

# TRANSFER PRICING DOCUMENTATION IN THE LIGHT OF NEW REGULATIONS



# STATUS OF POLISH TRANSFER PRICING REGULATIONS

New Transfer Pricing regulations have been introduced based on the Act dated October 9<sup>th</sup>, 2015, and come in force as of January 1<sup>st</sup>, 2017.

This means that **still until the end of the year 2016 the Polish taxpayers shall prepare the Transfer Pricing documentation in accordance with rules that have been binding over the last years.**

The reasons behind significant changes in Polish Transfer Pricing documentation rules are increased actions undertaken by OECD aimed at fighting tax evasion and aggressive tax planning. In order to reform the international tax system OECD has produced BEPS Action Plan. Base erosion and profit shifting (BEPS) refers to tax planning strategies that exploit gaps and mismatches in tax rules to make profits ‘disappear’ for tax purposes or to shift profits to locations where there is little or no real activity but the taxes are low, resulting in little or no overall corporate tax being paid.

The BEPS project has a material impact on the tax law of Poland. In attachment we present a short description of particular BEPS actions and below we indicate BEPS actions that have been implemented in the Polish tax law system.

# TRANSFER PRICING UNDER TAX AUTHORITIES SCRUTINY. INTENSIFICATION OF TRANSFER PRICING DOCUMENTATION INSPECTIONS.

“The correctness of the income tax base declared by the related entities is a particular area of interest of the tax and fiscal control authorities. Especially, issues concerning the accuracy of transfer pricing between related parties is an area that requires coordination of tax and fiscal control authorities” – an excerpt from justification to Directive no 16 issued by the Minister of Finance on April 11<sup>th</sup>, 2014, concerning the establishment of a Related Parties Control Task Team.

The Ministry of Finance is taking steps aimed at increasing efficiency of the audits re transfer pricing documentation. For this purpose, a Directive has been passed based on which Related Parties Control Task Team has been created.

This – together with announced results of the audits of the Polish Supreme Control Chamber, as well as plans of the Minister of Finance for tax audits for the next months – means that **taxpayers can expect intensification of controls in the area of transactions between related parties.** In view of the above, proper preparation through verification of existing as well as missing documentation and its eventual supplementation is essential.

# BEPS IN POLAND

The following three actions have been implemented recently in the Polish legislation.

<b>ACTION 3</b>  <b>CONTROLLED FOREIGN COMPANY</b>	<p>The CFC rules were introduced in Poland on January 1, 2015. According to these regulations Polish taxpayers are subject to Polish tax on income earned by their controlled foreign companies even if the income is not distributed by the non-Polish company. Subsidiaries in tax havens are also treated as CFC.</p>
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<b>ACTION 4</b> <b>INTEREST DEDUCTION</b>	<p>The amended thin capitalization rules have been introduced in Poland on January 1, 2015. According to the said regulations the thin capitalization threshold of 3:1 was lowered to a debt-to-equity ratio of 1:1. Moreover new definitions have been introduced for the terms equity, loan and interest. Under the changes, a broader range of loans should be included in the calculation of non-deductible interest.</p>
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<b>ACTION 13</b> <b>TRANSFER PRICING DOCUMENTATION</b>	<p>On October 27<sup>th</sup>, 2015, the President of the Republic of Poland has signed the Act amending The Personal Income Tax Act, The Corporate Income Tax Act and certain other acts, which contain entirely new solutions in regard to Transfer Pricing documentation.</p> <p>The amendments are due to come into force as of January 1<sup>st</sup>, 2017, whereas country-by-country report must be already drawn up in relation to 2016.</p>
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## NEW REGULATIONS IN TRANSFER PRICING PROVISIONS

The proposed amendments include:

- changes to the **scope of the TP documentation** (extension documentation requirements for new entities and events),
- obligation of preparing **new type of TP documentation** (local file, master file and country-by-country reporting)
- **deadline** for preparation of TP documentation.

