

Polish IT industry under tax scrutiny

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Recently there have been increasingly frequent reports of the tax authorities taking a particular interest in the IT industry. Tax offices are undertaking investigations and initiating audits regarding the use of tax preferences in the form of author's deductible costs (50% costs) by salaried IT specialists and are also taking a closer look at the tax settlements of self-employed IT specialists.

This may cause concern among both employers of IT professionals and the self-employed. It should, however, be borne in mind that tax preference settlements in the IT industry have always been of particular interest to the tax office. In addition, the tax authorities' activity in verifying personal income tax settlements for the previous year usually intensifies in the fall.

Nevertheless, it is worth remembering that the tax office is authorized to verify who benefits from author's deductible

expenses and the amount of tax benefits involved. Unfavorable decisions regarding tax arrears are often received, among others, by employers who treated the entire salary of an employee as remuneration for creative work (royalties) and also applied such tax relief to the part of the salary not related to the creation of copyrightable works (e.g., administrative activities).

Although with regard to applying tax-deductible expenses parties are free to define the rules for determining the amount of royalties, the proportion of work time spent on creative work and time spent on other administrative activities should be determined cautiously, accounting for the scope of the employee's duties.

There have also been rulings unfavorable to IT professionals who own their own business, both those who have decided to take advantage of the IP Box tax cut and those who tax their business income at a flat 12% or 8.5% tax rate, in terms of their eligibility for the given rate.

Until now, it was clear that the 12% tax was paid by those who dealt with software or with software consulting services. Those doing other work were entitled to pay lower tax. Currently, province administrative courts concur with the tax offices' position that IT professionals who support programmers should pay a flat rate of 12% rather than 8.5%. They assume that any actions related to IT activities involving an actual computer relate to software and therefore are subject to higher taxation.

IP-BOX relief concerns the possibility of applying a preferential rate of 5% to income declared as coming from creative activities. The tax authorities have denied the right to use the relief if the application for an individual tax interpretation does not clearly indicate that the activity concerned includes scientific research or development work. In addition, the amount of income that can be subject to the 5% tax rate is also problematic. In this regard, a recent ruling by the Supreme Administrative Court was unfavorable to taxpayers: the court ruled that the entire value of a product or service included in the sale price could not be eligible for the said relief. Such a right applies only to income covered by qualified intellectual property rights resulting from IP Box relief. Any other costs, such as materials, may not be subject to the 5% tax rate. Please note that although the tax regulations provide for several preferences and favorable solutions for the IT sector, it is important to plan them carefully and apply best market practices to avoid disputes with the tax authorities when implementing mechanisms to take advantage of these benefits.

Correct and safe implementation of the selected solutions, as well as ensuring comprehensive and careful internal documentation, can protect the taxpayer from adverse consequences related to a possible audit of their accounts by the tax authorities.

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