

No obligation to document domestic transactions meeting certain conditions

The tax regulations in force as of January 1, 2019 introduced many changes in the area of transfer pricing. The most significant changes certainly include the introduction of a new TPR form (obliging taxpayers to demonstrate the actual results achieved in particular transactions with related entities) and the clarification of issues related to transfer pricing documentation (e.g. indication of new ways of determining documentation thresholds or transaction values).

The introduced regulations also provide the taxpayers with a possibility to apply the exemption from the documentation obligation for transactions concluded with domestic related entities under certain conditions.

In addition, the regulations define specific cases where there is no obligation to prepare transfer pricing documentation. These include transactions concluded by related entities exclusively by the State Treasury or local government units, related entities operating within a tax capital group (PGK), transactions subject to APA or transactions where the price was determined by open tender.

Important aspects related to the exemption from the documentation obligation for transactions concluded between domestic related entities:

Conditions for exemption pursuant to Article 11n(1)

The exemption from the documentation obligation, which may be applicable in the case of a large group of entities entering into transactions with related parties, results from art. 11n sec. 1 of the Corporate Income Tax Act (CIT Act). The regulation lists the following conditions which must be met jointly for domestic transactions to benefit from the exemption:

- first of all, both parties to the controlled transaction must have their place of residence, registered office or management board in the territory of Poland
- in addition, in the tax year in which the transaction is entered into:
 - none of the parties to the controlled transaction benefits from the subjective exemptions under Article 6 of the CIT Act or from the exemptions indicated in Article 17(1)(34) and (34a) of the CIT Act (i.e. concerning respectively the taxation of income obtained from business activity conducted on the basis of a permit in a special economic zone and the exemption from income obtained from business activity specified in the decision on support referred to in the Act of 10 May 2018 on supporting new investments)
 - none of the parties to the controlled transaction suffered a tax loss.

Interpreting tax loss

The issue which raises the greatest interpretative doubts in connection with the possibility of exemption from the documentation obligation for domestic transactions is the concept of "tax loss", which has not yet been explicitly specified in the Act. One should consider whether the lawmakers were concerned with the total result from the taxpayer's activity in a given tax year or with the result from one of the so-called "income baskets". Currently there are two sources of revenue distinguished in income tax: revenue from capital gains (defined in detail in Article 7b(1) of the CIT Act) and revenue from other sources (operating activities).

Court rulings and tax interpretations come in handy. The ruling of the Provincial Administrative Court in Wrocław (I SA/WR 861/19) of January 9, 2020 reads: *"Therefore, the term 'tax loss' should be construed as a loss from a source of revenue referred to in Art. 7(2) of the CIT Act, which means that the condition for exemption from*

	<p><i>the preparation of local transfer pricing documentation will be met when none of the related entities being a party to the controlled transaction has suffered a loss from the source of revenue the transaction is attributed to (assuming that the other conditions necessary for the application of the domestic exemption listed in Art. 11n.1 of the CIT Act are met)". A similar position of the authorities can be found in the individual interpretation issued by the Head of the National Revenue Information Service (KIS) of 1 June 2020 (ref. 0111-KDIB1-1.4010.140.2020.1.BK), which states: "In the opinion of both the Applicant and the tax authority, the condition for exemption from drawing up transfer pricing documentation for the Applicant should be considered to be met if none of the related parties to the controlled transaction has suffered a loss from a source of revenue to which the controlled transaction is attributed."</i></p> <p>The same position was also presented in the interpretations of January 3, 2020. (ref. 0111-KDIB1-3.4010.481.2019.1.IZ) and of October 7, 2019. (ref. 0111-KDIB1-3.4010.341.2019.1.APO). This means that the tax authorities' interpretations are starting to move in a uniform direction, although initially they took a different stance (cf. the interpretation of August 22, 2019, ref. 0111-KDIB1-2.4010.260.2019.1.MS).</p>
Exemption from Article 11n(1) and the TPR form	<p>It is important to remember that each entity which benefits from the exemption from the transfer pricing documentation obligation for domestic transactions under Article 11n(1) of the CIT Act is obliged to disclose those transactions in the transfer pricing information (TPR form). The TPR form for exempt transactions is slightly less extensive and requires less detailed information than in the case of documented transactions, but it is still important to include these transactions when filling it in. The obligation to submit a TPR form for domestic transactions exempt from the documentation obligation is set out in Article 11t(1)(2) of the CIT Act.</p>
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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