<b>SCOPE OF TP DOCUMENTATION</b>	
<b>EXTENSION DOCUMENTATION REQUIREMENTS</b>	<b>PERSONAL SCOPE</b> <ul style="list-style-type: none"> <li>▪ New category of entities obliged to prepare TP documentation – partnerships</li> <li>▪ Change in definition of an affiliate – participation threshold changed from 5% to 25%</li> </ul>
	<b>MATERIAL SCOPE</b> <ul style="list-style-type: none"> <li>▪ TP documentation requirement for transactions with significant impact on taxpayers’ activity. Taxpayers whose incomes or expenses defined by accounting provisions have not exceeded in the year preceding the tax year the equivalent of EUR 2 Mio, will be not obliged/required to prepare tax documentation.</li> <li>▪ Exceeding the threshold of EUR 2 Mio results in such an obligation in the next fiscal year, even if the values in the year for which the taxpayer is required to prepare documentation, are lower</li> <li>▪ TP documentation requirements cover new category of events (e.g. cash pooling arrangements, cost sharing agreements, agreements of companies not being a legal entity, joint venture agreements)</li> </ul>

## NEW TYPES OF DOCUMENTATION

### LOCAL FILE

Basic documentation including among others information on: (i) transaction description, indicating its nature and subject, as well as financial data related to the transaction, (ii) the identity of affiliates, (iii) analysis of performed functions, involved assets and risks borne by the transaction parties, including identification of the off-balance sheet assets, (iv) presentation of the taxpayers income (loss) calculation method among with its substantiation and presentation of an algorithm and settlements calculation method, (v) presentation of financial data description of a taxpayer, which will allow to compare calculation methods of a taxpayer income settlements with an associated entity with the data resulting from the approved financial statements, (vi) taxpayer information, including presentation of the organizational and management structure, subject and scope of its operations as well as its competitive environment, (vii) presentation of taxpayer's economic strategy including description of transformations within the meaning of business restructuring provisions, (viii) attached agreement concerning the transaction, (ix) attached agreement to the documentation regarding documented transaction, if such has been concluded with foreign tax authorities.

### COMPARATIVE DATA ANALYSIS

Taxpayers, whose incomes or expenses in the previous fiscal year exceed the equivalent of EUR 10 Mio, will additionally be required to provide comparative data analysis, which is to prove that prices (margins) used by them are set at market levels. The analysis should be based on data from the Polish market. In the absence of such data, taxpayers will be allowed to utilize foreign analyzes containing comparative data.

### MASTER FILE

Documentation at the group level for the taxpayers being a part of a capital group, only for entities with revenues or costs above EUR 20 Mio. The aim of the group documentation is the presentation of information on global operations, that take place in the capital group to which the taxpayer belongs.

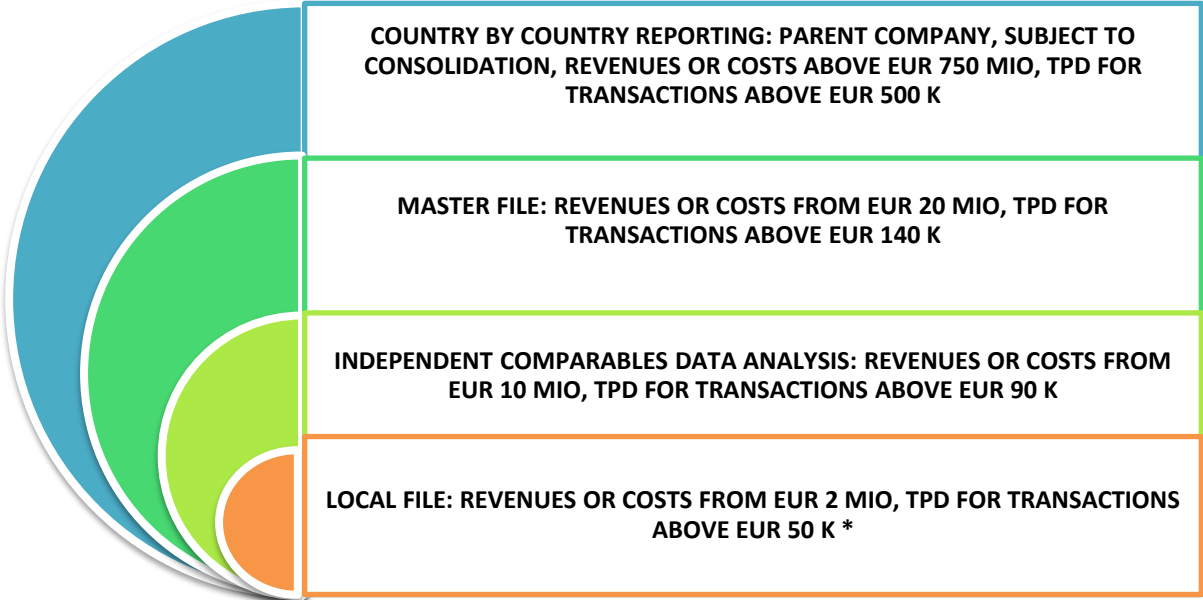
Group documentation should include a description of the ownership, legal, managerial and geographical structure of related parties, as well as group transfer pricing policy (including services provided in a group, research and development works, financing activities).

