CyF Publications

International Tax Developments:

Poland: Controlled Foreign Corporation (CFC) Rules

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Since January 2015 Poland introduced controlled foreign corporation (CFC) rules under which Polish tax residents are subject to 19% tax on the income earned by their CFCs.

The term CFC includes legal persons, such as limited liability companies, but also non tax transparent structures, such as non-tax transparent partnerships.

These rules apply if any of the following conditions are fulfilled:

1. The registered office or the place of effective management of a foreign company is in a jurisdiction included on the Polish black list.

2. The registered office or the place of effective management of a foreign company is in a jurisdiction that has not concluded an agreement with Poland or the EU for exchanging tax information.

3. The registered office or the place of effective management of a foreign company is in any other jurisdiction and all of the following conditions are satisfied:

   - At least 50% of its revenue is derived from passive income.

   - At least one of the types of its passive income is taxed in another jurisdiction at a rate which is at least 25% lower than the Polish corporate income tax rate (which is currently 19%, therefore, the threshold is 14.25%) or is tax exempt, unless this exemption is according to the EU Parent / Subsidiary Directive.

   - The Polish tax resident holds, directly or indirectly, at least 25% of its share capital, voting rights or rights to participate in its profits for an uninterrupted period of at least 30 days.

Please note that certain documentation and reporting obligations may apply even if a foreign company does not qualify as a CFC.

The CFC provisions do not apply in the following cases:

1. The foreign company's income in the tax year is less than €250,000.

2. The foreign company carries out genuine business activities in an EU, or in a European Economic Area country, and is subject to tax on all of its income.

3. The foreign company carries out genuine business activities in a country outside the EU or EEA and is subject to tax on all of its income provided that:

   - Its income is not more than 10% of its revenue resulting from genuine business activities.

   - There is a mechanism of exchanging information between Poland and that other country.

Our View:

The new rules affect most, if not all, jurisdictions as in most financial centres certain passive income is tax exempt.

Nevertheless, it is still unclear as to how the tax authorities will implement the new rules (for example the treatment of Investment Funds aiming at passing the 25% participation test and new corporate structures aiming at passing the €250,000 and/or the 25% participation tests).

Furthermore, there is still debate whether these rules violate any EU laws or tax treaties.

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