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New withholding tax (WHT) regime in Poland

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New WHT regime in Poland – in a nutshell

Loan
Intangible
services



Dividends
Fees for intangible
services
Interest

- WHT under domestic rules in Poland and ways to reduce the WHT burden (double tax treaties/ EU Directives);
- Due care requirement;
- Beneficial owner definition;
- Genuine business activity concept;
- Formal obligations



New WHT regime in Poland – pay and refund mechanism

Loan

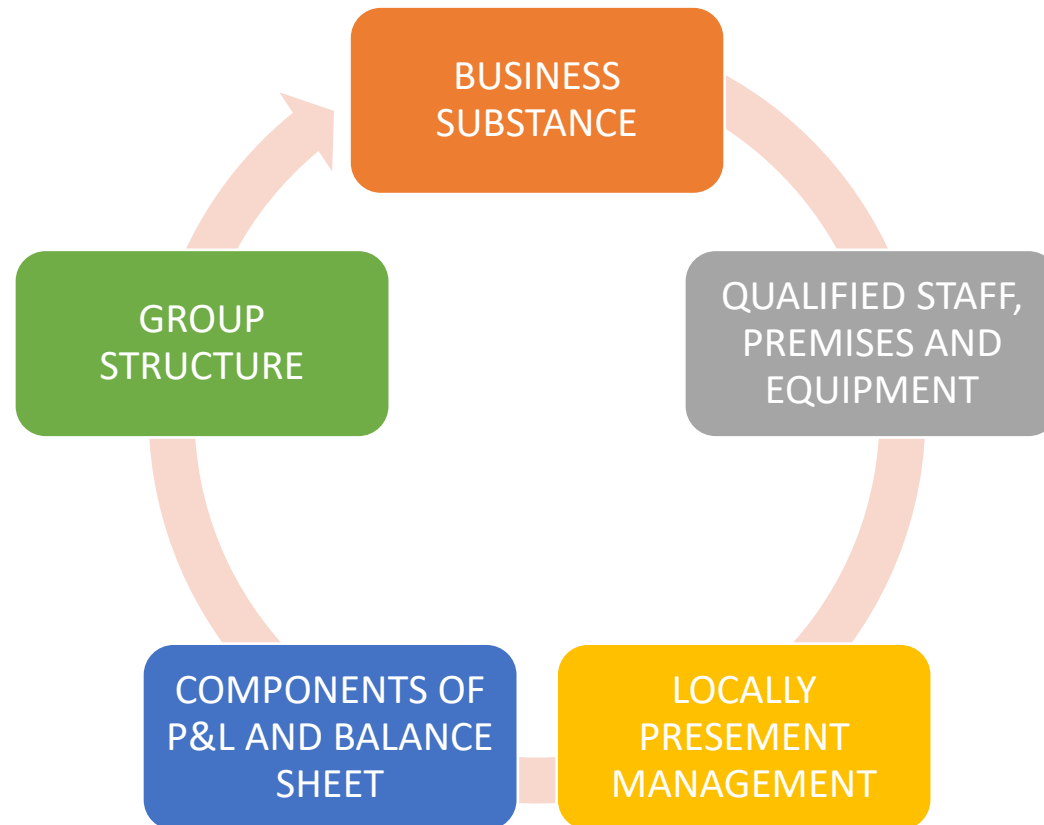


Dividends
and interest
> EUR 423 thousand p.a.

- New obligations in case the total amount of qualifying payments exceeding the PLN 2 million (approx. EUR 423 thousand) threshold per annum:
 - Pay&refund;
 - Remitter's statement;
 - Clearance opinion



New WHT regime in Poland – business substance considerations per Polish tax authorities





New approach towards the substance criteria?



Recent judgment issued by the Voivodship Administrative Court in Opole on December 9, 2022 (no. I SA/Op 311/22)



When assessing the business substance criteria, the holding nature of operations must be taken into account



Mere performing a management function and obtaining revenues strictly from managing the subsidiaries do not imply artificiality of the given structure



The holding company does not have to conduct typical business operations





Conclusions

New Polish WHT rules is a key tax factor when considering investment in Polish companies with the use of foreign-based vehicles;

Each Polish taxpayer should decide on its own as to which of the routes concerning the WHT burden (pay&refund, remitter's statement, clearance opinion) should be followed;

The paramount issue behind the new WHT regime is the business substance of holding entity;

It is currently unclear as to how the business substance criterion should be understood and thus further practice in this regards should be monitored

Thank you for your attention

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