### COUNTRY-BY-COUNTRY REPORTING

Documentation prepared by parties that: (i) are a parent company and simultaneously do not meet the criteria of a subsidiary, (ii) prepare consolidated financial statements, (iii) have a foreign establishment or a subsidiary, (iv) have consolidated revenues or costs above EUR 750 Mio.

The report should be submitted in tabular form called CIT-CBC. Data broken down by particular tax jurisdictions will have to be disclosed by parent companies including, among others, the amount of revenues, the level of declared income before tax, the amount of paid and payable tax or the number of employees.

**THRESHOLD QUOTA REGARDING TYPES OF TP DOCUMENTATION**



\* Threshold for transactions to be documented, subject to relevant proportional increase in line with the revenues or costs amount within a given range. For transactions with entities based in “tax heavens” the threshold is EUR 20 K.

**DEADLINES**

<p><b>DEADLINE FOR PREPARATION OF TP DOCUMENTATION</b></p>	<p>Deadline for preparation of TP documentation is no later than the date for filing the annual corporate income tax return.</p> <p>Member of the board will be obliged to sign a statement confirming preparation of TP documentation (statement will be attached to the annual tax return).</p> <p>Tax authorities will also be authorized to request documentation on transactions or other events, the value of which will not exceed statutory limits.</p>
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# CHECK YOUR DOCUMENTATION OBLIGATION

Please go through the below steps and make sure you are ready for the Transfer Pricing inspection.

We are happy to assist you in each of the below steps.



# HOW DO WE HELP IN THE FIELD OF TRANSFER PRICING

## TRANSFER PRICING DOCUMENTATION

- Verification of existing tax documentation
- Preparation of transfer pricing documentation, including „local file“, „master file“, „country-by-country“ report, benchmarking analysis, statement on TP obligation and transactions

## TRANSFER PRICING POLICY

- Verification of existing transfer pricing policies and mechanisms from a tax perspective
- Preparation of policies and procedures related to transfer pricing calculation
- Verification of marketability of applied pricing

## ASSISTANCE IN TAX AUDITS AND TAX PROCEEDINGS, COURT PROCEEDINGS

- Preparation of strategy related to tax audit
- Participation and support during tax proceedings, including transfer pricing area
- Development of argumentation on the arm's length prices applicability

## RESTRUCTURINGS

- Verification whether a business restructuring results in a necessity to apply transfer pricing provisions
- Verification and calculation of compensation
- Drafting argumentation for restructurings' economic purpose

## ANALYZES AND VALUATIONS

- Analysis of conditions applied for financial, commodity, service or gratuitous transactions
- Support in valuation of intangible or fixed assets
- Verification of existing analyzes and evaluations from a tax perspective

## OTHER SERVICES

- Preparation and implementation of cost-sharing agreements
- Advice on procedure re APA (advance pricing agreement)
- Advice regarding documentation of intangible services
- Advice on profit allocation to permanent establishment
- Verification of settlements of tax groups

## ABOUT ADVICERO

**Advicero Tax** is an independent consulting company providing comprehensive advice covering tax advisory, accounting and payroll outsourcing services. Through cooperating entities we offer as well legal services and financial audit.

**Advicero Tax** has been created by consultants having extensive experience in advising Polish and international clients. Our goal is to apply the highest quality and standards of services on the level known from international advisory firms, offering them at the fee level tailored to meet the specific needs of our Clients. Having the background of working in the strongest advisory practices in Poland, we know not only how to provide the Clients with the highest quality advice, but also how our Clients' business works. Thanks to that we are able to address and match our Clients' needs and flexibly adapt to changing demands the Clients' business may bring.

Our experience determines the scope of our advice, which covers in particular, but is not limited to:

- tax advisory for energy sector: (i) disposal and acquisition of assets, (ii) advisory on rental agreements, (iii) optimal tax structure of the flows between group companies, (iv) tax settlements of investment costs and current operations;
- tax advisory for real estate and construction market: (i) transactional advisory, (ii) tax due diligence analysis in case of both share and asset deals, (iii) tax advisory for property management, (iv) tax settlements with tenants, (v) tax optimization of holding and financing structures, (vi) tax advisory for construction contracts;
- strategic tax advisory for retail and FMCG sector: (i) current operations optimization, (ii) leases and settlements advisory, (iii) online sales tax settlements;
- advisory for investment funds: (i) elaborating the optimal structure for the acquisition and disposal of assets, (ii) transactional advisory, (iii) optimization in terms of current operations;
- resolving disputes with tax authorities (proceedings before the authorities of first and second instance, proceedings in front of administrative courts, request for tax refunds in case of overpayments);
- review on financial statements and preparation of obligatory reports.

