

Asset declarations

<https://oswiadczeniamajatkowe.cba.gov.pl/ome/legal-status-of-asset-declarat/subject-scope/1155,Subject-scope.html>
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Subject scope

The scope of information needed for inclusion in asset declarations is derived from the provisions of legislative acts applying to individual professional groups. The following is a summary of the information necessary to include in asset declarations submitted by persons performing a specified public function.

It should be noted that one of the largest affected groups are those required to submit asset declarations in accordance with Article 10 of the Anti-Corruption Act. Persons submitting asset declarations pursuant to this provision must include details of their monetary resources, real estate, shares and shares in commercial companies, as well as property acquired by themselves or their spouse from the State Treasury, other legal entities of the State, local government units, their associations or metropolitan association, subject to sale by tender. The declaration should also include information on business activities and performing functions in commercial companies or cooperatives, with the exception of housing cooperatives. Interestingly, the model asset declaration form submitted under this provision also provides for information on movable property worth over PLN 10,000, monetary liabilities worth over PLN 10,000 and other additional data on assets. Therefore, persons submitting a declaration pursuant to Art. 10 of the Anti-Corruption Act are required to disclose information that does not result directly from a statutory provision, but only from an implementing act.

Such information must be included also by persons submitting declarations about their financial status pursuant to the provisions of Art. 338 of the Act on the Defense of the Homeland. Pursuant to this provision, professional soldiers are not required to disclose in the declaration information on the purchase of property from a metropolitan association that was subject to sale by tender. Another interesting fact is that - in accordance with the Act- the information contained in the declaration on holding functions in commercial companies or cooperatives (except for functions on the supervisory board of a housing cooperative) do not apply to the person submitting the declaration of assets, but only to the spouse of a professional soldier. Persons submitting declarations of assets under this provision are required to use a form consistent with the provisions of the Anti-Corruption Act, which, in turn, contains space for disclosing information on the purchase of property from a metropolitan

association that was subject to sale by tender, as well as on the holding of functions in commercial companies or cooperatives by the person submitting the declaration. Additionally, the current asset declaration form requires professional soldiers also to provide information about their movable property (chattels) worth more than PLN 10,000, monetary liabilities worth more than PLN 10,000 and other additional data on their assets.

The information subject to disclosure in the asset declaration submitted pursuant to Art. 35 of the Act on the exercise of the mandate of a deputy and senator and art. 3a of the Act on the remuneration of Members of the European Parliament elected in the Republic of Poland requires persons submitting a declaration to include information about:

- monetary resources, real estate, participation in civil partnerships or commercial partnerships, shares and shares in commercial companies, property acquired from the State Treasury, another legal entities of the State, local government units, their associations or a municipal legal person, property that was subject to sale by way of tender, as well as about the business activity and positions held in commercial companies;
- income obtained from employment or other gainful activity or activities, specifying the amounts obtained from each title;
- movable property (e.g. chattels) worth more than PLN 10,000;
- monetary liabilities greater than PLN 10,000, including credits and loans taken out and the conditions on which they were granted.

Information similar to that of MPs and senators must be included by persons submitting asset declarations pursuant to local government acts - specified in: Art. 24h of the Act on municipal self-government, art. 25c of the Act on district self-government, Art. 27c of the Act on provincial self-government and Art. 24 of the Act on local government employees. The only differences between these declarations result from the first point, namely, persons submitting declarations pursuant to local government acts are not required to include information on participation in civil partnerships or partnerships, and, in addition to the other information provided in this point, they are required to provide information on the purchase of property from a metropolitan association acquired through sale by tender. The remaining points quoted above apply in their entirety. The similarity can also be seen in the information subject to disclosure in asset declarations submitted pursuant to Art. 41a of the Act on the organisation and operation of pension funds. The differences include: value and currency in which movable assets and liabilities must be disclosed. Pursuant to this provision, the declaration should include information about:

- possession of financial resources, real estate; participation in civil partnerships or partnerships, shares and shares in commercial companies, as

well as data regarding the business activity conducted and the performance of functions in commercial companies;

- income obtained from employment and other gainful activity or activities, specifying the amounts obtained from each;
- movable property with a unit value equivalent in PLN to more than EUR 3,000;
- monetary liabilities with a value equivalent in PLN to over EUR 3,000, including credits and loans taken out and the conditions on which they were granted.

