

# Transfer pricing – new Polish requirements



## Local File

**Purpose:** taxpayer justifies that transfer prices have been set in line with the arm's length principle  
**New thresholds for transactions of a single kind<sup>1</sup>**

Transaction type	Threshold <sup>2</sup>	Threshold's basis <sup>3</sup>
<ul style="list-style-type: none"> <li>Financial transactions</li> </ul>	PLN 10 million	Principal value – for loans Nominal value – for bonds Guarantee sum – for guarantees and warranties
<ul style="list-style-type: none"> <li>Transactions involving goods</li> <li>Transactions involving services</li> <li>Other transactions</li> </ul>	PLN 10 million PLN 2 million PLN 2 million	Appropriate value of a given controlled transaction

### New exemptions for domestic transactions<sup>4</sup>:

- parties do not have CIT-exempt status
- parties do not benefit from the Special Economic Zone tax exemption
- parties do not incur tax losses

**Other changes:** each Local File should include a benchmarking analysis or a description of transfer price's compliance with arm's length principle (in case preparation of benchmarking analysis is not appropriate taking into account the characteristic of a given transfer pricing method or it is not possible despite acting with due diligence)

**Deadline | procedure:** up to 9 months from the end of accounting year | submitted on the request of the tax authorities within 7 days

**Other requirements:** obligation to prepare Local File (without a benchmarking analysis) for the transactions being out of scope of the documentation obligation on the request of the tax authority | within 30 days from the date of delivery of such request

<sup>1</sup> Applicable irrespective of the scale of the taxpayer's activity

<sup>2</sup> Amounts net of VAT

<sup>3</sup> While assigning income (loss) to permanent establishment, the transaction value corresponds to the value of assigned revenues or costs  
 Threshold for transactions with companies seated in jurisdictions recognized as „tax havens” amounts to PLN 100 000

<sup>4</sup> All conditions must be met jointly by each of the parties to the transaction in a given tax year



## Master File

**Conditions:** consolidated group revenues exceeded PLN 200 million in the previous year | Master File is prepared by taxpayers obliged to (i) prepare Local File and (ii) consolidate their financial data with use of full or proportional consolidation method

**Simplifications:** unification of Master File requirements with OECD standards | possibility to use Master File prepared by another group entity | English version is allowed – Polish version must be submitted upon the tax authorities request within 30 days

**Deadline | procedure:** up to 12 months from the end of accounting year | submitted on the request of the tax authority within 7 days



## Transfer pricing reporting TP-R<sup>5</sup>

**Purpose:** TP-R reporting is to ensure better efficiency of selecting taxpayers for the tax controls

**Scope:** Taxpayers will be required to: indicate transaction types with related entities (more detailed than CIT-TP), present specific information on methods of calculating transfer prices – diversified requirements for transactions settled with use of a particular transfer pricing method – for example for CUP: type of comparable data (internal/ external), min. and max. comparable price, min. and max. price applied by the taxpayer; for TNMM: type of comparable data (used/ applied), profit level indicator, upper and lower range-end, taxpayer's profit level indicator (and its value), statistical tools (to narrow the range)

**Deadline | procedure:** up to 9 months from the end of tax year, filed in an electronic form

**Penal liability:** up to 720 daily rates (up to PLN 21,6 million) – in case of non-filing, late-filing or false-filing



## Formal statement on documentation

Related entities obliged to prepare Local File have to submit a statement that Local File was prepared and the transfer prices in the controlled transactions included in the Local File have been set in line with the arm's length principle

**Declarant:** head of the company within the meaning of Polish Accounting Act (Ustawa o Rachunkowości)

| it is not acceptable to submit the statement by a proxy

**Deadline | procedure:** up to 9 months from the end of accounting year in an electronic form

**Penal liability:** up to 720 daily rates (up to PLN 21,6 million) – in case of non-filing, late-filing or false-filing



## TP adjustments

Introduction of a clear rule that TP adjustment is (i) respectively tax income or tax deductible cost and (ii) recognized in the year to which it applies, under the following conditions<sup>6</sup>:

