
# Tax&Legal Highlights

## Poland

### Transfer pricing: Country-by-Country Reporting

**21 June 2017 saw the publication of the Regulation of the Minister of Development and Finance of 13 June 2017 on the detailed scope of data transmitted in the country-by-country report and the way it should be filled in, in the Poland's Journal of Laws. The Regulation implements Council Directive 2011/16/EC of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC.**

**Application of the new Regulation**

This is an implementing regulation to the Act of 9 March 2017 on the exchange of tax information with other countries under the **Country-by-Country Reporting** (CbCR). The Act imposes reporting obligations on Polish members of large capital groups. **The Regulation governs the CbCR issues — provision of information about a group of entities.**

**Elements required under the Regulation:**

The Regulation indicates what kind of information should be included in the country-by-country report. This includes:

1. the objective of filing the country-by-country report (filing, updates, adjustments);
2. specification of the period covered by the country-by-country report;
3. specification of the name of the group of entities;
4. information about the currency of the amounts referred to in the country-by-country report;
5. name of the reporting entity with information whether it is the parent, entity designated to file the report or a different type of entity;
6. identification data of the constituent entities (such as name of the entity, tax identification number, address, tax residence);
7. information about the key types of business activities of the constituent entities divided into: research and development; holding or managing intellectual property; purchasing or procurement; manufacturing or production; sales, marketing or distribution; administrative, management or support services; provision of services to unrelated parties; internal group finance; regulated financial services; insurance; holding shares or other equity instruments; dormant; other (which ones);
8. information about constituent entities — the amount of revenue, profit (loss) before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees, and tangible assets other than cash or cash equivalents with regard to each jurisdiction;
9. additional information or explanations specifically regarding the sources of data used in preparing the country-by-country report, currency exchange rates used, information about the business activities (if it falls outside the scope specified in point 7), notification of any data not being provided by the parent or any other information that would help interpret the data included in the country-by-country report.

Moreover, the Appendix to the Regulation provides a detailed instruction how to fill in the report. In particular, it specifies issues regarding tax jurisdiction, information about the group of entites, sources of data used to prepare the report, method of calculating the number of employees and the type of business activity.

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## Goods transport falling within the scope of the transport law package will be subject to the GPS route monitoring obligation

**On 15 June 2018, the Sejm passed amendments to the Act on the monitoring of road transport of goods (parliamentary paper no. 1794, the "amendments"), which impose new obligations on carriers as part of the transport law package (SENT).**

As stated in the explanatory memorandum to the amendments awaiting the President's signature, they are aimed to improve the efficiency and effectiveness of the monitoring of the transport of goods subject to the requirements of the transport law package through the use of geolocation information. The law which sets out the new obligations is to come into effect as of 1 October 2018. The amendments provide for a "grace period" ending on 1 January 2019, during which neither carriers nor drivers will be penalised for a failure to fulfil their duties.

According to the new provisions, a carrier will be obliged to ensure that up-to-date geolocation information of the vehicle is transmitted for SENT-registered goods for the whole route. In the event that the device used for sending geolocation information is found to be out of service for more than one hour, as a rule, the driver will be required to immediately stop the vehicle in the nearest parking lot or lay-by. The transport service may be resumed only when:

- the device used for sending geolocation information is again in working order;
- the goods have been loaded onto a different vehicle with a geolocation device that is in working order;
- a geolocation device that is in working order has been installed in the vehicle; or
- customs seals have been affixed on the vehicle or on the goods or a convoy decision has been made.

**How will geolocation work?**

In accordance with the amendments, with a view to sending up-to-date geolocation information the carrier will be allowed to use one of the following two device types:

(i) a **geolocation device** defined as telecommunication terminal equipment using satellite positioning and data transmission technologies (such as a smartphone or a tablet) on which software made available by the Head of the National Revenue Administration for goods transport route monitoring has been installed;

(ii) **an external positioning system** defined as a system used by the carrier to collect geolocation information for the vehicle that is sent from the satellite positioning and data transmission equipment installed in the vehicle.

