

New transfer pricing documentation requirements

1 January 2016 saw entry into force of the first of a series of changes to transfer pricing documentation requirements under the 9 October 2015 law amending the Corporate Income Tax Act, the Personal Income Tax Act and certain other acts. These first changes relate to country-by-country reporting and are to be followed by further changes which are to enter into force as of 1 January 2017.

The new law introduces a number of important changes and new duties for documenting transactions with related parties, including a new, extended TP documentation with a master file, a local file, a country-by-country report, a benchmarking study, a representation that the TP documentation has been prepared and a statement including related party transactions (form CIT-TP).

See below for a description of the major changes.

1. New transfer pricing documentation – revenue/expense thresholds

- The new law provides for a three-tiered TP documentation structure where the scope of information to be disclosed in each tier and of the additional reporting requirements depends on taxpayer's revenue or expenses.
- Revenue/expenses below EUR 2 million: No TP documentation will be required of micro entities, being those whose revenue or expenses for the preceding year did not exceed the PLN equivalent of EUR 2 million (except only for transactions with tax havens).
- Revenue/expenses above EUR 2 million: Businesses with revenues or expenses above this threshold will be required to prepare only a local file. The local file disclosures will be broader than today and will include information about, among other things, the taxpayer and its organisation and management structure, its business strategy, its past restructurings, its competitive environment, a description of the method and manner of profit calculation (with reasons for the particular choices made here), including how transactions (events) are settled (settlement algorithms) and how amounts affecting taxpayer's profit (loss) are calculated. In addition, the documentation will have to include taxpayer's financial results.
- Revenue/expenses above EUR 20 million: If a taxpayer's revenue or expenses exceed this threshold, it will have to prepare group-wide documentation called master file with information relevant for the group as a whole, including its structure, transfer pricing policies, business activities, intangible assets held by the group and its financial position (including its consolidated accounts).
- Consolidated revenue above EUR 750 million: The largest Polish-based multinationals with consolidated revenues of above EUR 750 million will have to provide a country-by-country report showing wide information on global allocation of the income of and the taxes paid by group members as well as a listing of the places where the group has business presence and its permanent establishments.

2. Benchmarking requirement

In addition to the above types of disclosures, taxpayers with revenues or expenses above EUR 10 million will have to provide a comparability analysis (benchmarking study). The study should present data on comparable entities established or having their places of management in Poland or, where the taxpayer has no access to comparable data, should describe how the terms of its transactions or other TP events are in line with terms which would otherwise be agreed between independent entities. Thus, the taxpayer will have to prove that its transactions are at arm's length. The benchmarking study should be prepared within 10 days from approval of financial statements.



3. New thresholds for related party status

Under the new law, two parties will be considered to be related on account of equity ties only if one holds (directly or indirectly) an equity interest in the other of no less than 25%, instead of 5% as before. In effect, a large group of taxpayers with relatively low equity interests in other entities will no longer be treated as related parties and will thus escape transfer pricing requirements.

4. Transactions falling under the documentation requirement

The new law changes the transaction thresholds which trigger the TP documentation duties. Under the previous law, transaction thresholds were fixed and did not depend on annual revenue. Now this will change and whether or not a transaction (or other event recognised in the books of account) is to be reported will depend not only on the transaction amount but also on the taxpayer's revenue.

See below for transaction thresholds and related revenue brackets.

Revenue (EUR)	Transaction thresholds triggering TP documentation requirement (EUR)
2m – 20m	50,000 + 5,000 for each million above 2m
20m – 100m	140,000 + 45,000 for each 10 million above 20m
> 100m	500,000

- The documentation requirements will pertain not only to related party transactions, but also to other events recognised in the books of account if such events materially affected the taxpayer's tax profit (loss) and their terms were agreed (or imposed) between related parties, for example cash pooling (liquidity management) agreements, profit sharing agreements, partnership agreements, joint venture agreements and the like.
- Moreover, where the law requires a taxpayer to prepare TP documentation by reference to a tax year, the taxpayer will automatically have to prepare such documentation also for the subsequent tax year even if the triggering thresholds are not exceeded in that year.

