in tax advantage, including those consisting in benefiting from statutory reliefs and preferences,
- arrangements to avoid tax,
- cross-border payments in excess of 25 million zloty, subject to withholding tax,
- transfer of rights to hard-to-value intangibles.

It should be taken into account that an arrangement arises not only when there is tax advantage.

The obligation to report under MDR legislation may apply to income taxes, VAT and excise duty, as well as local taxes, including, above all, real property tax. The MDR legislation does not apply to customs duty.

The Ministry of Finance emphasises that the MDR provisions are of a reporting nature, so a disclosure of a tax arrangement does not necessarily expose the taxpayer to unfavourable consequences or a tax inspection. According to the MDR Explanatory Notes, the MDR legislation is not only intended to provide revenue authorities with information on arrangements that pose increased risk of aggressive tax optimisation or breach of other tax laws. The MDR legislation also provides data to analyse how certain reliefs or preferences work.

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Examples of transactions constituting reportable arrangements:

- making of a contribution to the company using the so-called agio,
- payment of a dividend of at least 25 million zloty which is exempt from withholding tax for associated enterprises,
- payment of royalties for the use of a trademark in the total amount of at least 25 million zloty per year,
- payment by a Polish taxpayer of a fee for services rendered by an associated enterprise based in a tax haven,
- entry into a loan agreement including safe harbour provisions with an associated enterprise based in another country,
- sale of goods in sets to reduce the VAT taxable base,
- entry into a finance lease with an entity based in a country where the same lease will be considered an operating lease (both entities will depreciate the same leased asset),
- entry into a contract with a partnership whose partners are other partnerships – if it is impossible or difficult to determine the beneficial owner.

All types of company restructuring (divisions, mergers, transformations), debt restructuring, transfers of assets resulting in a significant reduction in EBIT for tax purposes may constitute an arrangement.

As for the use of a tax relief, it should not be a reportable arrangement unless it is part of a group of transactions of artificial nature, made in order to enjoy a relief or to derive greater benefit from it. Therefore, the following arrangements should not, generally, be considered a reportable arrangement:

- waiver of the VAT exemption when selling real property,
- R&D relief and IP BOX,
- obtaining a state aid decision,
- differences in the timing of interest recognition for tax and accounting purposes,
- application of different depreciation rates for tax and accounting purposes.

DEADLINES TO REMEMBER

The deadline for disclosing a reportable arrangement is relatively short – it is 30 days of the following dates (whichever occurs first):

- of the date following the date when the reportable arrangement is made available,
- of the date following the date when the reportable arrangement is prepared for implementation, or
- of the date of the first step to implement a reportable arrangement.

Depending on the circumstances, it may be the promoter and/or the user (rarely the facilitator) who may be obliged to disclose an arrangement on the MDR-1 form.

In addition, the user is required to separately report the tax advantages achieved in connection with the arrangement or its implementation. The form used for this is the MDR-3 form. It covers the accounting period for the tax in respect of which an arrangement was identified and should be filed by the deadline for filing the return regarding that tax. With regard to income tax arrangements, the deadline for filing the MDR-3 form to report tax advantages for 2024 could be as early as the end of January 2025.

Author's opinion

Please note that the suspension of the obligation to disclose reportable arrangements, introduced due to the COVID-19 pandemic, finally ended in August 2023, after the state of epidemic emergency had been called off. As the suspension was in place for more than three years, companies should review their MDR obligations if arrangements were not disclosed on an ongoing basis.

Given the broad catalogue of reportable arrangements, the uncertainties in identifying arrangements, the long three-year suspension of the MDR obligation during the pandemic period, we recommend **carrying out an MDR audit**. It is a specific type of tax review of transactions to which the client was a party. Also, please be aware that entities acting as promoters whose revenues or expenses exceeded the equivalent of 8 million zloty in the year preceding the financial year are obliged **to draw up and implement an internal MDR procedure**. It is worth **using professional support for MDR reporting and providing training for employees.**

Failure to comply with MDR reporting **obligations** or to meet relevant deadlines **may result in high fines** for individuals and **additional sanctions for business entities.** In the case of a conviction for a fiscal crime due to failure to comply with reporting obligations, the court may also impose a ban on carrying out certain types of business activity.