If the obligation to send geolocation information is not fulfilled, a fine of PLN 10 000.00 may be levied on the carrier, while the driver of the vehicle used for transporting goods may be subject to a fine from PLN 5 000.00 to PLN 7 500.00. Fortunately, the legislator has introduced a transition period during which the above penalties will not be imposed. This does not mean, though,

that carriers will be released from their obligations at that time. In the event of a roadside inspection which reveals e.g. that an appropriate geolocation device is not installed in the vehicle, it is most likely that the transport will be allowed to be resumed only after the carrier and the driver's duties have been performed.

**What next?**

Although the amendments impose new obligations mainly on carriers, careful preparation for their implementation is in the interest of all those engaged in SENT-compliant transport of goods (both sellers and buyers) to guarantee that supplies are made on time. Such preparation may include for example:

- implementation of appropriate risk management procedures and mechanisms in the organisation;
- changes to logistics processes;
- provision of appropriate training to staff;
- modification of transport service contract clauses.

Our prior experience related to the application of the provisions of the transport law package shows that the above-mentioned measures should be employed as early as possible so as to ensure that the risk of violation of the applicable laws which may lead to delays in supplies or to imposition of financial penalties is reduced to a minimum.

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## Bill amending legislation on transfer pricing

**15 July 2018 saw the publication of a bill amending the Personal Income Tax Act, Corporate Income Tax Act and certain other acts ("Act") governing specifically transfer pricing issues. The law is set to become effective as of 1 January 2019 and will apply to transactions executed in the fiscal years beginning after 31 December 2018. The bill provides that the new regulations may apply to transactions started after 31 December 2017, however, the decision has been left to the taxpayers.**

The objective of the regulation is to simplify tax laws and reduce the red tape and administrative burdens placed on businesses, specifically the small and medium ones. The bill covers not only changes in the legislation on transfer

pricing documentation, but also on the arm's length principle, the definition of related parties, transfer price adjustments, etc. This way it provides for a comprehensive regulation of transfer prices by creating a separate chapter in the CIT and PIT Acts.

The key changes brought by the bill are:

1. **Change in the definition of related parties** — parties are considered to be related if one party exercises a significant influence over at least one other party.

2. **Raised documentation thresholds**, which — once exceeded — make it necessary for the transfer pricing documentation to be prepared. The way the thresholds are set is being changed as well — the bill provides for general thresholds at PLN 10 million for commodity transactions and debt financing and PLN 2 million for intangible and other transactions.

3. **New terms and conditions for the Master File.** Under the new regulations entities obliged to prepare Master File 1 will be the taxpayers required to prepare local transfer pricing documentation that are constituents of a group which:

- prepares consolidated financial statements;
- in the prior financial year generated a consolidated revenue in excess of PLN 200 000 000 or equivalent,

4. The bill also governs charges for **low value adding services**. If the charge is not more than five percent of the cost (for acquisition) and not less than five percent of the cost (for provision), the authorities will refrain from calculating the amount of the mark-up.

5. For intra-group financing, the authorities will not apply interest, if:

- the interest has been determined based on a certain base rate and margin set out in an announcement of the Minister of Finance;
- no additional fees for the loan servicing are expected;
- the term of the loan is not more than five years; and
- the total borrowed and lent amounts between related parties (calculated separately) is not more than PLN 20 000 000.

6. The deadlines for filing a statement on the preparation of local transfer pricing documentation and information about transfer prices will be extended from three to **nine months after the end of the fiscal year**. The deadline for preparing the Master File will be even longer, i.e. 12 months after the end of the fiscal year.

7. The obligation to maintain **the Master File** may be fulfilled by providing documentation prepared by another entity in the group, also in English. This way, taxpayers which receive such documentation from the group will not be obliged to prepare it on their own.

8. Compulsory CIT/TP or PIT/TP forms are being replaced by **electronic forms** (TP-R) which will ensure greater effectiveness in the selection of taxpayers to be inspected.

9. The bill also governs **transfer pricing adjustments** made by the taxpayers and resulting from differences between the assumed and actual profitability and specifies the terms and conditions for such adjustments.

We do encourage you to read the full text in which the above issues are discussed in more detail. Please find below a link that will take you to the regulations.

