

# Newsletter

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### TAX:

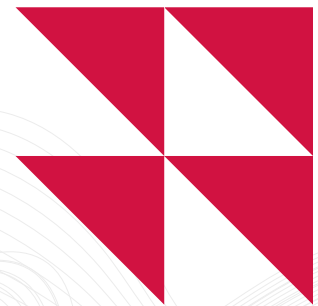
- **TRANSFER PRICING - Difficulties in Interpretation and Tax Disputes: Transfer Pricing Regulations on Tax Grounds**

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# Difficulties in Interpretation and Tax Disputes: Transfer Pricing Regulations on Tax Grounds

Under the tax provisions, related parties are required to comply with a number of obligations to ensure that they set 'arm's length' prices in transactions between them, i.e. prices that would be acceptable in a comparable transaction between unrelated parties.

When determining the market value of intangible goods or services in transactions between related parties, the tax authorities and tax inspection authorities prioritise whether independent, rational parties would have entered into such a transaction on the terms and conditions that the related parties have agreed.

The transfer pricing documentation aims to describe the transaction in detail, presents how the price was determined and indicates the factors that the parties took into account when determining the price. The main purpose of this documentation is to convince the tax authorities that the actual relationships between the entities did not influence the price determination process or the final price. This is an important element in the context of avoiding disputes with the tax authorities.

## Local Transfer Pricing Documentation Regulations - documentation thresholds

A Local File is required for a controlled transaction of a homogeneous nature, where the value exceeds the following thresholds in a given tax year:

- PLN 10,000,000 – for financial transactions;
- PLN 10,000,000 – for commodity transactions;
- PLN 2,000,000 – for services and other transactions.

Additionally, for transactions with a tax haven resident or a foreign permanent establishment located in a tax haven, the thresholds above which a Local File is required are:

- PLN 2,500,000 - for financial transactions; and
- PLN 500,000 – for other transactions.

Related parties required to prepare a Local File or Master File must submit this documentation within 14 days of receiving a request from the tax authorities. The new legislation introduces clarity and precision in the documentation requirements, aimed at increasing the transparency and efficiency of the tax audit process.

## New Guidelines of the Tax Authorities: Tightened Control Measures and Consequences for Taxpayers

The tax authorities recently introduced new procedures to monitor transactions more effectively and to increase transparency in tax documentation. Under the latest regulations, the tax authorities have gained the power to require taxpayers to prepare and submit tax documentation even where the value of a transaction does not exceed the thresholds requiring the preparation of documentation.

In situations where there are reasonable doubts as to the reliability of the submitted transaction values, the tax authorities may request the submission of tax documentation.

It is worth noting that taxpayers in the micro-enterprise category (with fewer than 10 employees and a turnover or total assets less than EUR 2 million) are exempt from such requests, but other companies are obliged to prepare and provide tax documentation within 30 days of receiving such a request.

A novelty is the introduction of a penalty if the tax authority decides that transfer pricing income was understated. In such situations, the tax authority determines additional tax liability amounting to 10% of the sum of the undeclared or overstated tax loss and the unreported income. This may be doubled if the basis for determining the additional liability exceeds PLN 15,000,000.

Importantly: a failure to present the tax documentation to the tax authority may result in the sanction being trebled, meaning a rate of as much as 30% on the overestimated income. Nonetheless, it is possible to avoid this sanction by completing the documentation in full within an additional period indicated by the tax authority, no longer than 14 days. Therefore, it is worth being cautious and taking care of the completeness of the tax documentation to avoid possible consequences.



 Your contact:

Agata Wlekińska  
tax advisor  
[agata.wlekinska@ecovis.pl](mailto:agata.wlekinska@ecovis.pl)

# ESG: A New Standard for Companies in an Age of Sustainability

The concept of ESG has become increasingly important for the operation of companies, with investors and consumers having high expectations. But what's behind the acronym and why should your company pay attention to it? Here are some answers to these questions and more, in a context where social and corporate awareness is growing in areas related to climate change, food crisis, water scarcity, conflicts and social inequality.

ESG stands for **Environmental, Social, and Governance**. It is a key standard that helps assess an organisation's business practices in terms of sustainability and ethics. It also includes measuring the risks and opportunities of corporations in the areas in which they operate.