Another list of information subject to disclosure is specified in: Art. 104 of the Law on the Public Prosecutor's Office, Art. 87 of the Act on the Organisation of Common Courts and Art. 28 of the Law on the System of Military Courts. This list indicates that professional groups to which the provisions apply are required to include in their declaration of assets information about:

- financial resources,
- owned real estate and legal titles to their possession,
- owned movable assets with a unit value exceeding PLN 10,000,
- shares and stocks held in commercial law companies,
- held financial instruments within the meaning of the Act of 29 July 2005 on trading in financial instruments (Journal of Laws of 2024, item 722, as amended) other than those indicated in point 4,
- income subject to personal income tax, received in the year before the date on which the declaration is submitted, provided that its total value exceeds PLN 10,000, together with its source(s), excluding income obtained in connection with holding an office or position requiring a separate declaration,
- property acquired by the person submitting the declaration or his/her spouse from the State Treasury, another state legal person, local government units, their associations or a local government legal person, which was subject to sale by tender,
- debts owing and monetary liabilities worth more than PLN 10,000.

There is also little difference in the scope of information subject to disclosure in asset declarations submitted by officers pursuant to: Art. 62 of the Police Act, Art. 137 of the Act on the State Protection Service, art. 91a of the Act on the Border Guard, Art. 200 of the Act on the National Tax Administration and firefighters pursuant to Art. 57a of the Act on the State Fire Service. The declarations they submit should include information on the sources and amounts of income obtained, financial resources, real estate, securities and shares in commercial companies, as well as information on

assets acquired by the subject or his/her spouse from the State Treasury, another legal entity of the State, a municipality, an inter-municipal association, a district authority, association of districts, district-municipal association or metropolitan association that had been subject to sale by tender.

The declarations of assets should also include information on business activities and on positions held in commercial companies or cooperatives, with the exception of functions on the supervisory board of a housing cooperative. Additionally, officers of the Border Guard, National Tax Administration and firefighters are required to include in their declarations information about participation in civil partnerships or commercial companies, their movable property assets, other property rights and monetary liabilities. However, officers of the National Tax Administration are not required to include information on their business activities or performing functions in commercial companies or cooperatives. It should be strongly emphasized that neither the provisions of the Act nor the templates of asset declaration forms submitted by police officers and state security services require these groups to disclose information about their movable property and monetary liabilities. The absence of this information significantly blurs and effectively makes it impossible to determine the actual financial situation of persons submitting asset declarations according to these templates. There is no doubt that this is unacceptable and requires legislative change.

An oddity is the declaration of assets submitted pursuant to Art. 161 section 2 of the Act on the Prison Service. According to its content, an officer submitting a declaration of his/her assets provides information on obtaining income and purchasing property from the State Treasury, another legal State entity, a local government unit, their associations or another legal person of a local government unit that was subject to sale by tender, during the last 12 months before the date of submitting the declaration. However, paragraph 4 of this article indicates, among others, that the form specified in the regulations for use in this context is as specified in Art. 11 of the Anti-Corruption Act. We can therefore see that the scope of information solicited in the form applicable to an officer is much broader than the scope of information resulting directly from the provisions of the Act. This is not the only such case.

Another professional group that has a strictly defined scope of information to be disclosed in the asset declaration, strictly defined in the Act, are bailiffs. They are required to submit declarations pursuant to Art. 32 sections 1 and 4 of the Act on Court Bailiffs. This provision clearly indicates that the declaration should include, in particular, information on financial resources held, real estate owned and legal titles to their possession, movable property with a unit value exceeding PLN 10,000, shares and stock in commercial companies, financial instruments within the meaning of the Act on July 29, 2005 on trading in financial instruments (Journal of Laws of 2024, item 722, as amended), income subject to personal income tax, obtained in the period of one year before the date on which the declaration is submitted, if the total value exceeds PLN 10,000, and their sources, and also income acquired by this person or

his/her spouse from the State Treasury or other State legal entity, local government units, their associations or local government legal person, property that was subject to sale by tender, as well as recoverable debts and monetary liabilities above PLN 10,000. In the case of this professional group, the asset declaration form was specified by regulation of the Minister of Justice and, importantly, the statutory provision does not differ significantly from the information required to be disclosed under the implementing act.

Therefore, it is clearly visible that the scope of information subject to disclosure in asset declarations submitted by individual groups of persons holding public offices essentially refers to the same areas of life and assets owned. However, the multitude of legal acts constituting the basis for their submission and introducing template forms for individual professional groups, as well as the differences resulting from them, make it practically impossible to have a uniform approach to the issue of completing asset declarations and the content to be disclosed. Therefore, it is reasonable to strive to establish common principles, procedures and a common template applicable to all professional groups covered by the requirement.

