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LEGAL REGULATIONS OF TRANSFER PRICING IN POLAND

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Aim of presentation

- to present legal regulations concerning transfer pricing in Poland in 2019,
- to compare them with previously applicable regulations: regulations in force until 2016, regulations in force in 2017-2018

Due to the right to control taxes up to 5 years back, groups capital in Poland must adapt to three different legal orders

History

- Poland became a member of the OECD on November 22, 1996
- The first provision on transfer prices was introduced into the Polish legal order in 1935 by amending the Law on state income tax
- Post-war regulations to a certain extent regulated the issue of international trade and leveled the impact of differences in the tax systems of individual countries on the tax base of Polish enterprises. The income tax decree of 1946 provided for the possibility of estimating the taxpayer's income in a situation when one of the related parties of the transaction benefited from specific tax reliefs. Two years later, national entities were also subject to regulations limiting the transfer of income



- Later, due to the functioning of the centrally controlled economy, the regulation of transfer prices lost their importance.
- Interest in this issue returned in the early 90s of the twentieth century along with the beginning of the market economy. The Law on Corporate Income Tax, in force since February 15, 1992, includes a provision regulating the issue of links between business entities

- Since 1996, work has begun to adapt Polish law to international regulations in the field of transfer pricing.
- In 2001, under the influence of the OECD, Polish regulations were supplemented with the obligation to document the transactions with related entities
- The possibility of concluding an Advanced Pricing Agreement was created for taxpayers in 2006

Source of recent changes in Polish legal regulations

- The subject of transfer pricing was discussed in the project of the Organization for Economic Cooperation and Development entitled "Base erosion and profit shifting (BEPS). In 2013-2015, the OECD and the G20 member states published a report (Action Plan on Base Erosion and Profit Shifting), the aim of which was to improve the coordination of tax authorities' actions against tax avoidance by global corporations. The report consists of 15 parts devoted to the most important problems in this area



Acts constituting the basis of legal regulations in the field of transfer pricing in Poland

1. The Act of 15 February 1992 on corporate income tax (updop) Version from 1/01/2017 - 31/12/2018 (Article 9a and Article 11) Changes from 01/01/2019 (chapter 1a Transfer prices added)
2. Act of July 26, 1991 on personal income tax Version 1.01.2017 - 31/12/2018 (Articles 25 and 25a) Changes from January 1, 2019 (Chapter 4b Transfer prices added)
3. Tax Ordinance of 29 August 1997 (Journal of Laws of 2018 item 800, as amended) Version until 31/12/2018 in art. 3 a) point 10 - definition of the transaction price Version from 1/01/2019 - reference to the transfer pricing definition in art. 11a updop



As of 1/01/2019, the following has been repealed:

- Regulation of the Minister of Development and Finance of September 12, 2017 on the information contained in the tax documentation in the scope of income tax from legal persons
- Regulation of the Minister of Development and Finance of September 12, 2017 on the information contained in the tax documentation in the field of personal income tax

- Regulation of the Minister of Finance of 10 September 2009 on the manner and procedure for determining the income of legal persons by way of estimation and the manner and procedure for eliminating double taxation of legal persons in the case of adjustment of affiliates' profits
- Regulation of the Minister of Finance of 10 September 2009 on the manner and procedure for determining the income of natural persons by way of estimation and the manner and procedure for eliminating double taxation of natural persons in the event of adjustment of affiliates' profits

Regulations in force from 1/01/2019

- Regulation of the Minister of Finance of December 21, 2018 regarding transfer pricing in the area of personal income tax
- Regulation of the Minister of Finance of December 21, 2018 regarding transfer pricing in the field of corporate income tax
- Regulation of the Minister of Finance of December 21, 2018 regarding information on transfer prices in the scope of corporate income tax
- Regulation of the Minister of Finance of December 21, 2018 regarding information on transfer prices in the area of personal income tax

- Regulation of the Minister of Finance of December 21, 2018 on the manner and procedure for eliminating double taxation in the event of adjustment of affiliates' profits in the area of personal income tax
- Regulation of the Minister of Finance of 21 December 2018 on the manner and procedure for eliminating double taxation in the event of adjustment of affiliates' profits in the scope of corporate income tax



- The amendments to the regulations should be assessed positively in the context of an attempt to adjust the tax system to the changing economic environment.
- Due to the globalization of economic turnover, the trends of harmonization of legal regulations in the field of transfer pricing in the world should be well assessed.
- On the other hand, related entities in Poland have been experiencing so many changes in the tax legislation so far that this raises many problems.