Bill amending the TP legislation:

http://legislacja.rcl.gov.pl/docs//2/12313855/12522183/12522184/dokument350017.pdf

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## A new obligation under the transport law package. Medicines and medical devices at risk of becoming unavailable in Poland are subject to transport monitoring regulations

**The amendments to the Act on the Monitoring of Road Transport of Goods and some other legal acts, which came into effect on 14 June (Journal of Laws of 2018, item 1039, the "amendments"), introduce changes to the transport law package (SENT).**

Among other things, they impose the obligation to monitor the transport of a group of medicinal products, foodstuffs for particular nutritional uses as well as medical devices (the "medicinal products"). The transport monitoring obligation is supposed to apply to medicinal products which are at risk of becoming unavailable in Poland because of their illegal export in the so called reverse supply chain.

As pointed out in the explanatory memorandum and in the course of the legislative process, the principal objective of the aforementioned extension of the list of products subject to the transport law package is to prevent their illegal export to other EU member states, which leads to shortages of specialized or innovative medicines, especially life-saving ones, at pharmacies and hospitals in Poland.

For the time being, in accordance with the provisions of the pharmaceutical law, an authorization needs to be obtained from the Chief Pharmaceutical Inspector to export and/or sell medicines and/or medical devices at risk of becoming unavailable in Poland to an entity located outside the territory of the country. Following the adoption of the amendments, as part of a transaction which requires an authorization of the Chief Pharmaceutical Inspector, the obligations set out in the transport law package will apply to the transport of such products, which means that it will also be necessary to register such transport in a dedicated SENT IT system.

A list of medicinal products, foodstuffs for particular nutritional uses and medical devices which are at risk of becoming unavailable in Poland and which

are affected by the amendments is published in an official announcement of the Minister of Health. The most recent announcement was published on 11 May 2018 (Official Gazette of the Ministry of Health 2018.39).

Additionally, the amendments impose an obligation to provide the Chief Pharmaceutical Inspector with a complete, up-to-date list of means of transport, including their registration numbers, that will be used to carry out the activities falling within the scope of the aforesaid authorization, within thirty days of the new legislation coming into effect. This obligation applies to a wide range of business entities engaged in wholesale and production/import of medicinal products.

**Goods transport monitoring – general principles**

The regulations which provide for the monitoring of goods transport by road came into effect as of 18 April 2017. Before, they applied mainly to excise goods, such as fuel, denatured alcohol or dried tobacco ("sensitive goods"). In September 2017, the list of goods subject to the transport monitoring obligation was extended to include some oils and vegetable fats.

The transport law package sets out a number of obligations for entities engaged in the business of selling or buying sensitive goods, carriers as well as drivers of the vehicles used for purposes of transporting such goods – depending on the transaction flow, such obligations have to be discharged by all or some of these entities.

Originally, the transport law package applied to road transport only but as it was amended, the monitoring obligation was also imposed on rail transport.

The key obligation arising from the transport law package is to register the transport of sensitive goods in the SENT system developed as part of the Electronic Tax and Customs Services Platform ("PUESC"). As a rule, registration is required before goods begin to be transported within the territory of Poland. Severe sanctions may be imposed for violation of the monitoring regulations, including a financial penalty for non-registration, representing 46% of the value of goods transported but no less than PLN 20,000.00. Even if an obvious error is made in the registration form where goods are shipped from a bonded warehouse, a penalty of PLN 2,000.00 may be levied.

**What next?**

As the new regulations have already come into effect, entities engaged in trading in medicinal products which are at risk of becoming unavailable in Poland, and required to obtain the Chief Pharmaceutical Inspector's authorization for their export from the country or sale to a foreign entity should take a number of steps in order to bring their operations into line with the new law, to include mitigation of the risk of sanctions being imposed on them for inadequate performance of their obligations under the transport law package. These may include:

- an analysis of the portfolio of products and transactions with a view to identifying those which may be subject to the new obligations;

- implementation of appropriate risk management procedures and mechanisms in the organization;
- changes to logistics processes;
- provision of appropriate training to staff;
- modification of transport service contract clauses.

Our prior experience related to the application of the provisions of the transport law package to sensitive goods shows that the above-mentioned measures should be employed as early as possible so as to ensure that the risk of violation of the applicable laws which may lead to delays in supplies or to imposition of financial penalties is reduced to minimum.

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