
European Tax Newsalert

A Washington National Tax Services (WNTS)
Publication

Poland

August 26, 2011

Withholding tax treatment of intangible services - refund opportunities in Poland

Recent Polish court decisions provide a withholding tax (“WHT”) refund opportunity for withholding payments to non-Polish tax residents for intangible services. This opportunity may appeal especially to tax residents (both individuals and companies) of countries that have no double tax treaty with Poland.

Introduction

Generally, under Polish tax law non-Polish tax residents are subject to taxation in Poland only on income sourced in Poland. In particular, payments received by a non-Polish tax resident as remuneration for certain services (so-called “intangible services”) ¹ are subject to 20%WHT in Poland. This rate may be reduced (even to zero) based on an appropriate double tax treaty.

¹ i.e. services performed in the field of advising, accounting, market research, legal services, advertising, management and control, data processing, employee recruitment and personnel hiring services, guarantees and services of a similar nature

Changes in tax practice

According to the Polish tax authorities' established view, payments received by non-Polish tax residents from Polish contractors as remuneration for intangible services should be deemed as income derived from Poland regardless of whether the services are rendered within or outside the territory of Poland. Consequently, such remuneration, if paid by a Polish contractor to a non-Polish tax resident, should always be subject to 20% WHT in Poland, unless a double tax treaty exists and the contractor obtains a certificate of tax residence from the non-Polish tax resident.

According to recent judgments however, remuneration received by non-Polish tax residents as remuneration from Polish contractors for intangible services rendered outside Poland should not be perceived as income sourced in Poland. Consequently, such income should be exempt from Polish WHT regardless of whether there is a double tax treaty in place between Poland and the tax residence of the entity rendering such services.

Potential tax savings

Therefore, residents of non-treaty countries may consider applying for refunds of WHT on payments for past intangible services (provided that the services were rendered outside Poland). Furthermore, residents of treaty countries may also apply for WHT refunds, if they could not apply the treaty in the past (e.g., due to the lack of a tax residence certificate) and the tax remitter deducted the WHT in the past.

Note, however, that the potential WHT refunds are based on the court decisions. Currently we are not aware of any tax rulings that support the approach presented in recent courts' judgments. Thus, potential tax refund may be achieved, but most likely at the administrative court level.

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