

Transfer Pricing in Poland -revolution again



The draft amendments to CIT and PIT Acts were published on July 16, 2018. The draft legislation introduces many changes for taxpayers and other should be treated as a transfer pricing audits' facilitation tool for tax authorities.

Following the draft the main changes include:



Thresholds for transactions

Increase of documentary thresholds for transactions covered by a transfer pricing documentation. The draft provides the following thresholds:

Transaction types	Threshold value	Basis for the threshold
• Tangible assets	PLN 10 million	The value of assets purchased / sold
• Debt financing	PLN 10 million	The value of debt
• Guarantees and pledges	PLN 10 million	The guarantee sum
• Services / Intangibles / Rental / Leasing	PLN 2 million	The value of intangibles / services / rental purchased / sold
• Profit allocation to PE	PLN 2 million	The value of profits or costs allocated to PE
• Other transactions	PLN 2 million	The value of a transaction

Following the new methodology presented in the draft, it is not the size of taxpayer but the value of transactions that determines this obligation. In addition each TP documentation (except for safe harbours transactions) should be supplemented with a benchmarking analysis or description of compliance with arm's length principle if it is not possible to prepare benchmarking study.



Deadlines

Extension of deadline for preparing the local file, submitting a statement confirming preparation of local transfer pricing documentation and submitting an information regarding transfer prices from 3 to 9 months from the end of the accounting year. The deadline for group transfer pricing documentation (Master File) will be even longer, i.e. 12 months from the end of the accounting year.



Master file

Possibility to use Master File prepared by another group entity, including documentation prepared in English. As a result, taxpayers - if they receive such documentation from the group - will no longer be obliged to prepare it locally. Only Polish taxpayers who are members of a group, where the consolidated financial statement is being prepared and where the consolidated revenues exceeded PLN 200 million in the previous year, need to have the Master File documentation.

It is also important that the entities preparing both Master File and CbC Report are obliged to provide the Head of National Tax Administration with the Master File until the end of the 12th month after the end of the accounting year.



Transfer pricing methods

Liberalizing of the arm's length principle. In some cases, when determining transfer prices, it will be possible to use methods other than the 5 standard transfer pricing methods, including valuation techniques.



TP adjustments

Transfer pricing year-end adjustments. Clear rule stating that the transfer pricing adjustment constitutes taxable revenues or tax-deductible costs and should be recognized in the year to which it applies. However there are a few restrictive conditions limiting the use of year-end adjustments introduced (including the justification for the adjustment (change of relevant circumstances), adjustment should be made no later than the day of submitting the annual tax return, the taxpayer received a declaration from the other party about the adjustment made in the same amount, the correction is made with the country with which Poland has signed a double tax treaty or with which it is possible to exchange tax information).



Non-recognition and recharacterization

New rules on transaction non-recognition and recharacterization. Tax authorities will gain power to consider the overall conditions of business activities conducted by related entities through the recognition that under certain conditions the transaction would not have been concluded (non-recognition) or could have been replaced by another transaction (recharacterization).



Electronic filing

Replacement of the CIT-TP and PIT-TP statements by electronic reporting of transfer prices (TP-R form). This will, at the same time, ensure higher efficiency in selecting taxpayers for tax audits.



Documentation elements

Unification of transfer pricing requirements with OECD standards. The elements of Local and Master File are going to be changed in order to meet the OECD requirements.

Safe harbours

Introduction of simplified settlement conditions (safe harbors). Taxpayers may use safe harbors what should result in recognition of the transfer price as arm's length. Safe harbors are introduced for two types of the transactions:

Transaction types	Safe harbors' conditions
Low value adding services (markup on costs)	<ul style="list-style-type: none"> • Markup should not exceed 5% if the LVAS is the company's costs and should be no less than 5% if LVAS is the company's revenue. • Service provider is not from a tax haven jurisdiction. • Service recipient has a detailed calculation of the cost base and justification for the selection of the allocation keys. • Low value adding services mean services that: <ul style="list-style-type: none"> • have been listed in Annex 6 of the CIT Act or are services of a similar nature (in particular: accounting and auditing services, corporate finance services, HR services, IT services, communication and promotion services, legal services, tax services, administrative services); • can be characterized as supporting to the key business activity (back office services); • are not the main business activity of the group; • are not provided to unrelated recipients; • 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).
Debt financing (loans and bonds)	<ul style="list-style-type: none"> • The interest rate is expressed as a margin over a base rate. • Except for the interest rate, there are no other fees or commissions related to granting or servicing the debt. • The financing has been granted for maximum 5 years. • The sum of liabilities from the related party financing does not exceed PLN 20 million (the same rule applies for the sum of receivables, if the taxpayer is the lender). • The financing is not provided by a tax haven entity.



Other changes

Other positive effect of the new regulations – an increase of the threshold for the purposes of determining tax deductible costs for the services and licenses purchased from related entities (increase from 5% to 10% of tax EBITDA). However, simultaneously the limit for tax deductibility of interest cost will be decreased from 30% to 20% of the tax EBITDA.

Moreover, the amended law eliminates the controversial art. 15ca of the CIT Act (market creditworthiness). However still the capital structure could be challenged based on the new recharacterization rule.

Changes except for the deletion of Article 15ca of the CIT Act (which is already applicable in 2018) will apply from 2019. Also, when it comes to the new regulations regarding the thresholds and elements of local and group documentation, the taxpayers may choose to apply the new rules from 2018 (opt-in option).

Why choose Crido?

- Our Transfer Pricing Team is a group of over 30 experts.
- The Team has been numerously recognized in Polish and international rankings (e.g. ITR European Tax Awards – Poland Transfer Pricing Firm of the Year in 2016, 2017 and 2018); the Team's Head – Ewelina Stamblewska-Urbaniak, is a recognized transfer pricing expert (in rankings of "Rzeczpospolita" and "Gazeta Prawna" dailies in the years 2015-2018).
- We deal with a full gamut of transfer pricing issues, including transfer pricing disputes, IP matters, reorganizations, financial modelling and valuation.
- We support our clients in the negotiations of advance pricing agreements (including mutual agreements) with the Ministry of Finance, and in the course of tax and fiscal controls.
- We participate in the legislation processes regarding transfer pricing provisions.
- We continue to share our expertise in the transfer pricing area.
- Our goal is to provide practical solutions and curb administrative burdens.
- We have been working for clients from various sectors, including, among others, the real estate, construction, public services, finances and debt collection, energy, retail, e-commerce, IT, gaming, media and telecommunications, and pharmaceutical sectors.
- We tap into the Taxand network and work with experts from over 40 countries.

Worth asking.



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