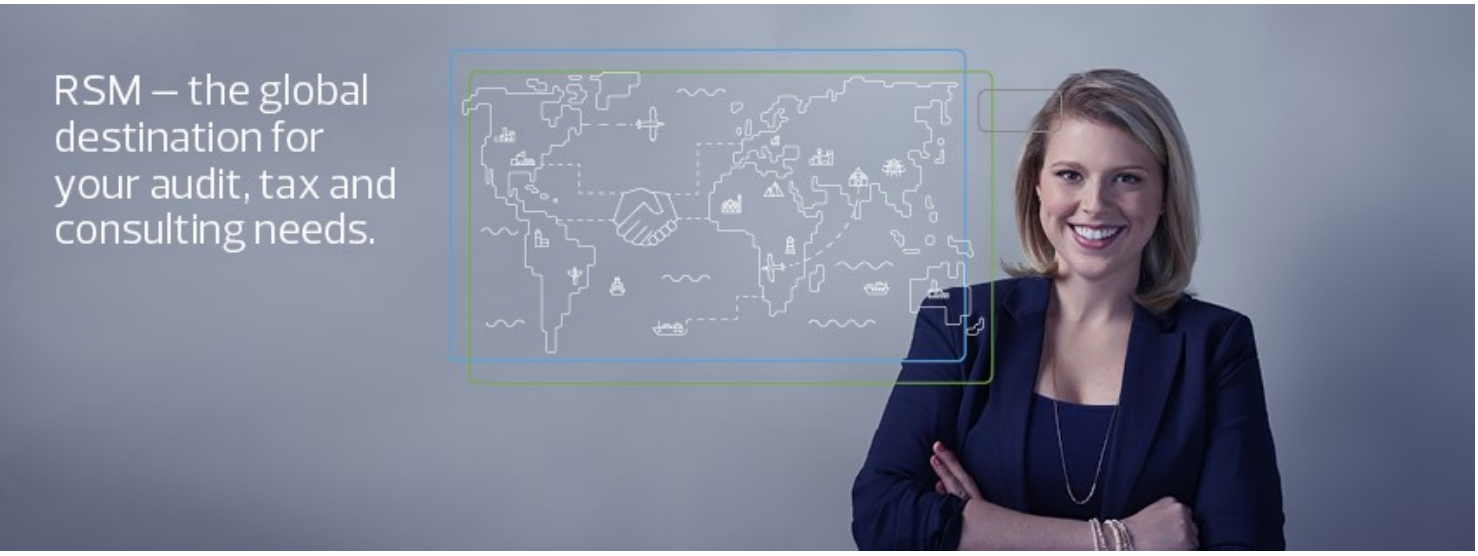


# Transfer pricing reporting in new regulations

## Tax Alert

**Dear Readers,**

**On 27 October 2015 the President signed the act amending the personal income tax act, the corporate income tax act and other acts (hereinafter „Act"). This act introduces, among others, fundamental changes in the scope of transfer pricing reporting. The outline of the changes in question was already presented in one of our previous publications. However, the final content slightly differs from what was included in the draft legislation. The changes will take effect in two stages: the minor part from 1 January 2016 and the vast majority from 1 January 2017. Among the provisions indicated below only the ones relating to Country-by-country reporting will come into force at the beginning of the new year, whereas the obligation to apply the remaining regulations will be effective after 31 December 2016.**

**The level of share in the capital of the entity and the existence of capital ties**

The analysis of changes should start with the modifications in the level of direct and indirect share in the capital of another entity which determines the existence of capital links between them. Compared to the current regulations, this level will be increased from 5% to 25%.

**The revenue criterion and transaction thresholds**

The act provides that the obligation to prepare the TP report will be applied to the taxpayers whose revenue or expenses according to their accounting books in the previous year exceeded the equivalent of EUR 2m in PLN. The criterion also applies to taxpayers who perform business activity through a partnership – in this case revenue or accounting costs of the partnership are to be considered. In addition to the revenue or cost criterion, there will also be a change in the values of transaction thresholds beyond which the obligation to prepare the documentation will arise. Up to now, the level of thresholds for particular types of transactions was fixed, which meant that it was not dependent on the revenue obtained by a taxpayer in a given year (incurred expenses). The above will change, however: the obligation to prepare the TP report will only apply to transactions (or other events entered into the accounting books) that are significant for the business activity of the taxpayer.

The table below presents the methods used for the calculation of transaction thresholds depending on the level of revenue (costs).

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| Revenue (Expenses) | Transaction thresholds |
|---|---|
| **> EUR 2m** | EUR 50,000 + EUR 5,000 for each EUR 1m in revenue over EUR 2m |
| **> EUR 20m** | EUR 140,000 + EUR 45,000 for each EUR 10m in revenue over EUR 20m |
| **> EUR 100m** | EUR 500,000 |

The level of transaction thresholds for transactions (or other events entered into the accounting books) performed with entities from countries applying harmful tax competition will not change. It must be noted that it is irrelevant whether the parties to a transaction are related or independent. Moreover, this obligation will apply to all taxpayers, including those who do not exceed the threshold of EUR 2m in revenue (expenses).