5. Additional duties – reporting

- Entities with revenue or expenses of above EUR 10 million will be required to attach a special statement (form CITTP) setting out their transactions (events) with related parties and with entities based in tax havens to their tax returns. This statement will doubtlessly give the tax administration access to very precise information on taxpayers and the kinds, amounts and materiality of their transactions. As such, the form will operate as an important tool for tax authorities to seek and identify taxpayers to be audited and to identify transactions on which to focus attention.
- In addition, taxpayers will be required to represent in writing that they have prepared TP documentation. This representation will have to accompany their annual tax return filings.

6. Preparation deadlines

- Transfer pricing documentation should be prepared no later than on the filing date for the annual tax return (and must be submitted upon tax authorities' request within 7 days, as before).
- Country-by-country reports, to be issued by ultimate parents of corporate groups with consolidated revenues of above EUR 750 million, should be prepared and filed within 12 months from the end of the tax year to which they relate (using form CIT-CBC).
- Tax authorities will be empowered to request documentation for transactions (events) whose amounts do not exceed the statutory thresholds if, in their opinion, it is likely in the circumstances that transaction amounts are understated to evade the documentation requirements. In such cases, the taxpayer will have to create and submit the documentation within 30 days from request.



7. Duty to update the documentation

- The law requires taxpayers to annually review and update their documentations for transactions/events that continue in subsequent tax years. Such updates should be completed within the deadline for the filing of the tax return for subsequent tax year.
- Benchmarking studies should be updated at least once every three years, or in any year in which there is a change in economic conditions such that affects the study.

8. Transactions by partnerships

The documentation requirements will now also apply to taxpayers earning revenues from participation in partnerships and by reference to such partnerships' transactions (the partners may appoint one of them to prepare the documentation but this will not release them from liability). In such cases, the revenue/expense thresholds apply to the partnership.

The changes described above become effective on 1 January 2017, except for country-by-country reporting regulations which entered into force on 1 January 2016 so that the first CBC reports must cover year 2016 and be filed by the end of 2017.

How to prepare?

The changes discussed above will undoubtedly enable tax authorities to hold more effective transfer pricing audits. In addition, the requirement to represent that TP documentation was prepared will increase the personal liability of those in charge of tax compliance.

Therefore, we recommend **preparing for the changes now by:**

- **analysing one's documentation and identifying what must be done** to ensure compliance with the new regulations
- **reviewing the terms of related party transactions** to make sure they are at arm's length; to this end we **advise doing a benchmarking study and making relevant adjustments** (if any prove necessary in light of the study)
- **developing processes and procedures** to ensure that the TP documentation and related party transactions statements are created as and when needed.

These preparations will materially mitigate the risk that any future TP audit would successfully challenge the terms of your transactions with foreign affiliates.

CONTACT DETAILS



Remigiusz Fijak

Manager

+48 604 999 370

remigiusz.fijak@tpa-group.pl



Mikołaj Ratajczak

Director

+48 663 664 260

mikolaj.ratajczak@tpa-group.pl



Damian Kubiś

Partner

+48 604 338 546

damian.kubis@tpa-group.pl

TPA is an international and dynamically developing consulting group offering comprehensive business advisory services. We provide our clients with top quality services in a client-friendly manner.

TPA Poland offers effective business solutions in the field of strategic tax and transaction advisory services, financial audit, accounting outsourcing, payroll administration and HR advisory services. We also have knowledge and special competencies which allow us to offer sector-specific advisory services particularly for the real estate and construction industry, as well as the energy sector.

TPA

office@tpa-group.pl

www.tpa-group.pl

www.tpa-group.com

Albania | Austria | Bulgaria | Croatia | Czech Republic | Poland | Romania | Serbia | Slovakia | Slovenia | Hungary
An independent member of Baker Tilly Europe Alliance