

DAC6 (MDR) legislation is unconstitutional as regards the duties of tax advisers

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The Constitutional Tribunal ruled that the provisions regulating the reporting of tax arrangements (MDR) are contrary to the Polish Constitution to the extent that they interfere with the scope of professional secrecy of tax advisers.

What follows from the Constitutional Tribunal judgment?

The Constitutional Tribunal (CT) indicated that the professional secrecy of a tax advisor is subject to constitutional protection regardless of the client's will, so that even the client itself cannot release its advisor from preserving this secrecy.

The duty of keeping professional secrecy also prevents tax advisers from providing the tax administration with information that does not explicitly identify their client (e.g. concerning the "standardised tax arrangements").

What does this judgment mean for the taxpayers?

However, the CT judgment does not result in the complete exclusion of the obligation to report tax arrangements. Instead of the tax advisor acting as the promoter (promoting intermediary), **this obligation should be carried out by the taxpayer (client)**, or possibly by a supporter (supporting intermediary).

For this reason, a taxpayer can expect the tax adviser to assist in identifying tax arrangements and to provide comprehensive information on the identified tax arrangements or to prepare the relevant MDR reports for submission by the taxpayer.

Following the CT judgment, the cooperation of taxpayers with their tax advisers in the proper fulfilment of their obligations under the MDR regulation should become even more important than before.

When will the Constitutional Tribunal's judgment take effect?

The judgment of the Constitutional Tribunal of 23 July 2024 (case no. 13/20) was issued almost 5 years after the application by the Tax Advisors Chamber was submitted. The judgments of the Constitutional Tribunal are applied after their publication in the Journal of Laws of the Republic of Poland. From March 2024 onwards, judgments of the Constitutional Tribunal are temporarily not published in the Journal of Laws. The question of the obligation to apply such unpublished judgments is currently the subject of controversy of a legal-system and constitutional nature.

If you have any questions in relation to the aforesaid judgment or require support in MDR matters, please do not hesitate to contact:

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