

Transfer pricing 2020

ARM'S LENGTH PRINCIPLE

RELATED ENTITIES SHOULD DETERMINE TRANSACTION PRICES IN THE WAY THEY WOULD BE ESTABLISHED BETWEEN UNRELATED PARTIES.

Elements determining documentation obligations for FY2020:

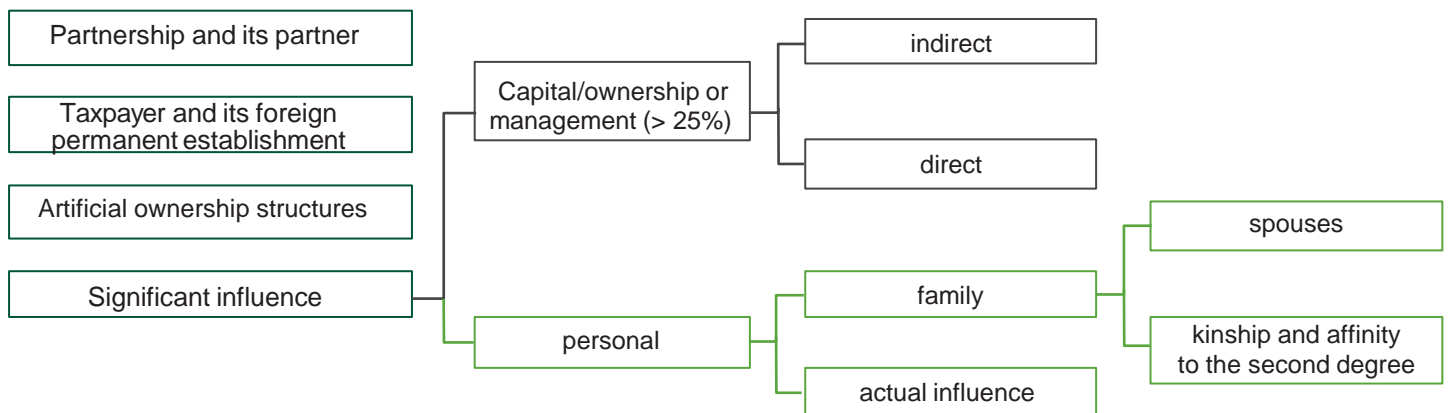
RELATIONS + TRANSACTIONS
WITH TAX HAVENS

+

VALUE OF ONE TYPE OF TRANSACTION
ABOVE THE THRESHOLDS

IDENTIFICATION OF RELATIONS

Related entities



OBLIGATIONS WITH RESPECT TO TP



Local File + statement

Transaction thresholds
Benchmarking studies for each transaction



TPR form

Local File + domestic transactions exempt from LF (Article 11n (1) of CIT ACT)



Master File

If LF + consolidated revenue > PLN 200 million in the previous FY



CbCR

CbCR report:
consolidated revenue > EUR 750 million (PLN 3.25 billion) in the previous FY

CbC-P notification:
if CbCR is prepared by another related entity

IDENTIFICATION OF CONTROLLED TRANSACTIONS SUBJECT TO TP OBLIGATIONS

Homogeneous controlled transaction:

- Uniform from the economic perspective
- Uniform comparability criteria (characteristics, course, conditions, economic strategy)
- Uniform method of transfer prices verification uniform other relevant transaction circumstances

Value of a controlled transaction is determined on the basis of:

- Invoices for a given tax year, or
- Agreements or other documents - if there is no invoice, or for financial transactions, or
- Payments received or transferred - otherwise

CONTROLLED TRANSACTION

Value of controlled transaction:

- Loan and credit - capital value bond issue - nominal value
- Guarantee or warranty - guarantee amount
- Allocation of income (loss) to a foreign permanent establishment - value of allocated revenues or costs
- Other transactions - value appropriate for a given transaction

Transaction thresholds (net value; calculated separately for the revenues or costs):

- Goods transaction - PLN 10 million
- Financial transaction - PLN 10 million
- Services transaction - PLN 2 million
- Other transaction - PLN 2 million
- Cost transaction with an entity from a tax haven - PLN 100,000

OBLIGATORY LOCAL FILE AND MASTER FILE ELEMENTS



Local File

Related entity description

- management structure and organizational chart core business / activity
- industry and market environment

Transaction description

- subject and type of transaction
- functional analysis
- related entities concluding the transaction
- transfer price calculation method transaction value
- intra-group agreements

Transfer pricing analysis

- indication of the method used to verify the transfer price
- indication of the tested party
- description of the benchmarking study or a written justification
- reference of the transfer price to the result of the analysis

The analysis of influence of COVID-19 on the market environment, documented controlled transaction and the transfer pricing analysis

Financial information

- audited Financial Statement of the entity



Master File

Description of the capital group

- ownership structure chart
- value chain
- significant agreements between entities
- functional analysis showing considerable participation of entities in creating value
- significant restructuring transactions

