

Transfer Pricing Alert

KPMG IN POLAND

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Amendments to the transfer pricing regulations passed by the Sejm

On 11 September the Sejm (Lower House of the Polish Parliament) passed amendments to the Personal Income Tax Act, the Corporate Income Tax Act and certain other acts. The bill introduces significant changes to the rules governing the relationship between related parties. There is a chance that the legislative process will be completed in the current term of the Parliament.

Capital relations threshold

Currently the threshold giving rise to capital relationships between two entities within the meaning of the transfer pricing provisions is 5 per cent. Under the new rules (if they enter into force), this threshold will be increased to 25 per cent.

Transfer pricing documentation

The obligation to prepare transfer pricing documentation (the so-called *local file*) will be dependent on the fulfillment of two criteria, i.e. the revenues criterion and the criterion of significant influence of the transaction (other event) on the level of taxpayer's income (loss). According to the first criterion, documentation will be required from taxpayers whose revenues or costs, as defined by the accounting regulations, exceeded in the year preceding the tax year the equivalent of EUR 2,000,000.

In cases where the above mentioned threshold is exceeded the taxpayer will be obliged to prepare the

documentation to all transactions (other events) with related parties having a significant influence on the level of taxpayer's income (loss). Transactions (other events) having a significant influence on the level of taxpayer's income (loss) are considered to be transactions (other events) of one kind of a total value exceeding in the tax year the equivalent of EUR 50,000. However, in cases of taxpayers whose revenues, as defined by the accounting regulations, exceeded the equivalent of EUR 2,000,000 in the year preceding the current tax year, the assessment of the significance of such a transaction (other event) would depend on the level of revenues generated by the taxpayer. The thresholds for taxpayers which reported revenues:

- between EUR 2,000,000 and EUR 20,000,000 – will amount to EUR 50,000 increased by EUR 5,000 for each EUR 1,000,000 of revenues above EUR 2,000,000;
- between EUR 20,000,000 and EUR 100,000,000 – will amount to EUR 140,000 increased by EUR 45,000 for each EUR 10,000,000 of revenues above EUR 20,000,000;
- above EUR 100,000,000 – will amount to EUR 500,000.

Separate threshold will apply to partnership agreements, joint venture agreements or any other similar agreements – in this case the threshold would amount to EUR 50,000.

According to the regulations, the tax authorities may nevertheless request documentation to transactions (other events) which did not exceed the specified thresholds. 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 (other event) was reduced in order to evade the documentation obligation. In these cases the deadline for submitting the documentation will be 30 days from the date of delivery of the request. In their request, the tax authorities should indicate the circumstances which demonstrate the likelihood of decreasing the value of the transaction (other event). In other cases the documentation will have to be delivered within 7 days from the request (as is required by the regulations currently in place).

The obligation to prepare the transfer pricing documentation will also refer to the taxpayers making, directly or indirectly, payments arising from the transactions (other events) to the entity that has its place of residence, seat or management on the territory or in the country applying harmful tax competition, as well as to taxpayers entering into partnership agreements, joint venture agreements or any other similar agreements with such entities, if the transaction (other event) value exceeds the equivalent of EUR 20,000.

The new legislation specifies also the range of information which the taxpayer will be required

to present in the transfer pricing documentation. It should be noted that the taxpayers whose revenues or expenses in the year preceding the tax year exceeded EUR 10,000,000 will be obliged to prepare a comparable analysis (i.e. *benchmarking study*). The comparable analysis should include a description of independent entities data or a description of data agreed with an independent entity that have been considered as comparable to the conditions of the documented transaction (other event). The comparable analysis should include comparable information on entities having their registered seat or place of management on the territory of Poland, if such information is available to the taxpayer.

If there is no data to conduct the comparable analysis, the taxpayer should attach to the documentation a description of the compliance between the conditions of the transaction (other event) set up between related entities and the conditions that would have been made between independent entities.

Taxpayers whose revenues or expenses in the year preceding the tax year exceeded EUR 20,000,000 will be additionally required to provide information about the group (the so-called *master file*). The master file will contain information relevant from the group perspective, including its organizational structure, transfer pricing policy applied, a description of the group's business activity and intangible assets owned by the group, its financial position (including a consolidated financial statement)

and a description of the agreements concluded by the entities with the tax authorities of other countries.

Other taxpayer obligations

The proposals passed by the Sejm impose additional obligations on taxpayers, in particular:

- taxpayers required to prepare transfer pricing documentation will be obliged to submit to the tax authorities a statement confirming that the complete documentation was prepared by the date of filing the tax return for the given tax year, with the exception that this statement will not include information about the group (i.e. the master file);
- taxpayers whose revenues or expenses, as defined by the accounting regulations, exceed the equivalent of EUR 10,000,000 who are to prepare the transfer pricing documentation will be also required to attach to the tax return a simplified report on related party transactions ("CIT TP" form);
- domestic entities whose consolidated revenues, as defined by the accounting regulations, exceeded in the year preceding the tax year the equivalent of EUR 750,000,000, will be required to prepare and submit to the tax authorities a *country-by-country report* (a report on the amount of income and tax paid and the places of business activity of its subsidiaries and foreign permanent establishments) within 12 months of the end of the tax year.

Legislative process

The bill passed by the Sejm will now be considered by the Senate, which may accept the bill without amendments, introduce amendments into its text or reject the whole bill. The earliest sitting of the Senate (most likely the last one in the current parliamentary term) has been scheduled for 30 September and 1 October. After passing to the Sejm to any potential amendments introduced by the Senate (the last sitting of the Sejm in the current parliamentary term has been scheduled for 8 and 9 October), the bill will be referred to the President.

According to the bill passed by the Sejm, new transfer pricing regulations should enter into force as of 1 January 2017. The exception are the regulations concerning the obligation to prepare the country-by-country report – this obligation would arise for the first time for the tax year commencing after 31 December 2015.

We will monitor the further progress of the legislative process and provide updated information.

If you wish to discuss the impact of the regulation changes on the situation of your company, please contact us.

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