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10. 8. TAX STRATEGY REPORT

Basics

Large enterprises are obliged under the CIT Act to prepare an additional report on the tax strategy and the tax procedures they apply. They must also publish information on their website that they have such a report in place.

Among other things, the following information should be disclosed in the report:

- processes and procedures for managing compliance with tax obligations,
- the taxpayer's compliance with its tax obligations,
- restructuring measures planned or undertaken by the taxpayer,
- the number of submitted reports on reportable arrangements,
- submitted applications for e.g. advance tax rulings and binding VAT rate information,
- transactions made with related parties,
- data on tax accounting in countries applying harmful tax competition.

The report is supposed to present the company's tax strategy. According to the legislation, it should include, in particular, processes and procedures for managing and ensuring the proper fulfilment of tax obligations.

MORE

The legislation applies to taxpayers:

1) whose revenue generated in the previous year exceeded the equivalent in zloty of 50 million euro,
2) operating as a tax-consolidated group (TCG), regardless of the revenue earned by that group.

Publication deadline – until the end of the twelfth month after the end of the tax year.

Author's opinion

The legislation is expected to increase the fiscal transparency of entities that play a significant role in the Polish economy, mainly due to the amount of revenue they generate.

At the same time, the legislation does not specify what elements the tax strategy report should contain and what procedures the taxpayer should have in place. Therefore, it is a challenge for taxpayers to comply with the statutory obligation while keeping their business secret. Taxpayers' doubts can be observed in practice when comparing the publicly available tax strategy reports: laconic communications and generally worded brochures are published alongside multi-page, detailed studies.

The elements indicated in the CIT Act are only examples, but it is the taxpayer who must disclose the right information. There are currently no explanatory notes from the Ministry of Finance. Some help can be found in the document 'Guidance on the Internal Tax Supervision Framework' prepared for taxpayers who have signed a Cooperative Compliance Agreement with the Head of the National Revenue Administration. It includes tips on how to prepare the tax policy and a company's tax strategy.

It is difficult to assess the introduced provisions as positive. They impose further additional obligations on enterprises. Although taxpayers are not obliged to draw up the tax strategy itself, they must nevertheless develop, write down or update the individual procedures that need to be disclosed in the tax strategy report. On the other hand, drawing up or reviewing a tax strategy document will optimise the company's processes, and reduce tax risks and the management board's liability. We recommend a review of the procedures in place.

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Taxpayers carrying out transactions with associated enterprises must prepare the Local File once the value of their transactions exceeds the statutory thresholds.

The Local File is prepared for uniform controlled transactions whose net value exceeds the following documentation thresholds in the financial year:

- transaction involving goods: 10 million zloty,
- financial transaction: 10 million zloty,
- transaction involving services: 2 million zloty,
- other transactions: 2 million zloty.

Basics

Transfer pricing is particularly important in the context of the real property sector, which encompasses both real property companies within the meaning of income tax legislation and companies owning investment properties. Irrespective of the above forms of activity, transfer pricing issues may concern such areas as:

Sale/lease of real property

Given the value of real properties, their sale/purchase or lease may give rise to tax implications, including in terms of transfer pricing.

Financing

Corporate groups have different funding needs. Due to the high level of capital intensity, entities operating in the property development and real property sector require stable, long-term financing in order to operate their businesses, which may trigger transfer pricing obligations.

Restructuring

Carving out a real property company from the existing group structure may constitute a restructuring with a number of tax implications, particularly in the area of transfer pricing.

Transactions with a special purpose vehicle (SPV)

In special cases, an investment project is implemented by a real property SPV established specifically for this purpose. The setting up of an SPV involves creating links and relationships between enterprises, which may also give rise to transfer pricing obligations.

MORE

Transfer pricing obligations also apply to entities from other industries that carry out transactions involving the lease, purchase or sale of real property to an associated enterprise. They will also arise if a company obtains financing for real property purchase from an associated enterprise.

OTHER IMPORTANT ISSUES

Failure to comply with the arm's length principle may cause revenue authorities to adjust the taxable income. That is why it is so important to verify the arm’s length nature of transactions, as well to fulfil documentation and reporting obligations in order to avoid the risk of fiscal crime liability for non-compliance.

