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2015 最新波兰税务转让定价修订案（部分）

注：以下中文内容为英文译文，若有任何疑问请参见英文原文

转让定价文档准备要求的重大修订

波兰提出有关转让定价文档准备要求的重大修订。企业及个人所得税税收法修订案由波兰总统于 2015 年 10 月 27 日签署。这些修订变化对关联企业之间的业务关系界定引入新方法，同时将要求纳税人更加关注其关联交易的筹划事项。

此外，财政部在波兰政府立法中心网站上发布两项实施条例，即有关转让定价文档组成部分具体描述的实施条例草案、建立用于转让定价未申报应税收入风险分析以及与外国主管部门进行有关企业所得税信息交换的报告模板（“国别报告”）。

新法规对立法者有关关联方之间交易的界定有了根本性的修订。新法规引入了要求介绍关联方之间关联交易双方达成商业条款和交易结果等转让定价政策需要符合独立交易原则。

为了适应新的要求，纳税人需要在筹划集团内部关联交易时对事先尽职调查应更加关注。纳税人应根据实际情况尽快审查其关联交易合理性，确保其定价政策符合独立交易原则，进行相应的基准分析，并根据验证交易的分析结果对企业自身关联交易进行适当的调整（如适用）。

Transfer Pricing - Significant changes to documentation requirements

Poland introduces significant changes to the transfer pricing documentation requirements. The Amendments to the Corporate and Personal Income Tax Acts were signed by the President of the Republic of Poland on 27 October 2015. The changes introduce a new approach to business relations between related entities and will require the taxpayers to devote much more effort to appropriate planning of the transactions.

Additionally, drafts of two ordinances of Ministry of Finance are available at the website of Polish Government Legislation Centre, i.e. the draft ordinance on detailed description of the elements of the tax documentation and the draft ordinance establishing the model report prepared to analyze the risk of taxable income underreporting in transfer pricing and to exchange information with competent foreign authorities in the scope of corporate income tax (“Country-By-Country Reporting”).

The new regulations constitute a fundamental change of the Legislator’s approach regarding settlements between related parties. The new regulations introduce requirement to demonstrate that terms of cooperation and settlements between related parties were determined, *ex-ante*, in line with the arm’s length principle.

In order to meet the new requirements the taxpayers will need to devote much more due diligence when planning their intra-group transactions. The taxpayers should, as soon as practical, review their related party settlements, ensure that they are at arm’s length, perform benchmarking analysis and make applicable changes to the conditions of the tested transactions (if applicable).

企业/个人所得税法及相关实施条例，以及企业所得税-转让定价/个人所得税-转让定价表格(所填信息需与年度税务申报提供的关联方交易信息进行对照)的提交应被视为于本年度 4 月份开始准备转让定价文档以及关联交易相关信息披露过程的最后一步。新法规针对“国别报告”的准备要求将适用于自 2016 年 1 月起实施的关联交易，转让定价文档的相关条款将适用于自 2017 年 1 月起及日后发生的关联交易。

此外，根据财政部发布的信息，2015 年税务稽查机关已经开始了对所有年度收入超过 10 亿兹罗提的实体进行综合分析，旨在评估相关实体信息披露不足以及提供虚假税务信息的风险。

企业有义务准备转让定价文档

新法规引入了转让定价文档三层结构，比如：本地企业转让定价文档（本地文档），企业所在集团文档（主体文档）以及一份有关企业集团运营所在地的所有税收管辖地范围内与全球收入分配情况报告（国别报告）。

根据最新的法规，纳税人在上一纳税年度收入或成本超过 200 万欧元则有义务在当年准备转让定价文档。转让定价文档不仅涉及关联交易的披露，同时，被记录在企业指定年度会计帐簿，及已经和其关联方确定（或实施）的合同条款以及对纳税人的收入（损失）金额造成重大影响的其他事件也须在转让定价文档中披露。

The amendments to the CIT and PIT Acts along with the two implementing regulations and the CIT-TP / PIT-TP forms (forms collating information of related-party transactions that is to be attached to annual tax returns) should be seen as final steps in the process of incorporating new guidelines regarding the transfer pricing documentation and disclosure of information concerning such transactions that began in April this year. The new rules regarding “Country-By-Country Reporting” will apply to the settlements carried out by related parties from 1 January 2016 and provision concerning transfer pricing documentation will affect transactions and other events occurring from 1 January 2017.

Moreover, pursuant to the information published by the Ministry of Finance, in 2015 the tax inspections offices have started a comprehensive analysis of all entities with annual revenues exceeding 1 billion PLN. The aim of the analysis is to assess the risk of inadequacies and tax misstatements of such entities.

Entities obliged to prepare transfer pricing documentation

New legislation introduces a three-tiered approach to transfer pricing documentation, i.e. local documentation (“Local File”), documentation for groups of companies (“Master File”) and a report on global allocation of income and tax within the group (“Country-By-Country Reporting”).

