

A photograph of a European city street, likely in Poland, featuring colorful buildings with red-tiled roofs and a prominent church tower with a green dome in the background. The scene is captured during the day with soft lighting.

Poland

DAC 6 Domestic Implementation

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General information

Territory	Poland
Tax authority	Szef Krajowej Administracji Skarbowej (Head of the National Revenue Administration)
Status of legislation	<p>Implemented</p> <p>Entry into force on 1 January 2019.</p> <p>Reportable transactions for which first implementation step took place for:</p> <ul style="list-style-type: none"> • Cross-border tax arrangements after 25 June 2018 • Arrangements other than cross-border tax arrangements after 1 November 2018. <p>The deadline for reporting the above arrangements was:</p> <ul style="list-style-type: none"> • 30 June 2019 for promoters and supporters • 30 September 2019 for users. <p>Please note that amendment introducing obligation to report cross-border tax arrangements for which first implementation step took place after 25 June 2018 on new form (new logical structure) has been introduced. New obligation covers both tax arrangements already reported and tax arrangements that had not been reported by the date of entry into force of the amendment.</p> <p>The deadline for reporting arrangements on new form are:</p> <ul style="list-style-type: none"> • 31 December 2020 for promoters • 31 January 2021 for users • 28 February 2021 for supporters • 30 April 2021 for quarterly reporting on arrangements made available by the promoter.
Taxes covered	Every tax except for customs duty ie. CIT, PIT, VAT, tax on civil law transactions, excise, tax on the extraction of certain minerals, local taxes.
Taxes excluded	Custom duty
Domestic transactions	Yes

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Definitions further clarified by guidance

Relevant taxpayer

Natural person, legal person or organisational unit without legal personality to whom the arrangement is made available or for whom the arrangement is implemented, or who is prepared to implement the arrangement or performed an action related to the implementation of that arrangement.

Associated enterprise

Entity affiliated with another entity through at least one of the ways specified below:

- A natural person, legal person or organisational unit without legal personality participates in the management of another entity by being in a position to exercise a significant influence over the managed entity
- A natural person, legal person or organisational unit without legal personality participates in the control of another entity through a holding that exceeds 25% of the voting rights
- A natural person, legal person or organisational unit without legal personality has a - either direct or indirect - holding in the capital of another entity that exceeds 25% of its capital, with the stipulation that the indirect share shall be determined by multiplying the rates of holding through the successive tiers and that a person holding more than 50% of the voting rights shall be deemed to hold 100% of these rights
- A natural person, legal person or organisational unit without legal personality is entitled to 25% or more of the profits of another entity;

Marketable arrangement

It means a tax scheme that may be implemented by or made available to more than one user without the need to change its key assumptions, in particular those concerning the type of activities taken or planned within the framework of the tax scheme.

Cross-border arrangement

Arrangement concerning more than one Member State of the European Union or a Member State of the European Union and a third country where at least one of the following conditions is met:

- Not all of the participants in the arrangement have a place of residence, registered office or management in the same state
- At least one of the participants in the arrangement has a place of residence, registered office or management in the territory of more than one state
- At least one of the participants in the arrangement conducts business in the territory of a given state through a foreign establishment situated in that state and the arrangement forms part or the whole of the business of that foreign establishment

Cross-border arrangement

- At least one of the participants in the arrangement conducts business in the territory of another state without having a place of residence or registered office situated in the territory of that state and without having a foreign establishment situated in that state
- Such arrangement has a possible impact on the automatic exchange of information referred to in Section III of the Act of 9 March 2017 on the Exchange of Tax Information with Other Countries or on the identification of the beneficial owner within the meaning of the Act of 1 March 2018 on Counteracting Money Laundering and Terrorism Financing.

- except where the arrangement applies only to VAT, excise tax, customs duties imposed in the territory of a Member State of the European Union or except where an arrangement concerns other specific hallmark (hallmarks specific only for Polish regulations).

Intermediary

Please note that definition of intermediary is split in Polish provisions into promoter and supporter which have different information obligation.

Promoter - means a natural person, legal person or organisational unit without legal personality, in particular a tax advisor, an attorney, legal counsel, an employee of a bank or other financial institution advising clients, including when that entity does not have a place of residence, registered office or management in the territory of the country, who offers, makes available or implements the arrangement or manages its implementation.