REMEMBER

The arm's length principle is the cornerstone of transfer pricing. It requires associated enterprises to set prices on terms and conditions that would be applied between independent market players. That principle should be followed irrespective of the materiality of the transaction and irrespective of the documentation obligation.

Author’s opinion

The uniqueness of the underlying assets affects the way the transaction is valued. Consequently, enterprises operating in the broadly understood real property sector are advised to manage their transfer pricing obligations by proper planning, identification of risk areas, and the application of tools to minimise those risks, taking into account the pursued business objectives.

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Basics

The commercial real property market in Poland has faced many dynamic changes in the past few years, which have had a significant impact on both investors and tenants. As a result, new solutions have been worked out to further develop the real property market, which is encouraging for the future. However, in the long run, it is investment in green technology and sustainability which will be crucial in the face of the challenges ahead.

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Legal regulations introduced at the EU level have a significant impact on the commercial real property market in Poland because they impose standards and requirements which determine both the planning of new investment projects and the way in which the existing real properties are managed. For example, according to the revised Energy Performance of Buildings Directive (EPBD), all new buildings to be constructed in the EU from 2030 onwards will have to be zero-emission. The EU Taxonomy, in turn, allows to identify activities and investment projects that can be considered sustainable, which will make it significantly easier for investors to select environmentally friendly projects and assets.

OTHER IMPORTANT ISSUES

Green clauses, which are increasingly popular in the context of real property rental, oblige both the landlord and the tenant to follow certain sustainability practices and meet certain green standards. The aim of these provisions is to minimise the negative environmental impact of buildings and to promote energy efficiency and sustainable real property management. These issues are not irrelevant to the core business of tenants, as in many collaborations (e.g. in supply chains) with large companies or financing entities, they will have to demonstrate specific environmental measures.

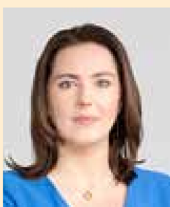
REMEMBER

The selection of a suitable commercial real property must be preceded by a detailed analysis of many factors, such as location, standard, operating costs, technical solutions used or availability of staff. Before making a decision, it is worth using the support of a professional adviser who will help, advise and guide you smoothly through the entire rental process.

Author’s opinion

Flexibility and optimisation, including with the green transition in mind, are the terms that are being used across the board in the Polish commercial real property market. Flexibility means ability to adapt the space to the different needs of tenants, which is crucial in the face of changing working models such as remote or hybrid work. Optimisation, in turn, is about maximising cost and operational efficiency using technologies that reduce the operating costs and increase the energy efficiency of buildings.

The above aspects are decisive for the decisions of investors and the strategies of developers seeking to respond to the growing demands of the market, including those of tenants themselves. Investors are currently eagerly awaiting a reduction in interest rates, which will translate into lower costs of raising debt financing, which in turn will boost investment activity in the Polish commercial real property market.



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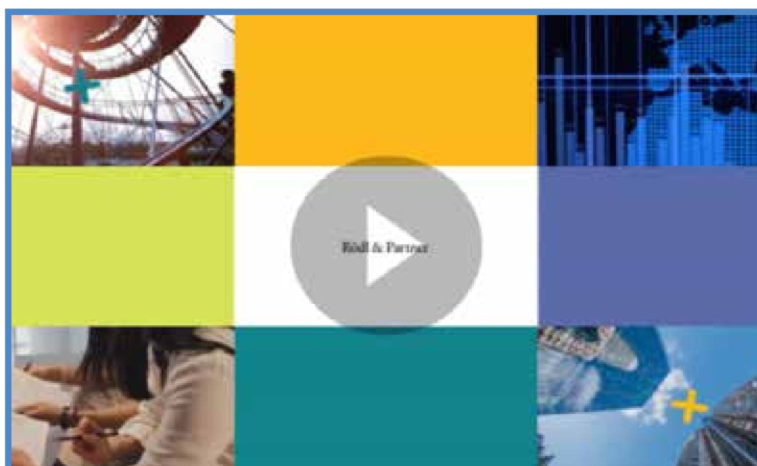

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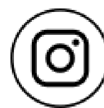 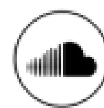

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