- Along with the changes to the Corporate Income Tax Act, the Act on Personal Income Tax and the Tax Ordinance, an opinion regarding the compliance of the proposed changes with the European Union law has been submitted.
- The aim of the changes was to simplify regulations and reduce bureaucratic and administrative burdens while also tightening the tax system. The statement of reasons includes a desire to link the amount of tax paid by large international enterprises to the actual place where they obtain income.

- There are also opinions, that new regulations are more restrictive than the OECD Guidelines and regulations in the field of transfer pricing implemented in other European Union countries.
- The main complaint: that the number of newly introduced regulations require interpretation and explanation

- Due to the large number of new legal regulations regarding transfer pricing and the necessity of their interpretation, the Minister of Finance appointed the Transfer Pricing Forum, operating by the Ministry of Finance of the Minister of Finance's order of 27 April 2018 regarding the creation of Transfer Pricing Forum.
- The aim of the Forum is to prepare recommendations, opinions, analyzes, proposals and proposals regarding the simplification and sealing of the operation of the tax system in the field of transfer pricing.

- The works are carried out as part of working groups appointed for the elaboration of the chosen problem. So far, working groups have been working on making recommendations on topics such as:
 - a) the hierarchy of using the transfer pricing methods and selecting the most appropriate method,
 - b) verification of the market nature of re-invoice transactions,
 - c) preparation of descriptions of compliance of transaction conditions and other events established with entities related to conditions that would be established between independent entities,
 - d) technical aspects of preparing comparative analyses,
 - e) interpretation of the application of restructuring provisions.



Details

The most important legal act for international capital groups in Poland in the field of transfer pricing is the Act on Corporate Income Tax. The issue of Transfer Pricing is devoted to chapter 1a entitled "Transfer prices", containing the following chapters:

1. General provisions (Articles 11 a and 11 b)
2. Arms'length principle (from article 11 c to 11 j)
3. Transfer Pricing Documentation (from article 11 k to 11 t)

Definitions

- Art. 11 a contains, inter alia, regulations in the scope of: transfer pricing definition, definition of related entities, definitions of direct and indirect share in capital. Article 11b excludes the application of transfer pricing provisions for transactions in which the price results from the provisions of statutes or other normative acts. Other exclusions are transactions between the Bank Guarantee Fund and the bank or brokerage house.

Arm's length principle

- The second chapter defines the arm's length principle and provides the right of the tax authority to determine the taxable income, if it recognizes a violation of the arms length principle (Act on Corporate Income Tax, art. 11c).
- Article 11 d contains methods for verification of Transfer prices in accordance with OECD methods and allows the sixth method, if it is not possible to apply the methods mentioned above.
- In order to verify transfer prices, the tax authority must take into account the method adopted by the taxpayer, unless another method is more appropriate.



Related entities

- Entities from which one entity exercises significant influence over at least one other entity. Possession, directly or indirectly, of at least 25% (Until the 2016 – 5% share in capital):
 - a) equity shares or
 - b) voting rights in the Company's bodies or
 - c) shares or profit participation rights
 - d) marriage or second degree relatedness or affinity.

