

# Transfer pricing 2021

## ARM'S LENGTH PRINCIPLE

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

Elements establishing documentation obligations for FY2021:

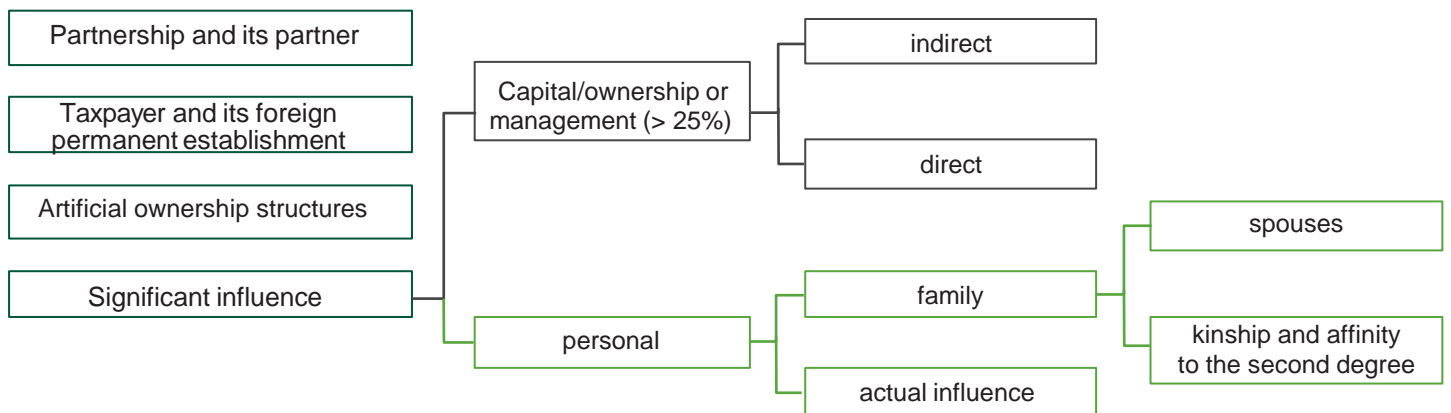
RELATIONS + TRANSACTIONS  
WITH TAX HAVENS

+

VALUE OF ONE TYPE OF TRANSACTION  
ABOVE THE THRESHOLDS

## IDENTIFICATION OF RELATIONS

### Related entities



## OBLIGATIONS WITH RESPECT TO TP



### Local File + statement

Transaction thresholds



### TPR form

Local File + domestic transactions exempt from LF (art. 11n pkt 1-2 or 10-12) of CIT ACT) + tax haven transactions



### 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 TRANSACTIONS SUBJECT TO TP OBLIGATIONS

### Homogeneous controlled transaction:

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

### 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

## TRANSACTION

### Value of controlled transaction:

- Loan and credit – capital value
- Bond issue – nominal value
- Surety or guarantee – guarantee amount
- Assigning of income (loss) to a foreign permanent establishment – value of allocated revenues or costs
- Other transactions – value relevant 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
- Transaction (revenue/cost) with an entity from a tax haven (related/unrelated) – PLN 100,000
- Cost transaction in which the beneficial owner of the receivables is an entity from a tax haven (related/unrelated) – PLN 500,000

## IDENTIFICATION OF TP OBLIGATIONS FOR TRANSACTIONS WITH ENTITIES IN TAX HAVENS – DIRECT AND INDIRECT TAX HAVEN TRANSACTIONS (applicable to transactions entered into in 2021)

### Direct Tax Haven Transactions:

- The obligation applies to controlled and other than controlled transactions (**revenue and cost transactions**) with an entity from a tax haven (**related/unrelated entity**) with a value exceeding PLN 100,000
- Possibility of not preparing a benchmarking/compliance analysis (only for transactions other than controlled, no exemption for controlled transactions)
- The transfer pricing documentation should contain an additional analysis (written justification) - the so-called "benefit test", i.e. economic justification of the transaction along with a description of expected economic benefits, including tax ones

### Indirect Tax Haven Transactions:

- The obligation applies to controlled and other than controlled transactions (**cost transactions**) with a value above PLN 500,000 in which the beneficial owner of the receivables is an entity from a tax haven (**related/unrelated**)
- According to the regulations, the beneficial owner is presumed to be a tax haven entity if the counterparty settles accounts with a tax haven entity
- The taxpayer is required to exercise due diligence in verifying indirect haven transactions by, i.a:
  - obtaining a statement act from the counterparty while the counterparty is the beneficial owner of the receivables subject to the transaction
  - developing a procedure for counterparty verification
  - verifying contractors in publicly available registers
- Possibility of not preparing a benchmarking/compliance analysis (only for transactions other than controlled transactions, no exemption for controlled transactions)
- The transfer pricing documentation should contain an additional analysis (written justification) - the so-called "benefit test", i.e. economic justification of the transaction along with a description of expected economic benefits, including tax ones