Supporter - means a natural person, a legal person or an organisational unit without legal personality, in particular a statutory auditor, a notary public, a person who provides bookkeeping services, an accountant or chief financial officer, a bank or another financial institution, and an employee thereof who, while exercising due diligence generally required in transactions made and having regard to the professional nature of activity, the area of its specialisation and the object of its transactions, undertook to provide, directly or by means of other persons, aid, assistance or advice on the development, marketing or organisation of a tax scheme or on making the arrangement available for implementation or supervising its implementation.

Tax advantage**Tax advantage means:**

- Non-occurrence of a tax liability, its postponement in time or a reduction of its value
- Occurrence or overvaluation of a tax loss
- Occurrence of a tax overpayment or the right to a tax refund or an increase in the tax overpayment or refund amount
- The absence of obligation to collect tax by the tax remitter, if this results from the circumstances indicated in point a)
- An increase of the excess amount of input tax over output tax, to be carried over to the next settlement period
- Non-application or postponement in time of the obligation to prepare and submit tax information, including information on tax schemes.

Made available for implementation

It means:

- offering the arrangement to the user, entry into an agreement the subject matter of which is to file information on the arrangement, or the acceptance of remuneration for the provision of information on the arrangement or;
- providing information on the arrangement, in particular by presenting its assumptions, to the user in any form, including by electronic means, by phone or in person.

Hallmark

There is no legal definition of hallmark itself. Hallmark can be understood as characteristic or feature of arrangement. Not every hallmark has to cause tax advantage.

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Additional hallmarks

Additional hallmarks

Additional (other than provided by DAC6) hallmarks are indicated below:

- A promoter or user undertook to keep the manner in which the arrangement allows to achieve a tax advantage confidential from third parties, in particular other users, promoters or tax authorities
- A promoter is entitled to receive remuneration the amount of which is dependent on the amount of tax advantage resulting from the arrangement
- A promoter is entitled to receive remuneration dependent on achieving a tax advantage resulting from the arrangement or undertook to return remuneration or part thereof if a tax advantage does not arise or arises in an amount lower than assumed
- Actions performed as part of the arrangement are based on substantially harmonised records or performed in a substantially harmonised form that do not require significant changes in order for more than one user to implement a scheme
- It involves cross-border payments between affiliated entities that are classified as tax deductible expenses and in the state where the recipient's place of residence, registered office or management is located
- Corporate income tax is not imposed or corporate income tax is collected at a zero rate or a rate lower than 5%, these payments are fully exempt or covered by preferential rules of taxation
- User undertook to cooperate with the promoter who made the arrangement available or pay remuneration or compensation to the promoter, if the arrangement is implemented
- A promoter or user actually observe at least one of the obligations indicated in points b and c

Additional hallmarks continued

- Based on existing circumstances it is necessary to assume that a reasonably acting promoter or user to whom the obligations provided for in the provisions of this Chapter would not apply would like for at least one of the obligations indicated in points a to c to be actually observed
- Assets are transferred as part of the arrangement and remuneration for that transfer specified by both countries for tax purposes differs by more than 25%
- Impact on the deferred part of income tax or assets or provisions for deferred income tax, arising or expected to arise in connection with the arrangement implemented by the user is relevant for a given entity within the meaning of accounting regulations and exceeds the amount of PLN 5,000,000 in a calendar year
- A remitter of income tax would be obliged to collect tax exceeding the amount of PLN 5,000,000 in a calendar year, if the relevant double taxation conventions or tax exemptions would not apply with regard to the payment of amounts due arising or expected to arise in connection with the arrangement
- Income (revenue) of the taxable person referred to in Article 3.2a of the Act of 26 July 1991 on Personal Income Tax or Article 3.2 of the Act of 15 February 1992 on Corporate Income Tax, arising or expected to arise in connection with the arrangement, collectively exceeds the amount of PLN 25,000,000 in a calendar year
- The difference between the Polish income tax that would be due in connection with the arrangement from a user who does not have a registered office, management or place of residence in the territory of the Republic of Poland if they were a taxable person referred to in Article 3.1 of the Act of 26 July 1991 on Personal Income Tax or Article 3.1 of the Act of 15 February 1992 on Corporate Income Tax and the income tax actually due in the state where the user's registered office, management or place of residence is located in connection with the arrangement collectively exceeds the amount of PLN 5,000,000 in a calendar year.

