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Tax strategy: new tax compliance obligation | deadline is coming

Pursuant to the recent amendment to the CIT Act, from the fiscal year beginning after December 31, 2020, taxpayers are required to prepare and publish information on the execution of their tax strategy.

This obligation applies to:

- taxpayers whose annual revenues exceed the equivalent of EUR 50 million as well as
- all tax capital groups.

Information on the execution of the tax strategy is to be published in Polish on a taxpayer's relevant website no later than 12 months from the end of a given tax year.

According to the announcements of the Minister of Finance, the first reporting is required already for FY20 – thus, in case of FY20 corresponding to a calendar year the deadline lapses on December 31, 2021.

Regulations in this area provide for a wide catalogue of elements and data that should contain information on the execution of the tax strategy, e.g.:

- a description of the approach to processes and procedures for managing the performance of obligations arising from tax regulations and ensuring their proper implementation, and
- information about the taxpayers' planned or undertaken restructuring activities that may affect the amount of their or related entities' liabilities, and
- information on related party transactions, etc.

Therefore, the above information on the tax strategy (which must be published on a publicly available website) may occur to be something more specific and extensive comparing to the tax strategy publications made at the group / headquarters level.

The Polish publication (as more precise in terms of necessary items) will definitely be a basic source of information for the Polish Tax Administration as well as for competitors – therefore, it will be of a key importance to properly address:

- on the one hand, a **comprehensive list of requirements** under Polish tax laws and ensuring that entities are properly recognized by the Polish Tax Administration, as well as all tax capital groups.
- on the other hand: **sensitivity of data & information,** which may be analysed by competitors.

The preparation of tax strategy and relevant information regarding its execution may be supplemented by the preparation/verification of procedures for organizing tax processes in a company and managing the liability of natural persons involved in these processes, including in particular the company's management board. In the current reality, having such procedures and acting in accordance with them may become the so-called best practice and fundamental means to demonstrate due diligence in tax management in an organization.

The **goals of tax compliance procedures** (including separation of tax duties among company's employees) are:

To mitigate tax risks:

- Improper tax procedures may result in tax arrears (due but unpaid tax, increased by penalty interest and potentially additional sanctions). This risk in Poland is relatively high due to frequent pro-fiscal amendments to tax law (e.g. introduction of Article 15e to the Polish CIT law limiting deductibility of costs in shared services centers, strict rules on withholding taxes charged on foreign payments, no clear regulations regarding taxation of branches) and volatile rulings of tax authorities and administrative courts;
- Board members and employees (COO, CFO, chief accountant, etc.) may be held personally and criminally responsible for a taxpayer not being compliant with tax regulations. This is called penal fiscal liability (in Polish *odpowiedzialność karna skarbowa*) and may result in a person being sentenced for a criminal tax offense or misdemeanour. Apart from monetary penalties or imprisonment, such conviction may put an end to the possibility to sit on a company's board or take part in public tenders.

A **key element of tax compliance procedures is to clearly separate tax duties and obligations** within an organization;

To settle taxes more effectively:

Tax processes are complicated and frequently ineffective (regarding time spent on them, quality of tax computations and amount of tax paid). Smart, tailor-made procedures increase effectiveness of tax processes, saving employees' time and taxpayers' resources.

Furthermore, they allow to manage a tax result in a better way (for example to avoid unnecessary expenses being non-deductible due to deficiencies in gathered documentation).

Polish Deal: announcement of another tax incentives

The Polish Minister of Finance has announced further tax incentives to attract foreign investors and to decrease income tax for all taxpayers. The amendments are expected to enter into force on January 1, 2022. Please see some of **most interesting ones below**:

Research & Development (R&D) tax relief even more attractive: according to the Income Tax Act, all companies in Poland which perform their R&D activities are entitled to tax relief. From 2022 there will be an increase from 100% to 200% of the gross salary deduction.

So, costs incurred within the implementation of R&D projects can be deducted three times. For the first time as a standard tax deductible cost under the corporate income tax return. For the second and third time as deduction from the taxable base. The advantage of this approach is an extra saving of 38% of the eligible R&D costs including wages and social and health insurance contributions.

If taxpayer's income does not suffice to benefit from a full tax credit, from 2022 there will be a possibility to use R&D relief to decrease the amount of withheld PIT.

Last but not least, from 2022 companies will be able to include the eligible R&D costs for **Innovation/IP Box purposes** (5% CIT on income from intellectual property rights, instead of 19% standard tax rate);

Tax relief for automation and robotization of production: extra deduction of 50% of costs incurred on robotization (i.e. on the purchase of industrial robots);

Tax relief on prototypes: extra deduction of 30% of selected costs incurred on trial production of new products (not services) and their introduction to the market (a relief is capped at 10% of overall income);

CIT exemption on proceeds from sale of shares by a Polish holding company to an unrelated party (participation exemption conditions apply: i.a. holding at least 10% shares for a year).

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