Transfer price

Financial result of conditions determined or imposed as a result of existing links, including price, remuneration, financial result or financial index

Exceptions

- In Polish transfer pricing regulations, controlled transactions are identified for low value-added services. Services with low added value may not exceed 2% of the value of all services provided. Annex 6 of Act on Corporate Income Tax contains details of such services. For transactions involving low value-added services, the tax authority waives the corrections if the mark-up on the costs of these services has been set at:
 - a) no more than 5% of costs - in the case of services purchased,
 - b) not less than 5% of costs - in the case of the provision of services;



- Pursuant to the regulations that have been in force since 2019, the possibility of simplified settlement and documentation of loan transactions has been introduced, in addition to low value-added services, the so-called "Safe harbours" (art. 11g). When calculating loans, a taxpayer may apply a margin above the base interest rate (or actually a margin above the base rate) set out in the Minister of Finance's notice published at least annually, and when the conditions set out in the provisions are met. For example, for 2019, a 2% margin and base interest rates were determined depending on the loan currency (eg WIBOR 3M for a loan in PLN, LIBOR USD 3M, - for a loan in US dollars).



Transfer pricing documentation (from 2017)

- Local file
- Master file
- Country-by-country report

Documentation thresholds for local file – if the revenues or costs exceeded the equivalent (2019):

- 1) PLN 10,000,000 - in the case of commodity transactions;
- 2) PLN 10,000,000 - in the case of a financial transaction;
- 3) PLN 2,000,000 - in the case of a service transaction;
- 4) PLN 2,000,000 - in the case of a transaction other than specified in points 1-3.

2017-2018

- 1) EUR 2,000,000, but not more than the equivalent of EUR 20,000,000 - threshold of EUR 50,000 increased by EUR 5,000 for each EUR 1,000,000 of revenue over EUR 2,000,000;
- 2) EUR 20,000,000, but not more than the equivalent of EUR 100,000,000 - a threshold of EUR 140,000 increased by EUR 45,000 for every EUR 10,000,000 in revenue above EUR 20,000,000;
- 3) EUR 100,000,000 - threshold of EUR 500,000

2016

- EUR 100,000 - if the value of the transaction does not exceed 20% of the share capital, or
- EUR 30,000 - in the case of the provision of services, sale or provision of intangible assets, or
- EUR 350.000 - in other cases.

Documentation thresholds for master file

- When the consolidated income of the capital group exceeded EUR 20,000,000 in the previous financial year (2017-2018)
- When the consolidated income of the capital group exceeded PLN 200,000,000 in the previous financial year (2019)

Documentation thresholds for country-by-country report

- When the consolidated revenues of the capital group for the previous financial year exceeded 750 million EUR

Penalties in case of income increase by tax authorities and lack of tax transfer pricing documentation

Until 2018: If the tax authority determines the income of the taxpayer in a higher amount (loss in the amount lower than declared by the taxpayer and does not submit to the tax documentation body), the difference between the income declared by the taxpayer and specified by this body is taxed at 50%

2019: Additional tax liability is 10% of the amount of unduly proved or overstated tax loss and unrealized income to the extent resulting from the decision issued in relation to transfer prices (in justified cases 20% -30%)

Comparative analysis / compliance analysis obligation

- Until 2016: No such obligation
- 2017-2018: The obligation to conclude the results of a comparative analysis in tax documentation of transfer prices for entities whose revenues exceeded EUR 10,000,000 in the financial year
- From 2019: The obligation to conclude the results of a comparative analysis in tax transfer pricing documentation for all entities. Compliance analysis in the case of the lack of the possibility of compiling a comparability analysis



The deadline for preparing the documentation "local file"

- Until 2016: No such obligation
- 2017-2018: Until March 31 after the end of the tax year
- From 2019: Until 30 September after the end of the tax year

The deadline for submitting documentation:
Within 7 days at the request of the tax authority

Additional statements obligation

- Untill 2016: No such obligation
- From 2017: Declaration of the Management Board on the possession of transfer pricing documentation and on the fact that transfer prices are set on market terms (2017-2018: CIT TP, 2019: TP-R)

Practical significance for taxpayers in Poland is also found in the Regulation of the Minister of Finance of December 21, 2018 regarding transfer pricing in the field of corporate income tax. The regulation contains the following chapters:

- 1) General provisions
- 2) Comparability study
- 3) Transfer pricing methods
- 4) Restructuring



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