## OBLIGATORY ELEMENTS OF LOCAL FILE AND MASTER FILE



### 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
- EXEMPTION: possibility of exemption from preparing the transfer pricing analysis for transactions concluded by related entities which are micro or small enterprises

#### The analysis of the impact of COVID-19 on the market conditions (competitive environment), documented controlled transaction and the transfer pricing analysis

#### Financial information

- approved Financial Statement of the entity



### Master File

#### Description of the capital group

- ownership structure chart
- value chain for the five most important product and service groups in terms of revenues
- 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



## MITIGATION 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:

- **Person(s) authorized to represent the entity in accordance with representation rules**
- **Person(s) authorized** by the foreign entrepreneur to **represent the branch** (in the case of a related entity being a foreign entrepreneur with a branch in the territory of the Republic of Poland)

**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 that year

### SIMPLIFICATIONS AND FACILITATIONS FOR TAXPAYERS

**Exemption from the obligation to have an adjustment statement**

The exemption from the obligation to have a statement on the adjustment made 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	<b>9 months after the end of FY</b>	The extension of the deadlines for complying with the obligations: <ul style="list-style-type: none"> <li>■ <b>until September 30, 2022</b> – when the deadline is between January 1, 2022 and June 30, 2022.</li> <li>■ <b>by 3 months</b> – when the deadline is between July 1, 2022 and December 31, 2022.</li> </ul> For many taxpayers (whose FY ended on December 31, 2021), the deadline is December 31, 2022.
Submitting a statement to the Tax Office	<b>9 months after the end of FY</b>	
Submitting the TPR form to the Head of the National Revenue Administration (KAS)	<b>9 months after the end of FY</b>	
Master File	<b>12 months after the end of FY</b>	The extension of the deadline <b>until the end of third month</b> , counting from the day following the day on which the deadline (extended) for submitting the statement on preparation of TP documentation has expired.  For many taxpayers, whose FY ended on December 31, 2021 and for whom the deadline for preparing MF expires on December 31, 2022, the deadline is March 31, 2023.
CBC-P notification	<b>3 months after the end of FY</b>	-
Submitting Local File at the request of the tax authority	<b>14 days from the date of the request</b>	-
Submitting a translation of the Master File	<b>30 days from the date of the request</b>	-



## OUR SERVICES

			
Local File	Benchmarking studies, including for financial transactions	TPR form	Master File
			
LF/MF verification with regard to PL requirements	Tool or Procedure to identify indirect tax haven transactions	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
			
Reference documentation for services	Assistance (litigation) in tax audits	Advance pricing agreement - APA	Mutual Agreement Procedure - MAP

## CONTACT



### Joanna Kubińska

Associate Partner, Head of Transfer Pricing

+ 48 502 184 882

joanna.kubinska@tpa-group.pl

TPA is a leading international consulting group, offering comprehensive business advisory services in 12 countries of Central and Southeastern Europe.

In Poland, TPA is one of the largest consulting companies. We provide international corporations and large domestic companies with effective business solutions in terms of tax advisory, accounting and payroll outsourcing, real estate investment consultancy and personnel consulting, as well as audit and business advisory services under the Baker Tilly TPA brand. Legal services, provided under the Baker Tilly Legal Poland brand, have been a natural addition to our interdisciplinary services.

TPA Poland, Baker Tilly TPA, and Baker Tilly Legal Poland are the exclusive representatives of Baker Tilly International in Poland – one of the largest global networks of independent consulting companies.

As a member of Baker Tilly International, we combine the advantages of integrated, interdisciplinary 'one-stop-shop' services with local expertise and global reach of the advisory group.

[www.tpa-group.pl](http://www.tpa-group.pl) | [www.bakertilly.pl](http://www.bakertilly.pl)

## OUR OFFICES

ul. Przyokopowa 33  
01-208 Warszawa  
tel. +48 22 647 97 00

ul. Młyńska 12  
61-730 Poznań  
tel. +48 61 630 05 00

Al. Roździeńskiego 188H  
40-203 Katowice  
tel. +48 32 732 00 00