

Transfer Pricing Country Summary Poland

March 2018

Legislation

Existence of Transfer Pricing Laws/Guidelines

Article 11 of the Corporate Income Tax Act ("CIT") serves as the legal basis for applying the arm's length principle. It also defines the concept of related parties and lists transfer pricing methods available to tax authorities when assessing the taxpayer's income.

The statutory transfer pricing documentation requirements, including the definition of entities obliged to prepare it and the required items of such documentation, are introduced in the article 9a of the CIT.

The abovementioned regulations have their equivalent in the Personal Income Tax Act (articles 25 and 25a, respectively).

The Polish transfer pricing regulations in general follow the OECD Transfer Pricing Guidelines. However, these guidelines are not formally accepted as the source of law in Poland. In practice, the OECD Transfer Pricing Guidelines are considered supporting reference material only.

Furthermore, it should be noted that:

- articles 9a and 11 of the Corporate Income Tax Act of 15 February 1992 (Journal of Laws of 2017, item 1753 as amended),
- Decree of the Minister of Finance of 10 September 2009 on the method and procedure for assessing legal person's income by estimating the prices and the method and procedure for eliminating double taxation of legal persons resulting from adjustment of related parties' profits (Journal of Laws no. 160, item 1268 as amended),
- Decree of the Minister of Finance of 12 September 2017 on the information to be included in transfer pricing documentation in the field of corporate income tax (Journal of Laws from 2017, item 1753),

apply to certain transactions with entities located in jurisdictions applying harmful tax competition, even if the counter party in such a location is not a related party. In addition, article 9a applies to non-resident taxpayers carrying activities through a permanent establishment located on Polish territory.

Transfer Pricing Scrutiny

The audit risk is medium to high for all types of transactions and other events. In 2014, the Ministry of Finance appointed a special transfer pricing audit team. It was tasked with supporting other tax authorities in conducting transfer pricing audits with their expertise and to share access to external databases for benchmarking studies, such as Amadeus, and other databases, e.g. for royalties and financial transactions. The aim was for audits to become more substantive. In January 2015, a Competence Center for Transfer Pricing at the Tax Chamber in Łódź was established. Sample tasks of competence centers include: detailed analysis of industries, issues and risks associated with them, coordination of detection activities and selection of entities for tax audit. Competence Center for Transfer Pricing coordinates tax audits towards large entities operating within transnational corporations.

Additionally, in 2017 Transfer Pricing and Valuation Department was established to shape the Minister of Finance's policy in the field of transfer pricing (i.e. preparing legislative solutions with regard to transfer pricing regulations, developing guidelines for taxpayers, international cooperation with other jurisdictions, preparing economic valuations and analyses for tax purposes). Transfer Pricing and Valuation Department has employed a number of experienced practitioners well-versed in transfer pricing matters.

The number of transfer pricing audits in 2016 was up by about 59% (vs. 2015) and the value of transfer

pricing adjustments boosted from PLN 29 million (in 2015) to PLN 657 million (in 2016).

The Ministry of Finance-released data show that transfer pricing audits are becoming more and more important and taxpayers applying harmful tax policy pay much bigger penalties. The Ministry keeps training transfer pricing specialists to expand their knowledge.

Intangible assets transactions, including management services and royalties, as well as financial transactions (such as loans and guarantees), are under special scrutiny of tax authorities.

Definition of Related Party

According to Polish regulations (article 11 of the CIT) two parties are considered “related” in these situations:

Domestic entity and foreign entity

- a natural person, legal person, or an organizational unit having no legal personality, having their place of residence, seat or management office in the territory of the Republic of Poland (domestic entity), participates directly or indirectly in managing or controlling an enterprise located outside the territory of the Republic of Poland or has shares in its capital; or
- a natural or legal person, or an organizational unit having no legal personality, having their place of residence, seat or management office outside the territory of the Republic of Poland, (foreign entity), participates directly or indirectly in managing or controlling a domestic subject or has shares in its capital; or
- the same natural person, legal person or an organizational unit having no legal personality at the same time participates directly or indirectly in managing or controlling a domestic subject and a foreign subject or has shares in their capital

Two domestic entities

- a domestic subject participates, whether directly or indirectly, in the management of another domestic subject or its control or holds a share in the capital of another domestic subject or
- the same natural person, legal person or an organizational unit having no legal personality at the same time participates directly or indirectly in managing or controlling domestic subjects or has shares in their capital.

