



TRANSFER PRICING DOCUMENTATION IN POLAND



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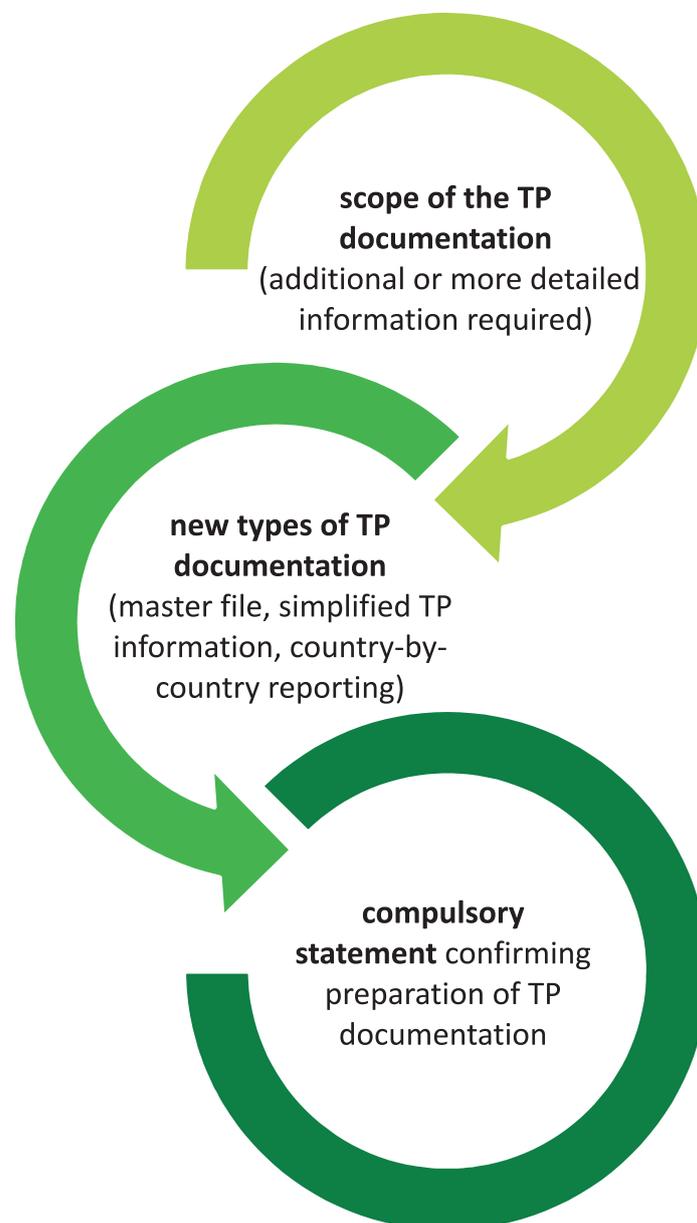
INTRODUCTION

On January 1st, 2017 the amended and expanded Transfer Pricing regulations came into force in Poland.

The changes result from Base Erosion and Profit Shifting (BEPS) Action Plan prepared by the OECD. BEPS refers to tax planning strategies that exploit gaps and mismatches in tax regulations in order to avoid or diminish effective taxation of profits.

Introduction of new transfer pricing rules is one of the steps assumed in BEPS plan which should seal the tax leakage following from shifting of profits between related entities.

