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Tax Alert

KPMG in Poland

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Banking tax – not only for financial institutions and chargeable repeatedly

On 1 February 2016, the Act on Tax on Certain Financial Institutions (hereinafter: "FIT") became effective. According to the original objectives, the tax was to affect only banks and insurance companies. In the course of legislative work, the tax has been extended to cover also so-called lending institutions within the meaning of the Act on Consumer Credit. The extended scope of entities covered by the tax may lead to a situation where entities which carry out lending activities even to a marginal degree, will become FIT taxpayers.

How are lending institutions and consumer credit defined?

Pursuant to the Act on Consumer Credit, a lending institution is defined as an entrepreneur (other than a bank or a cooperative savings and credit union) which, within its scope of commercial or professional activities, grants or promises to grant consumer credit to consumers.

The definition of consumer credit includes any loan, credit, financial leasing agreement or a deferred payment agreement for consideration provided that its amount does not exceed PLN 255 550 and is concluded with a consumer.

The above means that **any entity which granted any consumer credit may be regarded as a lending institution** within the meaning of the Act on Consumer Credit, **and therefore as a FIT taxpayer**. The Act does not contain any exemptions, including with respect to loans that are of a marginal or auxiliary character in the operations of a given entity. Thus, the tax may also affect entities which have granted any consumer credit, even of an insignificant amount.

Furthermore, both the Act on Consumer Credit and the Act on FIT do not specifically address the situation where an entity granted some consumer credits in the past, but ceased doing so. This may lead to the conclusion that **any entity, which granted consumer credit at least once becomes a lending institution (and thus a FIT taxpayer) until the termination of its legal existence.**

Taxable base

If an entity is deemed a lending institution, it becomes liable to FIT. As a general rule, the taxable base is the excess of the sum of the taxpayer's asset value over the amount of 200 million PLN. The value is calculated jointly for all FIT taxpayers dependent or interdependent, directly or indirectly, on one entity or a group of entities related to each other.

Taxable base in respect of a group

The Act provides for a specific method of determining the taxable base in respect of taxpayers operating within a group. In such a situation, the taxable base for each FIT taxpayer should be the excess of the sum of the asset value of all FIT taxpayers belonging to the given group over 200 million PLN.

The Act does not define how "relations" should be understood – however, the regulation's context suggests that it may, in particular, refer to the capital group within the meaning of the Accounting Act, but this might have a broader meaning as well.

In a situation involving a group, the taxable base for each lending institution is not the sum of the institution's assets less PLN 200 million, but the sum of assets of all taxpayers belonging to the same capital group reduced (only once) by PLN 200 million. The tax so calculated should be paid by each lending institution (FIT taxpayer) within the group.

This may create a risk that the assets accumulated within one capital group may be taxed multiple times.

This issue was raised during the legislative work, but it was not taken into account in the final version of the Act.

Example

Companies A, B and C belong to the same capital group.

Companies A, and B are FIT taxpayers (lending institutions), Company C is not.

The sum of assets:
Company A – 800 million PLN
Company B – 150 million PLN
Company C – 500 million PLN

Calculation of tax:
Company A: 800 million + 150 million – 200 million (tax-free amount) x 0,44% = 4,18 million PLN of FIT per year
Company B: 800 million + 150 million – 200 million (tax-free amount) x 0,44% = 4,18 million PLN of FIT per year
Company C: no tax
In total: 8.36 million of FIT per year

Having regard to the above, if you identify that any of your entities granted consumer credit, there is a risk that such an entity may now be regarded as a FIT taxpayer. If there are more such entities, taxation may take the form of "multiple taxation."

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