

Transfer Pricing Alert

KPMG IN POLAND

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Amendments to the draft of new transfer pricing regulations

As we informed in our alert dated 14 May, on 28 April at the request of the Minister of Finance, draft amendments to the to the Corporate Income Tax Act and Personal Income Tax Act were published. They included significant changes to the rules governing the relationship between related parties.

However on 15 June this year a second version of the draft amendments to both acts together with three decrees concerning transfer pricing regulations were published. Below we discuss main changes in the area of transfer pricing introduced by the new draft as compared to its previous version.

Increase in the capital relations threshold

One of the basic criteria for determining the existence of capital relations between the two entities is the ownership of shares/stakes in another entity. Currently, the threshold giving rise to capital relationships within the meaning of the transfer pricing provisions is equal to only 5 per cent and is one of the most restrictive in the world. According to the draft amendments published on 28 April, the threshold was to be raised to 20 per cent.

In the second draft dated 15 June, this threshold was increased to 25 per cent which is good news for taxpayers. As a result, the number of transactions subject to transfer pricing regulation will be even more

reduced, including in particular portfolio investments. In the justification we read that the capital relations threshold of 25 per cent is applied in regulations on thin capitalization and in regulations concerning so called foreign controlled entities. As a result we may presume that the change is caused by the intention to ensure consistency across the provisions.

Documentation obligation

According to the first draft of amendments, the obligation to prepare documentation will depend on the value of revenues or costs of the taxpayer in the given financial year. Taxpayers whose revenues or costs according to the Accounting Act exceeded EUR 2,000,000 will be obliged to prepare documentation.

It is worth underlining that under the new draft, in case of exceeding this threshold the taxpayer will not be obliged to prepare the documentation to all transactions/events, but only to those transactions/events which had significant influence on the level of its income (loss). The level of significance will depend on the value of the given transaction/event and it will increase together with the increase in the taxpayer's revenues. The basic threshold for taxpayers which reported revenues between EUR 2,000,000 and EUR 20,000,000 will amount to EUR 5,000 increased by EUR 5,000 for each EUR 1,000,000 of revenues above EUR

2,000,000. Separate limits apply for partnership and joint venture agreements which amount to EUR 50,000 (value of contributions) and EUR 20,000 (value of the joint venture fixed in the agreement or planned) respectively.

This change should be regarded as positive as it will reduce the number of transactions or events to be described in the documentation. As a result it may even occur that a taxpayer whose revenues or expenses exceeded EUR 2,000,000 will not be obliged to prepare transfer pricing documentation because in the given year it was not a party to any transactions or events with its related parties having significant influence on its income (or loss).

The new draft introduces an important change according to which the tax authorities may request documentation to transactions/events which did not exceed the specified thresholds. Under the new draft amendments, the tax authorities will be entitled to submit such a request if, based on the circumstances of the case, it is probable that the value of the transaction or an event was intentionally reduced in order to evade the documentation obligation. The deadline for submitting such documentation will be longer i.e. 30 days from the date of delivery of the request (the standard deadline is 7 days). In the request the tax authorities should indicate the circumstances which prove the likelihood

of decreasing the value of the transaction or an event.

Apart from this, the new draft introduces the obligation of preparing the documentation to partnership agreements where one of the parties has its place of residence, seat or management on the territory or in the country applying harmful tax competition if the total value of contributions exceeds the equivalent of EUR 20,000. Until now, the documentation obligation concerned only transactions (or other events) where payment was made to such entities.

Decreets

Apart from the new draft amendments, three decrees were published which include:

1. A detailed description of the elements of the tax documentation

This Decree specifies the range of information which the taxpayer will be required to present in the documentation, in particular the financial data, related parties, description of the course of the transaction and analysis of the comparable data to be included in the so called local file as well as the data and information to be presented in each element of the so called master file. It is worth noting the wide range of information and data on the group's activity which according to the draft decree large taxpayers will be required to present in the master file.

2. A CIT-TP declaration template to be prepared by taxpayers whose revenues or costs exceeded EUR 10,000,000

In the CIT-TP declaration the taxpayer will be required to provide information which includes capital relations, restructuring processes,

types and values of related party transactions split into trade transactions, rental and leasing, intra-group services, transactions concerning assets, including intangible assets, financial transactions, financial information and cost contribution as well as joint venture agreements.

3. A CBC declaration template to be prepared by taxpayers whose consolidated revenues exceeded EUR 750,000,000

The CBC declaration will consist of two tables containing a summary of income allocation, taxes and business activity according to tax jurisdictions and list of all related parties forming part of a multinational enterprise enumerated in the aggregation of the tax jurisdictions.

Date of entrance into force of the new regulations

The draft of amendments in tax acts dated 15 June provides that the new regulations on transfer pricing should enter into force as of 1 January 2015 with one exception. Namely, the obligation to prepare the CBC declaration by the largest taxpayers reporting consolidated revenues exceeding EUR 750,000,000 should apply to tax years commencing after 31 December 2015 although the transition regulations in this respect are not entirely consistent.

Conclusions

It is worth noting that in the second draft of amendments in the Corporate and Personal Income Tax Acts the legislator sustained its willingness to introduce to the Polish transfer pricing regulations the EU and OECD recommendations which are the consequences of a program aimed at ending tax evasion or tax base erosion. The second draft

provides for only a few changes which do not have a major impact on the overall aim of the new regulations i.e. ensuring the tax authorities have wider access to information about intra-group transactions.

It seems that the adjustment of the Polish regulations to the recommendations of the EU and the OECD is only a matter of time. The implementation of the new regulations under the second draft was postponed until 1 January 2017 (i.e. by one year as compared to the first draft) which will enable the taxpayers to prepare better for the coming changes.

In view of the above, we still recommend analyzing now what impact potential changes in regulations may have on the responsibilities of the entity regarding the preparation of the documentation. In addition, we also suggest reviewing the most significant related party transactions to check their compliance with the arm's length principle. In this way it will be possible to make necessary amendments to the related party settlements before the new regulations enter into force.

We will inform you about the further progress of this initiative and any changes in the regulations.

Please contact us if you would like to obtain more information on the draft amendments or discuss their impact on the obligations of your company.

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