KEY AMENDMENTS IN TRANSFER PRICING REGULATIONS



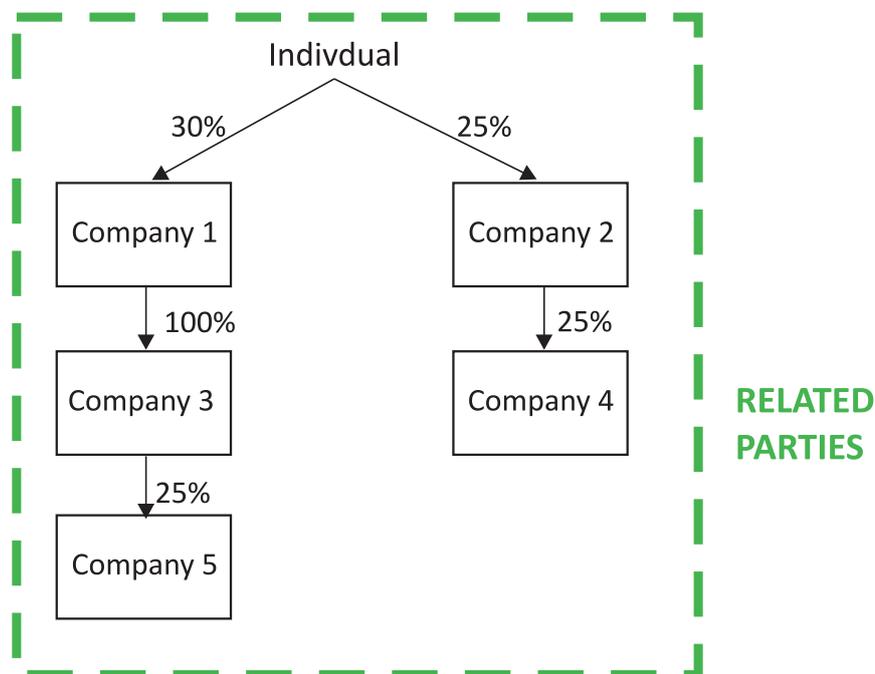
WHEN COMPANIES / INDIVIDUALS ARE RELATED PARTIES?

Companies are considered as related parties based on capital and personal relations.

Capital relations

The threshold of capital relations between the entities which are considered as related parties is increased from 5% to 25%. The parties are considered as related in the case when:

- One taxpayer holds at least 25% of another's shares (directly or indirectly),
- One entity holds at least 25% of shares in the capital of the parties to transaction (directly or indirectly).



Personal relations

Personal relations exist when an individual is involved directly or indirectly in management of parties to the transaction. This rule applies accordingly to the individuals having family connections, employment relation or due to property relation.

Other situations

Irrespective of the related parties' definition, the transfer pricing obligations apply to the transactions with entities and individuals seated in tax havens. Moreover, this obligation arise with respect to the partnership agreements and joint venture (and similar) agreement in the case when value of the contract exceeds EUR 50k.

WHICH TRANSACTIONS REQUIRE TRANSFER PRICING DOCUMENTATION?

A transaction (or a set of transactions of the same kind) or other events performed between related entities should be documented with transfer pricing documentation if:

- the taxpayer's accounting revenues or costs exceeded in the preceding year EUR 2m, and
- the annual value of the transaction(s) exceeds the materiality threshold. It starts at EUR 50k and increases proportionally to the volume of revenues (costs).

Materiality level for transactions performed with entities from tax havens is set at the level of EUR 20k.

Transfer pricing documentation should be prepared by taxpayers whose accounting revenues or costs in the preceding year **exceeded EUR 2m**. The obligation to prepare the documentation applies also to the subsequent tax year after the threshold is reached, in practice obligation lasts for two years after exceeding the threshold.

The materiality level transactions with a related party, which should be documented with transfer pricing documentation, starts **at EUR 50k** (taxpayers with annual revenues / costs of PLN 2-3m), and ends with **EUR 500k** (taxpayers with annual revenues / costs of more than EUR 100m, with multiple thresholds in between. Transactions with tax havens are exception – EUR 20k.

Tax authorities are also authorized to request documentation of transactions or other events with volume below the statutory limits if the taxpayer **artificially lowered** their value.

WHAT ARE THE TYPES OF DOCUMENTATION?