Starting 1 January 2017, “control” is understood as a direct or indirect involvement in management, supervision or share capital of at least 25% in the controlled entity.

The abovementioned provisions regarding two domestic entities also apply to family, capital, property or employment relations between domestic entities or persons engaged in management, supervision or control in these entities or when any of the above persons combine managerial, supervisory or control functions for these entities.

Polish transfer pricing regulations also apply to entities conducting operations in Poland through a permanent establishment and to the allocation of profits between a permanent establishment and the head office.

In 2018 (applicable retrospectively from 2017), entities which could be classified as related solely on the basis of connection between them through the State Treasury or a local governmental unit were excluded from TP obligations.

Transfer Pricing Penalties

If the tax authorities decide that the remuneration for a transaction is **not in line with the arm's length principle** but the **taxpayer did file the documentation**, tax authorities may **estimate taxpayer's profit and tax it at a 19% tax rate**.

If the taxpayer **fails to file the documentation** on the tax authorities' request, it must pay a **50% tax rate** on profit estimated by fiscal authorities.

There are **sanctions** under **penal and fiscal code** for failure to file the statement on having prepared tax documentation and CIT-TP form or for making a false statement.

Advance Pricing Agreement (APA)

Regulations relating to an APA are in force in Poland since 1 January 2006.

The APA regulations set out three different types of agreements, depending on the type of related parties involved:

1. Unilateral:
 - Domestic (for transactions between domestic entities); or
 - Foreign (for transactions between a domestic entity and a foreign entity).
2. Bilateral (for transactions with a foreign related entity, subject to acceptance by a foreign tax authority competent for the foreign entity).
3. Multilateral (for transactions with foreign related entities of more than one country, subject to acceptance by the foreign tax authorities competent for the foreign entities).

The APA is made by a decision issued by the Minister of Finance. The deadlines for the Minister of Finance to issue the decision with respect to an APA are:

Unilateral agreement - within 6 months after the procedure launch date;
Bilateral agreement - within 12 months after the procedure launch date; and
Multilateral agreements - within 18 months after the procedure launch date.

Bilateral and multilateral agreements are made by the Minister of Finance with the tax authority competent for the other party to the transaction (an entity related to the taxpayer). Once an agreement is signed, an administrative decision is issued for the taxpayer.

The APA decision covers: (i) transfer pricing method and calculation algorithm(s) and (ii) terms and conditions for using the TP method approved.

APA is binding on the tax authorities and they cannot challenge the transfer price if the actual transaction is in line with the assumptions of the APA decision.

In practice, even entering an APA procedure offers some protection as the tax office usually does not

launch an audit if a transaction is discussed at the Ministry level.

An APA is binding for up to five years. However, it may be extended for a further five year period (provided the critical assumptions of the methodology used are not changed and the taxpayer applies for the extension of the agreement at least 6 months before it expires).

The Ministry of Finance imposes an administrative fee for an APA application. In general, it is equal to 1% of the transaction value. However, the following ranges are used:

1. Unilateral agreement:
in the case of domestic entities: PLN 5,000 minimum – PLN 50,000 maximum; and
in the case of a foreign entity: PLN 20,000 minimum – PLN 100,000 maximum.
2. Bilateral / Multilateral agreements: PLN 50,000 minimum – PLN 200,000 maximum.

The fee for extending an APA is equal to half the fee due for the initial APA application.

