November 2023

Time is running out on the preparation and publication of tax strategy information

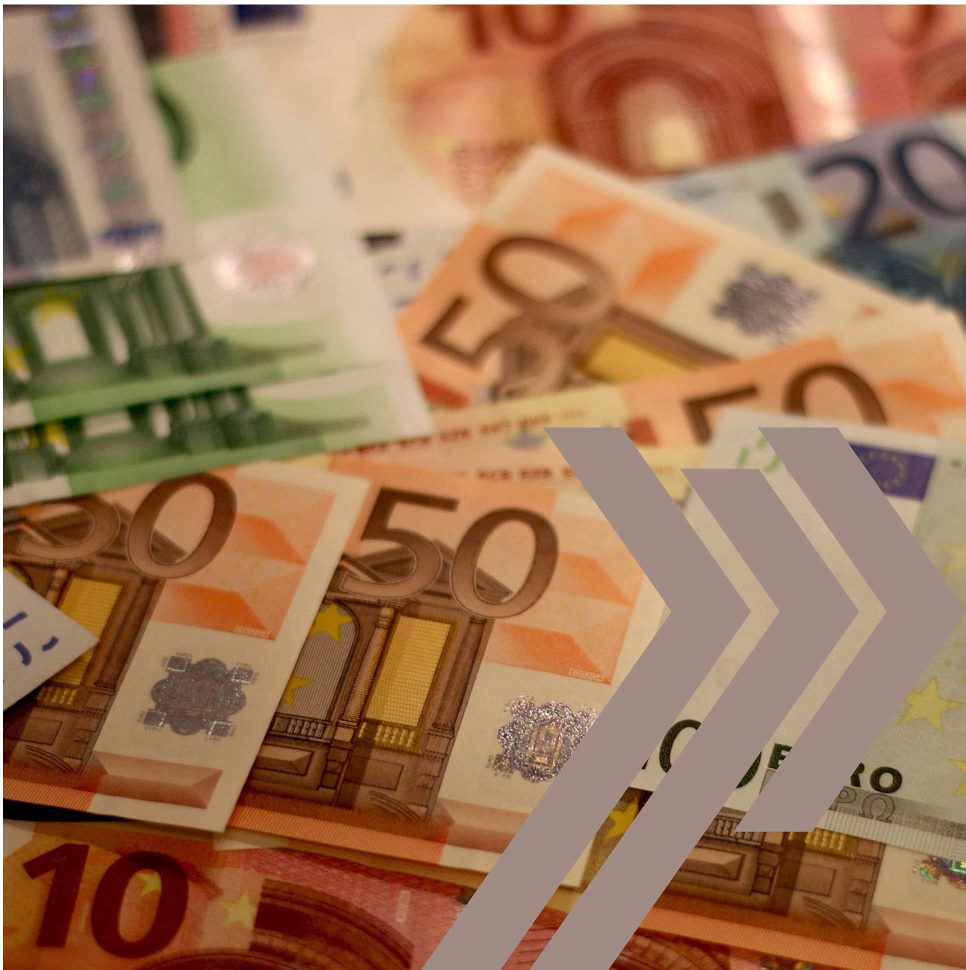
Taxable persons with revenues in excess of 50 million euro, as well as Tax Groups, must publish their 2022 tax strategy reports by the end of December 2023. This applies to situations where the tax year is concurrent with the calendar year. The tax authorities must also be informed of the webpage where the information is published, even if has not changed and is the same as last year.

I. Information about the tax strategy applied in 2022 must be published

The end of December is the deadline for the publication of information on the tax strategy applied in 2022 by taxable persons whose tax year is concurrent with the calendar year. The same deadline has been set for notifying the head of the tax office of the webpage where the information is published. Tax strategy information is to be published by the end of the twelfth month following the end of the tax year to which the information pertains. For taxable persons whose tax year is concurrent with the calendar year this means the need to publish by 31 December of the year following the tax year.

II. Requirement covers tax groups and taxable persons with more than EUR 50 million in revenues

The tax strategy publication requirement applies to taxable persons whose revenues exceed EUR 50 million, as well as tax groups (TG). The latter irrespective of the amount of revenue earned. The limit expressed in EUR is translated into PLN using the average exchange rate announced by the National Bank of Poland for the last working day of the calendar year preceding the year of publication. This means that for taxable persons whose tax year is concurrent with the calendar year submitting information in 2023 on the tax strategy applied in 2022 it is the exchange rate from 31 December 2022. The average exchange rate announced by the National Bank of Poland for 30 December 2022 was PLN 4,6872. Thus after translation into PLN the limit amounts to PLN 234,36 million. To recap, last year (for information for 2021) the exchange rate from 31 December 2021 was used, which had amounted to PLN 4,5866 per euro, setting the limit at PLN 229,33 (PLN 225 255 000 the year before that).