The current regulations provide for the following types of documentation:

LOCAL FILE

Basic documentation including among others the following: (i) transaction's description, indicating its nature and subject, as well as financial data related to the transaction, (ii) the identification data of the parties, (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 method of transfer price calculation (or loss resulting from the transaction) along with its justification and presentation of profit calculation algorithm with impact on profit and loss (v) presentation of financial data of the taxpayer, which will allow to compare calculations included in point iv) above with data shown in the approved financial statements, (vi) information about the taxpayer's structure, including presentation of the organizational and management structure chart, subject and scope of its operations as well as its competitive environment, (vii) presentation of the taxpayer's economic strategy including description of transfer(s) of significant functions, assets or risks between related parties, which took place in the current or previous tax year and impact the taxpayer's tax income / loss, (viii) agreement concerning the transaction, (ix) attached advance pricing arrangements (APAs) signed with tax authorities from different countries in relation to the described transactions.

BENCHMARKING ANALYSIS

Taxpayers reporting revenues or costs in the previous fiscal year above the equivalent of EUR 10m, are additionally required to provide benchmarking analysis. Formally as an element of local file which should confirm that transfer prices comply with arm's length principle (free market conditions). It is important that the analysis should be based on the Polish market data. If comparable data is not available, benchmarking study should be replaced with the justification of transfer price applied confirming that market conditions are preserved.

MASTER FILE

"Master file" is a document for taxpayers being a part of a capital group and having accounting revenues or costs for the preceding financial year of more than EUR 20m. The purpose of the group documentation is presentation of information on global transactions performed within the capital group of the taxpayer.

The group documentation should include a description of: the subject and scope of the group's business activity, legal and organizational structure of the group, group transfer pricing policy, created / used intangibles as well as financial situation of the entities forming the group.

