

Significant changes to Polish Transfer Pricing regulations

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In brief

On 16 July 2018, a draft law changing significantly the Polish transfer pricing regulations was published.

It grants the tax authorities new tools for auditing and challenging the related party transactions as well as changes the obligations imposed on taxpayers conducting such transactions.

The main purpose of the new regulations will be to enhance the efficiency of tax audits and transparency of related party transactions. On the other hand, the new law, once enacted, will limit reporting requirements with respect to typical low-value-adding transactions.

In detail

Draft law presented for public consultations

The draft law amending the Personal Income Tax Act, the Corporate Income Tax Act and some other acts was published on 16 July 2018. The draft was presented for public consultations, so the final content of the regulations may differ from those recently published. The key changes proposed currently are described below.

Non-recognition and re-characterization

The new law, once enacted, will grant the tax authorities additional tools. They will be able to re-characterize or even disregard related party transactions if they conclude that unrelated entities would not enter into transaction declared by the taxpayer or would conclude different transaction. Consequently, when assessing the arm's length level of remuneration in

a given transaction, they could refer to other transactions or terms that in their opinion could have been applied by unrelated parties.

Introduction of safe harbours

Safe harbours will be introduced for two transaction types, i.e. loans meeting specific requirements and low-value-adding services. In the case of the former, an official interest rate will be published, whereas, for the latter, a mark-up of 5% will be recommended.

Transfer pricing adjustments

The new regulations will also modify rules on conducting transfer pricing adjustments. In particular, they will determine in which period the adjustment should be reported. However, the taxpayers will be obliged to meet a number of requirements before conducting the adjustment, which may make them difficult to apply in practice.

New TP documentation materiality thresholds

New transactional materiality thresholds applicable for TP documentation (local file) will be introduced, i.e.

- PLN 10 million (approx. EUR 2,5 million for transactions concerning tangible assets and financing), and
- PLN 2 million (approx. EUR 0,5 million for other transactions).

The new thresholds will, in practice, result in reducing the scope of documentation requirements, especially for small and medium-sized taxpayers.

Materiality threshold for master file will be set at PLN 200 million of consolidated revenue. Taxpayers submitting the CbC report (those achieving consolidated revenues exceeding EUR 750 million and meeting other specific requirements) will also

be obliged to submit the master file to the Head of the National Revenue Administration.

According to the new regulations, the master file may be prepared in English. Translation into Polish will only be required at the explicit request of the tax authorities.

Contents of transfer pricing documentation and benchmarking studies

The scope of mandatory elements of transfer pricing documentation will also change. The detailed contents of the local file and master file will be determined in a decree of the Minister of Finance. Although it will only be possible to comment on the contents after the decree is published, it is clear based on the draft law that there will be changes in comparison to the current contents of the local and master file.

Benchmarking studies will become a compulsory element of the documentation for each transaction described in a local file (no specific materiality thresholds will be applicable),

except for those to which safe harbours apply. If it is impossible to prepare such an analysis, the taxpayer will be obliged to prepare an analysis showing compliance of the conditions on which the transaction was concluded with the conditions that would have been set by unrelated entities.

Extension of deadlines for the preparation of documentation

The deadline for filing a statement on the preparation of local transfer pricing documentation will be permanently extended to 9 months after the end of the tax year for local documentation. The deadline for preparing the master file will be 12 months after the end of the tax year.

New reporting responsibilities

Taxpayers will also be required to submit a new electronic form (TP-R form), which will replace the CIT-TP / PIT-TP forms introduced recently. The new form will need to be submitted within 9 months after the end of the financial year. The form will contain selected information on the

transactions carried out with related entities.

The takeaway

The proposed regulations introduce a number of significant changes from the taxpayer's point of view.

On one hand, the tax authorities are granted new tools (non-recognition and re-characterization) but on the other hand, certain new obligations are imposed on taxpayers while some others are repealed.

The new law will surely increase the transparency of related party transactions and facilitate the selection of taxpayers for tax audits by the tax authorities.

The new regulations are to be binding as from 1 January 2019, however, taxpayers will have the right to apply the new regulations referring to the TP documentation voluntarily, also to tax years started after December 31, 2017.

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