September 3 2021

High time for REITs in Polish real estate market

Kubas Kos Gałkowski | Real Estate - Poland

BARBARA JELONEK-JARCO, MAGDALENA KRZEMIŃSKA

The Polish real estate market is continuing to thrive. Despite some downtime relating to the covid-19 pandemic, the demand for flats purchased for investment purposes is growing steadily. Further, despite the pandemic and the lockdown, investors invested €5.5 billion in commercial real estate in Poland in 2020.

However, Polish law does not currently provide for the regulation of real estate investment trust- (REIT-) type entities. The Polish legislature has previously embarked on drafting a bill to regulate the operation of such companies (the idea to introduce REIT-type entities first appeared in 2016), but to no avail. At present, works on another draft law are underway. The introduction of the applicable legal regulation is essential, primarily for tax reasons. This is because REITs are companies investing in real estate that generate rental income, which is paid out to shareholders as dividends. The regulation of REITs is therefore connected with introducing preferential tax solutions guaranteeing that this income is taxed only once (exemption from corporate income tax (CIT) or tax on dividend).

REITs can undoubtedly become a platform to enable individual investors to enter the Polish real estate market, including the commercial real estate market. Currently, this market is generally not accessible to them due to the high entry threshold.

The idea to return to the regulation of REITs in Poland should therefore be regarded as a positive one. However, it is vital for the real estate sector to be consulted on the draft act and for the act to be well thought out. Investments in real estate are of a long-term nature. Therefore, a situation in which the act is amended shortly after coming into force and the solutions adopted therein are significantly modified is not acceptable. The adopted regulation must ensure the certainty and security of the investment. The act must define, among other things:

- which entities may be REITs;
- in which real estate they may invest (a question that was raised in the course of previous legislative works arises here – namely, whether they may invest only in residential real estate); and
- how they are to pay dividends.

Of course, tax solutions adopted by the legislature, determining the attractiveness (or not) of REITs, will be fundamental.

The earlier draft of the REIT act provided for many attractive tax solutions:

- Income obtained by investors from participation in the profits of such a company (eg, dividends or dividend advances) was to be exempt from income tax. This exemption was to apply to both CIT and personal income tax payers.
- Favourable tax terms for reinvestment were to include income earned by real estate rental companies from their participation in the profits of subsidiaries to the extent in which the source of income (profits) obtained by these subsidiaries would be the activity of renting out real estate or parts thereof and disposing of real estate or parts thereof.
- The tax-favourable conditions for reinvestment were also to consist of the total exemption from income tax of income earned by subsidiaries from the rental of real estate or parts thereof or the disposal of real estate or parts thereof.

According to the legislative works calendar, comprehensive assumptions of the law are to be prepared by September 2021, while legislative works are scheduled for the third and fourth quarters of 2021.

For further information on this topic please contact Barbara Jelonek-Jarco or Magdalena Krzemińska at Kubas Kos Gałkowski by telephone (+48 22 206 83 00) or email (barbara.jelonek@kkg.pl or magdalena.krzeminska@kkg.pl). The Kubas Kos Gałkowski website can be accessed at www.kkg.pl.