December 2022

2021 tax strategies must be published by end of December

I. Tax strategy report must be published by end of December

In accordance with regulations in effect since 2021, tax strategy information is a requirement for groups and other taxable persons with revenues in excess of 50 million in a tax year. Such information is to be published on the taxable person's website by the end of the twelfth month following the end of the tax year. For taxable persons whose tax year is concurrent with the calendar year this means that they are required to publish their tax strategy information for 2021 no later than by 31 December 2022.

II. Requirement covers tax groups and taxable persons with revenues in excess of EUR 50 million

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. Thus the first such publication (for taxable persons whose tax year is concurrent with the calendar year) is subject to the exchange rate from 31 December 2021, i.e. PLN 4,5866 for EUR 1. That sets the limit at PLN 229 330 000 (a year ago it was PLN 225 255 000).

31 December 2022 is the deadline for the publication of the tax strategy followed in 2021 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. Failure to notify carries a fine of as much as PLN 250 thousand.

III. 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, as well as on voluntary forms of cooperation with the National Tax Administration; on the taxable person's fulfillment of tax obligations in the territory of the Republic of Poland, including on the number of reported tax arrangements broken down by type of tax; on transactions with related parties, the value of which exceeds 5% of the taxable person's total assets; on any planned or undertaken restructuring activities that could affect the amount of the taxable person's tax liabilities or the tax liabilities of related parties; on any applications filed for tax interpretations, binding rate information or binding excise tax information; on any tax settlements made by the taxable person in territories or countries that practice harmful tax competition. The publication requirement excludes information protected as trade, industrial, professional or production process secrets.

IV. 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 of 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.

V. Including ESG elements is a good idea

While preparing their tax strategies and tax strategy information, taxable persons should bear in mind that taxes are becoming an important area to be analyzed as part of ESG (environmental, social and corporate governance). Overlooking ESG standards while designing a tax strategy is no longer well received by markets and investors. For this reason, although at this time Polish regulations do not require including this element in tax strategy information reports, it is a good idea to add ESG elements to this information. In doing so, it is wise to take advantage of the increasingly widely available international standards that describe good tax transparency practices as part of the applied ESG policies (standards).

VI. Publication itself is not enough, tax authorities have to 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.

VII. 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 in response to opinions expressed by some experts that such errors may potentially result in fines. 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.

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

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