As of 1 January 2016, an APA can be conducted by entities without legal personality and the provisions of a prior agreement may be applied earlier, i.e. from when the taxpayer formally applies to the Ministry of Finance (the provisions before the amendment did not provide for such a possibility and the provisions of the APA could be applied from the date when APA decision was served by the Minister of Finance to the taxpayer).

APA is the only tool that can be used to secure transfer pricing.

Additionally, the draft amending CIT law was signed by the President on 22 November 2017.

Amendment of CIT law introduces these modifications:

- **Unlimited expenditures on intangible services in the case of APA**

The amendment adopted provides for a possibility of recognizing all intangible and legal assets as costs of revenues **only if the taxpayer enters into the Advanced Pricing Agreement (APA) with the Chief of National Tax Administration (NTA)**.

Such a general rule can be applied for the APA term as well as the tax year when the decision was made and the year before.

- **Abandoned obligation to prepare transfer pricing documentation for transactions covered by APA**

Taxpayers who have signed an APA have another advantage. APA is an effective method of mitigating tax risk and from 1 January 2018 it additionally **lifts documentation obligations on transactions being under such an agreement** for taxpayers who will receive **decision regarding APA** from the Chief of NTA.

- **Arm's length nature of the transactions in tax capital groups (TCG)**

Since 1 January 2018, provisions were repealed under which companies setting up TCGs could agree on the conditions for transactions which differ from those which unrelated entities would apply. Therefore, starting **1 January 2018 entities being part of TCG must set the terms and conditions of transactions made with other members of TCG at arm's length**.

Moreover an exclusion was introduced from the obligation to prepare transfer pricing documentation between entities which are part of TCG. Such an obligation will only apply to transactions or other events between entities of TCG with related parties outside the TCG.

Documentation And Disclosure Requirements

Tax Return Disclosures

1. Polish entities (legal and natural persons) must file information on revenues paid out to foreign entities (both related and unrelated) and derived from dividends, interests, royalties, intangible services, etc. (deadline: by the last day of the third month of the year following the tax year);
2. In their tax returns Polish taxpayers under Corporate Income Tax Act state that they have prepared transfer pricing documentations (deadline: by the last day of the ninth month of the year following the tax year). The statements do not cover Master File documentation.

Level of Documentation

The regulations amended concerning transfer pricing became valid on 1 January 2017.

The most significant change is that under the new regulations **taxpayers' obligations are differentiated by revenues / costs value** (in accordance with accounting regulations) **exceeded in the previous tax year**. Additionally, the value threshold of transactions or others events triggering the documentation obligation also depend on taxpayers' revenues/costs.

The documentation obligations from 1 January 2017 are presented in the table below.

INCOME/COST PREVIOUS YEAR (EURm ¹)	THE VALUE THRESHOLD OF ONE TRANSACTION/OCCURRENCE (EURk)	DOCUMENTARY OBLIGATIONS
<2	-	None ² <i>Please note that the transaction of below EUR 2 million must be in accordance with arm's length principle.</i>
2 – 3	50	Obligations: <ul style="list-style-type: none"> • Local file which includes description of taxpayer and transaction, financial data, description of method and manner of calculation profits with justification, description of business environment, reference documents (i.e. agreements), • A statement on having prepared the complete tax documentation within the statutory period.
3 – 4	55	
4 – 5	60	
5 – 6	65	
6 – 7	70	
7 – 8	75	
8 – 9	80	
9 – 10	85	
10 – 11	90	Obligations:

¹ The value presented in EUR are converted to PLN at the average rate published by NBP, valid on the last working day of the fiscal year previous to the fiscal year which the documentation concerns.

² The limit does not apply to transactions with companies from tax havens.

