

INFORMATION ON TAX ARRANGEMENTS

On 1 January 2019 amendments to the Act on Personal Income Tax, the Act on Corporate Income Tax and the Tax Ordinance Act came into force (the "**Act**"), which introduce, inter alia, mandatory disclosure rules). The Act implements into Polish law Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements.

In particular, the Act:

- defines tax arrangements and mandatory disclosure rules;
- states which entities are required to provide information;
- specifies to which tax authority the information should be sent;
- the scope of information to be disclosed;
- the method and time limit of disclosure;
- the fiscal-criminal consequences if obliged entities fail to comply with the requirement.

According to the justification of the Act, the new solutions are aimed at ensuring fiscal administration has rapid access to information on potentially aggressive planning or abuses related to tax planning and on promoters and relevant taxpayers taking advantage of arrangements, and also to discourage taxpayers and their advisers from preparing and applying tax arrangements. The new regulations are therefore aimed at gathering knowledge on the actions of taxpayers who gain tax benefits.

TAX ARRANGEMENT

Put simply, a tax arrangement is an agreement that involves a tax benefit as the main advantage or one of the main advantages that an entity expects to gain by performing the arrangement and which has one of the hallmarks mentioned in the Act. Furthermore, a tax arrangement may also be an arrangement with a special hallmark or a so-called other special hallmark that are also described in the Act in detail.

Issues

- Tax arrangement
- Mandatory disclosure
- de minimis threshold
- Reportable information
- Criminal sanctions
- Interim provisions

An arrangement means an act or a series of related acts, including a planned act or series of planned acts, in which at least one party is a taxpayer, or which have or could have an effect on whether a tax liability arises or not.

Additionally, the Act introduces a marketable tax arrangement, defining it as an arrangement capable of being implemented or made available to more than one relevant taxpayer without the need to change its material assumptions, in particular concerning the type of actions to be taken or planned under the arrangement.

Furthermore, the Act mentions cross-border tax arrangements, which generally relate to more than one member state of the European Union or a member state of the European Union and a third state and which meet other conditions set out in the Act.

DISCLOSURE REQUIREMENT

Generally, the promotor will be required to disclose tax arrangements. Under the Act, a promotor means a natural person, legal person or organisational entity without legal personality, in particular a tax adviser, advocate, legal adviser, employee of a bank or other financial institution advising clients, even if he/she/it does not have his/her/its place of residence, registered office or management board in in Poland, who develops, offers, makes available, implements or manages implementation of an arrangement. Supporting entities such as auditors, notaries and accountants may also be required to disclose tax arrangements.

Entities so defined will be required to send the Director of the National Tax Administration ("NTA") information on the tax arrangement within 30 days of the day after it is made available or from the next day after preparation of the tax arrangement for implementation or from the date the first action related to the implementation of the tax arrangement is taken – whichever is the earliest. The Director of the NTA will allocate individual numbers to tax arrangements (TAN) obtained as a result of the disclosure.

In this regard, the Act provides for certain exemptions aimed at guaranteeing professional privilege. Firstly, the rule of disclosure of tax arrangements by the relevant taxpayer, if the promotor or supporting entities are obliged to comply with professional privilege and this is not waived, has been introduced. The exemption from the disclosure requirement for promotors and supporting entities protected by professional privilege will not apply to marketable arrangements. In such a situation, relevant taxpayers' data covered by professional privilege that could enable identification of the relevant taxpayers will not be disclosed.

Notwithstanding the above-mentioned entities' ongoing disclosure obligation, a relevant taxpayer that in the relevant settlement period takes any actions that are an element of a tax arrangement or obtained a tax benefit therefrom, must, by the deadline for filing a tax return related to that settlement period, provide the Director of the NTA with information on that tax arrangement and the amount of the tax benefit arising from the tax arrangement.

DE MINIMIS THRESHOLD

There is no obligation to provide information on a tax arrangement if a tax arrangement other than a cross-border arrangement relates to a relevant taxpayer for which the criterion of a qualified relevant taxpayer is not fulfilled. That criterion is considered fulfilled if the revenues and costs of the relevant

taxpayer or the value of that entity's assets in the meaning of accounting provisions exceeded EUR 10,000,000 in the preceding or current financial year or if an arrangement being made available or implemented relates to objects or rights with a market value exceeding EUR 2,500,000 or if the relevant taxpayer is an affiliate of such an entity.

REPORTABLE INFORMATION

The Act details what data should be contained in the information on the tax arrangement. The following are examples: data identifying promoters and relevant taxpayers, hallmarks of the reportable arrangement and a detailed description of the arrangement stating why a relevant agreement/ is considered a tax arrangement.

CRIMINAL SANCTIONS

Under the Act there are fiscal-criminal sanctions for failing to comply with the requirements laid down in the Act. One example is the provision under which a failure to provide the competent authority with information on a tax arrangement or providing the authority with information after the deadline carries a penalty of up to 720 daily rates (the maximum rates provided for in the Fiscal Offences Code). The same penalty applies for a failure to provide the competent authority with data on the entities to which a marketable tax arrangement was made available or if the data are provided after the deadline.

INTERIM PROVISIONS

The Act also regulates interim issues. An interim provision sets a deadline (25 June 2018 and 1 November 2018, as the case may be), stating the requirement to provide information on a tax arrangement if the first action related to its implementation is taken after the deadline. The Act points out that the period for which information on a tax arrangement should be submitted in relation to action taken before 1 January 2019 depends on the type of reportable tax arrangement.

A cross-border tax arrangement will be reportable if the first action related to its implementation is taken before the date the Act comes into force, but no earlier than 26 June 2018. However, other arrangements are reportable if the first action related to implementation thereof is taken before the date the Act comes into force, but no earlier than 2 November 2018. In both cases, the tax arrangement must be disclosed by 30 June 2019.

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This publication does not discuss all the aspects of the issues raised and is not legal or other advice.

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