

Tax audits regarding withholding tax

What they are, what is the current practice and how to prepare for them?



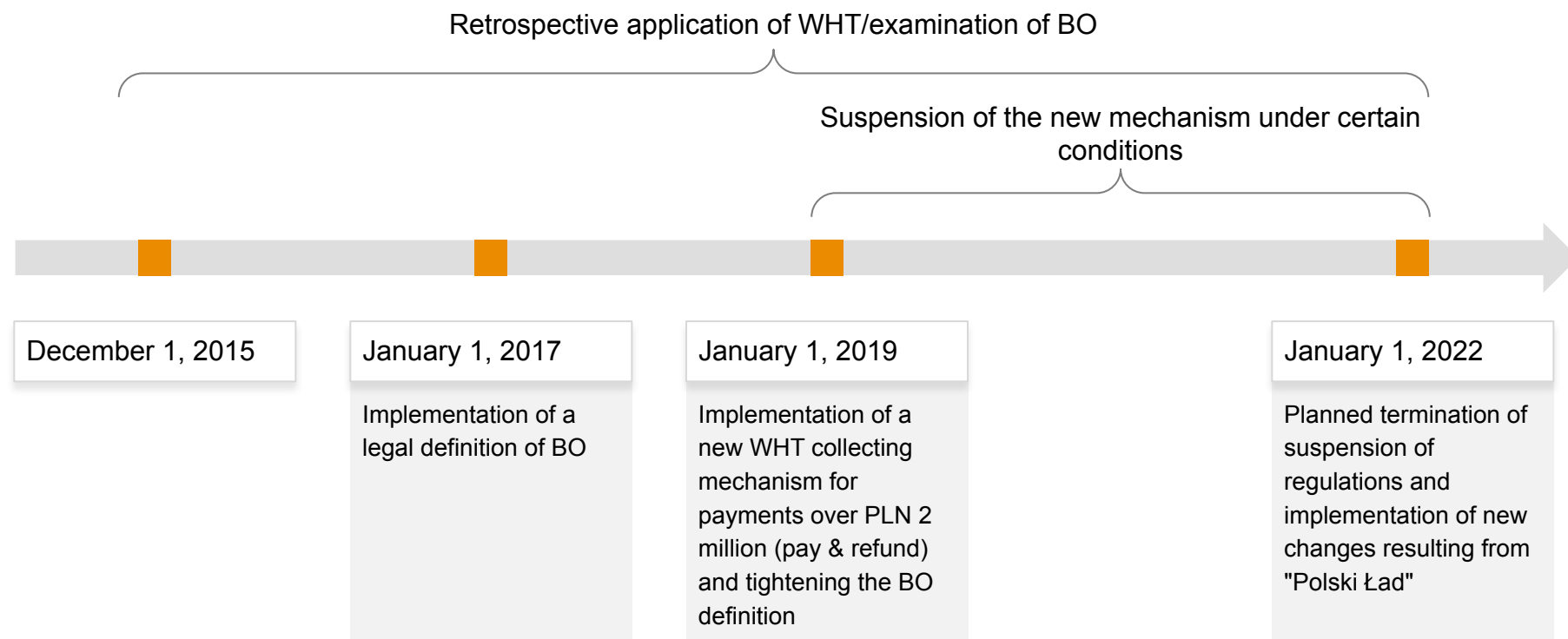
Why is WHT attracting increasing interest from tax authorities?

Why WHT?

- WHT concerns tax obligations of foreign entities operating in international capital groups and making significant investments in Poland;
- accordingly, liabilities in WHT are determined on recurring payments of a large amount;
- so far WHT has been a less controlled area related to verification by tax authorities of fulfilment of "formal" conditions (certificate of residence) to apply an exemption or preferential tax rate;
- for several years now, tax audits in WHT have been very meticulous and include examination of beneficial owner (BO) status and substance determinations to verify the right to benefits in WHT from EU directives and DTA agreements.

WHT accounted for approximately 5.2%-7.6% of total CIT revenue in 2018 and 2019

What has happened at WHT in recent years and what will change in the near future?



Changes in legislation and changes in the interpretation of WHT regulations have resulted in an increase in WHT receipts to the treasury - for example, over the course of 2018 and 2019, the share of WHT receipts in relation to all CIT receipts has increased by 70% (almost PLN 1.3 billion)

PwC analysis - audits by customs and tax offices (UCS) in the scope of WHT (1)

PwC experts gathered data from 15 customs and tax offices on WHT audits for the last 5 years in order to estimate how changes in WHT regulations and their retrospective application by the tax authorities based on a previously non-existent in practice understanding of the concept of "beneficial owner" translated into the area and effects of audits.