Society has become increasingly attentive to the actions of companies in terms of their environmental and social impact. Consumers want to know that companies care about the problems our planet is facing and are implementing solutions that minimise the negative impacts of their activities.

ESG-based sustainability means that business strategies take into account not only financial aspects, but also their environmental impact and social and corporate governance. Companies that adhere to these standards provide information, indicators and data in the ESG report that illustrates their impact in three key areas and identify the added value in their operations.

*In the context of current public awareness, the concept of ESG has become increasingly common. However, it is worth noting that it is not just an acronym, but also a set of three key categories that are relevant in the context of assessing corporate actions. It is not only a business trend, but also part of the wider sustainability movement and emphasises the balance between economic, social and environmental aspects.*

It is also worth referring here to the Sustainable Development Goals (SDGs) – also known as the Global Goals – adopted by the United Nations. These goals, which include the promotion of stable, sustainable economic growth, fit into the concept of ESG, creating a coherent picture of how companies should shape their strategies in an era of sustainable development.

Therefore, it is worth considering how your company can align with these standards to not only survive, but thrive in the future.

## The EU Regulates Sustainability: New Standards for Companies in ESG Reporting

The European Union continues to take steps towards sustainability by introducing regulations that have a significant impact on companies. One of the key documents governing corporate sustainability reporting is Directive (EU) 2022/2464 of the European Parliament and

of the Council of 14 December 2022, amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU. Also known as the "CSRD", this directive became effective on 5 January 2023:

### "E" – Environment

- Climate change mitigation, covering scopes 1, 2 and, where applicable, scope 3 of greenhouse gas emissions;
- Climate change adaptation;
- Management of water and marine resources;
- Use of resources and the circular economy;
- Pollution control;
- Conservation of biodiversity and the ecosystem.

### "S" – Social

- Equal treatment and equal opportunities for all, including gender equality, equal pay, training and skills development;
- Working conditions, job security, fair wages, social dialogue, freedom of association, existence of works councils and collective bargaining;
- Respect for human rights, fundamental freedoms and democratic norms.

### "G" – Governance

- The role of the entity's administrative, management and supervisory bodies in relation to sustainability;
- Internal control and risk management systems in relation to sustainability reporting;
- Business ethics and corporate culture, including anti-corruption, whistleblower protection and animal welfare;
- The entity's activities and commitments related to political influence, including lobbying;
- Management and quality of relationships with customers, suppliers and communities.

These three main areas are universal for companies, regardless of their size, location or type of business. The introduction of such standards makes sustainability an integral part of the business strategies of all economic players.

The CSRD sends a clear signal that the European Union attaches importance to sustainability and expects companies to be more socially and environmentally responsible and oriented.





### ESG in Business: Key to Success and Sustainability

So why should ESG be a priority for businesses? ESG, or Environmental, Social, and Governance, is a three-tiered model of sustainability that has a number of benefits for businesses. Why is it worth taking a closer look at this approach?

**Firstly**, ESG is not just another shorthand fad. It is an opportunity to convince employees, creating a comfortable working environment for them, which in turn can have a significant impact on their motivation and commitment. Employees, seeing the company make a commitment to environmental, social and governance issues, will be more loyal and motivated to achieve common goals.


**Secondly**, the ESG approach is an opportunity to build a solid foundation of trust in the corporate environment. Companies that integrate these values into their operations become an attractive target for new investors. Trust opens the door to new investment opportunities, enabling dynamic corporate growth.

Importantly, ESG facilitates business relationships, especially in the international market. Shared values with business partners translate into more effective collaboration, eliminating barriers and building lasting relationships. It is worth noting that in the global marketplace, sustainability aspects are increasingly taken into account when making business decisions.

The impact of ESG on a company's image is also not insignificant. In the eyes of potential customers, especially environmentally and socially conscious ones, a company that implements ESG standards becomes more attractive. Your branding gains strength and your company becomes perceived as reliable and credible.

In the long term, an ESG approach translates into gaining a high competitive advantage in the market. Companies that actively integrate these values are better prepared for social and environmental change, which becomes an important asset in a dynamically evolving business world. Therefore, it is worth looking at ESG not only as a standard, but above all as an opportunity for the sustainable success of your company.



