

# TP documentation in 2021

Below we present an overview of the most important rules for transfer pricing documentation to be prepared for the year 2020.

## Transactional thresholds for local documentation:

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

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 to prepare 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 CIT Act sets deadlines for preparing documentation:

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



## Transactional thresholds



## The basic deadline for TPD has been extended due to COVID - 19



## Exemptions from the documentation obligation



## Safe harbor rules

Entities required to prepare local transfer pricing documentation shall submit a statement to the tax authorities about the preparation of this documentation by the end of the ninth month following the end of a fiscal year – in the case of entities having a fiscal year corresponding with a calendar year, as a rule, that period expires on September 30th.

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 a tax year, via electronic communication, with an information about transfer prices in a given tax year, prepared on the basis of an 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 2020:

- until September 30th, 2021, for entities whose original reporting deadline for 2020 expires in the period between February 1st, 2021 to June 30th, 2021,
- by 3 months - if this period expires between July 1st, 2021 to December 31st, 2021.

The above means that for entities whose tax year lasted from January 1st, 2020 to December 31st, 2020, the deadline for compliance with transfer pricing obligations will expire on December 31st, 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 document in the local transfer pricing documentation. So, exempted are:

- controlled transactions concluded by affiliated parties having a place of residence, registered office or head office in the territory 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, was 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).

The Act on counteracting the effects of COVID-19 introduced another exemption for transactions commencing after December 31st, 2019, when there was an epidemic threat or epidemic state announced in the entire territory of Poland, in the case of:

- transactions with domestic entities, if the entity incurred a tax loss and its revenues in the year 2020 were lower by at least 50% compared to the total revenues obtained in the corresponding period of 2019.

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

Safe harbour rules, meant as a 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 relevant 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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