

## New duties towards the Head of NRA with respect to reporting tax schemes

As of 1 January, 2019, controversial regulation of the Tax Ordinance Act will enter into force, which introduce the obligation to inform the Head of the National Revenue Administration (NRA) about studies and implementation of “arrangements” aimed at optimization of tax settlements. Although this obligation will apply mostly to tax advisors, in many cases it will affect taxpayers directly. Moreover, the new obligation will apply retroactively to activities that started to be implemented after June 25, 2018 (cross border schemes) or on November 1, 2018 (domestic schemes)

### THE BASIS FOR CHANGES

The new regulations of the Tax Ordinance Act to a large extent are the result of the implementation obligation of the EU Directive 2018/822, including the obligation to inform fiscal authorities about cross-border tax schemes. Polish lawmakers, however, decided to expand that obligation to domestic arrangement as well.

### THE IDEA OF THE AMENDMENT

The idea behind the amendment is to impose on advisors and taxpayers (should the advisor fail to disclose professional secrecy) the obligation to inform the Head of NRA about tax optimization schemes that meet the criteria stipulated in the Tax Ordinance Act.

The new law also contains detailed regulations aimed directly at taxpayers. Failure to comply with the latter may result in penal/penal and fiscal sanctions for the members of managing bodies or taxpayers who are natural persons.

### INFORMATION ABOUT TAX SCHEMES TO BE SUBMITTED TOGETHER WITH THE TAX DECLARATION

Pursuant to the new regulations, if in a given settlement period the taxpayer performed any activities that meet the definition of the so-called “tax scheme”, they will be obliged to submit the information about the applied tax scheme and the amount of tax advantage achieved using this scheme together with the tax declaration by electronic means. The term “tax scheme” has been defined very broadly.

The information about tax schemes in the case of legal persons will have to be submitted by all members of the managing body of the given entity, with evidence of signatures submitted to the Head of NRA. In the case of natural persons, the signature will have to be submitted by the taxpayers themselves.

The information will be submitted under pain of criminal liability for making a false statement (punishable by 6 months to 8 years of imprisonment), whereas a failure to submit it will be subject to a severe fiscal fine (up to do 720 day-fine units, which in extreme cases may amount up to PLN 21 million)

<b>SINCE WHEN?</b>	<p>Given the fact that first information about arrangements implemented after June 25, 2018 (cross-border arrangements) or after November 1, 2018 (domestic arrangements) will have to be submitted by the end of June 2019, taxpayers who obtain tax benefits from monthly tax settlements (e.g. VAT) will have to submit the information as soon as early H1 2019.</p>
<b>OUR RECOMMENDATIONS</b>	<p>In order to protect the members of managing bodies of taxpayers, we recommend developing mechanisms that allow for the efficient performance of the obligation to submit the information about used tax schemes together with tax declarations. This is of particular importance in the case of legal entities, whose managing bodies' members reside abroad and do not have, e.g., an electronic signature.</p> <p>Although the obligation will arise only after the information about a tax scheme has been submitted, it is important to bear in mind that an omission in this respect may result in severe penalties for the members of managing bodies.</p>
<b>CONTACT</b>	<p><b>This document was prepared for informational purposes only and is of a general nature. Every time before taking actions on the basis of presented information, we recommend obtaining a binding opinion of TPA Poland experts.</b></p> <div data-bbox="450 813 628 987">  </div> <div data-bbox="632 813 938 947"> <p><b>dr Wojciech Sztuba</b>  <i>Partner</i>  +48 604 966 422  wojciech.sztuba@tpa-group.pl</p> </div>

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