 Your contact:

Agnieszka Słowikowska  
attorney at law  
[agnieszka.slowikowska@ecovis.pl](mailto:agnieszka.slowikowska@ecovis.pl)



# Compensation for recovery costs: Creditor Support Tools

In recent years, an increasing number of businesses have been considering effective ways of recovering debt collection costs. The Polish legislator has addressed this issue in the Act on Combating Excessive Delays in Commercial Transactions (the "Act on Payment Delays") to combat unfair practices of counterparties.

The Act on Payment Delays, which applies to business-to-business relations, brings a number of solutions aimed at shortening payment deadlines, introduces new types of interest and a fixed sum for the cost of recovering a late commercial payment.

## Creditor Support Tools

One of the key elements of the Act on Payment Delays is the shortened payment periods, which is intended to strongly encourage debtors to pay their financial obligations on time. The new type of interest represents a further step towards payment regularisation, providing creditors with an effective tool to motivate debtors to pay their debts on time.

## Fixed-sum Reimbursement Amount

The Act on Payment Delays also provides for creditors to be granted a fixed sum to cover the costs of debt recovery. This arrangement is intended to compensate the actual expenses incurred by creditors in the process of debt recovery, which in turn stimulates fairness in commercial relations.

It is worth remembering, however, that the Act on Payment Delays does not apply to commercial transactions in which one of the parties is an individual not engaged in business activity. This means that it mainly covers relations between businesses, eliminating the need to apply them in the context of transactions with individual consumers.

## Creditors can claim a fixed sum under the Act on Payment Delays, which brings fairness in debt recovery

In light of the Act on Payment Delays, creditors may take advantage of a fixed sum to recover reasonable debt collection costs. This entitlement is based on the value of the benefit and makes compensation more just.

Under the Act on Payment Delays, a creditor is entitled to claim a fixed sum depending on the value of the monetary claim. Here are the key points:

1. When the value of a monetary claim does not exceed PLN 5,000, the creditor is entitled to EUR 40;
2. When the value of a monetary claim is more than PLN 5,000, but less than PLN 50,000, the creditor is entitled to EUR 70;
3. When the value of a monetary claim is PLN 50,000 or more, the creditor is entitled to EUR 100.

The introduction of these fixed amounts is intended to compensate for the creditor's own recovery costs. However, in order to benefit from this entitlement, the creditor must meet two key conditions:

1. The creditor has fulfilled its non-monetary obligation; and
2. The debtor has failed to make payment within the period specified in the contract.

Importantly, this entitlement does not require any additional formalities. A creditor does not have to demonstrate the costs incurred in recovering the debt, nor does it have to prove that it has taken any particular action to recover the debt. This approach introduces an element of simplicity and fairness in the process of compensating creditors, while at the same time encouraging debtors to settle their debts on time.

## The Act on Payment Delays enables creditors to claim the recovery of costs: financial protection for creditors

With the introduction of the Act on Payment Delays, creditors have gained an additional tool in the form of being able to seek the reimbursement of costs that exceed the fixed sums. The legislation is designed to provide fuller financial protection for creditors who are anxious to recover their debts efficiently.


Unlike the fixed sum, the amount of which is determined according to clear criteria, any costs exceeding this amount must meet additional conditions. They must be appropriate, justified and reasonable. Importantly, they must also be documented. The range of reimbursable expenses incurred is wide, including debt collection costs, legal aid fees and expenses related to the use of collection agencies.

An important criterion for costs above the fixed sum is their reasonableness. It is useful to base the amount of these costs on the prevailing market rates for such services. This approach allows for fairness and transparency in the cost recovery process.

The Act on Payment Delays is now a key tool to protect the interests of creditors. It gives them the opportunity to be compensated for expenses incurred in the recovery of their debts, which is an important step towards a sustainable business relationship.

The Act on Payment Delays is designed not only to protect the rights of creditors, but also to promote fairness in commercial transactions. Tools such as shortened payment periods, new interest rates, a lump sum reimbursement amount and the reimbursement of other reasonable costs are a step towards building a solid foundation for a healthy business environment. Businesses should read the legal provisions carefully and, if in doubt, seek the assistance of an attorney specialising in commercial transactions.