Despite differences in the forms, the scope and methods of presenting information, most declarations require the presentation of the same information, e.g. cash resources, real estate, movable property or liabilities. Therefore, referring to the conclusions of Anna Wierzbica included in Anti-corruption restrictions in local government and Agnieszka Rzetecka-Gil in the commentary to the Anti-Corruption Act, it can be stated that a person submitting a declaration of assets, regardless of the legal basis for this obligation, in respect of cash resources should provide information covering all cash that has been accumulated, e.g. funds accumulated in Polish and foreign currencies and securities. The funds shown concern both cash and non-cash forms, eg. accumulated in bank accounts, deposits and investment funds.

The asset declaration form also involves completing the part regarding real estate owned. This requires the subject to provide all information about residential properties, farms and other properties. In addition to indicating all real estate owned, it is also legitimate to indicate the legal title to these properties as well as their area and value. There is no definition of the term "house" in Polish legislation. Therefore, any land property with a residential building should be considered as such.

If it is necessary to provide information concerning a flat, the definition appears easier because there are legal acts introducing the concept of a residential premises. According to these regulations, the possession of both a residential premises constituting separate ownership and one where cooperative ownership rights apply should be defined as an apartment. It should also be noted that a flat may also be a premises in the public housing stock, social and replacement premises, and premises occupied on the basis of a lease agreement with a housing construction society.

The concept of real estate also includes an agricultural farm. Pursuant to the Act of 15 November 1984 on agricultural tax (Journal of Laws of 2024, item 1176), it is an area of land with a total area exceeding 1 ha or 1 ha in aggregate, owned or held by a person, a legal entity or an organisational unit, including a company without legal status classified in the register of land and buildings as agricultural land, excepting land occupied for non-agricultural activities.

The type of farm, area, value, type of development and legal title in should be included in the declaration. The type of development, should include buildings and structures. A person who declares ownership of a farm in his/her asset declaration is also required to show the revenues and income obtained from running it as well as any subsidies received from the European Union. It must not be forgotten that every farm for which there is an ownership deed, co-ownership deed, lease deed, etc. is subject to disclosure. As can be seen from the above review, most submitted asset declarations also include the fact of purchasing property from the State Treasury, another State legal entity, local government unit, association and a municipal legal entity, etc., when the asset was subject to sale by tender. When completing this part of the declaration, it is important that property includes both ownership and other property rights. Since the regulations do not specify whether only property acquired in the period from the submission of the previous declaration is subject to disclosure, it is advisable always to provide information about the acquired property, including the date on which it was acquired. It should be noted, however, that the provisions in this area are imprecise and often raise a number of doubts.

Another item included in the vast majority of property declarations submitted is movable property. This part of the declaration, in accordance with the legislator's intention, should include data about motor vehicles, as well as works of art, jewelry, furniture, audiovisual equipment, etc. A person proving ownership of a vehicle should provide its make, model and year of production. Please remember that only assets whose value exceeds PLN 10,000 are subject to disclosure. Movable property whose value is equal to this amount is not subject to disclosure. The issue of movable property constituting a set or a set seems to be problematic. The question arises whether the value of such movable property should be considered individually or as a whole. Unfortunately, due to the lack of a definition of such a collection in the regulations on asset declarations, it is impossible to attribute to the person submitting the declaration the failure to demonstrate, for example, a book collection or a coin collection. In the current legal situation, a disconnected element of a set or set is subject to disclosure only if it can function independently and its unit value exceeds PLN 10,000. Otherwise, such movable property (collection) is not subject to disclosure in the asset declaration.

Another problem is the use of movable property, i.e. the situation in which the person obliged to submit the declaration is neither the owner nor the possessor, but he should be considered a beneficiary of the movable property.

Monetary liabilities that are subject to disclosure in the submitted asset declarations also require explanation. Both monetary liabilities in Polish currency and those in foreign currencies are disclosed. Many people completing asset declarations forget that this part should include both liabilities arising from the conclusion of the contract (e.g. as a debtor or creditor) and those arising as a result of damage caused to a third party (e.g. payment of compensation). Therefore, it is reasonable to show the obligation at the same time to disclose the person or institution towards which it was incurred.

When disclosing a given liability, the person submitting the declaration of assets should not limit himself only to its principal amount. The declaration should also specify the value of interest and other side benefits, i.e. the total cost of the obligation and the amount outstanding as at the date on which the declaration was prepared. This part of the submitted asset declarations often omits the receivables held, which are also subject to disclosure in the asset declarations. Moreover, many years of CBA practice show that in the section regarding liabilities, loans from individuals - family or friends - are very often not disclosed. This naturally results from the belief that such obligations will not be "discovered" by the relevant authorities.