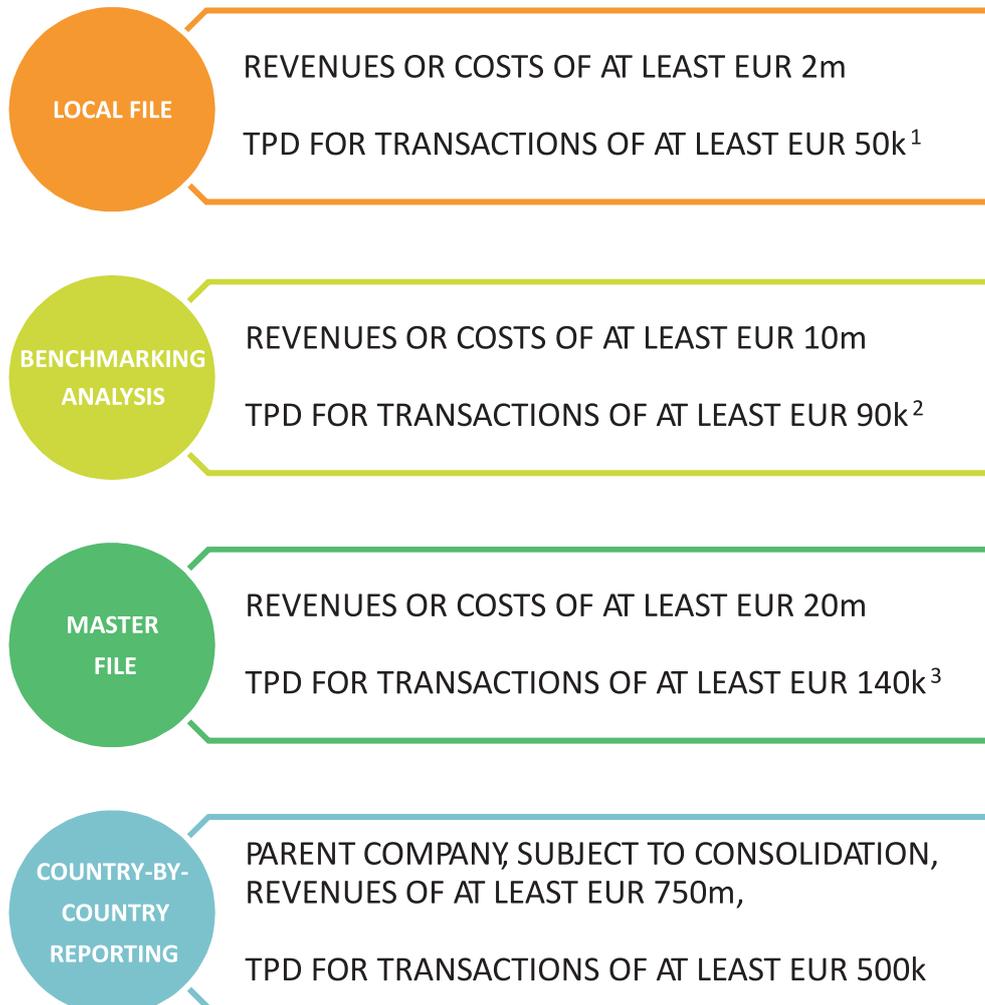
COUNTRY-BY-COUNTRY REPORTING

Country by country report should be prepared by the taxpayers that: (i) are an ultimate parent company and simultaneously do not meet the criteria of a subsidiary (within the meaning of the Polish Accounting Act), (ii) prepare consolidated financial statements, (iii) have a foreign establishment or a subsidiary, and (iv) have consolidated revenues of more than EUR 750m.

The report should be submitted in official form (CIT-CBC). It should include, among others, information on: the amount of revenues, the level of declared profit before tax, the amount of paid and due tax or the number of employees in respect of every tax jurisdiction where the Polish tax payer (or its foreign subsidiary) is present.

WHAT KIND OF DOCUMENTATION SHOULD BE PREPARED?

Threshold quota regarding types of documentations are presented below:



Additional documents

- All taxpayers being subject to TP regulations are also obliged to sign and submit a statement confirming preparation of TP documentation.
- Moreover, taxpayers whose accounting revenues or costs exceeded in the preceding year the threshold of EUR 10m are also obliged to submit a simplified report on transactions with related entities (CIT-TP form).

¹ EUR 50k threshold is assigned to the range of revenues between EUR 2 – 3m

² EUR 90k threshold is assigned to the range of revenues between EUR 10 – 11m

³ EUR 140k threshold is assigned to the range of revenues between EUR 20 – 30m

WHAT IS THE DEADLINE FOR PREPARATION OF TRANSFER PRICING DOCUMENTATION?

Deadline for:

- preparation of **TP documentation**, and
- submission of the **statement confirming** preparation of TP documentation

is the deadline for filing the annual income tax return (i.e. for the corporate income taxpayers – the end of the third month following the end of a given tax year).

- The benchmarking analysis should be prepared within 10 days from acceptance of the financial statement.
- The simplified report on transactions with related entities (CIT-TP form) should be attached to the annual tax return.
- The master file should be ready within the deadline corresponding with submission of the annual CIT return by a group company that prepared the file.

In the years 2018 and 2019 the deadline for preparation of TP documentation related to tax years 2017 and 2018 as well as submitting additional forms and statements is postponed until the end of the ninth month following the end of a given tax year (for standard tax years: until the end of September).

WHAT ARE THE STATISTICS OF TRANSFER PRICING CONTROLS?

- In 2017, tax offices initiated **287 audits related to transfer pricing**. **239 transfer pricing audits** were closed with the decision of the tax offices of first instance.
- **115 cases** among all the proceedings (also those initiated and uncompleted before 2017) regarding transfer pricing ended with the decision of the second instance authority.
- **182 cases** ended up with decisions **in relation to** transfer pricing resulting in the increase of taxable revenues or reduction of tax deductible losses (46 cases in 2016).
- Total value of the additional income evaluation resulting from the above activities carried out in 2017 amounts to **PLN 2,333,935,938.34**. This amount has increased by **250%** compared to 2016 (PLN 650,000,000.00).
- In 2017, the Polish Ministry of Finance employed **232 officers** specializing in transfer pricing documentation.

HOW DO WE HELP IN THE AREA 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
- Preparation of policies and procedures related to transfer pricing calculation
- Verification if terms of related party transactions meet market conditions

ASSITANCE 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 supporting existing terms of transactions

RESTRUCTURINGS

- Verification of restructuring transactions from TP perspective
- Verification and calculation of compensation granted / received
- Drafting argumentation supporting the restructuring’s 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

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



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