New draft bill introducing REITs announced by the Polish Ministry of Finance

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In Brief

The Ministry of Finance has published an amended draft bill introducing a CIT exempt investment vehicle to the Polish real estate market. The draft bill is now under government and public consultation. The bill is expected to come into force as of 1 January 2018.

Overview

The new draft bill incorporates several important amendments in comparison to the previous draft published in October 2016.

Currently, a REIT can be a joint-stock company with its registered seat or place of management in Poland which is listed on a public stock exchange (in practice – main market of the Warsaw Stock Exchange). The business purpose of a REIT is to regularly pay shareholders dividends stemming from leasing real property.

The definition of real property includes buildings permanently attached to land or parts of such buildings if based on other provisions such parts constitute separate property (e.g. separate flats). This means that REITs may operate in both residential and commercial real estate markets.

A REIT has to meet the following criteria:

- it can purchase real property with regulated legal status only, not subject to lien or execution;
- it can purchase real property encumbered with third-party rights but only if their realization will not create a risk of losing ownership of the real property;
- its registered share capital must be at least PLN 50m (approx. EUR 12m);
- its lifespan cannot be limited in time; at least 70% of book value of the assets must comprise of real properties, shares in REIT's subsidiaries or shares in other REITs;
- at least 80% of net revenue must be derived from leasing of real property, disposal of real property which is leased for at least one year, shares held in REIT's subsidiaries or sale of such shares;
- it has to earn revenue from leasing at least three real properties (directly or indirectly via subsidiaries);
- it has to keep book value of loan liabilities below 70% of book value of assets;
- it has to annually distribute dividends of at least 90% of last year's profit (although under certain conditions the profit may be used to purchase real property or shares of specific entities investing in real estate).

Provided that the above mentioned criteria are met, income of a REIT derived from leasing real property, disposal of real property or disposal of shares in a REIT's subsidiaries ('qualifying income') **should be exempt from CIT until such income is distributed as dividends.**

Dividends will be subject to CIT taxation at 8.5% upon their distribution.

Entire qualifying income generated by a REIT should be subject to one-off taxation, solely at the level of a REIT. **Obtained proceeds should be exempt from income taxation (both CIT and PIT) in hands of dividends recipients.**

A REIT will be subject to obligatory registration with the Polish Financial Supervision Authority. The draft bill sets out specific requirements for members of REITs' governing bodies. Additionally, while auditing a REIT's financial statements, chartered auditors will have to verify if a REIT meets certain requirements stipulated in the bill.

There are no specific shareholder diversification requirements in the draft bill.

Our view

Introduction of REITs into the Polish legal system should have a positive impact on the Polish real estate and capital markets and trigger their further development. REITs may attract in particular individual investors, as well as, under certain conditions, institutional ones.

On the other hand, the popularity of REITs may be adversely impacted by the high capital requirement and restrictions regarding legal status and financing of real properties which may be purchased by a REIT.

Interest in property investment via REITs has already been shown by some of the major players in the Polish real estate market. REITs are also expected to increase the share of domestic capital in the Polish real estate market, which is currently dominated by foreign investors.

The draft bill is at the early legislative stage (government and public consultations) and has not been passed to the parliament yet. As such, progress of the legislation should be closely monitored. The bill is expected to come into force as of 1 January 2018.

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