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General interpretation concerning transfer pricing regulations

Tax Alert

Dear Readers,

On 24 January 2018, the Ministry of Finance issued a general interpretation clarifying some technical issues related to the preparation of tax documentation. The document clarifies issues that are confusing for taxable persons concerning, e.g. the method of determining documentation thresholds and relevant classification of transactions as transactions of one type.

After the amendment of the regulations governing the conditions for documenting transactions between related parties, introduced at the beginning of 2017, there were many doubts concerning their correct interpretation, especially the issue related to the determination of transaction thresholds. Misinterpretation by a taxable person of those regulations could result in the recognition by the tax authorities that the taxable person failed to fulfil the obligation to prepare transfer pricing documentation, and thus result in fiscal criminal consequences, the assessment of the earned income and the application of the 50% sanction tax rate.

The confirmation of the uncertainty growing among taxable persons concerning the method of interpreting new regulations was the increase in the number of individual interpretations issued in this respect that was observed at the end of 2017. In order to dispel these doubts, the Ministry of Finance decided to issue a general interpretation. The most important issues clarified by the published document are presented hereinbelow.

The term "of one type" refers both to "other events" and to "transactions"

The Minister explains that the "documentation threshold (...) shall be applied separately to each type of transaction or to any other type of event". This means that the term "of one type" shall not be referred only to "other events". Thus, a taxable person is not obliged to sum up transactions of different types, and if the transaction of one type does not exceed the amounts of the thresholds stipulated in the regulations, the taxable person is not obliged to prepare the documentation. As emphasised by the Ministry of Finance, the ratio legis of the regulations in force since 1 January 2017 was, inter alia, to focus on economically significant transactions that affect the income amount of a taxable person.

Documentation threshold counted cumulatively for all related parties

In a situation where a taxable person performs in a fiscal year transactions of one type (or other events) with a number of related parties, in order to determine the obligation to prepare tax documentation, the taxable person shall sum up the value of the transactions (or other events) of one type concluded with all related parties, instead of taking into account only a specific related party. The new regulations fail to specify in any point that the documentation threshold should be determined separately for each related party.

The documentation obligation applies only to related entities

In response to the emerging doubts, the Ministry of Finance pointed out also that the obligation applying to "other events" does not apply to transactions carried out with unrelated parties. This conclusion is based on both the wording of the transfer pricing regulations and the purpose of their functioning, as they are addressed only to taxable persons carrying out transactions or other events with related parties (except for transactions or other events carried out with entities from tax havens).

Classification of transactions (or other events) as of one type

The assessment of whether the transactions (or other events) are of the same type should be performed each time based on the main transaction parameters relevant from the transfer pricing point of view, such as important functions, assets, risks as well as the method of price calculation, significant payment terms, etc. In the opinion of the Ministry of Finance, each transaction (or other event) shall be analysed individually for this purpose, taking into account the specific nature of taxable person's operations.

Given the above, despite the fact that the Minister has failed to define clear guidelines regarding which transactions (other events) shall be treated as transactions (other events) of the same type, the published interpretation clarifying other doubts will certainly be helpful for taxpayers.

It should be also noted here that all taxable persons may observe the general interpretation, even including those for whom an unfavourable individual interpretation was issued. And with regard to taxpayers with individual interpretations whose theses are more favourable to them than the provisions of the published general interpretation, they may adhere to those provisions until such interpretations are changed, expired or revoked.

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

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