

REVOLUTION IN TRANSFER PRICING CONTINUES

On 16 July 2018, a draft bill amending the Corporate Income Tax Act and the Personal Income Tax Act was published. The bill is to abolish current regulations and replace them with new ones, included in a separate chapter of both acts. These amendments are to adapt Polish regulations to the OECD Guidelines and seem to reduce some administrative encumbrances related to transfer pricing.

Below is a summary of selected changes:

NEW TRANSACTION THRESHOLDS	<p>Currently, documentation thresholds are defined on the basis of the taxpayer's revenue (expenses). The taxpayer whose revenue (expenses) exceeds EUR 2 million is obliged to prepare the transfer pricing documentation for transactions which exceed relevant thresholds (from EUR 50,000 to EUR 500,000, depending on the revenue/expenses of the particular taxpayer).</p> <p>In the light of the proposed amendments, revenue (expenses) of the taxpayer will not be taken into account – the only thing that will matter will be the transaction value. Two thresholds have been proposed: PLN 2 million and PLN 10 million, depending on the transaction type.</p> <p>That change will certainly mitigate obligations related to documentation for many entities with respect to smaller transactions. On the other hand, it may result in an obligation to prepare documentation for entities that have not exceeded the revenue (expenses) threshold of EUR 2 million, but have concluded transactions with related entities.</p>
EXTENDED TERMS	<p>The terms for submitting transfer pricing documentation have been extended. Pursuant to the draft bill, they will be 9 months since the end of the fiscal year for local documentation (the Local file) and 12 months for group documentation (the Master file).</p>
MASTER FILES ALSO IN ENGLISH	<p>So far, entities that have exceeded the revenue (expenses) threshold of EUR 20 million had to prepare the Master file in Polish. As a result, taxpayers who received such documentation from another group entity, had to translate it into Polish, and often adapt it to Polish requirements.</p> <p>The proposed amendment not only allows to submit to the tax authorities the Master file received in English, but also unifies Polish requirements for the contents of the Master file group documentation with the OECD guidelines. The tax authority will be able to request a Polish language version of the Master file to be submitted within 30 days.</p>
(UN)OBLIGATORY COMPARATIVE ANALYSES	<p>As far as the comparative analysis is concerned, the amendments are much more far-fetched. On the one hand, a comparative analysis will be an obligatory element of Local file documentation (so far, that obligation applied only to entities whose revenue (expenses) exceeded EUR 10 million).</p> <p>On the other hand, the safe harbour principle will be introduced, according to which a transaction is automatically considered to be at arm's length, which will exempt the entity from the obligation to prepare a comparative analysis. It will apply to the so-called low value-adding intra-group services and loans. In order to use that exemption, the mark-up or margin value in a particular transaction will have to remain within a range defined by the authorities.</p>

ALLOWING FOR OTHER METHODS OF DETERMINING THE TRANSFER PRICE	Pursuant to the current regulations, the taxpayer had a possibility to use other methods than those provided for in the Act to determine the transfer price, however the authorities determining the income had to use one of the five methods stipulated in the Act. The new Act provides for a possibility to use another method, which would be more applicable in particular circumstances, whereas the fiscal authority determining the taxpayer's income will have to use the method selected by the taxpayer.
TP ADJUSTMENT	An unambiguous rule will be introduced, stating that a transfer pricing adjustment will constitute respectively revenue or a tax deductible expense and will be recognised in the year concerned.
TP DOCUMENTATION EXEMPTION	The draft bill provides for two documentation exemptions, applicable to transactions that do not constitute revenue or tax deductible costs, and transactions, whose price has not been determined through an open tender procedure under the Public Procurement Law.
CHANGES IN REPORTING	The recently introduced CIT-TP and PIT-TP statements will be replaced with transfer pricing information (TP-R). The new form is to be easier to fill in and the reporting is to take place online. That change is also likely to result in a more efficient selection of entities to be controlled by the authorities.
UNIFICATION OF TERMS AND DEFINITION	One of draft chapters of the bill includes a dictionary with legal definitions of terms used with regard to transfer pricing. That change will allow to avoid potential disagreements over interpretation, which occur nowadays, e.g. when defining the term 'transaction'.
HARMONISATION OF REGULATIONS WITH OECD GUIDELINES	The introduced amendments will define elements of the Local file and Master file documentation so that it complies with regulations stipulated in the OECD Guidelines.
CONTACT	<p>This document has been prepared for information purposes only and is of a general nature. Before taking any action pursuant to the above information, we recommend that you obtain a valid opinion of TPA experts.</p> <div style="display: flex; justify-content: space-between;"> <div style="text-align: center;">  <p>Małgorzata Dankowska <i>Partner</i> +48 663 877 788 malgorzata.dankowska@tpa-group.pl</p> </div> <div style="text-align: center;">  <p>Maciej Miąskowski <i>Manager</i> +48 604 999 381 maciej.miaskowski@tpa-group.pl</p> </div> </div>

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