KPMG ACOR TAX

New Polish requirements for extensive publication of businesses' tax affairs

Get an overview of the most important questions

It is now normal for large Danish businesses to publish a tax strategy, and e.g. in the United Kingdom, this was made a legal requirement back in 2017. Now, Poland has introduced significantly more extensive publication requirements.

Background

In November 2020, Poland adopted a number of amendments to their corporate tax rules. Among other things, the amendments entail an extensive obligation on companies to publish their tax affairs. Companies covered by the rules shall annually account for the implementation of their tax strategy during the year.

With this change, businesses will now need to communicate how they are applying their tax strategy in practice. For most businesses, this new requirement must be addressed as the current tax strategies and other disclosures do not provide sufficient details to comply with these additional requirements.

Which Danish groups may be covered?

For Danish groups, the legislation is relevant if their turnover in Poland is more than EUR 50m, or if the group has a Capital Group (joint taxation) in Poland.

When to report?

The rules came into force on 1 January 2021, and reporting is due no later than 12 months from the end of the tax year. This means that covered companies with tax years following the calendar year shall report for the first time for the year 2020 by the end of 2021. After this, they must report annually.

Businesses must disclose their tax strategy and how they ensure that they pay the right tax in Poland. In KPMG Acor Tax's experience, it may take time to develop and approve tax strategies. Typically, it is even more time-consuming to document a control environment in the tax area if not already in place and done systematically throughout the entire period.

We recommend that businesses start preparing their first reporting package as soon as possible. In this context, it should be considered whether any areas have inadequate procedures and should be subject to compensating measures.

How to report?

The report must be published on the company's website. In addition, the report must also be submitted directly to the Polish authorities. The information provided in the report should therefore be appropriate for scrutiny by both authorities and competitors.

What to include in the report?

Considering the type and size of the business, the report must account for the implementation of the business' tax strategy; as a minimum, it must include:

- A description of processes and procedures implemented to ensure that the business complies with the obligations arising from the tax legislation;
- A description of how the company voluntarily cooperates with the Polish authorities, e.g. through a co-operative compliance or by means of Advance Pricing Agreements etc.;
- A description of planned and implemented restructurings;
- An overview of Mandatory Disclosures prepared by tax classification submitted to the Polish authorities during the year;
- An overview of controlled transactions that constitute more than 5% of the company's balance sheet total;
- Requests for binding rulings etc. submitted during the year;
- Transactions with tax haven jurisdictions during the year.

Furthermore, the report must describe other relevant matters that impact the business' tax affairs in Poland. At present, there are no guidelines for understanding the individual items – particularly how much detail is required. Most strategies written to meet disclosure requirements in the UK describe the existence of a tax control environment, but provide very little detail on the contents. It is our understanding that general wording at group level will not be sufficient to meet the reporting requirement per se. If the document is produced in English, a Polish version must also be available.

Which penalty clauses apply?

If a business does not meet its obligation, it risks being fined up to PLN 250,000, corresponding to approx. DKK 410,000, and the board of directors and the management of the company can also be held accountable. So the penalties are much higher compared to the current requirements in the UK.

Should businesses have a Polish tax strategy?

Businesses do not need to prepare a separate tax strategy for the Polish part of the business. However, it is necessary to provide details about the business' behaviour in a Polish perspective, even if it is consistent with the group strategy. In addition, businesses should ensure consistency between the report published for Poland and the group's overall tax strategy.

So there is no requirement for further strategic work if the business' affairs are already reasonably described, but businesses do need to prepare both a local Polish report and establish a process for collecting of and ensuring a high quality for the required information.

What is going to happen now?

Businesses covered by the Polish reporting requirement should review their current tax strategy and examine whether it contains the appropriate level of details about the business' actions and which additional information is needed to understand the Polish part of the business. Naturally, there must be consistency between the tax strategy described and the actual behaviour of the business.

A key part of the reporting is to explain the processes and procedures designed to ensure compliance with Polish tax law. This should give rise to revisiting existing processes and procedures as soon as possible and considering whether they appropriately ensure compliance in all tax disciplines. Also, businesses should make sure they are comfortable with disclosing these to both the public and the authorities.

It is unclear how the authorities will use the information provided in a tax strategy report. Assumingly, businesses need to be able to document their disclosures, e.g. document that controls have been effective during the period.

This information is typically not published in existing tax strategies. We also often see that businesses expressing that they are comfortable with the strength of their processes and quality of compliance find it difficult to document the strength of their procedures to such degree that they can provide assurance to tax authorities. Finally, businesses should make a plan for how to obtain information on binding rulings, controlled transactions, MDR disclosures and additional information that must be included and review all this well ahead of the first reporting at the end of 2021. Also make sure to allocate time for the appropriate internal approval of the statement to be published.

Do you need help?

For most businesses, compliance with the Polish rules means adding another step to their efforts to disclose their corporate tax affairs. Often, there is no special process for external reporting of Tax Control Frameworks, interactions with authorities and other specific transactions and disclosures apart from e.g. the contents of financial statements and CSR reports, if any.

Having an established methodology for working with implementation of tax strategies and Tax Control Frameworks, we can help you with:

Gap analysis

- Non-committal talk with our Polish colleagues about the amendment of the law and how other companies are addressing the new requirements;
- Analysis of existing tax strategy and assessment of gaps in relation to the Polish requirements, including recommended improvements;
- Local and global tax strategy benchmarks against relevant peers and standards.

Implementation

- Review of existing processes and procedures to assess risk and strength of procedures and recommended improvements;
- Establishment of Tax Control Frameworks for implementation and documentation of policies, processes and procedures;
- Establishment and reporting process with appropriate controls;
- Review and procedures and reporting packages.

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