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Operation of legal professional privilege (LPP)

Operation of legal professional privilege (LPP)

Where the reporting of information on a tax scheme other than a marketable tax scheme by the promoter would violate the obligation not to disclose professional secrets protected by law and the promoter was not released from that obligation to that extent by the user, the promoter shall without delay:

- Inform the user in writing, within the statutory deadlines, about the obligation to report the tax scheme and
- Provide the user with the data relating to the tax scheme.

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Reporting deadline

Intermediaries

Due to the pandemic all reporting deadlines were suspended or extended. According to the special COVID-19 legislation, as regards domestic schemes, all deadlines, do not commence, and if already commenced are suspended from 31 March 2020 until cancellation of the epidemic emergency or the state of the coronavirus epidemic. In case of cross-border schemes reporting deadline recommences from 1 January 2021 if the reporting obligation arose by 31 December 2020. For quarterly reporting on arrangements made available by the promoter the reporting deadline has been extended to 30 April 2021.

The promoter provides information on the tax scheme to the Head of the National Tax Administration within 30 days beginning on the next day after the tax scheme is made available, on the next day after the tax scheme is ready for implementation or on the day when the first step in the implementation of the tax scheme has been made - whichever occurs first.

If the supporter is not informed about the TSN of a tax scheme, the advisor shall be obliged to file information on the tax scheme to the Head of the National Tax Administration if the advisor, exercising due diligence generally required in actions taken and having regard to the professional nature of their activity, the area of their specialisation and the object of their actions, becomes aware or should have become aware that the arrangement in regard to which the advisor acts as the advisor constitutes a tax scheme. The supporter is also obliged to file information on the tax scheme within 30 days beginning on the day after they provided, directly or by means of other persons, aid, assistance or advice on the development, marketing, organisation of a tax scheme or on making the tax scheme available for implementation or supervising its implementation.

Users (where LPP applies)

The user who was informed about LPP obligations by supporter, the User shall file information on the tax scheme with the Head of the National Tax Administration also in the situation where the arrangement, in the user's opinion, does not constitute a tax scheme. When filing information on the tax scheme, the user verifies data received from the promoter and modifies it to ensure its compliance with the facts in that information. Information on the tax scheme filed by the user shall also include data received from the promoter.

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Reporting principles for intermediary

Circumstances in which intermediary is obliged to report

The promoter provides information on the tax scheme to the Head of the National Tax Administration within 30 days beginning on the next day after the tax scheme is made available, on the next day after the tax scheme is ready for implementation or on the day when the first step in the implementation of the tax scheme has been made, whichever occurs first.

If the supporter is not informed about the TSN of a tax scheme, the advisor shall be obliged to file information on the tax scheme to the Head of the National Tax Administration if the advisor, exercising due diligence generally required in actions taken and having regard to the professional nature of their activity, the area of their specialisation and the object of their actions, becomes aware or should have become aware that the arrangement in regard to which the advisor acts as the advisor constitutes a tax scheme.

The advisor is also obliged to file information on the tax scheme within 30 days beginning on the day after they provided, directly or by means of other persons, aid, assistance or advice on the development, marketing, organisation of a tax scheme or on making the tax scheme available for implementation or supervising its implementation.

Obligation to inform user what data was communicated

Yes

Priority of reporting where multi member state reporting obligations exist

If obligation to file information on a cross-border tax scheme arises in more than one Member State of the European Union on the basis of the provisions implementing the requirements arising from the provision of Article 8ab of the Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ L 64, 11.03.2011, p. 1, as amended 10) in force in that state, the obligation is enforceable only in the Member State of the European Union featured higher on the list below:

- The state where the promoter's place of residence, registered office or management is situated
- The state where services related to the tax scheme are supplied by the promoter through a foreign establishment
- The state where the promoter is established or whose laws they are governed by
- The state where the promoter is a member of a professional association or another non-governmental organisation whose registered office or management is situated in the territory of that state, representing persons or entities providing legal, tax consultancy or advisory services.

