

NEW TRANSFER PRICING REGULATIONS TO BECOME EFFECTIVE IN 2017

You might remember our Newsletter 32/2015 dated 20 May 2015, where we wrote about a draft law to change the Personal Income Tax Act and the Corporate Income Tax Act. Now we would like to alert you to amendments that have been made to that draft. After the draft went through the public consultation process and was sent to the Standing Committee of the Cabinet, the Government Legislative Centre published its latest version on 17 June 2015.

According to the recent proposals, the equity interest threshold triggering the status of related party is to be 25%, as in thin capitalisation and CFC regulations.

Comparing to the original draft, the newest proposal refines the notion of transactions or other events materially affecting income or loss and which therefore must be documented. Material are to be those transactions/events of the same kind whose aggregate value within a tax year exceeds the PLN equivalent of EUR 50,000 or a higher amount that depends on the taxpayer's revenue in the year preceding the relevant tax year, but not higher than EUR 500,000 (for prior-year revenues of over EUR 100 million).

According to the new draft, the tax authorities or tax audit authorities would be empowered to request transfer pricing documentation even for transactions or events that otherwise need not be documented, if it is likely that they were understated to evade the documentation requirements. In the case of such requests, the taxpayers would have 30 days (from delivery of request) to prepare and submit such documentation.

The recent legislative proposal requires taxpayers who are under the TP documentation duty to file a representation that the documentation is complete. The representation must be filed until the date for submission of the tax return. However, the draft no longer requires the representation to be signed by a member of the management board.

The publication of the draft amendments to the statutory provisions is accompanied by publication of drafts of Finance Minister regulations providing a detailed framework for transfer pricing documentation and specifying the form of transfer pricing report and country-by-country reporting (this is called *a report on the amount of tax paid and of income and on countries where subsidiaries do business*). The reports will have to be submitted to tax offices.

Rather than on 1 January 2016 as previously projected, the new law is generally expected to enter into force on 1 January 2017, except for country-by-country reporting regulations, which will apply to transactions made in the first tax year beginning after 31 December 2015.

If this issue pertains to your business and you are interested in a more in-depth overview of these regulatory changes, please send an email to maja.seliga@wtssaja.pl. The overview will be sent to you after completion of a brief questionnaire.

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