The data collected indicates that:



The total number of audits conducted was:

197



The total amount of findings was (in PLN):

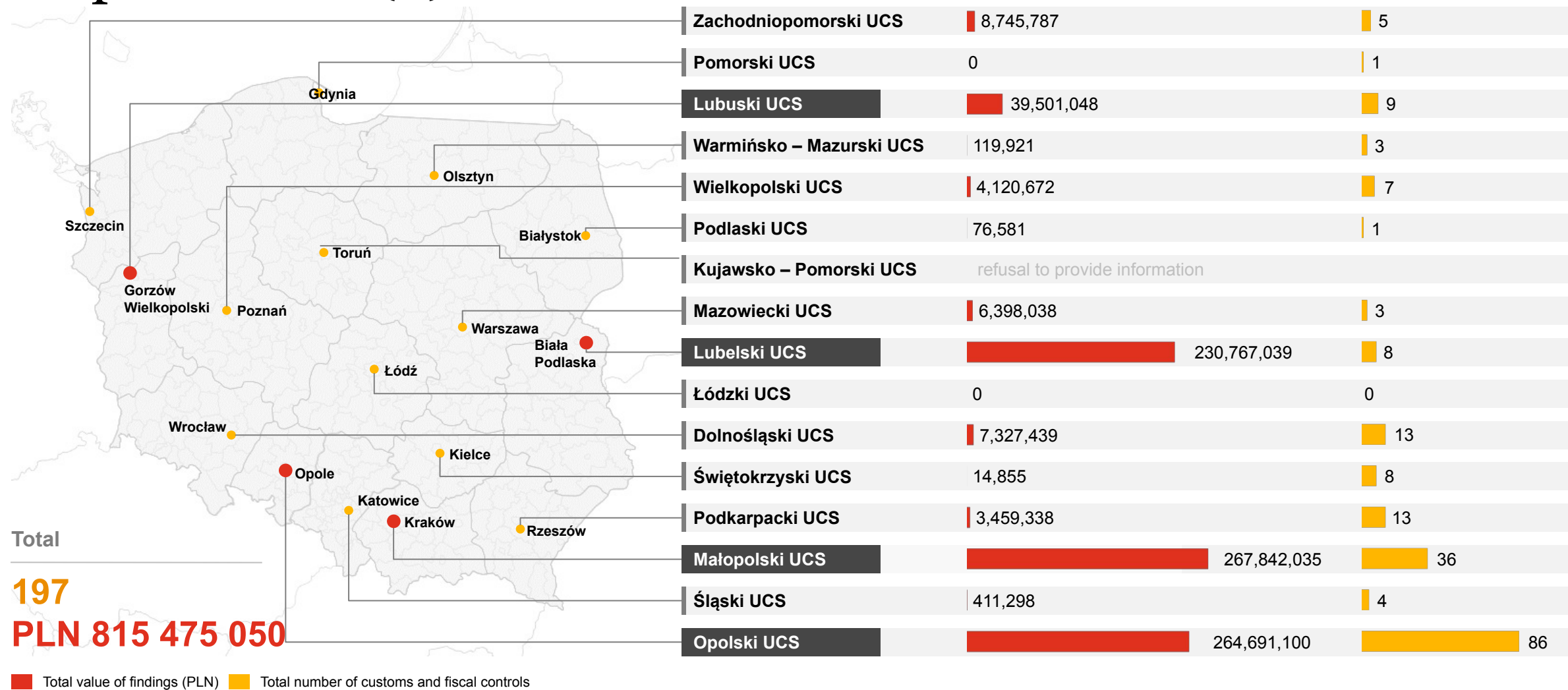
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The data may be underestimated:

- data were provided to us in a heterogeneous form, in several cases they referred only to the period since the National Tax Administration (KAS) Act came into force (i.e. for the last 3 years);
- in practice it happens that an tax audit initiated with respect to regular CIT obligations also covers with its scope findings with respect to payer's obligations in WHT (in our experts' opinion however such practice is questionable).

Therefore we estimate that the total amount of findings may already exceed PLN 1 billion.

PwC analysis - audits by customs and tax offices (UCS) in the scope of WHT (2)





Key conclusions from the analysis of data collected by PwC experts

- In the last 5 years, customs and tax offices have conducted almost 200 proceedings aimed exclusively at examining the correctness of settlements in WHT.
- PwC experts estimate that the level of findings in WHT as part of customs and treasury audits will be **over PLN 1 billion** until the end of 2021.
- 4 of the 16 UCS – Lubelski, Małopolski, Lubelski and Opolski - were responsible for 96% of the total amount of WHT findings, what indicating their specialized focus on WHT cases.
- Data from the parts of UCS most specialized in WHT suggest that interest in this area is gradually increasing year after year compared to previous years when it was treated as fiscally insignificant.
- Currently, the issue of the so-called beneficial owner and abuse of tax law (examination of economic substance) is the axis of dispute in tax audit proceedings - the regulations in this respect have been subject to many significant amendments in recent years.