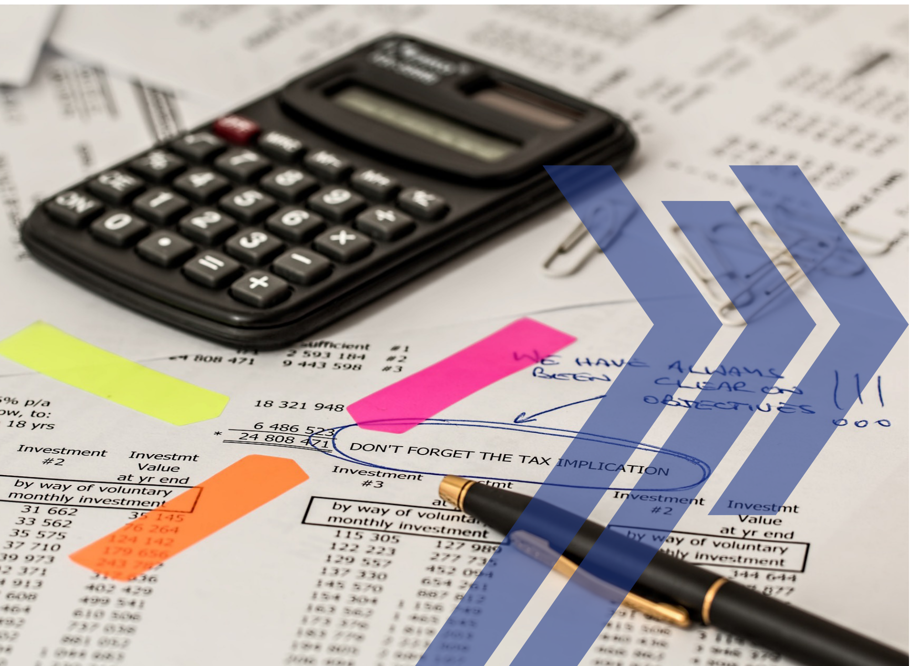


III. Those taxable with Estonian CIT do not have to publish tax strategies

According to tax interpretations issued by the tax authorities, there is no requirement to publish information if revenue drops below 50 million euro in subsequent years (see interpretations 0111-KDIB2-1.4010.153.2022.1.PB and 0111-KDWB.4010.52.2021.1.AZE). The rule whereby once a strategy is published for one year, it must also be published for subsequent years does not apply here. Information is only published for the years in which the taxable person met the revenue condition or had TG status. In their interpretations the tax authorities have also explained that those taxable with the so-called Estonian CIT who do not declare revenues do not meet the criterion for being covered with the said requirement and therefore do not have to publish tax strategy information (see individual interpretation number 0111-KDIB1-1.4010.778.2022.1.SG).

IV. Report to describe tax reporting approach

The CIT Act does not contain a complete list of data to be provided in the publication. It does, however, provide examples of data that should be included in the information. These include, in particular, information on: the procedures and processes applied to correctly perform tax obligations, the forms of cooperation with the National Tax Administration, fulfillment of tax obligations in the territory of the Republic of Poland, reported tax arrangements, transactions with related parties exceeding 5% of the value of total assets, planned or undertaken restructuring activities that could affect tax liabilities or the tax liabilities, applications filed for tax interpretations, tax settlements in territories that practice harmful tax competition. The publication requirement excludes information protected as trade, industrial, professional or production process secrets.



V. KAS uses tax strategy description guidelines

Irrespective of the guidance presented in the CIT Act, according to the “Guidelines for Internal Tax Control Framework” prepared by the National Tax Administration as part of its cooperative compliance program, a tax strategy should cover such matters as: tax risk, i.e. general orientation towards tax threats that may arise as part of a company’s operations or result from the mere fact of operating in a particular industry. A tax risk strategy should describe the organization’s approach to limiting tax risks by minimizing threats from the tax environment and taking advantage of the opportunities afforded by tax law; risk appetite, i.e. the desired level of tax risk the company is willing to accept in its operations – the tax strategy should describe the company’s readiness to take risks, including its readiness to consider tax positions that may be rejected/questioned by the tax administration; the level of the management’s involvement in the process of making tax planning decisions; reporting; filing of tax returns; tax liability payment strategy.

VI. General description of transactions with related parties must be provided

Tax strategy information must include information on related party transactions with a value in excess of 5% of the entity’s total assets and liabilities as defined in the Accounting Act, determined based on the most recent approved financial statements. This limit should be applied to the total value of all transactions concluded with related parties in a given tax year. Thus the taxable person should first add up all such transactions. If their value does not exceed 5% of total assets determined based on the taxable person’s last approved financial statements, then the transactions do not have to be disclosed in the tax strategy report. If the limit is exceeded, then they must be included in the report. This does not, however, mean that they have to be recorded and described in detail. It is sufficient to indicate the total value of transactions concluded with a given related party, provide a general description of the nature of the transactions (e.g. management, marketing, advisory service fees) and indicate the general nature of the links between the entities.

VII. Publication itself is not enough, tax authorities must be notified

Taxable persons are required to publish their tax strategy reports for the given tax year, prepared in or translated into Polish, on their websites. Irrespective of the requirement to publish tax strategy reports on their websites, taxable persons are required to electronically inform the head of the relevant tax office of the address of the webpage on which the report has been published. Tax strategy reports must be published by the end of the twelfth month after the end of the tax year. Tax group tax strategy reports should be structured to include all components of the tax strategy report not only with respect to the entire tax group, but also for each of its component companies.

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VIII. Failure to inform carries a fine as high as PLN 250 thousand

Under the CIT Act, failure to comply with tax strategy regulations is punishable by a fine of up to PLN 250 thousand. The fine is imposed for failure to provide the tax authorities with the address where the information is published. Importantly, the penalty (fine) provided for in the CIT Act is for failure to inform the head of the tax office of the webpage on which the information is located. Errors in a published tax strategy report are not punishable under the Criminal Tax Code. This was clearly stressed by the Ministry of Finance. The fine limit is also the maximum, which means that the fine may be imposed at a lower amount. Whereas failure to prepare and publish tax strategy information is punishable by a fine equal to up to 120 daily rates imposed based on the provisions of the Criminal Tax Code.

The information presented herein does not constitute comprehensive information or opinion. Consult your adviser before making any decisions.

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