
Significant changes to Polish Transfer Pricing regulations

In brief

New law changing significantly the Polish transfer pricing regulations came into force as of 1 January 2019.

Among others, it imposes a new obligation on taxpayers conducting related party transactions – they will be obliged to submit a statement confirming that prices applied meet the arm's length principle. The statement will need to be signed by board members. Personal fines may be imposed for submitting false declarations.

The new regulations also grant the tax authorities new tools for auditing and challenging the related party transactions as well as change the obligations imposed on taxpayers conducting such transactions. The main purpose of the new regulations is to enhance the efficiency of tax audits and transparency of related party transactions.

On the other hand, the new law, may in some cases limit reporting requirements with respect to typical low-value-adding transactions and domestic transactions.

In detail

Non-recognition and re-characterization

The new law, grants the tax authorities additional tools. They are now 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 have been introduced for two transaction

types, i.e. loans meeting specific requirements and low-value-adding services. In the case of the former, an official announcement on the arm's length level interest rates has been published. For the latter, a mark-up of 5% is recommended.

Transfer pricing adjustments

The new regulations modify significantly rules on conducting transfer pricing adjustments.

Adjusting the results (and not only revenue or costs) of related party transactions is now allowed. Such adjustment could be recorded for tax purposes in the adjusted period, contrary to previous financial years. 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) have been 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).

Materiality threshold for master file has been set at PLN 200 million of consolidated revenue. According to the new regulations, the master file may be prepared in English.

Contents of transfer pricing documentation and benchmarking studies

The scope of mandatory elements of transfer pricing documentation has also changed. In particular, taxpayers must present actual result achieved on a specific related party transaction (which will in most cases require segmentation of profit and loss account).

Benchmarking studies has now become a compulsory element of the documentation for each transaction described in a local file, except for those to which safe harbours apply. Until the end of 2018, benchmarking studies were obligatory for taxpayers exceeding the materiality threshold of EUR 10 million revenue or costs. If conducting such analysis is impossible, a taxpayer is obliged to prepare an analysis justifying compliance of the related party transaction with the conditions that would have been set by unrelated entities.

Finally, taxpayers are now obliged to explain any discrepancy between the actual results achieved on related party transactions and results of relevant benchmarking studies. This will in most cases require segmentation of the profit and loss account.

Domestic transactions

The local transfer pricing documentation does not have to include description of

domestic transactions conducted between Polish taxpayers, who are not exempt from income tax, are not located in the special economic zone and do not incur losses. Certain other limitations from the transfer pricing documentation requirements are also provided.

New reporting responsibilities

Taxpayers are also required to submit a new electronic form (TP-R form), which replaces the previous CIT-TP / PIT-TP reporting forms. The new form must be submitted within 9 months after the end of the financial year and should contain information on the transactions carried out with related entities.

Taxpayer's statement

The new requirements oblige taxpayers to submit within 9 months after the end of the tax year a statement to the tax authorities confirming that (1) the transfer pricing documentation had been prepared and (2) related party transactions described therein had been conducted according to the arm's length principle. The statement must be signed by a management board member. Submission of a false statement may lead to personal fines.

The takeaway

The new regulations introduce significant changes relevant for

the taxpayers conducting related party transactions.

On one hand, the tax authorities are granted new tools (non-recognition and re-characterization). On the other hand, the requirements towards the transfer pricing documentation may be more or less stringent in comparison to previous financial years, depending on individual taxpayer's situation.

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 since more details are to be disclosed to the tax authorities.

Most of all, the obligation to submit a statement confirming that the related party transactions have been conducted at arm's length will require that taxpayers conduct a thorough review of terms of the related party transactions before the statement may be submitted.

The new regulations are binding as from 1 January 2019, however, taxpayers have the right to apply the new regulations voluntarily, also to tax years started after December 31, 2017. Each taxpayer should analyse individually whether in his specific circumstances, following this option would be favourable.

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