



Mandatory transfer pricing documentation proposed in Bulgaria for the first time

On 5 November 2018, the Ministry of Finance proposed mandatory transfer pricing (“TP”) documentation in Bulgaria. The proposed rules are part of the draft changes to the Tax and Social Security Proceedings Code, published on the ministry’s website. Public comments are expected by 5 December 2018. The law will apply on transactions performed after 1 January 2019.

Current TP documentation framework

So far, taxpayers have only the general obligation to prove the arm’s length nature of their transactions with related parties (“controlled transactions”) during a tax audit. The rules apply to domestic transactions (between two Bulgarian companies) and cross border ones. There is no mandatory term to prepare the TP documentation before the tax audit.

The content of the TP documentation is provided in the TP Manual published on the website of the National Revenue Agency (a non-legislative document). The TP documentation consists of master file (general for the whole group) and local file with TP analysis of the specific controlled transactions of the taxpayer.

What’s new under the proposal?

Starting from 2019, taxpayers will be obliged to prepare the local TP file every fiscal year if they have more than (i) BGN 16,000,000 of net sales, or (ii) BGN 8,000,000 asset net book value as at 31 December of the prior year. Exempt are the entities not liable to corporate income tax (“CIT”) or subject to alternative taxes under the CIT Act.

The local file should be prepared for transactions exceeding certain monetary thresholds per annum (BGN 400k for goods, BGN 200k for services/intangibles/financial assets, BGN 2 mln loan principal/ BGN 100k interest). Documentation of controlled transactions with natural persons (except sole traders) is not mandatory.

Entities part of multinational groups should have also a TP master file for the respective year.

The local file should be prepared by 31 March of the following year, whereas the master file should be available by 31 March of the year after. The rules explain also how to update the benchmark studies.

There is no requirement to submit the TP files with the tax authorities. The TP documentation (both local file and master file) should be kept by the local taxpayer and provided to the revenue authorities upon request.

Sanctions for non-compliance are proposed too. The level of the fines depends on the size of transactions, is it a repeated non-compliance, etc.

Comments and next steps for the business

The draft law is a logic consequence of the increased interest in TP matters and a natural follow up of the declared willingness to implement the BEPS elements of the OECD in Bulgaria. It is very likely that the parliament will approve this proposal in the coming months, possibly with some small changes after the public comments.

It is an additional administrative burden. However, the new rules have a cost-benefit rationale. The TP compliance covers material businesses and transactions, reflecting the higher potential tax risks. This approach makes sense, having in mind the size of the Bulgarian economy and income tax rates.

Taxpayers can expect higher scrutiny in TP audits. Therefore, preparation of the TP files will help businesses to manage the risk of TP adjustments and consequently, reduce the risk of penalty interest and sanctions.

In practice some situations lead often to TP adjustments and substantial tax assessments. This is the case when business are in a loss making position or where there are large amounts of services fees charged within the group (like management fees or interest charges). Especially these businesses should give high priority on preparation of their TP files.

The proposed rules are following the international standards and will give more clarity to the Bulgarian taxpayers on the way they prove the conformity of their intercompany pricing with the market levels. Also, the rules can function as a guidance for businesses who are not obliged to prepare TP documentation and/or have controlled transactions below the statutory thresholds.

If you have questions about your specific TP position please contact Deloitte specialized TP team:

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