

The explanations of the Ministry of Finance regarding the information on transfer pricing (TPR form). Publication of the TPR Guidebook

The third edition of the 'Questions and Answers' regarding transfer pricing information – TPR form (TPR-C for legal persons and TPR-P for natural persons) - has been published on the Tax Portal of Ministry of Finance. The document is an extended, third version of the document that has already been published to answer questions about how to complete the form. Although the TPR Guidebook does not solve all problems related to the correct reporting of transactions with related parties, it presents the approach to its completion preferred by the Ministry of Finance.

It should also be reminded that the publication of the Ministry of Finance refers to the TPR forms for 2021, to which interactive forms have recently been published, and the deadline for their submission is 31 December 2022 (for taxpayers whose tax year corresponds to the calendar year).

Below are the key details of the published TPR Guidebook:

Transactions with entities from tax havens

The TPR Guidebook provides guidance on reporting transactions with entities from countries applying harmful tax competition, so-called **tax havens**. The Ministry remind that transactions with entities from tax havens, regardless of their relations, should be presented in TPR form after exceeding the following thresholds in 2021 (in accordance with Article 11o of the CIT Act and Article 23zo of the PIT Act):

- **PLN 2 500 000** – for financial transactions,
- **PLN 500 000** – for transactions other than financial transactions.

The thresholds for **direct tax havens transactions** have been amended by the Act of October 7, 2022 on the amendment of the Corporate Income Tax Act and certain other acts that have entered into force in recent days.

The TPR Guidebook indicates that a transaction concluded with a tax haven should be assigned to the relevant category, as in the case of controlled transactions (concluded with related entities).

Exemption from the presentation of the results of the benchmarking analysis

In addition, the Ministry of Finance confirmed the possibility for some entities to show a limited scope of information in the TPR form. The exemption from the presentation of the results of benchmarking/compliance analyses in transfer pricing information applies to the following transactions:

- Transactions other than controlled transactions referred to in Article 11o of the CIT Act and Article 23z of the PIT – **transactions with entities from tax havens**;
- Controlled transactions concluded by related entities which in the last tax year had **the status of micro or small entrepreneur** (in accordance with the Act - Entrepreneurs' Law);
- **Safe harbour transactions** (for loans transactions and low value-added services).

The above mentioned exemption can be applied by selecting the relevant code in the TPR form i.e., the code MW00 – *'not applicable' should be selected for the specified transaction in the 'Price Verification Method' section.*

Reporting of transactions by limited partnerships

As from May 1, 2021, some **limited partnerships have become a CIT taxpayers**, there have been doubts about the reporting obligations of such entities. The Ministry of Finance also provided its clarification on this issue.

According to the TPR Guidebook, two possibilities should be distinguished:

- **In the event that the limited partnership has not prepared its financial statements on April 30, 2021, it is obliged to submit information on transfer pricing for the entire financial year 2021.** This means that it submits information on transfer pricing as a CIT taxpayer (i.e., on the TPR-C form).
- However, if the limited partnership **has prepared its financial statements on April 30, 2021**, the TPR form should be submitted for two periods, i.e., **from January 1 to April 30, 2021 and from May 1 to December 31, 2021.** Depending on the legal form of the designated partner (legal or natural person), the form TPR-C or TPR-P should be submitted for the first part of the year and the company as CIT taxpayer should submit the form TPR-C for the second part of the year.

Similarly, in the case of the extended tax year of the limited partnership, the partner should submit the TPR form for the period from January 1, 2020 to April 30, 2021.

The doubts with regard to TP restructuring

The latest version of the TPR Guidebook also provides guidance on **reporting restructuring transaction** when it is possible to identify both the revenue and the cost side of the transaction.

The Ministry of Finance explains that in such case, the information on transfer pricing should show two separate transactions – revenue and cost transactions respectively. Once the relevant restructuring transaction code (codes 3001-3013) has been selected, it is possible to select the appropriate remuneration code: receipt of payment / make a payment / no remuneration for the restructuring.

No need to submit a correction of the TPR form

Importantly, the Ministry of Finance also confirmed that there is no need to submit a correction of the TPR form if it was submitted on a previous version of the interactive form. This means **that TPR forms marked with the number 3 submitted until the publication of the latest TPR forms (marked with the number 4) do not have to be replaced with the most recent forms.**

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