INCOME/COST PREVIOUS YEAR (EURm ¹)	THE VALUE THRESHOLD OF ONE TRANSACTION/OCCURRENCE (EURk)	DOCUMENTARY OBLIGATIONS
11 – 12	95	<ul style="list-style-type: none"> All of the above, Benchmark taking into account Polish comparative data, Simplified financial statements considering transactions and other occurrences between related entities (CIT-TP, PIT-TP).
12 – 13	100	
13 – 14	105	
14 – 15	110	
15 – 16	115	
16 – 17	120	
17 – 18	125	
18 – 19	130	
19 – 20	135	
20 – 30	140	Obligations: <ul style="list-style-type: none"> All of the above, Master file including identification of the related entity which prepared the Master file, description of organisational structure of the Group, transfer pricing policy, description of the subject of business activities conducted by the Group, description of financial state of the Group, description of agreements made with fiscal authorities.
30 – 40	185	
40 – 50	230	
50 – 60	275	
60 – 70	320	
70 – 80	365	
80 – 90	410	
90 – 100	455	
100 – 750	500	
>750	500	Obligations: <ul style="list-style-type: none"> All of the above, Country-by-country reporting – group level information concerning level of income, paid taxes, scale of operations conducted by other entities from the Group in different countries (obligation for groups in which parent company – that consolidates financial statements – is based in Poland).
Taxpayers conducting transactions, partnership agreements or joint venture agreements with entities based in tax havens must prepare transfer pricing documentation if the value of the transaction or agreement exceeded EUR 20,000		
Taxpayers conducting partnership agreements or joint venture agreements with related entities are obligated to prepare transfer pricing documentation if the value of input or the value of joint venture agreement exceeded EUR 50,000		

Under the regulations in force since January 2017, all restructuring transactions must be presented in Local File and Master File. The restructuring should be understood as (i) transfer of significant functions, assets, risks or (ii) change of structure or legal form.

The information on restructuring must also be included in CIT–TP form. The restructuring documentation is a specific one and besides the standard items listed in Article 9a of the CIT Act/25 of the PIT Act, it also covers additional elements (such as description of other realistic available options) set forth in the Decree of the Minister of Finance of 10 September 2009 on the method and procedure for assessing legal person's income by estimating the prices and the method and procedure for eliminating double taxation of legal persons resulting from adjustment of related parties' profits.

Local File requirements

Polish regulations addressing Local File documentation came into force on 1 January 2017. The obligation for preparing Local File documentation is imposed if a taxpayer's (or partnership's) revenues or costs (as defined by the Accounting Act) exceeded the threshold of EUR 2m in the previous tax year.

The Local File should feature:

H.J.E. Wenckebachweg 210 . 1096 AS Amsterdam . The Netherlands . +31 (0)20 462

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1. **Description of the transaction** (including cash pooling agreements and cost contribution agreements):
 - indication of the type and subject of the documented transaction,
 - financial data,
 - identification data of entities involved in this transaction,
 - description of the course of documented transactions (in the form of functional analysis).
2. Description of taxpayer's **financial data** or **data from financial report** (in the case of taxpayers receiving revenue from shares in partnership),
3. **Information about taxpayers**, including:
 - organizational and management structure,
 - subject and scope of business activities,
 - implemented business strategy including restructuring,
 - business environment.
4. **Documents**, in particular:
 - agreements,
 - APAs,
 - Obligatory description of method and manner for calculating profits in the form of description of being aligned with market conditions.
5. Description of **analysis prepared on the basis of data of unrelated entities or data agreed on with unrelated entities identified as comparable to conditions established in transaction** – required only from entities whose revenue or costs exceeded EUR 10m in the previous tax.

Benchmarking requirements

Under the new transfer pricing regulations, a benchmarking study should **include data** on the comparable **entities** whose headquarters or management is **located on the Polish territory**. The approach to be displayed by Polish Tax Authority towards Pan-European benchmarking studies prepared by the Group is unknown at this point. We believe they will be accepted yet based on the current tax practice it is likely that such studies **would have to include Polish entities in the analysis process and, ideally, within the accepted companies**. Absence of Polish comparables triggers a high risk that the study will be challenged by Polish tax authorities in which case Transfer Pricing Documentation Local File may be assessed as incomplete and a 50% tax rate may apply. Unfortunately, even if the 'Polish entities' condition is met, **during a tax audit Polish tax authorities may still ask for a benchmarking study based on the Polish database Quick TPA**, to which they have access.

