



Transfer Pricing

Amendments into the OECD Guidelines resulting from incorporation of BEPS reports

On 23 May 2016, the OECD Council approved the amendments to the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations („OECD Guidelines“) resulting from incorporation of 2015 BEPS („Base Erosion and Profit Shifting“) Reports in transfer pricing area i.e. Reports on Actions 8-10 „Aligning Transfer Pricing Outcomes with Value Creation“ and Action 13 „Transfer Pricing Documentation and Country-by-Country Reporting“ endorsed by the Council on 1 October 2015 and officially released 4 days later.

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The amendments constitute an important change to the current version of the OECD Guidelines (previous amendments were released by OECD in July 2010 r.).

Specific changes to the OECD Guidelines 2010

Provisions of 2015 BEPS Reports on Actions 8-10 and Action 13 affect six of the nine chapters of the OECD Guidelines 2010. Specific changes to particular chapters of

the Guidelines resulting from incorporation of the 2015 BEPS Reports are presented in the below table.

Transfer Pricing

OECD Guidelines 2010	OECD Guidelines after 23 May 2016
Actions 8-10 „Aligning Transfer Pricing Outcomes with Value Creation”	
Chapter I Section D („Guidelines for applying the arm’s length principle”) – deleted in their entirety	New Chapter I, Section D regarding new guidance on applying the arm’s length principle, in particular, comparability factors in transfer pricing, including location savings, assembled workforce, and MNE group synergies
Chapter II („Transfer Pricing Methods”) – amended	Sub-paragraphs were added (2.16A-2.16E) related to applying the comparable uncontrolled price method in commodity transactions and other transfer pricing issues in transactions of that kind
Chapter VI („Special Considerations for Intangible Property”) and the annex to this Chapter – deleted in their entirety	New Chapter VI with new annexes to this Chapter regarding definition of intangibles, principles of appropriate allocation of profits associated with the transfer and use of intangibles and transfer pricing rules or special measures for transfers of hard-to-value intangibles
Chapter VII („Special Considerations for Intra-Group Service”) – deleted in their entirety	New Chapter VII regarding low value-adding intra-group services and a simplified approach to such services
Chapter VIII („Cost Contribution Arrangements”) – deleted in their entirety	New Chapter VIII regarding Cost Contribution Arrangements (CCAs) containing definition of such arrangements, applying of the arm’s length principle to CCAs, guidelines for entry, withdrawal and termination of CCAs and recommendations for structuring and documentation of such arrangements
Action 13 „Transfer Pricing Documentation and Country-by-Country Reporting”	
Chapter V („Documentation”) – deleted in their entirety	New Chapter V regarding transfer pricing documentation introducing three-tiered approach to documentation i.e. <i>Local File</i> , <i>Masterfile</i> and <i>Country-by-Country Reporting</i>

OECD has not published the consolidated text of the amended OECD Guidelines yet, nevertheless, the content of 2015 BEPS Reports on Actions 8-10 and Action 13 was planned in a way that enables identification of particular chapters and paragraphs of the OECD Guidelines that were amended.

OECD plans amending and approving of changes resulting from incorporation of the provisions of 2015 BEPS Reports on Actions 8-10 and Action 13 to the reminding chapters of the OECD Guidelines, including Chapter IX “Transfer Pricing Aspects of Business Restructurings” later in 2016. However, these changes will likely not be so substantive but rather editorial in order to align the text of the reminding chapters to

the text of chapters amended in May. Until approving of the conforming changes, it is stipulated that the OECD Guidelines should be interpreted to be consistent with the amended provisions and, in case of perceived inconsistencies, the modified provisions prevail.

Implications of the amended OECD Guidelines on Polish transfer pricing regulations

Although the OECD Guidelines are not universally applicable source of law in Poland, due to our country’s membership in this organization, they constitute a practical source of reading guidance concerning Polish regulations on related party settlements.

It should also be marked that part of the provisions of 2015 BEPS Reports concerning transfer pricing issues was already incorporated into the Polish law – it refers mainly to the transfer pricing documentation requirements introduced in Report on Action 13 which were reflected in the text of the amended Corporate income tax act and Natural persons’ income tax act from 9 October 2015.

The amendments introduced into the OECD Guidelines will require from companies a broader look at the issue of preventing of BEPS and a review of the applied economic structures and transfer pricing policies in terms whether they fit into the new approach to doing business presented 2015 BEPS Reports.

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