We provide our services in Polish, English, German and Italian.

**Our mission** is to support the business of our Clients and to provide them with the necessary advice, allowing them to run their business activities in an optimal and safe way.

**Our approach** is to render services to our Clients with the highest professional care, providing the right experts and the right mix of services.

### **Nexia International**

Advicero Tax Sp. z o.o. is a member firm of Nexia International.

Nexia International is a global network of independent accounting and consulting firms providing a wide range of audit, advisory and tax services. Nexia has 570 offices in 100 financial and economic world central points. This strategic location of Nexia units enables to meet with high demands of international clients, starting from private entities and ending with owners of large enterprises.

Members of a network cooperate with each other and exchange ideas, considering mainly individual needs of clients related to global and financial business activity.

More information at: [www.nexia.com](http://www.nexia.com).



## BEPS ACTIONS

<b>1. DIGITAL ECONOMY</b>	Identifying the main difficulties that the digital business poses for the application of existing international tax rules and developing detailed options to address these difficulties.
<b>2. HYBRIDS</b>	Developing model treaty provisions regarding the design of domestic rules to neutralize the effect of hybrid instruments and entities.
<b>3. CFC</b>	Strengthen controlled foreign company rules by developing recommendations regarding the design of CFC provisions.
<b>4. INTEREST DEDUCTIONS</b>	Developing recommendations regarding best practices in the design of rules to prevent base erosion through the use of interest expense.
<b>5. HARMFUL TAX PRACTICES</b>	Revamping the work on harmful tax practices with a priority on improving transparency, including compulsory spontaneous exchange on rulings related to preferential regimes, and on requiring substantial activity for any preferential regime.
<b>6. PREVENT TREATY ABUSE</b>	Developing model treaty provisions and recommendations regarding the design of domestic rules to prevent the granting of treaty benefits in inappropriate circumstances.
<b>7. PERMANENT ESTABLISHMENT STATUS</b>	Developing changes to the definition of PE to prevent the artificial avoidance of PE status in relation to BEPS, including through the use of commissionaire arrangements and the specific activity exemptions.
<b>8. TRANSFER PRICING INTANGIBLES</b>	Developing rules to prevent BEPS by moving intangibles among group members.
<b>9. TRANSFER PRICING RISK &amp; CAPITAL</b>	Developing rules to prevent BEPS by transferring risks among, or allocating excessive capital to, group members.
<b>10. TRANSFER PRICING HIGH-RISK TRANSACTIONS</b>	Developing rules to prevent BEPS by engaging in transactions which would not, or would only very rarely, occur between third parties.
<b>11. DATA COLLECTION</b>	Developing recommendations regarding indicators of the scale and economic impact of BEPS and ensure that tools are available to monitor and evaluate the effectiveness and economic impact of the actions taken to address BEPS on an ongoing basis.
<b>12. DISCLOSURE OF AGGRESSIVE TAX PLANNING</b>	Developing recommendations regarding the design of mandatory disclosure rules for aggressive or abusive transactions, arrangements, or structures, taking into consideration the administrative costs for tax administrations and businesses and drawing on experiences of the increasing number of countries that have such rules
<b>13. TRANSFER PRICING DOCUMENTATION</b>	Developing rules regarding transfer pricing documentation to enhance transparency for tax administration, taking into consideration the compliance costs for business.
<b>14. DISPUTE RESOLUTION</b>	Developing solutions to address obstacles that prevent countries from solving treaty-related disputes under mutual agreement procedures.
<b>15. MULTILATERAL INSTRUMENT</b>	Analyzing the tax issues related to development of a multilateral instrument to enable jurisdictions to implement measures developed in the course of the work on BEPS.

Transfer pricing documentation in the light of new regulations

**This brochure provides general information and does not constitute legal or tax advice and should not be considered as such. Before using presented information for running a business or making a decision based on the information presented in this report we suggest you to contact the Advicero Tax team.**

**Professional advice should be obtained before acting or refraining from acting based on the contents of this publication.**



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