

Significant changes in the Polish withholding tax regulations in 2022

Poznań, April 2022



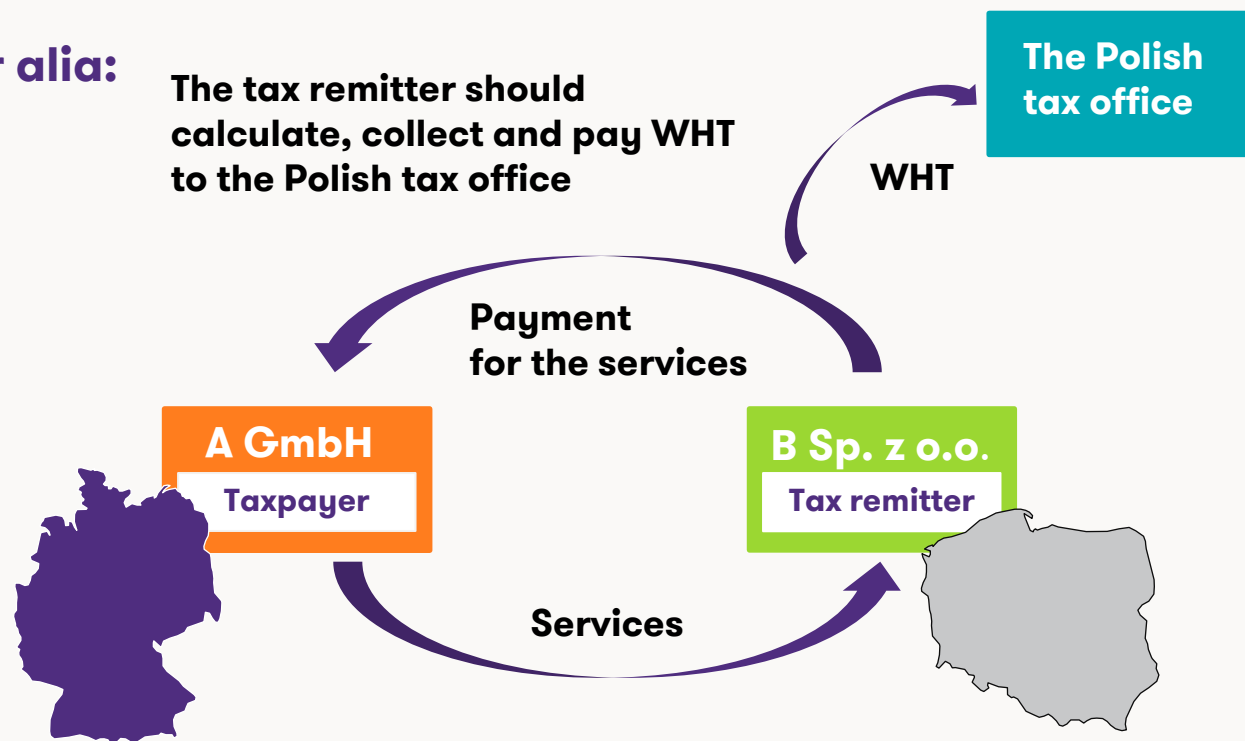
WHT in Poland – payments covered with WHT

WHT rate in Poland = 19% or 20%

Subject to withholding tax (WHT) are inter alia:

- dividends,
- interest,
- royalties,
- payment for some services (i.e. for intangible services),
- payment for use of industrial devices, including vehicles.

Example:



Payments for provision of services – it might be worth to make a double check

We would like to underline that the regulations on determining whether a given service is subject to WHT are sophisticated and their brief interpretation does not always lead to clear answer.

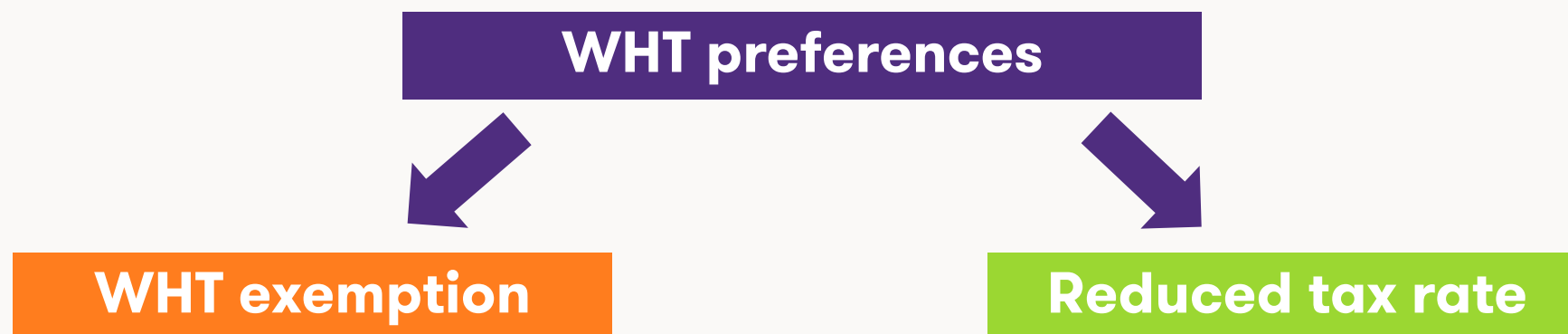
For this reason, it is recommended to perform a detailed analysis in each case in which the payment for the service to a foreign entity occurs.

