



## Tax&Legal Highlights

### Poland

#### Country-by-Country Reporting — Ordinance of the Minister of Economic Development and Finance on the detailed scope of data to be included in the information about a group of entities

On 21 June 2017 the Ordinance of the Minister of Economic Development and Finance of 13 June 2017 on the detailed scope of data to be included in the information about a group of entities was published in the Journal of Laws. The Ordinance implements the Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC.

#### Scope of the new Ordinance

This is an implementing ordinance to the Act of 9 March 2017 on the exchange of tax information with other countries, concerning the **Country-by-Country Reporting** (hereinafter: CbCR). The Act imposes reporting obligations on Polish entities that are members of large capital groups. **The Ordinance regulates matters related to CbCR — providing information about a group of entities.**

**Elements required according to the Ordinance:**

The Ordinance indicates what information should be included in the information about a group of entities. It is as follows:

- 1. the aim of submitting the information about the group of entities** (submission, update, adjustment);
- 2. indication of the period** covered by the information about the group of entities;
- 3. name of the group of entities;**
- 4. indication of the currency** in which the values included in the information about the group of entities are expressed;
- 5. name of the reporting entity**, with an indication of whether it is the parent entity, entity appointed to report or other entity;
- 6. unique identification data of the members of the group of entities** (such as: name of the member of the group, tax identification number, address, tax residence);
- 7. indication of the business activities undertaken by the entities in the group**, divided into: research and development; possession or management of intangible assets; purchases or orders; production or processing; sales, marketing or distribution; administrative, management or support services; provision of services to independent entities; intra-group financing; regulated financial services; insurance; ownership of shares or other proprietary rights in entities; dormant or other activities (need to be specified);
- 8. data about members of the group of entities** — generated revenues, profit (loss before taxation), income tax paid, income tax due, share capital, undistributed profit from previous years, number of employees, current and non-current assets — divided by the country or territory;
- 9. additional information or explanations** concerning the sources of data used to provide the information about the group of entities, exchange rates applied, information about activities (if it does not fall within the scope of point 7), notification regarding non-submission of data by the parent entity and other information, useful for interpreting data about the group of entities.

In addition, the Annex to the Ordinance contains detailed instructions on how to complete the CbCR, in particular clarifying the concepts of tax jurisdiction, information about the group of entities, sources of data used for the CbCR, the method of calculation of the number of employees or the type of economic activity.

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**Excise duty revolution on the e-cigarette market**

**On 21 June 2017, a bill amending the Excise Duty Act of 14 June 2017 was published on the website of the Governmental Legislation Center. The bill assumes introduction of two new classes of excise goods: liquids for e-cigarettes and so-called innovative tobacco products that will be subject to excise duty.**

**What will change?**

As assumed in the published bill, the following items shall be subject to excise duty:

- Liquids for e-cigarettes defined as solutions used in electronic cigarettes (importantly, both containing nicotine and nicotine-free, including the glycol or glycerin base), as well as
- Innovative tobacco products including:
  - a) Mixture containing fresh or dry tobacco;
  - b) Mixture referred to in section a) and, separately, liquids for e-cigarettes other than tobacco products and dry tobacco that do not undergo combustion.

Both items shall be classified as excise goods not listed in Appendix 2 to the Excise Duty Act, subject to non-zero excise rate, which among others means that they will be subject to the excise suspension procedure in Poland and their manufacturing should be performed at excise warehouses.

The new products will be subject to general excise duty regulations, such as those regarding tax chargeability, the subject of taxation, tax returns, registration of entities or excise duty on product losses. Further, the bill assumes that these products shall be subject to the obligation to bear excise stamps.

In the bill, the excise rate applicable to e-cigarette liquids has been set as PLN 0.7 per 1 ml of liquid, whereas the rate applicable to innovative tobacco products amounts to PLN 141.29 per kilogram and 31.41% of the weighted average selling price of the smoking tobacco. Further, the bill introduces

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increased excise rates for such products manufactured outside excise warehouse.

It also defines the concept of manufacturing of these excise goods. In relation to e-cigarette liquids, the manufacturing includes production, processing and bottling, whereas in relation to innovative tobacco products, it includes production, processing and packaging.

### Exemptions

Exemptions projected in relation to the new excise goods include:

- Intra-community purchase of products personally by an individual for own use (not for resale);
- Import of products in personal luggage by a person aged 17+;
- Import of products placed in a package sent from a third state by an individual and intended for another individual staying in Poland.

The above exemptions are limited, mostly by volume.

### Planned effective date

The intended amendments may materially affect both business operations of manufacturers and distributors of e-cigarette liquids and innovative tobacco products. New tax charges shall increase the number of procedures and the volume of documentation required in relation to business activities involving e-cigarettes.

