

TRANSFER PRICING 2017 – APPLICATION OF DOCUMENTATION REQUIREMENTS

We wish to alert you to the first tax ruling on the application practicalities relating to the amended CITA Article 9a (transfer pricing documentation) which is to enter into force on 1 January 2017.

One of the purposes of this legislative amendment was to reduce the documentation burden on small enterprises. The new law abolishes the documentation requirement for entities whose revenue and expenses as defined in the Accounting Act did not exceed EUR 2 million in the year preceding the tax year concerned.

The tax ruling, which was given by Director of Katowice Tax Chamber ("Authority") on 17 June 2016 (ref. IBPB-1-2/4510-541/16/JW), was about whether revenue and expenses should include also extraordinary gains and losses.

The case involved a company, a member of a multinational group, which will have transactions with related parties in 2017 the amount of which will exceed the equivalent of EUR 50,000. While the company expects its 2016 revenue and expenses to not exceed the EUR 2m cap, it is also possible that it may have extraordinary gains or losses which will cause it to exceed this threshold. The company asked the Authority to confirm if extraordinary gains or losses should be taken into account when calculating the threshold triggering TP documentation requirements.

According to the company, revenue and expenses for Accounting Act purposes are those which arose in the ordinary course of business. Thus, extraordinary gains or losses should not be counted into the EUR 2m threshold.

The Authority disagreed. It ruled that, by CIT Act provisions on the cap triggering transfer pricing documentation requirements, revenue or expenses under the Accounting Act should be taken to mean the total revenue or, respectively, total expenses derived from company's books of account and reported in its financial statements for the given tax year.

What is more, the Authority invoked the revision made to the Accounting Act on 23 July 2015 which changed the definition of extraordinary gains and losses so that they will be "recognised" solely in banks, insurance and reinsurance companies and savings and loans associations. For all other organisations, there are "acts of God", which however are made part of operating income/expenses and as such are not a distinct category under the Accounting Act.

If this issue pertains to your business and you are interested in our assistance, please contact your WTS&SAJA consultant or our office.

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