 Your contact:

Michał Sobolewski  
attorney at law  
[michal.sobolewski@ecovis.pl](mailto:michal.sobolewski@ecovis.pl)

## Whistlelink's Whistleblowing System: Ensuring confidential and anonymous reporting for uncovering misconduct

**Whistleblowing plays a crucial role in promoting transparency and accountability within organisations. It enables individuals to report unethical or illegal practices without fear of retaliation.**

Whistlelink, as a leading provider of whistleblowing solutions, recognizes the importance of both anonymous and confidential reporting. Here, we will explain the benefits of each approach and how Whistlelink's innovative system caters to both, making it easy for individuals to report misconduct.

### Anonymous Reporting:

Anonymous reporting allows whistleblowers to provide information about wrongdoing without revealing their identity. This approach offers the highest level of protection, ensuring the safety of the whistleblower and minimizing the risk of retaliation. Whistlelink's whistleblowing system now includes a standard element in the report form, allowing individuals to choose anonymous reporting, if the organisation has enabled it. By selecting this option, whistleblowers can confidently report misconduct, knowing that their identity will remain undisclosed.

Enabling anonymous reporting will result in enhanced safety: Whistlelink's system ensures complete anonymity for whistleblowers, protecting them from potential harm or reprisals. The number of incoming reports might increase: Anonymity encourages more individuals to come forward and report unethical or illegal practices, leading to a higher detection rate of misconduct. Anonymous reporting also promotes transparency: It can shed light on wrongdoings that may otherwise remain hidden, promoting greater accountability within the organisation.

The downsides of anonymous reporting are that investigation might be more difficult: Investigating anonymous reports can be challenging, as authorities may face hurdles in verifying the accuracy of the information provided. Furthermore, without the ability to verify the identity of the whistleblower, there is a possibility of false or misleading accusations. This makes it even more important to thoroughly evaluate the information provided.

### Confidential Reporting:

Confidential reporting allows whistleblowers to disclose their identity to a designated person or unit while ensuring that their information remains confidential within that group. Whistlelink's whistleblowing system includes the option for confidential reporting, enabling individuals to report misconduct while maintaining a higher level of control over their personal information.

Choosing to enable confidential reporting might speed up investigations: With access to the whistleblower's identity, designated persons or units can swiftly initiate investigations and gather more specific information if required. It will also facilitate prosecution if the reported wrongdoing is determined to be a criminal offence.

However, the risk of retaliation is higher with confidential reporting. Despite protection measures, named whistleblowers still face a higher risk of potential retaliation from the organisation or individuals involved in the wrongdoing. As the whistleblower's identity is known to the designated person or department, there may also be a potential conflict of interests, compromising the integrity of the investigation.


### Whistlelink's Whistleblowing System:

Whistlelink understands the importance of offering both anonymous and confidential reporting options to individuals. Our all-in-one whistleblowing system provides a user-friendly interface that allows organisations and whistleblowers to choose their preferred reporting method. With the inclusion of a standard element in the report form, reporting persons can easily indicate whether they wish to remain anonymous or provide their name and contact details for confidential reporting.

Furthermore, Whistlelink has introduced Voice Messages, allowing whistleblowers to record oral reports. This feature provides an alternative to written reporting, catering to those who may be uncomfortable or unable to express their concerns in writing. The Voice Scramble feature ensures complete anonymity for whistleblowers, distorting their voice in the recorded message.

Whistlelink's whistleblowing system paves the way for anonymous and confidential reporting, empowering individuals to report misconduct with the utmost confidence in their safety and protection. Whistlelink will continue to support organisations in complying with whistleblowing laws while fostering a culture of transparency, accountability, and ethical conduct.



 Your contact:

Urszula Bryś  
Territory Manager - CEE  
[urszula.brys@whistlelink.com](mailto:urszula.brys@whistlelink.com)

 whistlelink

# DO YOU HAVE ANY QUESTIONS?

WE LOOK FORWARD TO RECEIVING A CALL  
OR A MESSAGE FROM YOU

ECOVIS LEGAL POLAND  
MULTAN, PRUŚ AND PARTNERS LAW & TAX FIRM  
9A/5 BELWEDERSKA STREET  
00-761 WARSAW  
+ 48 22 400 45 85

email: [warsaw-law@ecovis.pl](mailto:warsaw-law@ecovis.pl)



[www.ecovislegal.pl](http://www.ecovislegal.pl)  
[www.ecovis.com](http://www.ecovis.com)