Tax authorities' interest in WHT is growing



The number of inspections in the WHT area is increasing. Such a trend is likely to increase or at least continue in the coming years.

National Tax Administration (KAS) more and more often "brags" about its findings and publishes anonymous data illustrating the amount of findings in single tax audits, which also shows that WHT has become one of the areas of primary interest for the tax authorities:



<https://www.gov.pl/web/kas/kas-wykryla-nieprawidlowosci-w-ci-t-skarb-panstwa-odzyskal-ponad-55-mln-zl>



<https://www.gov.pl/web/kas/kas-odzyskala-od-spolki-12-mln-zl-zaleglego-podatku-cit>

KAS detected incorrectness in CIT. The treasury has recovered over PLN 55 million.

- the Opolski KAS audited a company that avoided WHT on interest transferred to a related party.
- the company corrected its tax returns and paid tax arrears with interest in the total amount of PLN 55 million.

KAS recovered PLN 12 million of overdue CIT from the company.

- the Opole KAS audited CIT settlements in a company from the automotive industry.
- KAS auditors found that the company avoided WHT on dividends paid to Luxembourg.
- as a result of the control, the company paid to the treasury PLN 12 million of due CIT.



Why will tax authorities' interest in WHT grow?

➤ PwC's Tax Controversy and Dispute Resolution team together with the International Tax Services team last year alone advised in over 50 WHT cases in the total amount of over PLN 500 million - this shows the current scale of the whole problem for our clients - the number of disputes with tax authorities before administrative courts is also growing

➤ We also observe a visible development of specialization and competence in this area among UCS employees. Authorities are no longer afraid to audit complicated WHT settlements in international groups, and the verification carried out does not boil down to formal issues only

➤ As of January 1, 2021, WHT settlements have been centralized within the Lublin Tax Office. Already now the Lublin Tax Office is showing interest in the correctness of WHT settlements by sending to payers making the largest payments (above PLN 2 million) information reminding about the necessity to exercise due diligence while verifying the prerequisites which entitle them to apply the exemption or preferential rate. This may also suggest that Fiscal is conducting intensive activities in the area of analysis and selection of entities to be audited in order to maximize the WHT collection rate



How can you prepare for a tax audit?

- **Independent verification** whether the payments made by you meet the conditions for exemption or application of the preferential rate according to the provisions implementing EU directives - with the use of PwC's proprietary tool "WHT verifier"

- **Conduct a billing review and gather relevant data and information** - allows for more accurate billing verification and possible safeguarding in the event of an tax audit

- **Inspection simulation** - will allow you to be better prepared for the meeting with the tax authorities by familiarizing yourself with the procedure and the course of the tax audit

- **Developing WHT due diligence procedures** - preparing procedures which, in the event of future payments, will secure your verification of the conditions for exemption or application of the preferential tax rate

Support in tax audit - PwC Poland's Tax Controversy and Dispute Resolution Team

A team of over 20 experts with years of experience in tax litigation at the level of tax authorities and administrative courts:



- Effective taxpayers' attorneys in multi-million disputes, in the vast majority of cases completed in accordance with the expectations of clients;
- Awarded in the rankings of Dziennik Gazeta Prawna, Rzeczpospolita, International Tax Review in the category of international tax law and tax litigation;

The scope of support includes, but is not limited to:



- detailed analysis of the situation and strategy planning with a view to concluding the case amicably and quickly without the need to conduct lengthy proceedings;
- conducting and representing the Client during the case or making recommendations at every stage of the dispute, from its initiation to the stage of preparing corrections and finalizing the audit;
- minimizing other risks, including those related to potential penal and fiscal liability;
- support and representation of the Client in disputes before administrative courts.

"Out of the box" collaboration:



- Support during audits / disputes using our extensive experience in cooperation with various authorities and at all levels of the National Tax Administration (KAS);
- Long-standing relationships with prominent external experts to support arguments presented during audits with external expertise on (i) tax law, (ii) economics, (iii) marketing, (iv) technology.

Support in criminal fiscal proceedings:



- Experience in conducting disputes in a manner that limits the possible initiation of criminal tax proceedings;
- experience in conducting and representing taxpayers in penal-fiscal proceedings;
- cooperation with White Collar Crime PwC team and specialists recommended in international rankings.

If you are interested in more details - please contact us:



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