Circumstances under which intermediary not required to report

There are two circumstances under which intermediary is not required to report. The first one concerns cases in which there is more than one entity is obliged to file information on the tax scheme. The performance of this obligation by one of them releases the others who were identified in the information on the tax scheme and informed in writing about the TSN of that tax scheme, with the TSN assignment confirmation enclosed.

The second one concerns cases where the LPP applies to non standardised tax scheme. I.e. where the reporting of information on a tax scheme other than a marketable tax scheme by the promoter would violate the obligation not to disclose professional secrets protected by law and the promoter was not released from that obligation to that extent by the user, the promoter shall without delay:

- Inform the user in writing, within statutory deadlines, about the obligation to report the tax scheme to the Head of the National Tax Administration and;
- Provide the user with the data relating to the tax scheme.

What will the tax authorities provide for the notification received

Tax Scheme Number (TSN)

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Reporting principles for taxpayer

Circumstances in which taxpayer is obliged to report

Due to pandemic all reporting deadlines is suspended or extended. According to the special COVID-19 legislation, as regards domestic schemes, all deadlines, do not commence, and if already commenced are suspended from March 31, 2020 until cancellation of the epidemic emergency or the state of the coronavirus epidemic. In case of cross-border schemes the reporting deadline was extended to April 30, 2021, if the user performed activities that are part of the cross-border tax scheme / obtained the tax benefit by December 31, 2020.

If the user was not provided with TSN or with information covering data submitted by promoter, the user shall file information on the tax scheme with the Head of the National Tax Administration within 30 days beginning on the next day after the tax scheme is made available to the user, on the next day after the tax scheme is ready for implementation or on the day when the first step in the implementation of the tax scheme has been made by the user, whichever occurs first.

Priority of reporting where multiple taxpayers are involved

If the user is obliged to file information on a cross-border tax scheme in more than one Member State of the European Union on the basis of the provisions implementing the requirements arising from the provision of Article 8ab of the Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC in force in that state, the obligation is enforceable only in the Member State of the European Union featured higher on the list below:

- The state where the user's place of residence, registered office or management is situated
- The state where the user uses the tax scheme through a foreign establishment
- The state where the user earns income or profits, despite the fact that the user does not have a place of residence, registered office, management or foreign establishment in any Member State of the European Union
- The state where the user carries out business activity, despite the fact that the user does not have a place of residence, registered office, management or foreign establishment in any Member State of the European Union.

Circumstances under which taxpayer not required to report

In case of both cross-border and domestic tax schemes when taxpayers is provided with TSN or with data covering information submitted by promoter.

In case of domestic tax schemes when taxpayer is not required to report if eligible user criteria is not met.

The eligible user test shall be deemed satisfied if revenue or expenses of the user or the value of the entity's assets within the meaning of accounting regulations, determined based on kept accounting books, exceeded the equivalent of EUR 10,000,000 in the previous or current financial year or if the arrangement being made available or implemented concerns goods or rights the market value of which exceeds the equivalent of EUR 2,500,000 or if the user is an entity affiliated with that entity.

For entities that do not keep accounting books, revenue and expenses shall be determined accordingly pursuant to the Act of 26 July 1991 on Personal Income Tax or the Act of 15 February 1992 on Corporate Income Tax in the relevant tax years and the value of assets shall be determined according to their market value in the relevant tax years.

Proof that reporting obligation is satisfied by other taxpayer

TSN or information that tax scheme has been reported covering reported data if the TSN has not been issued by statutory deadline to report tax scheme.

8 Reporting principles applicable to all

Language

Polish

9 Penalties

Circumstances in which penalties may apply

Criminal penalties may be applied when one:

- Fails to provide the competent authority with information on the tax scheme or provides information after the deadline
- Fails to provide the competent authority with data on entities to whom the standardised tax scheme has been made available, or transfers them after the deadline
- Fails to inform in writing the entity obliged to provide the tax scheme of this obligation or does it after the deadline.

Criminal penalties may be applied when one:

- Fails to inform entities obliged to provide information on the tax scheme in writing that they will not provide information on the tax scheme or do so after the deadline
- Does not apply to the entity ordering the activities with a separate letter to provide him with a written statement that the reconciliation is not a tax scheme, or does so after the deadline.