The tax remitter who does not collect the obligatory withholding tax is exposed to fiscal penalties.

Reduced tax rate and WHT exemption

When the payment is subject to WHT, it is possible to benefit from WHT preferences: the reduced tax rate resulting from the double tax treaty and/or the WHT exemption (i.e. exemption resulting from EU Parent-Subsidiary Directive or EU Interest and Royalties Directive that were both implemented to the Polish system).

However, in order to apply the WHT preferences specific conditions must be met. One of them is that the tax remitter (paying company) should meet conditions of exercising **the due care (the due diligence)** in verifying the conditions for applying the reduced rate / the exemption and gathering specific documents (e.g. regarding **beneficial owner**).



Due care

In order to apply the WHT exemption or other WHT preferences the tax remitter should **always meet the condition of due care**. The regulations do not provide a list of documents, which should be gathered and verified, what raises the risk of questioning the fulfilment of the due care obligation and right to benefit from the tax preference. Failure to exercise due care may also result in personal penalties.

The Polish Minister of Finance issued a **draft of clarifications**, which describe some examples indicating how due care obligation can be met, however, at the same time the explanatory notes include some inconsistencies and information that may lead to misinterpretation.

One of the solutions to reduce the risk of the questioning the fulfilment of the due care condition is the implementation of a **WHT procedure**.

The tax remitter is obliged to meet the condition of due care in the case of payments both to unrelated and related companies.

In case of the payments to a **related entity, higher standards of the due care** should be met. It means that detailed documentation should be collected.

The threshold for WHT preferences

As of January 1, 2022, a new withholding tax (WHT) collection mechanism was introduced into the Polish tax regulation. According to it, as a rule, in case of payments to the related entities the Polish tax remitters paying out remuneration are firstly obliged to collect WHT at a standard rate, if payments being subject to WHT exceeds **the threshold of PLN 2 000 000 to one entity per annum**.

Note that the due care obligation mentioned before should be met irrespectively from the threshold.

However, even if the threshold is exceeded, it will still be possible to benefit from the WHT exemption or reduced rate resulting from DTT.

There are 3 options :

**The official opinion
confirming the tax
preferences**

**Pay & refund
mechanism**

**The WH-OSC
statement**

The official opinion confirming the tax preferences

- The taxpayer and the tax remitter can apply for the official opinion confirming the tax preferences for specific payments in order to benefit from the WHT preferences (it is a kind of a tax ruling).
- The opinion is issued by the Polish tax authorities.
- In order to obtain the opinion, the applicant should submit the relevant documentation.
- The opinion is valid for three years from the moment of its issuance (so it can cover also payments in the future).
- The procedure can take up to 6 months, however, the tax authorities can refuse to issue the opinion.

Pay & refund mechanism

- Another way to benefit from the WHT preferences is to collect WHT and then apply for a refund of the collected WHT.
- In order to apply for the refund, the applicant should submit the documents indicated in the provisions as well as additional documents requested by the Polish tax authorities.
- The refund procedure can take up to 6 months and there is no guarantee that the funds will be returned.

The WH-OSC statement

In order to benefit from the WHT preferences, the member of the management board of the tax remitter can also sign the WH-OSC statement indicating that:

- the tax remitter holds the documents required by the tax provisions for applying the WHT rate or WHT exemption,
- after conducting the verification, the tax remitter is not aware of any circumstances excluding the option of applying the reduced WHT rate or the WHT exemption.

The WH-OSC statement and the supporting documents are sent to the Polish tax authorities. The WH-OSC statement can be easily questioned, since the regulations do not indicate what kind of documents should be collected and how to conduct the abovementioned verification.

The questioning of the WH-OSC statement may result in personal penalties for board member signing the WH-OSC statement up to the amount of PLN 28 million. Simultaneously, the additional tax obligation amounting to 10% of the tax base can be imposed on the tax remitter.

Please, do not hesitate to contact us!

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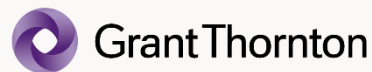
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