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Tax Alert no 243/14.01.2022



The Polish Deal (Polski Ład) - changes in transfer pricing as of 1 January 2022

Among the numerous legislative changes, starting from 1 January 2022 transfer pricing regulations have also been amended and change formal and documentation obligations.

The major changes include:

Changes to formal obligations:

- **TP-R Form** - the taxpayer will be required to submit the TP-R form to the Head of the Tax Office competent for the taxpayer (and not, as before, to the Head of National Revenue Administration).
- **Statement on preparation of transfer pricing documentation and on arm's length nature of prices** - will be combined with the TP-R form (it used to be a separate document beforehand).
- Abolished obligation to submit the **ORD-U** form for taxpayers/companies which are not legal entities, which are obliged to submit the TP-R and do not perform the so-called "tax-haven transactions".
- **Extended reporting and documentation deadlines:**
 - preparation of local transfer pricing documentation - by the end of the 10th month following the end of the entity's tax year,
 - submission of TP-R transfer pricing information - by the end of the 11th month following the end of the entity's tax year,
 - submission of local TP documentation by the taxpayer at the request of the tax authority - 14 days.
- Clarified manner of determining **the value of a controlled transaction:**
 - in the case of a deposit (which also includes bank deposits) - the transaction value refers to the equity value,
 - in the case of non-corporate entities- the transaction value refers to the total value of contributions made to the non-corporate entities.

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Changes in the scope of documentation obligations:

- Extended catalogue of **exemptions from the obligation to prepare local transfer pricing documentation** for:
 - transactions between foreign permanent establishments located in Poland with related entities as parent companies thereof,
 - transactions between a non-resident related entity located in Poland and a related entity that has tax residency in Poland,
 - controlled transactions covered by a tax agreement and an investment agreement,
 - controlled transactions covered by the safe harbour mechanism for loans, credits, bonds,
 - transactions concerning settlements with regard to the so-called net re invoicing (provided that certain conditions are met).
- Introduced possibility of **waiving the preparation of benchmarking/compliance analysis** for:
 - controlled transactions concluded by taxpayers that are micro or small entrepreneurs (possibility to apply for the tax year beginning in 2021),
 - transactions other than controlled transactions concluded with so-called tax havens (direct transactions) or in which the beneficial owner of the counterparty is a resident of so-called tax havens (indirect transactions), covered by the documentation obligation (possibility of application for the tax year beginning in 2021).

Other changes:

- Clarified moment for which a loan (facility, bond) agreement should comply with the conditions of the **safe harbour mechanism** with respect to interest rates - the terms and conditions should be met each time a loan agreement is amended.
- **Transfer pricing adjustments:**
 - allowed possibility to apply an adjustment when the taxpayer has received an accounting evidence from a related party that confirms the TP adjustment,
 - lack of obligation to inform about the TP adjustment in the annual return - one of the formal conditions for the effective making of such an adjustment repealed.
- Added statutory definition of a tax agreement and an investment agreement within the meaning of the Tax Code.
- Changed reference period from a financial year to a tax year in transfer pricing regulations.
- Clarified documentation obligation for companies forming a tax capital group.

If you are interested in obtaining further information, or would like to discuss the impact of the above changes please contact:

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