At present, the bill has been presented for consultations, among others sent to the Social Dialogue Council members and to employer organizations to allow them submit comments.

According to the bill, the new regulations shall come into force as of 1 January 2018.

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## Posting of workers under scrutiny of the National Labour Inspectorate

A recent report on the activity of the National Labour Inspectorate in 2016 provides interesting insights on the areas under close scrutiny of the institution and employer issues identified. According to the in-depth report, one of the key areas of interest was posting of workers to and from Poland. Key information about inspection findings and irregularities detected have been presented below to help readers prepare to possible future inspections.

### More frequent inspections of Polish employees posted abroad

Foreign institutions more intensely scrutinize Polish workers posted abroad by Polish companies. The number of enquiries received by the National Labour Inspectorate from foreign authorities in 2016 **grew by 40% comparing to 2015**. Last year labour inspectors carried out 131 inspections of Polish companies posting workers abroad based on requests submitted by foreign institutions.

The main objective of the inspections was to check if a given employee seconded abroad can actually be considered a posted worker under the laws of the receiving country. The inspections also covered payment of salaries and other benefits in the secondment period.

One of the most frequent irregularities identified was that minimum terms and conditions of employment were not satisfied for posted staff. Some Polish employers still pay posted employees **less than a minimum pay** in a given receiving country. The inspections also indicated attempted evasion of law, when employers referred to business trip regulations.

Although the National Labour Inspectorate has no authority to impose sanctions on Polish employers posting employees abroad for breaches of local legislation, such **sanctions may be applied by foreign institutions** based on information provided by the National Labour Inspectorate.

### Results of initial inspections of posting workers to Poland

The National Labour Inspectorate also analyses staff posted to Poland by foreign employers. In the first six months from the enactment of the Act on posting of workers in the framework of the provision of services, the National Labour Inspectorate carried out 67 inspections of employers posting employees to Poland. According to the report, inspections covered over 1.3 thousand employees, i.e. **ca. 1/4 of all employees posted to Poland and reported to the National Labour Inspectorate**.

Most irregularities detected during the inspection concerned employee secondment declarations (including the failure to report or to timely report posting employees, incomplete or non-updated declarations) and the failure to designate a person in charge of facilitating communication between the National Labour Inspectorate and a foreign employer posting employees to Poland.

The Inspectorate also checked if terms and conditions of employment were satisfied for employees posted to Poland. Most infringements concerned working time, in particular compliance with the working hours and rest times standards and paid vacations regulations.

Inspectors also detected **OHS issues** related to medical check-ups and OHS training for seconded staff. According to the Inspectorate, there are no clear regulations in this respect, which would indicate that medical check-ups and OHS training should be carried out in line with the principles applicable to Polish employees.

Our experience shows that the Inspectorate often requests employers to determine if foreign medical check-ups correspond with medical check-ups carried out in Poland and if any individual training should be provided in Poland.

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The Act on posting of workers in the framework of the provision of services was enacted only a year ago, hence the National Labour Inspectorate has not fully developed its practices in this respect. Still, the National Labour Inspectorate will certainly become increasingly interested in staff secondment, considering the current controversial legislative works aimed at revising the Directive 96/71 concerning the posting of workers in the framework of the provision of services.

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### Centrum Obsługi Kluczowych Podatników - Key Taxpayers' Service Centre. Change of the clearing rules applicable to large entities

The pilot project called Centrum Obsługi Kluczowych Podmiotów - Key Taxpayers' Service Centre (COKP for short) was launched within the First Mazovian Tax Office on 03 July 2017. In the long term, COKP is planned to provide services to approx. 3,000 entities earning more than 50 million in revenue a year.

At present the COKP pilot project operates as part of the First Mazovian Tax Office and covers circa 200 entities, **but in the future it is intended to be a separate public sector unit reporting directly to the Head of the National Fiscal Administration (KAS)** and performing services for 3 thousand taxpayers responsible for 60% of budget receipts (companies with the annual revenue of more than EUR 50 million).

### Project assumptions

The major objectives underlying the project undertaken by the Ministry of Finance and Development include:

- improvement of service quality and experience of the entities that account for a significant part of the state budget receipts,

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- provision of standardized services to the covered entities,
- building a bond of trust between the enterprise and the authorities,
- favourable impact on tax chargeability and the serviced entities.

The Centre will provide comprehensive services - each covered entity will be assigned to the relevant industry-specific team and appointed a manager who will be familiar with the specifics of its business operations. In particular, the team specialization is aimed to strengthen confidence in tax administration and promote fulfilment of tax obligations. In addition, the authorities want to host a website focused on material domestic and international tax law issues, which is also expected to make their services more efficient. They plan to publish tax bulletins providing information targeted specifically at enterprises. Workshops, video-conferences and individual taxpayer communication channels will also be organized in the near future.

