

Poland

Ministry of Finance Announces Consultations on Guidelines to Withholding Tax on Cross-Border Payments

2 October 2023

Report from Magdalena Olejnicka, Principal Associate, IBFD

The Ministry of Finance has announced public consultations on draft guidelines to the withholding tax (WHT). The guidelines clarify the amended provisions for applying WHT to cross-border payments of passive income introduced from 1 January 2022. For details of these provisions, see [Poland Implements Mandatory Withholding Tax on Payments of Passive Income to Non-Resident Recipients \(2 December 2021\)](#).

The primary goal of the guidelines is to provide explanations regarding the beneficial ownership clause. This includes interpreting and applying provisions related to the beneficial owner clause found in articles 4a (29), 21-22b, 26, 26b and 28b of the Corporate Income Tax Law, as well as the corresponding provisions of the Individual Income Tax Act.

The guidelines specifically address:

- the concept of beneficial ownership for WHT purposes;
- the criterion of receiving a particular payment for one's own benefit, highlighting that acting as an income administrator is insufficient to be considered the income owner if one has limited control over the income and only the right to transfer it to another entity;
- the criterion of conducting genuine business activities, meaning that arrangements that are entirely contrived or contain artificial elements will not meet the criteria;
- the application of the look-through approach concept; and
- the criterion of effective taxation.

The consultations are open for comments until 10 October 2023.

The draft guidelines were published on 28 September 2023 and are available [here](#) (in Polish).

Poland - Ministry of Finance Announces Consultations on Guidelines to Withholding Tax on Cross-Border Payments (02 Oct. 2023), News IBFD.

Exported / Printed on 7 Mar. 2024 by hkermadi@deloitte.lu.