Description of the group's significant intangibles

- general description of the group's strategy, list of significant intangibles and agreements, description of the TP policy in this respect

Description of significant financial transactions of the group

- general description of financing strategy
- identification of entities performing central financing functions within the group
- description of the TP policy in this respect

Financial and tax information on the group

- consolidated group statement, APA and tax interpretations

IMPORTANT AREAS IN TERMS OF TP



Increased risk of tax audit

- loss or decreasing profitability of operating activity
- unstable profitability of a limited risk entity indicated in CIT TP / TPR forms
- tax-exempt income (including activities in SEZ)
- profitability significantly different from the industry average
- low income compared to involvement (significant functions, risks, IP, etc.)
- significant income adjustments in intra-group transactions
- financial transactions of significant value, intangible and services transactions
- free of charge services (e.g. guarantees, warranties, trademark, other intangible)
- Tax Capital Group (PGK)
- restructuring



Restructuring

- change of commercial or financial relations (termination of existing agreements or change of their significant conditions)
- transfer of functions, assets or risks, e.g:
 - sale of an organized part or enterprise
 - change of functional profile from full risk entity to low risk entity (e.g. contract manufacturer, processor, agent, etc.)
 - transfer of employees to another related entity
- change in expected average annual EBIT in the 3-year period after the transfer by at least 20% of the projected average annual EBIT over the same period
- **Important!** The relevance and arm's length character of the restructuring fee (so-called exit fee)



RELAXATION OF TRANSFER PRICING OBLIGATIONS DURING THE COVID-19 PANDEMIC (effective during the epidemic emergency or the state of epidemic announced in connection with COVID-19)

Statement on the preparation of documentation and arm's length character of the transaction

The statement can be signed by:

- **A person authorized** by the foreign entrepreneur to **represent the branch** (in case of an related entity being a foreign entrepreneur with a branch in the territory of the Republic of Poland),
- **A persons authorized to represent the entity in accordance with representation rules** (in case of other related entities)

Exemption from the obligation to prepare documentation for domestic transactions (exclusion of the condition of not incurring a loss)

The condition of not incurring a loss (Article 11n(1)(c) of the CIT ACT) does not apply (in a tax year beginning after December 31, 2019, when the epidemic emergency or the state of pandemic was in force):

- if the related entity that does not meet this condition received in that year **total revenues lower by at least 50%** than the total revenues received in the corresponding period immediately preceding this year

SIMPLIFICATIONS AND FACILITATIONS FOR TAXPAYERS

Exemption from the obligation to have an adjustment statement

The exemption from the obligation to have a statement referred to in Article 11e(3) of the CIT ACT (i.e. the statement of a related entity on making an adjustment in the same amount as the taxpayer) applies to taxpayers making transfer pricing adjustments, if that **adjustment is made for a tax year or at a time when the epidemic emergency or the state of epidemic was in force.**

DEADLINES FOR MEETING THE OBLIGATIONS

Obligations	Statutory deadlines	Extension of statutory deadlines (due to COVID-19 pandemic)
Local File	9 months after the FY end	Deadline extended:
Submitting a statement to the Tax Office	9 months after the FY end	<ul style="list-style-type: none"> ■ until September 30, 2021 – when the deadline is between February 1, 2021 and June 30, 2021 ■ extended by 3 months – when the deadline is between July 1, 2021 and December 31, 2021.
Submitting the TPR form to the Head of the National Tax Administration (KAS)	9 months after the FY end	For many taxpayers (whose FY ended on December 31, 2020), the deadline is December 31, 2021
Master File	12 months after the FY end	<ul style="list-style-type: none"> ■ Until the end of the third month from the day following the day on which the deadline (extended) for submitting a statement on preparation of TP documentation expired <p>For many taxpayers, whose FY ended on December 31, 2020 and for whom the deadline for preparing MF expires on December 31, 2021 – the deadline until the end of March 2022.</p>
CBC-P notification	3 months after the FY end	-
Submitting Local File at the request of the tax authority	7 days from the date of the request	-
Submitting a translation of the Master File	30 days from the date of the request	-



OUR SERVICES

Local File	Benchmarking studies, including for financial transactions	TPR form	Master File
LF/MF verification with regard to PL requirements	Allocation of profits/ costs to a branch or permanent establishment	Transfer pricing risk analysis	Restructuring (planning, DF, exit fee, rulings)
Transfer pricing policy (drafting, verification)	Structuring settlement models in a group of related entities	Profit Split analysis (as an alternative for traditional benchmarks during the crisis)	Reference documentation for services
Assistance (litigation) in tax audits	Advance pricing agreement - APA	Analyses in terms of the limit under Article 15e of CIT Act - ruling/APA	Mutual Agreement Procedure - MAP

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