Report from benchmarking study should feature:

1. An indication of the **associated entity which was chosen as the tested party** and an **explanation of the reason** for this choice,
2. A summary of the **main assumptions made while performing the analysis** and an explanation of the reasons behind these assumptions, including:
 - **Characteristics of goods or services** being the subject matter of the analysed transaction,

- The **course of transaction**, including functional analysis,
 - The **conditions of the comparable transactions between unrelated parties**, business strategy of associated entities and market conditions if they affect the value of the transaction,
3. An explanation of the **reasons for applying multi-year or one-year data**,
 4. Data on **comparable business operations between unrelated entities**, including data on the relevant **financial indicators** and **data on business operations rejected** during the **process of benchmarking study because of incomparability** with analysed transaction, including the **source of data**,
 5. A **description of any comparability adjustments** made to eliminate the differences between comparable transactions,
 6. A description of **profitability indicators applied**.

Master file requirements

Polish regulations addressing Master File documentation came into force on 1 January 2017. The obligation for preparing Master File documentation is imposed if a taxpayer's (or partnership's) revenues or costs (as defined by the Accounting Act) exceeded the threshold of EUR 20m in the previous tax year.

The Master File should feature such elements as:

1. **Identification of the related enterprise** which had prepared Master File;
2. The group's **organizational, legal and operational structure** (including an organizational chart, a list of group members and a description of the participation of the parent company in the subsidiaries);
3. **Description of the principles for determining transfer prices (transfer pricing policy):**
 - method of allocating the cost of intragroup services and determining the remuneration for intragroup services,
 - presentation of R&D works made within the Group,
 - the summary of **remuneration payable due to use or share of intangible assets between related entities**,
 - manner of financing the entities within the Group;
4. **Description of the subject and scope of business activities made by the Group:**
 - general **description of functions performed and risks assumed**, including the description of changes in respect of functions and risks compared to previous tax years, e.g. the change from a full-fledged distributor to a commissionaire;
 - major **factors** affecting the profit,
 - list of **major services** transactions,
 - information about the **largest suppliers and recipients**,
 - **geographical allocation of main markets** of business activities,
 - significant **mergers, acquisitions and sales** of investments,
 - description of **accomplished restructuring** (i.e. the transfer of essential functions, assets and risks);
5. **Description of essential intangible assets used within the Group should include:**
 - **Strategy for development**, possession and use of intangible assets by each related entity in the Group,

- **List of intangible assets** owned by entities in the Group, which are essential to the Group business activities, including information about the legal or economical owner of each intangible asset,
 - List of **deals or agreements concerning intangible assets**, including joint venture agreements, R&D agreements and license agreements,
 - Description of **changes in ownership or use of intangible assets** in given tax year, including changes in legal or economical ownership as well as changes of the entity using each intangible asset,
6. Description of **financial situation** within the Group;
7. **Description of agreements made with fiscal authorities;**
- description of income tax agreements made by entities from the Group with tax authorities other than Polish, which includes the description of **unilateral advance pricing** agreements made by related entities from the Group.

Simplified statement on transactions and other occurrences between related entities (so-called CIT-TP)

The taxpayers whose revenues or costs in the current tax year exceeded EUR 10 million must prepare the CIT-TP form. It enables tax authorities to select taxpayers and the transactions to be subject to a potential tax control in the field of transfer pricing.

The taxpayers must fill in more than 140 items in the CIT-TP form. It is divided into 6 main categories:

- Data identifying the taxpayer,
- Identification of taxpayers' transfer pricing relationships with related parties,
- Information about related entities
- Main taxpayer's business activity and functional profile,
- Restructurings,
- Related party transactions or other events (divided into 6 subcategories).

