

Poland introduces new obligation to publish reports on tax strategy

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Executive summary

On 30 November 2020, the Polish Government published significant changes to corporate income tax law which are in force as of 1 January 2021.¹ Among other changes, tax capital groups and taxpayers with revenues over €50m are required to prepare and publish an annual report on execution of the tax strategy they have implemented.

The reports should be made publicly available and should include specific information such as information on the applied tax processes and procedures to manage tax compliance, transactions with related parties, implemented or planned restructurings, and transactions with entities from black-listed jurisdictions.

Detailed discussion

A taxpayer shall publish the report in Polish on its website not later than the end of the twelfth month after the end of the tax year. If the taxpayer does not have a website, the report can be published on a related party's website.

Within the above deadline, the taxpayer is required to provide the director of the taxpayer's competent tax office with the address of the website on which the report was published.

Failure to provide this information may result in a fine for the taxpayer of up to PLN 250,000 (approximately US\$70k). Individual penalties for board members or other persons responsible for tax matters are also possible.

Based on an unofficial (non-binding) communication issued by the Ministry of Finance in a press release, the first publication of reports should be made in 2021 (with respect to 2020).

All reports for subsequent years should be kept together and made available on the above mentioned website.

Companies which participate in the Horizontal Monitoring Program in Poland (who are a party to a cooperation agreement) are released from these obligations.

The tax strategy report should include in particular the following (considering the nature, type and size of the taxpayer's business):

- 1) Information about:
 - a) The processes and procedures that the taxpayer applies governing management of the fulfilment of duties arising from tax law and ensuring their correct fulfilment.
 - b) The voluntary forms of cooperation with the National Tax Administration (Polish tax authorities) that the taxpayer applies.
- 2) Information about the taxpayer's fulfilment of tax duties in Poland along with information on the number of Mandatory Disclosure reports submitted to the Director of the National Tax Administration Office, with a breakdown regarding the taxes to which they refer.
- 3) information about:
 - a) Transactions with related parties within the meaning of the respective Polish tax provisions, the value of which exceeds 5% of the balance sheet total of the assets within the meaning of accounting law, established by reference to the taxpayer's latest approved financial statement.
 - b) Restructuring projects the taxpayer plans or is implementing which may affect the amount of the taxpayer's tax liabilities or tax liabilities of the related parties.
- 4) information about applications the taxpayer has filed for:
 - a) A general tax ruling from the tax authorities
 - b) An individual tax ruling from the tax authorities
- c) A binding rate information decision for the purpose of Value Added Tax settlements
- d) A binding excise information decision for the purpose of Excise Duty settlements
- 5) Information on the taxpayer's tax settlements in the jurisdictions pursuing harmful tax competition listed in the regulations issued under personal income tax and corporate income tax laws and the announcement of the Minister of Finance.

Except for any information qualifying as trade, industrial, professional or manufacturing process secret.

Although the new reporting obligation is included in the corporate income tax law, the wording of the regulations implies that the relevant tax procedures and processes should apply to all taxes paid or remitted.

Next steps

The new reporting obligations imply that companies should implement processes and procedures for the entire fiscal year to be able to confirm adequate tax governance and compliance and also have the proper basis for subsequent reporting.

This should include a relevant tax framework (policies) ensuring adequate tax risk management and assignment of roles and responsibilities within the organization. Although not clearly defined in the regulations, it can be anticipated that companies should also document their tax strategy in a written form. Some guidance is available in the manuals issued to applicants for Horizontal Monitoring.

Given that taxpayers will need to include certain information and statements relating to a whole fiscal year, actions aimed at verification of readiness of Polish companies to the new compliance obligations should be considered starting in Q1 2021.

Since information will be publicly available, international groups may need to ensure that content shared with the market by Polish subsidiaries complies with the group's policies and standards.

Endnote

1. See EY Global Tax Alert, [Poland implements significant changes to corporate income tax law - final bill published in Journal of Laws](#), dated 1 December 2020.

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EYG no. 000356-21GbI

1508-1600216 NY
ED None

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