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Transfer Pricing Alert

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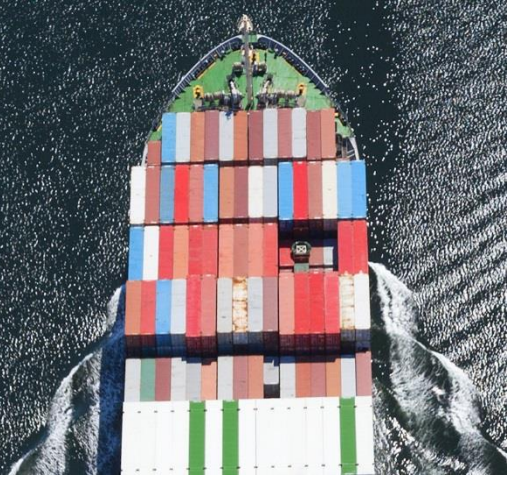

March 2016

Ministry of Finance looks closely at transfer pricing

On 26 February 2016, the Ministry of Finance posted a message "100 days of government – Ministry of Finance" on its website, presenting the department's key actions – both completed and ongoing.

The message puts emphasis on the fact that tackling the problem of understated taxable income – as a result of applying transfer prices inconsistent with the arm's length principle - is one of the actions being currently carried out by the Ministry. To this end, certain control measures have already been launched and – according to the Ministry's announcement – will be intensified in the 2nd quarter of the current year.

In-depth audits of transactions concluded between related parties were first announced as early as December 2015, when the Minister of Finance encouraged taxpayers to revise their tax returns filed for previous years.

Further interest in transactions made between related parties was confirmed in a communiqué dated 5 February 2016, according to which personnel performing audits will pay special attention to those taxpayers who – despite their levels of income – paid no corporate income tax in previous years.
In the communiqué, the department of finance presented the Ministry's plans for 2016 as regards transfer pricing, as well as informed about its experience gained from the actions undertaken over the past months, together with examples of irregularities exposed so far.

According to the information presented by the Ministry of Finance, as a result of concluded proceedings in the area of transfer pricing and tax optimization, the Ministry has identified a set of techniques and methods for establishing contractual arrangements within capital groups, resulting in declaration of no profits or profits lower than those that would be expected if relations between the parties to the transaction did not exist. Examples of such mechanisms presented by the Ministry of Finance include:

- artificially increasing the book value of shares held in a limited liability company in the chain of related entities,
- concluding a one-off, substantial agreement with a majority shareholder, resulting in a tax loss for the controlled entity,
- appraising royalties not in line with the arm's length principle,
- applying an incorrect allocation key to apportion costs/profits to a domestic entity,
- granting loans or warranties between related entities on more favorable terms than those applied on the market.

Each subsequent message consistently presents the Ministry's standpoint, according to which prices of transactions concluded between Polish taxpayers and related entities will come under close scrutiny in 2016.

In response to the tax authorities' heightened activity in the area of transfer pricing, announced by the Minister of Finance, we recommend:

- reviewing the existing transfer pricing policy and settlement rules applied in transactions,
- reviewing and updating transfer pricing documentation,
- preparing or updating benchmarking studies, confirming transactions' consistency with the arm's length principle,
- verifying the appropriateness of recognition of transactions with regard to income tax and value-added tax regulations.

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