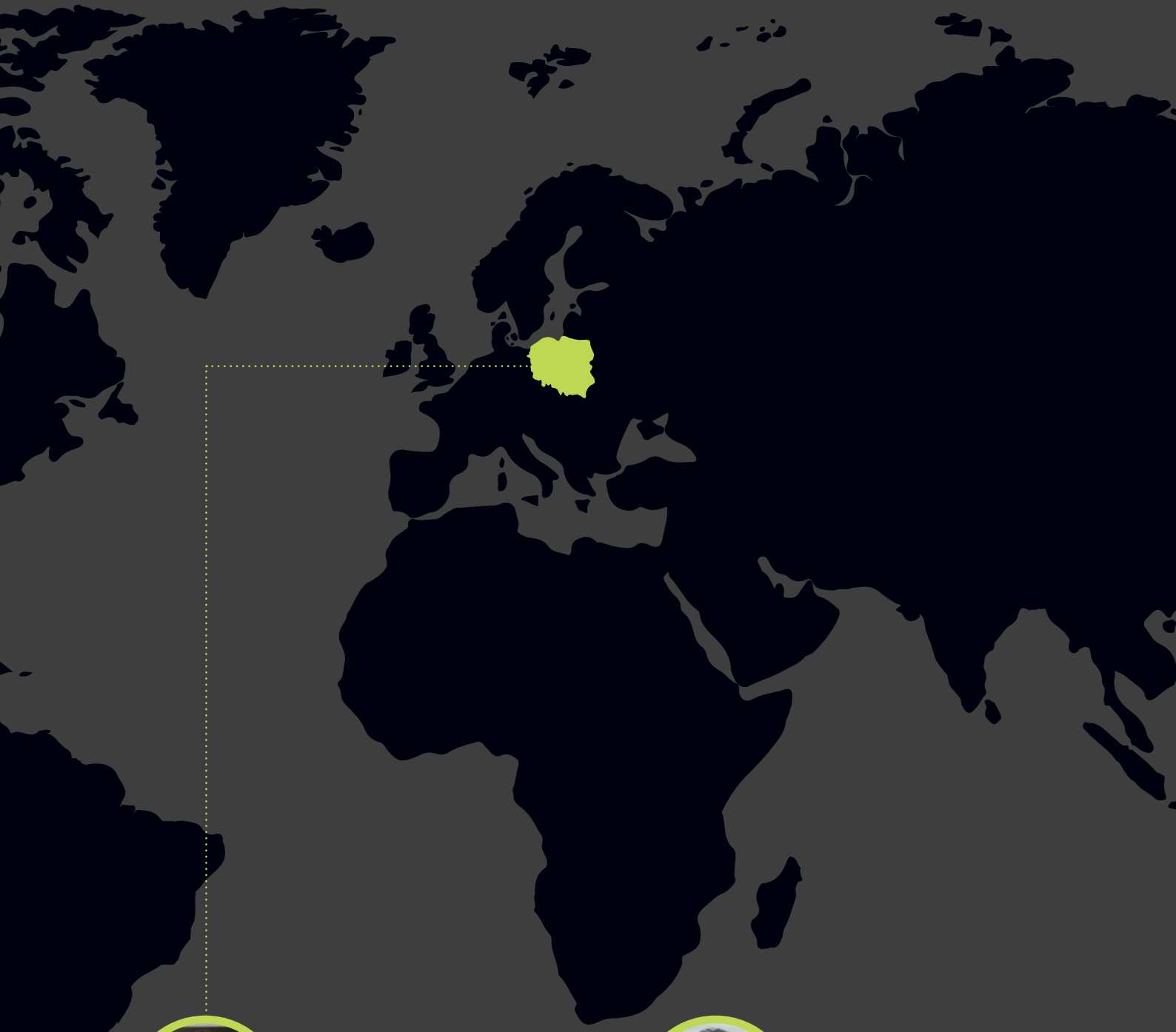
Amount

Up to PLN 25m (Eur 5.5m).

10 Country specifics

Country specifics / deviation from EU directive

Polish provisions cover obligation to report domestic tax schemes, provide more hallmarks than EU directive and cover other taxes ie VAT.



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