

Adjustments of transfer pricing between related parties




Starting from January 1, 2019, the lawmakers introduced into the national regulations the principles of applying transfer pricing adjustments (true-up, true-down, TP adjustment), a mechanism which was so far lacking in the Polish transfer pricing tax regulations.

In the light of numerous earlier doubts and various interpretations issued by the tax authorities concerning the possibility of performing and the manner of settling transfer pricing adjustments, the introduction of the current mechanism is undoubtedly a solution beneficial for taxpayers. However, it is important to remember that its application requires not only the fulfillment of a number of requirements, but also permanent and structured cooperation between related parties within the group.

At the same time, we would like to point out that it is only possible to include adjustments resulting in a reduction of taxable income in the tax settlement provided that they meet more extensive requirements than in the case of adjustments that increase tax income.

The following issues need to be highlighted:

The arm's length principle and transfer pricing adjustment	<p>Pursuant to the applicable regulations, transactions between related parties must be concluded in accordance with the arm's length principle. Therefore, for a transfer pricing adjustment to be acceptable, the terms and conditions of the controlled transaction should be on arm's length terms at the stage of planning the adjustment and developing its financial assumptions.</p> <p>However, despite such terms and conditions between related entities, there may in practice be significant changes in circumstances affecting the arm's length conditions established during the tax year (for example, changes in the prices of raw materials used in the production process by the related supplier), which means that transfer prices need to be adjusted to bring them to the arm's length level.</p>
Transfer pricing adjustment methods	<p>According to the introduced Article 11e of the CIT Act, a taxpayer may correct transfer prices in two ways, i.e. by:</p> <ul style="list-style-type: none">■ changing the amount of revenue received or■ changing the amount of deductible costs incurred
Conditions for applying transfer pricing adjustments	<p>The lawmakers provided a possibility to make adjustments to the transfer prices indicated in art. 11e of the CIT Act only if the following conditions are met jointly:</p> <ul style="list-style-type: none">■ in controlled transactions performed by the taxpayer during the tax year, conditions were established which would be also followed by unrelated entities■ there has been a change in significant circumstances affecting the conditions established in the course of the tax year, or the actual costs incurred or revenues obtained that are the basis for the calculation of the transfer price are known, and ensuring their compliance with the arm's length conditions requires a transfer price adjustment■ At the time of the adjustment, the taxpayer has a statement from a related party that the related party has adjusted the transfer prices in the same amount as the taxpayer (the regulations do not provide for the form of this statement, it can be obtained in paper or electronic form. What is important is that the taxpayer has it at the time of the correction, as it serves as proof of the parties' agreement on the correction)

	<ul style="list-style-type: none"> the related entity has its place of residence/registered office/management in the territory of the Republic of Poland or in a country or territory with which the Republic of Poland has concluded a double taxation treaty and there is a legal basis for the exchange of tax information with that country the taxpayer confirms making the transfer pricing adjustment in the annual tax return for the tax year to which the adjustment applies. <p>It should be noted that pursuant to Article 12.3aa and Article 15.1ab of the CIT Act, when determining the amount of revenues and tax deductible costs, the following are taken into account:</p> <ul style="list-style-type: none"> transfer pricing adjustment reducing revenue or increasing costs if the conditions referred to in Article 11e(1) to (5) above are jointly met, and transfer pricing adjustment increasing revenue or decreasing costs if only the conditions referred to in Article 11e(1) and (2) above are met.
Transfer pricing adjustments and audits by tax authorities	The fact that the taxpayer applies the adjustment in accordance with the above conditions does not prevent the tax authorities from verifying the validity of the adjustment under Article 11c(1) and (2) of the CIT Act.
Transfer pricing adjustment and CIT-8 statement	According to the regulations in force, a transfer pricing adjustment must be reported in the annual tax return for the tax year to which the adjustment applies (column 26 of the CIT-8 return as of the date).
Transfer pricing adjustment and transfer pricing information (TP-R form)	<p>The transfer pricing adjustment should be declared when preparing the TP-R form for the controlled transaction to which it applies (by declaring "YES" under the item "Transfer pricing adjustment" and indicating the value of the adjustment in PLN thousands and the result from the transaction after the adjustment).</p> <p>If the transfer pricing adjustment was made after the preparation and submission of the transfer pricing information (TP-R form), a corresponding adjustment to the TP-R form must be prepared and submitted.</p>
Transfer pricing adjustment and other tax obligations	An adjustment of transfer pricing may entail other problems in terms of taxes, in particular VAT. Therefore, making the adjustments requires not only a detailed analysis and fulfilling the conditions referred to in terms of transfer pricing, but also verification in terms of other tax regulations. In case of any doubts, it is worth considering applying for a tax interpretation.
CONTACT	<p>This document was prepared for informational purposes only and is of a general nature. Every time before taking actions on the basis of the presented information, we recommend obtaining a binding opinion of TPA Poland experts.</p> <div>  <p>Małgorzata Dankowska Partner +48 663 877 788 Email</p> </div> <div>  <p>Joanna Kubińska Associate Partner Head of Transfer Pricing +48 502 184 882 Email</p> </div> <div>  <p>Damian Kubiś Partner +48 604 338 546 Email</p> </div>

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