

POLAND

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Assessing the main transfer pricing challenges for Polish taxpayers in 2020

Magdalena Marciniak and Marta Klepacz of MDDP discuss the key considerations that Polish businesses must look out for as they complete their transfer pricing obligations.

The COVID-19 reality has caused deadlines for the fulfilment of transfer pricing (TP) obligations for FY2019 to be extended until December 31 2020. Nevertheless, many Polish taxpayers will still find it challenging. 2020 is the first year when Polish entities must prepare TP documentation under the new TP regulations.

The regulations, which have been in force from January 1 2019, are considered to be much more extensive. On top of introducing OECD guidelines assumptions such as local file, master file and benchmarking studies, they also impose obligations specific for the Polish jurisdiction. Reviewing the arm's-length nature of transactions has become even more important with the law in place: especially the TP-R form (a new obligatory statement) which requires detailed information on transactions made with related entities. The responsibility of board members regarding TP matters has also been extended.

This article focuses on what Polish businesses might find challenging or problematic when it comes to considering TP obligations for FY2019.

Related parties – does it really mean the same?

The very first problem is the wide definition of relations introduced in Polish TP regulations. Example: personal relations. The key factor in this respect is when there is a significant impact on decisions made by the particular entity, even in the absence of a formal authorisation. Thus, entities will be related when for instance, a sales director may decide about sales strategy of both entities. Moreover, entities may be considered related also due to family relations.

It may very well be that an entity will be related to a foreign company under Polish law while the relations will not be

recognised under the regulations in force in the country of the foreign company.

Therefore, it is essential to verify whether all the relations are properly recognised on the ground of Polish TP regulations.

Comparing transfer prices with results from the benchmark study

Polish regulations see benchmarking study as an obligatory part of a local file.

Additionally, a local file must contain information on the comparison of the applied transfer price with the results from the benchmarking study. If the transfer price is outside of the market range, proper justification should be prepared.

The calculation of financial indicators to compare it with benchmarking study results raises various practical problems. It requires additional calculation, often only for TP purposes. For example, a foreign entity must calculate the profitability ratio on a single transaction or on a transaction with the Polish entity only. Another example: a foreign entity must verify its profitability using profitability ratios identical to those applied in the benchmarking study (and that it had never used previously).

Our experience revealed it was problematic for foreign entities to calculate relevant profitability ratios. The deadline for reporting the ratios in the TP-R form is the end of 2020, so taxpayers should start collecting data as soon as possible to meet it.

New TP-R form

In 2020, Polish taxpayers will be for the first time filing a new TP form: the TP-R form.

The TP-R form collects information about transactions with related parties (including information on the results of benchmarking study).

TP-R form requires from taxpayers to have detailed records of data and proper calculations. An example: services settled according to the 'cost plus' method/lump-sum/hourly rate and of homogeneous nature. In order to verify arm's-length nature of the transaction and to report the transaction in TP-R, the taxpayer must in this case calculate the profitability obtained from the services as a whole.

It is very important to complete the form correctly since tax authorities will be picking entities for tax audits on the basis of TP-R forms. The authorities will also see how a given entity looks compared to others operating in the same industry.

These matters are all important in 2020 since all board members must for the first time sign a statement for 2019 about the compliance of intra-group transactions

with the arm's-length principle (not only about having a TP documentation). Such a statement is filed under penal and fiscal liability.

With the above in mind, it is important to obtain all the necessary data from a related entity regarding intra-group transactions to meet all obligations related to TP regulations. Time for preparation is now.

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