1. conditions in the controlled transactions are set at arm's length level
2. significant change in circumstances affected the conditions of the transaction
3. while making a TP adjustment, the taxpayer possesses a statement that counterparty has made the TP adjustment in the same amount
4. TP adjustment should be confirmed in the tax return for the relevant (tax) year
5. registered office, place of management or residence of the related entity is in Poland or in other country with which Poland has concluded a double tax treaty and there is an agreement on exchanging tax information with this country

<sup>5</sup> The obligation is imposed on the taxpayers obliged to prepare Local File or those who conduct controlled transactions exempted from the Local File based on the exemption for domestic transactions

<sup>6</sup> All above-mentioned conditions must be met for TP adjustment reducing revenues / increasing costs  
First two above-mentioned conditions must be met for TP adjustment increasing revenues / reducing costs



## Safe harbours

Introduction of safe harbours, as a result of which tax authorities do not determine mark-up / margin (the taxpayer is not obliged to prepare benchmarking analysis / compliance analysis for such transactions). Safe harbours are introduced for two types of transactions, presented below

### Transaction types

Low value adding services (mark-up on costs)

- Low value adding services are mainly accounting and auditing services, corporate finance services, HR services, IT services, communication and promotion services, legal services, tax services, administrative services (listed in appendix to the CIT Act), which:
  - can be characterized as supporting the key business activity of the beneficiary (back office services)
  - are not the main business activity of the group
  - the value of these services provided by the service provider for the benefit of unrelated entities does not exceed 2% of the value of these services provided for the benefit of both related and unrelated entities
  - are not subject to further resale, with the exception of resale of services purchased by the recipient for the account of another related entity (re-invoicing)
- Mark-up is not greater than 5% for purchase of services and not less than 5% for providing services
- Service provider has its seat outside “tax haven” jurisdictions
- Service recipient has a detailed calculation of the cost base and justification of the allocation keys applied

Debt financing (interest rate)

- The interest rate is expressed as a base rate + margin
- There are no other fees related to granting or servicing the debt (e.g. commissions or additional charges)
- Financing has been granted for maximum period of 5 years
- The sum of liabilities / receivables of the related party in relation to group financing does not exceed PLN 20 million
- Lender has its seat outside “tax haven” jurisdictions



## New rules on transaction non-recognition and recharacterization

Tax authorities may consider the overall conditions of business activities conducted by the related entities and recognize that under certain conditions the transaction would not have been concluded (non-recognition) or could have been replaced by another transaction (recharacterization). In such situations tax authorities shall determine the income of the taxpayer without taking into account the non-recognized transaction or, if justified, the income from the appropriately recharacterized transaction



## Tax valuation methods

If justified, it will be possible to use other methods than the 5 standard transfer pricing methods, including valuation techniques



## New penal liabilities

From January 1, 2019, a 50% penal CIT rate is replaced by an additional tax liability. If transfer prices are questioned, additional tax liability amounts to 10% of total amount of unduly reported or overstated tax loss and not fully or partially reported tax income to the extent resulting from the decision. The legislator stipulates also a possibility of doubling the penal liability (20%) if the basis for determining additional tax liability exceeds PLN 15 million (for the part exceeding this amount) or the taxpayer fails to submit TP documentation for a given transaction (unless it is completed within the deadline specified by the tax authority, no longer than 14 days) and even tripling (30%) if the amount exceeds PLN 15 million and at the same time the taxpayer fails to submit TP documentation (unless it is completed within the deadline specified by the tax authority, no longer than 14 days)



## Implementation

New regulations enter into force on **January 1, 2019**

Optionally, taxpayers may apply transfer pricing documentation provisions (Local File and Master File), including new exemptions (for example for domestic transactions) from the tax year starting after December 31, 2017 (rollback). However, the choice of this option impose on the head of the entity the obligation to make a statement (in line with the new rules) confirming that:

- 1) the entity has prepared the Local File
- 2) transactions covered by the Local File have been set in line with arm's length principle

## Worth asking.



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