

## Duties regarding transfer pricing documentation for 2019

As of 1 January 2019, new rules entered into force as regards duties related to documentation of transactions with related entities. Contrary to regulations applicable until the end of 2018, the scope of reporting duties with reference to transactions conducted since the beginning of 2019 no longer depends on revenues and costs generated by the taxpayer, but now depends on the value of particular transactions (of uniform nature).

### NEW DEFINITIONS OF CONTROLLED TRANSACTION/ SIGNIFICANT INFLUENCE/RELATED ENTITIES

The Legislator has introduced a new definition of a “controlled transaction” (instead of the existing term “transactions and other events of one type”).

A controlled transaction shall be deemed as **actions of business nature identified pursuant to actual behaviour of the parties**, including allocation of income to a foreign establishment (entity), the terms of which have been agreed or imposed as a result of relations.

Furthermore, the Legislator gives a new definition of related entities. It includes “exerting significant influence” as a major factor creating relations among related entities.

The definition points to three areas of such relations:

- ownership relations (share in equity, profit, or voting rights at the level of at least 25%)
- actual capacity of a natural person to influence on major decisions via key employees of an entity (e.g. financial director)

family relations (spouses, relatives and affinity (relationship by marriage) to the second degree).

### TRANSFER PRICING DOCUMENTATION - LOCAL FILE

In accordance with new regulations, **by the end of the ninth month from the end of a financial year**, related entities are obligated to draft a transfer pricing documentation (**local file**) for a uniform controlled transaction, the value of which, **reduced by VAT tax**, exceeded the following reporting thresholds in the financial year:

Transaction	Transaction value (net)
goods transaction	10 M PLN
financial transaction	10 M PLN
services transaction	2 M PLN
transaction other than involving goods, services or finance	2 M PLN
transactio with an entity from a tax haven	100 kPLN

The amount of revenues achieved/costs incurred in the previous year is irrelevant. What matters is the **value of transactions of one type**.

In the justification of the draft amendment of the act it was argued that such method of regulating the reporting duty is also favourable from the point of view of the interests of the State Treasury because it is the value of transactions with related entities (and not the level of revenues) that is directly connected to the degree of risk of reducing the taxable income, and the value of such reduction.

The above documentation thresholds are defined **separately for**:

- each controlled transaction of uniform nature, regardless of whether the controlled transaction is allocated to goods, finance, services, or other transactions
- **costs and revenues**.

The value of a controlled transaction **of uniform nature** is determined regardless of the number of accounting documents, payments made or received, and related parties involved in the controlled transaction. In Article 11k(5) of the CIT Act, the Legislator has presented a catalogue of the criteria for assessing the uniform nature of a transaction.

Furthermore, the Legislator points out that the value of a controlled transaction corresponds to the following:

Value	Transaction
capital value	Loans, credits
nominal value	Bonds issue
guarantee sum	Guarantees, sureties
value of allocated revenues or costs	If income (loss) is allocated to a foreign establishment/entity
value appropriate for a given transaction	In the case of other transactions

#### MANDATORY BENCHMARKING STUDY (COMPLIANCE ANALYSIS)

It must be pointed out that the **new regulations require that each transfer pricing documentation (*local file*) should include a benchmarking study (or a compliance analysis if drafting a benchmarking study is not applicable in view of a given verification method, or where it is impossible while observing due diligence)**. **The analysis/study is to be mandatory key element of the documentation aimed at proving the arm's length nature of the transfer pricing applied in the transaction.**

At the same time, the amendment sustains the existing duty to update the benchmarking study **not less frequently than every three years** unless changes to economic terms justify more frequent updates.