**Scope of information in the TP report**

With the increase in the level of revenue or accounting costs the scope of the transfer price report will be extended. The level of detail of the TP report for particular levels of revenue or costs is presented in the table below.

| Scope of the TP report | Revenue (Expenses) | | Deadline for: |
|---|---|---|---|
| **– regulations in force from 1 January 2017** | | | |
| Local File<br>+ Declaration of documentation preparation | > EUR 2m | preparation* | by the date of declaration corporate tax return<br>(for example, the majority of CIT taxpayers will have to prepare such documentation by 31 March 2018) |
| + Comparative analysis<br>+ Simplified report (CIT-TP/PIT-TP – annexes to the annual tax return) | > EUR 10m | | |
| + Master File | > EUR 20m | | by the day of filing the corporate tax return applicable to the entity providing such Master file (shareholder, holding company etc.) |
| **– regulations in force from 1 January 2016** | | | |
| + Country-by *-by-Country Reporting* | > EUR 750m | submission | 12 months from the end of the fiscal year<br>(for example, the first such document will have to be submitted by 31 December 2017) |

* the deadlines indicated in the table apply to the preparation of the TP report, as the deadline for its submission will not change and will still be 7 days from the receipt of a request for submission

**Local File + declaration**

If the taxpayer exceeds the threshold of EUR 2m in revenue (expenses), he will be required to prepare local TP report and submit a declaration of its preparation (there is not a formalised template of such a declaration yet). Local report should contain information on the taxpayer, including, among others, a description of the organisational structure, business strategy, conducted business activity, a description of financial data allowing

to compare the settlements with the data resulting from the financial statement. Moreover, it should also include descriptions of transactions and other events, among others, the indication of the nature and object of the transaction and associated financial flows. Documents, such as contracts or agreements between related entities should also be enclosed with the documentation. At this level the TP report will not significantly differ from what taxpayers are currently required to prepare.

**Benchmarking report + CIT-TP/PIT-TP**

In the case of exceeding the level of revenue or accounting costs in the amount of EUR 10m, the TP report should also contain the benchmarking analysis and a simplified report of the transactions and other events taking place between related entities (CIT-TP/PIT-TP). The benchmarking report is the analysis of data relating to independent entities or data agreed with an independent entity with an indication of the source of the data.

**Master File**

If the taxpayer's revenues or costs exceed the level of EUR 20m, an additional part of the TP report will be the so called Master File – a document including information on a group of related entities. This document is to include, among others, the indication of the related entity that prepared the documentation (as there are no guidelines as to which entity is responsible for its preparation), the organisational structure of the group or a description of the principles of determination of transactional prices (transaction prices policy) applied by a group of related entities.

**Country-by-Country Reporting**

Polish parent entities that prepare consolidated financial statements within the meaning of the accounting regulations, which own a foreign branch or subsidiaries outside the territory of the Republic of Poland, if their consolidated revenues exceeded EUR 750m in the previous year will be required to submit an additional statement to the tax authority on the amount of income and the tax paid as well as on the locations of business activity of the subsidiaries and foreign branches in the fiscal year – the so called Country-by-Country Reporting.

However, a new provision will appear relating to the possibility of the tax authorities requiring the documentation for transactions and other events whose value will not exceed the statutory limits. The rationale for this will be the occurrence of circumstances indicating to the likelihood of underestimation of the value by the taxpayer in order to avoid the obligation to prepare the documentation. Then the taxpayer will be obliged to prepare the documentation and submit it within 30 days of the receipt of the request.

**Obligation to update documentation**

The legislator also provides for a necessity to perform a periodic review and update of the documentation relating to the transactions or other events that continue into the next fiscal year – at least once per tax year – before the deadline for filing the tax return for the following years. In the case of benchmarking report the update should be performed at least once per 3 years. However, in the event of economic circumstances affecting the analysis, the review should be performed in the year when the change of conditions occurred.

**Consequences of regulation amendment**

This act introduces fundamental changes in the scope of TP report. First of all, they translate into an increase in the level of detail required in relation to the information included in the documentation following an increase in the level of revenue/expenses of the taxpayer. The changes are aimed to improve the transparency of not only single entities but also of entire capital groups. The purpose behind this is to enable the tax authorities to perform more effective inspections of transfer prices. The amendment of regulations by introducing an obligation for the taxpayer to submit a declaration of the TP report preparation will additionally increase personal liability of persons responsible for tax settlements. It is also worth noting that the act introduces a specific deadline for the preparation of the TP report. Due to the fact that the deadline will coincide with the deadline for filing the annual tax return, it is worth preparing and analysing all the data necessary for the TP report on an ongoing basis.

**Should you wish to discuss the above mentioned amendments in detail, feel free to contact us:**

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