

Extended deadline for ORD-U reporting for 2022

In 2023, entities from capital groups are once again, pursuant to Art. 82 of the Tax Ordinance Act, obliged to provide information on contracts concluded with non-residents within the meaning of the foreign exchange law, i.e. **to submit the ORD-U form**.

A few days ago, a decree of the Minister of Finance of February 16, 2023 amending the decree on tax information was published, according to which the deadline for reporting for 2022 to the Head of the National Tax Administration (KAS) was extended from three to eleven months from the end of the given tax year.

The amendment of the decree unified the deadline for submitting the ORD-U with the deadline for submitting information on transfer prices (TPR form), i.e. in both cases, it will be the end of the 11th month after the end of the tax year.

The extended deadline applies to the ORD-U information submitted for the tax year beginning after December 31, 2021.

For most taxpayers (i.e. those whose tax year ended on December 31, 2022), the deadline for submitting the ORD-U form for 2022 **is November 30, 2023**.

It should be noted that not all taxpayers are obliged to ORD-U reporting.

The most important issues with regard the ORD-U reporting for 2022 are presented below.

EXEMPTION FROM ORD-U REPORTING OBLIGATION

According to the regulations, taxpayers obliged to prepare the information on transfer pricing (TPR) pursuant to art. 11t section 1 of the CIT Act are not obliged to submit the ORD-U form.

However, **this exemption does not apply** to the entities concluding the transactions with entities having their place of residence, seat or management in the territory of a tax haven or with a foreign permanent establishment located in the territory of a tax haven, if the value of this transaction for the tax year exceeds:

- PLN 2,500,000 – in case of a financial transaction,
- PLN 500,000 – in case of a transaction other than a financial transaction.

Therefore, it should be remembered that in order to benefit from the exemption from ORD-U reporting, **it is necessary to confirm that the above mentioned tax haven transactions have not been concluded in 2022**.

If such transactions are identified, **the obligation to submit the TPR form as well as the ORD-U form** will arise for all transactions for which the reporting obligation has arisen (and thus not only those with tax havens).

DEADLINE FOR SUBMISSION OF THE ORD-U FORM

The deadline for submitting information on contracts concluded with non-residents is **11 months from the end of the tax year** for which the information is submitted.

In practice, this means that for most taxpayers (those whose tax year corresponds with the calendar year) **the deadline for reporting the ORD-U form for 2022 expires on November 30, 2023.**

REPORTING OBLIGATION AND SCOPE OF REPORTING

The obligation to submit the ORD-U form in relation to contracts concluded with non-residents applies to situations where:

- one of the parties to this agreement, directly or indirectly, participates in the management or control of the other party to the agreement or holds at least 5% of its capital, or
- another entity, not being a party to the agreement, at the same time participates, directly or indirectly, in the management or control of entities being parties to the agreement or holds at least 5% of shares in the capital of such entities, or
- a non-resident who is a party to the agreement has an enterprise, branch representative office in the territory of the Republic of Poland.

The form should include contracts concluded in a given tax year, as well as transactions carried out in a given year on the basis of contracts concluded in earlier years, which exceed the following materiality thresholds:

- the sum of receivables or liabilities resulting from contracts concluded with the same non-resident is EUR 300,000 – in the first two cases indicated above, or
- the one-off value of receivables or liabilities is EUR 5,000 – in the third case indicated above.

PENALTIES FOR FAILURE TO FILE THE ORD-U FORM

Failure to comply with the obligation to submit the ORD-U may involve **the risk of penal and fiscal liability.**

According to art. 80 of the Fiscal Penal Code: failure to submit the required information to the competent authority on time shall be subject to **a fine of up to 120 daily rates**, and if the information is incorrect, **up to 240 daily rates**. In case of minor prohibited act, offender shall be liable to **a fine for fiscal offence (§ 4).**



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CONTACT US



Joanna Kubińska
Associate Partner
Head of Transfer Pricing
joanna.kubinska
@tpa-group.pl



Magdalena Goławska
Manager
Transfer Pricing
magdalena.golawska
@tpa-group.pl

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