### Entities covered by COKP

In line with the currently binding legal regulations, entities that generated not less than PLN 400 million of revenue in 2014 or 2015 and that fall under the competence of the head of the First Mazovian Tax Office will be covered by the services of COKP. COKP will function in its current form until the end of 2017. **At the beginning of 2018 the Fourth Mazovian Tax Office will be set up, to be later transformed into COKP.** Importantly, COKP will be the first-instance tax authority, whereas the Head of KAS will fill the role of the second instance. It is estimated that in its final shape and form COKP will deliver services in respect of circa 3000 taxpayers, i.e. the companies that generate over EUR 50 million in revenue a year. In aggregate, such taxpayers are responsible for 60% of the state budget receipts.

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### Transportation package – further amendments and extension of obligations to cover railway transport

**The Government Legislation Centre published a bill amending the Act on the system of monitoring road transport of goods and certain other acts (hereinafter: “bill” or “amendment”) which changes the transportation package regime (hereinafter also: “the Act”).**

The amendment extends the scope of the goods’ transportation monitoring obligation to include **railway transport** (only road transport has been subject to monitoring so far).

The bill constitutes yet another proposal of changes in the transportation package rules. In the June issue of our Excise Express we mentioned amendments based on which transportation would be monitored with the use of GPS locators (some of the changes contained in the GPS-focused proposal have been transposed to the new bill). Hence, two bills amending the transportation package are being processed at the same time.

### **Newly proposed amendment - extending monitoring to cover railway transport**

According to the legislator, to restrict the possibility of using railway transport for illicit transportation of 'sensitive goods', it is justified to apply the monitoring system to railway transportation. The legislator explains that the proposed amendment is a result, inter alia, of the increased volume of railway transportation of energy products.

By analogy to road transportation, railway movement of the goods that fall within the scope of the Act will be associated with certain duties to be fulfilled by the dispatcher / recipient of the goods and the carrier (the entity that carries out the railway transportation). In this case, the train driver (the individual driving an engine-powered railway vehicle unit) will function as the driver.

As opposed to road transportation, when submitting the report to the register, the railway carrier will be obliged to provide certain additional data, such as: (i) train number, (ii) harmonized freight wagon code and (iii) location of the siding where it is possible to conduct inspection and which is closest in distance to the goods' destination or the place where the transport of goods ends in the territory of the country.

More importantly, the amendment increases the penalty imposed on carriers (including railway carriers) for non-reporting, from PLN 5 000 to PLN 10 000.

### **Changes taken from the previous bill of amendments**

As pointed out above, the bill includes certain changes taken from the GPS-system bill. Among others, under the new bill the goods subject to monitoring requirements are no longer classified to sub-categories in line with the Polish Classification of Goods and Services ("PKWiU"). Therefore, the monitoring requirements may apply to the goods assigned to the CN categories specified in the applicable regulations.

In addition, the bill includes a provision to the effect that as regards the goods classified under CN 2905 and CN 3824, only the products marked as excise goods can be subject to monitoring.

The new bill also proposes changes in respect of the inter-warehouse transfer sheet by adding more details to be disclosed in that document, i.e. the registration number of the vehicle used and the date of issuing the inter-warehouse transfer sheet.

The right to demand that the carrier reported in the register present the vehicle and the goods transported in the specified location (the place where the dispatch of the goods ends or a branch of the tax and customs office) and at a specified time, for inspection purposes (if, based on the analysis, it transpires that the transportation of goods indicated in the report is associated with higher risks) is another significant change transposed from the GPS-related bill. If the vehicle with the goods is not provided to the specified place in the specified time, the carrier will be fined PLN 20,000.

### **Additional changes**

Apart from the amendments originating from the GPS-system bill, certain additional changes have also been proposed, including inter alia the provision that if the transportation is made from a single dispatcher, to a single



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recipient, to one and the same destination, and using one vehicle, then the report can cover various types of goods (falling within the scope of various CN codes).

More importantly, as regards the penalties for non-fulfilment of statutory obligations, a clause has been added stipulating that if irregularities are detected in the course of tax proceedings, tax audit or tax and customs control, no penalties will be imposed where the receipts of the State Treasury have not been depleted.

The limitation of the possibility to impose fines will not apply to disclosure of irregularities in the course of the transport inspection.

### **What next?**

The bill has been tabled for interministerial discussions, and it will come into effect 14 days after its publishing.

If the proposed amendments become effective, they will cover a wide range of new entities (especially railway carriers). Such entities should verify the goods they transport as soon as possible, and if they conclude that new obligations may be applicable, they should carefully follow the legislative process associated with the bill. Then, if the proposed regulations become the binding law, they will need to take steps with a view to implement appropriate enterprise risk management procedures and mechanisms, organize employee training, modify agreements concluded with contractors, etc.

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