<b>SAFE HARBOURS FOR LOAN TRANSACTIONS AND LOW VALUE- ADDED SERVICES</b>	<p>New regulations introduce simplified solutions (<i>safe harbours</i>) which, if applied by the taxpayer, shall result in deeming a price or price component as having arm's length nature without the need to draft a benchmarking study.</p> <p>Such a solution, on the one hand, assures taxpayer's protection against tax authority's challenging the arm's length nature of the price applied, while on the other, it exempts the taxpayer from some reporting duties (i.e. drafting the benchmarking study), nevertheless sustaining the duty to draft transfer pricing documentation for such transactions.</p> <p>Such solutions have been envisaged for two types of transactions: loans and low value-added services, after meeting statutory conditions.</p>
<b>EXEMPTIONS FROM REPORTING DUTY</b>	<p>Despite a broad range of entities obligated to draft transfer pricing documentation, the Legislator has also envisaged a number of exemptions from reporting duties.</p> <p>The catalogue of exemptions has been included in Article 11n of the CIT Act.</p>
<b>GROUP TRANSFER PRICING DOCUMENTATION - MASTER FILE</b>	<p>The Legislator has modified regulations for drafting the group transfer pricing documentation. A major change regarding the duty to draft the <i>master file</i> is that the duty now depends on consolidated revenues achieved by the group, not the taxpayer alone.</p> <p>Related entities consolidated with full consolidation or proportionate consolidation method and obligated to draft the <i>local file</i> shall attach the group transfer pricing documentation (<b><i>master file</i></b>) made for the financial year if they belong to a group of related entities who:</p> <ul style="list-style-type: none"> <li>■ draft consolidated financial statements</li> <li>■ exceeded the amount of <b>200 M PLN</b> or equivalent in revenue in the previous financial year.</li> </ul> <p><i>Master file</i> can be drafted by the related entity obligated to attach the <i>master file</i> or by another entity belonging to the group of related entities (<i>provided it conforms to the Polish regulations</i>), also in English.</p> <p>The tax authority may request submission of the <i>master file</i> in the Polish version within 30 days from submitting the request.</p>
<b>OTHER OBLIGATIONS</b>	<p>Furthermore, the related entity is also obligated to draft and submit the following:</p> <ul style="list-style-type: none"> <li>■ <b>statement</b> that it has drafted local file and that transfer pricing in controlled transactions covered by local file is agreed on the terms that would be applied by unrelated entities.</li> </ul> <p>The statement is to be signed by the head of the unit in the meaning of the Accountancy Law, stating his function, whereas:</p> <ul style="list-style-type: none"> <li>■ the statement is to be submitted and signed by <b>each of the persons authorised to represent</b> (where several persons meet the criteria for being the head of the unit or where it is impossible to specify the head of the unit)</li> <li>■ statements submitted by a proxy shall be prohibited.</li> </ul> <p><b>Statements are to be submitted electronically in line with the Tax Law by the end of the ninth month from the end of a financial year.</b></p> <ul style="list-style-type: none"> <li>■ <b>transfer pricing information (TP-R)</b>, which shall replace the existing simplified report CIT-TP.</li> </ul> <p>As compared to 2018, the taxpayer shall be obligated to much more thorough and more exhaustive presentation of the data regarding transactions with related parties,</p>

including in particular descriptions and results of benchmarking studies. Detailed scope of data and information provided in TP-R has been determined in the Regulation of the Minister of Finance on transfer pricing information related to corporate income tax.

Submission of TP-R is aimed at providing information to the tax authorities for the purpose of analysing the risk of taxpayers' reducing taxable income by non-market behaviours and for other economic or statistical analyses.

**TP-R reports are to be submitted electronically by the end of the ninth month from the end of a financial year.**

Importantly, TP-R reports must be submitted by two groups of entities:

- a) related entities obligated to draft local file, and
- b) related entities concluding transactions exempted from the duty to draft transfer pricing documentation (Article 11n(1) of the CIT Act).

## TAX SUPPORT IN THE AREA OF TRANSFER PRICING

In order to provide support to our Clients, we offer tax services including:

- drafting/update/verification of transfer pricing documentation (*local file/master file*)
- drafting/update/verification of benchmarking study (compliance report)
- drafting and verification of transfer pricing information: TP-R
- drafting and verification of the statement regarding transfer pricing documentation for correctness
- support and Client representation in tax, court, and administrative proceedings to the extent of transfer pricing
- training and workshops on the transfer pricing issues, including Client's staff training oriented at individual drafting and updating transfer pricing documentation.

## CONTACT US

**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 an opinion of TPA experts.**



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