Additional information

According to the information released on 16 February by the Ministry of Finance, taxpayers **will be obliged to prepare transfer pricing documentation for FY 2017 and 2018 by the end of September.**

Record Keeping

Taxpayers must keep records until the tax obligation expires, i.e. for a period of 5 years from the end of the calendar year in which the tax for a given tax year is due. In practice, as the tax return should be submitted (and the tax due should be paid) three months after the end of the tax year, the tax liability for the tax year 2012 (an example) expires at the end of December 2018 (provided the tax year matches the calendar year as in most of the cases). The records should be kept during this period.

The 50% penalty rate may be applied for 3 years after the end of the calendar year in which the tax obligation arose (afterwards, the tax authority may apply only the regular 19% rate). Such conclusions result from the judgment of the Supreme Administrative Court of 13 October 2016, (ref. II FSK 2288/14).

Language for Documentation

The documentation should be prepared in the Polish language.

Small and Medium Sized Enterprises (SMEs)

There are no special transfer pricing rules for small and medium sized enterprises that would deviate from the general transfer pricing regime. In accordance with the amended regulations, small enterprises are excluded from the transfer pricing regulations and medium enterprises have limited requirements in accordance to transfer pricing issues.

Deadline to Prepare and Submit Documentation

The deadline to prepare the transfer pricing documentation is 31 March (according to information released on 16 February by the Ministry of Finance, taxpayers **must prepare transfer pricing documentation by the end of September**) and the deadline to submit the documentation is:

- **7 days following the request** of tax authorities for transactions exceeding the statutory thresholds, or
- **30 days following the request** of tax authorities for transactions not exceeding the statutory thresholds, after receiving a request to present such a documentation. The authorities must clarify the reasons for submitting this kind of request.

Additionally, the taxpayer must submit within **9 months after the end of fiscal year (according to draft version of Decree)**:

- statement of preparation of the tax documentation, and
- CIT-TP/ PIT-TP form constituting attachment to CIT-8 form.

Statute Of Limitations

The tax liability is enforceable during 5 years from the end of the calendar year in which the tax for a given tax year is due. In practice, as the tax return should be submitted (and the tax due should be paid) three months after the end of the tax year, the tax liability for e.g. tax year 2012 expires at the end of December 2018 (provided the tax year matches the calendar year as in most cases).

Transfer Pricing Methods

There is no direct reference to OECD accepted methods. However, methods similar to the OECD methods are enacted in a Minister of Finance decree of 10 September 2009 regarding method and procedure of determination of taxpayers' income as well as the method and procedure of eliminating double taxation in case of related party profit adjustment:

The traditional methods:

- Comparable Uncontrolled Price ("CUP");
- Resale Price; and

Reasonable Margin (Cost Plus).

The transactional profit methods:

Profit Split; and
Transactional Net Margin Method.

These five methods are binding for the tax authorities for the purpose of assessing the taxpayer's income. There is a priority that traditional methods should be used before transactional methods (previously only the CUP was indicated as the first-choice method). If the traditional methods cannot be applied, the use of the transactional profit methods is allowed.

Comparables

Starting 1 January 2017 a benchmarking study is an obligatory element of Local File.

It is obligatory for taxpayers, whose revenues or costs exceeded in the year preceding the tax year the equivalent of EUR 10,000,000 to include benchmarking studies in the statutory transfer pricing documentation.

According to Polish transfer pricing regulations, an analysis of comparison data shall contain comparable data concerning subjects having their **seats or management offices within the territory of the Republic of Poland**, provided that the data is accessible for the taxpayer (the taxpayer may prepare external benchmarking analysis – based on external comparables or internal benchmarking analysis – based on internal comparables). Obligatory elements of benchmarking analysis have been listed in the Decree of the Minister of Finance of 12 September 2017 on the information to be included in transfer pricing documentation in the field of corporate income tax.

In the case of a lack of data serving to conduct an analysis of comparison data, the taxpayer shall append to the tax documentation a description of compliance of the conditions of transactions and other events determined with related subjects with the conditions determined by and between independent subjects.

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