

Since 2019 amended regulations in respect of transfer pricing documentation apply. They were introduced by the Act of 23rd October 2018 amending Personal Income Tax Act, the Corporate Income Tax Act, Tax Code and certain other Acts and apply obligatory to transfer pricing documentation prepared for the year 2019 and also optionally to documentation prepared for the year 2018.

Below we present an overview of the most important rules for transfer pricing documentation to be prepared for the year 2019.

## Transactional thresholds for local documentation:

- **PLN 10 million** – for transaction relating to tangible assets and financing, and
- **PLN 2 million** – for services and other transaction.

In practice, the introduction of above thresholds compared to those previously in force, has led to a reduction of documentation obligations, in particular for small and medium-sized taxpayers.

In the case of transactions with entities domiciled in so-called tax havens there is a lower threshold of **PLN 100,000**.

## Group documentation

The obligation of preparing so called Group TP documentation concerns entities which fulfil three conditions cumulatively, i.e.:

- are required to prepare local documentation,
- belong to capital group for which consolidated financial statements are prepared,
- consolidated revenues of the capital group exceeded PLN 200 million in the previous fiscal year.

## Deadlines for preparing TP documentation

The Act sets of the deadlines for preparing documentation:

- for local documentation – 9 months from the end of the tax year,
- for group documentation – 12 months from the end of the tax year.



## Transactional thresholds



The basic deadline for TPD has been extended due to COVID - 19 until 31st December 2020



Exemptions from the documentation obligation



Safe harbor rules

Entities required to preparing local transfer pricing documentations shall submit a statement to the tax authorities about the preparation of these documentation by the end of the ninth month following the end of the fiscal year - in the case of entities having a fiscal year the same as the calendar year, as a rule, that period expire on 30th September.

In addition, affiliated parties who have obligation to prepare local transfer pricing documentation – for controlled transactions covered by that obligation, or carrying out controlled transactions, are obliged to provide the Head of the National Treasury Administration, by the end of the ninth month after the end of the tax year, via electronic communication, an information about transfer prices in a given tax year, prepared on the basis of electronic document presented in the Bulletin of Public Information on the website of the authority serving the ministry responsible for public finances (TPR-C or TPR-P).

However, in the Act on counteracting the effects of COVID-19, so-called Anti-Crisis Shield 4.0, it was proposed to extend the above deadlines for the documentation prepared for the year 2019:

- until 31st December 2020 for entities whose primary terms of reporting for 2019 expire between 31st March 2020 and 30th September 2020,
- by 3 months (i.e. effectively 12 months after the end of the tax year) for entities with a postponed or extended tax year whose primary term of reporting for 2019 expires between 1st October 2020 and 31st January 2021.

### **No obligations to prepare documentation**

Part of transactions, despite exceeding the thresholds, i.e. **PLN 10 million** about the transactions relating to tangible assets and financing and **PLN 2 million** for other transactions, remains exempt from the obligation to documenting in the local transfer pricing documentation. So, exempted are:

- controlled transactions concluded only for by affiliated parties having a place of residence, registered office or head office in the territory of the Republic of Poland, provided that in the tax year for which transfer pricing documentation is to be prepared, none of these affiliated parties use income tax exemption and none showed a tax loss,
- controlled transactions concluded between entities creating a capital tax group,
- transactions concluded between entities whose relationship results only from links with the State Treasury or local government entities (i.e. between entities who would not be considered as related, if their shareholder, directly or indirectly, would not be the State Treasury or local authorities),

- controlled transactions which value fully and permanently neither creates taxable income nor tax deductible expenses, excluding financial transactions, capital transactions and transactions relating to investments, fixed assets or intangible assets (this exemption does not apply to a situation where the costs of obtaining income are recognised at other time than the conclusion of the transaction).

### **Introduction of safe harbour rules**

Safe harbour rules – i.e. confirmation of market level of price determined – apply for some low value-added transactions, with a margin at the minimum level of 5% for the provision of services and a maximum of 5% for the purchase of services.

A similar solution has been introduced for certain loans. If the interest rate on the loan is determined on the basis of the base interest rate increased with margin as determined in the decree published by the Ministry of Finance, after fulfilling certain requirements on the period and value of the loan, taxpayers will be able to benefit from the safe harbour rules.

Application of the above rates exempts the taxpayer from the benchmarking requirement for those transactions, still the use of the safe harbour is only possible if the taxpayer has a broad calculation presenting information on the type and amount of costs included in the calculation, as well as the use of allocation keys for all entities using a given low value added service.

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