The obligation to prepare transfer pricing documentation will, as a rule, apply to taxpayers whose revenues or costs exceed the equivalent of EUR 2,000,000 in the year preceding the tax year that the transfer pricing documentation is to be prepared for. The transfer pricing documentation obligation concerns related-party transactions, as well as, other events recorded in the books of accounts for the specific year, the terms of which have been determined (or imposed) with related parties, where such events have material impact on the taxpayers’ income (loss) amount.

针对转让定价文档的新要求同样适用于没有法人资格的纳税人所运营的企业（如合伙制企业），他们可以任命一名合伙人负责起草该报告。在这种情况下，当合伙制企业的收入或成本的超过准备转让定价文档的义务的门槛时，其同样有义务提交转让定价文档。

在前一纳税年度纳税人的收入或成本超过 1,000 万欧元的纳税人将被要求额外准备相应的基准分析。

如果纳税人在前一纳税年度的收入或成本超过 2,000 万欧元，纳税人将必须向税务机关提交补充文件，其中包括有关企业所在集团所有关联方信息（“主体文档”）。对于在前一纳税年度的合并收入超过 7.5 亿欧元的大规模企业，将出具一份包括其子公司的收入和纳税情况、业务经营地以及其常设机构的报告（“国别报告”）。

转让定价文档的范围

与更新的法规要求一致，纳税人不仅有义务就其与关联方之间的交易准备税务文件，还应涵盖会计帐簿中对纳税人收入(损失)金额产生重大影响的其他事项以及已经与其关联方共同决定（或严重涉及）的其他事件，其中包括财务管理合同（如现金池）、成本分摊协议、非法人企业实体的成立合同、合资经营合同和其他类似的协议。

针对重要性水平的衡量标准，新法规已经在数量和质量方面进行了定义，如重大交易或其他类似事项交易总额在一个纳税年度内超过 5 万欧元。

The new transfer pricing documentation requirements will also apply to taxpayers that conduct their business operations without having legal personality (e.g. partnerships) giving them the possibility to appoint a partner responsible for drafting the documentation. In such a situation the limit of revenues or costs, exceeding of which triggers the obligation to prepare transfer pricing documentation, will apply to the partnership.

Taxpayers whose revenues or costs exceed the equivalent of EUR 10,000,000 in the year preceding the tax year will be additionally obliged to prepare benchmarking studies.

If the taxpayer's revenues or costs exceed the equivalent of EUR 20,000,000 in the year preceding the tax year, the taxpayer will be obliged to supplement tax authorities with documentation that will additionally contain information about the whole group of related parties (“Master File”). As regards the largest entities whose consolidated revenues exceed the equivalent of EUR 750,000,000 in the year preceding the tax year, there will be an obligation to produce a report on the income and tax paid in by subsidiaries, their places of conducting business as well as their permanent establishments (“Country-By-Country Reporting”).

Scope of transfer pricing documentation

In line with the updated legislation, taxpayers will be under an obligation to draw up tax documentation not only in respect of their transactions with related parties but also concerning other events recognized in the books of accounts where such events have a material impact on the taxpayers' income (loss) amount, as well as, other events terms of which have been determined (or imposed) with their related parties, including the contracts for finance management (e.g. cash pooling), cost sharing agreements, agreements related to incorporation of entities that are not legal persons, joint venture contracts and other comparable agreements.

The materiality criterion has been defined in quantitative and qualitative terms, i.e. material transactions or other events are transactions or events of the same kind whose aggregate value exceeds the equivalent of EUR 50,000 in a tax year.

此外，该修正案根据纳税人的收入设置重要性水平衡量标准。换言之，纳税人在上一纳税年度所获得的收入超过以下限值时，其交易将被视为重大交易：

- 超过 200 万欧元但不超过 2,000 万欧元 - 在收入超过 200 万欧元后每 100 万欧元收入的增加会给交易或相同的其他事项的交易额带来 5,000 欧元的加成，若最后其总价值折合为欧元超过 5 万，则被认定为重大交易；
- 超过 2,000 万欧元但不超过 1 亿欧元 - 在收入超过 2,000 万欧元后每 1,000 万欧元收入的增加会给交易或相同的其他事项的交易额带来 4 万 5 千欧元加成，若最后其总交易金额超过 14 万欧元，则被认定为重大交易；
- 超过 1 亿欧元 - 交易或相同种类其他事项，其总交易金额超过 50 万欧元将会被认定是重大交易。

转让定价文档内容

在前一个税务年度中，纳税人收入或成本超过 200 万欧元时，应准备转让定价文档，其内容应包括：

关联交易或者相关事项的描述，以及财务管理合同以及成本分摊协议，具体包括：

- a) 关联交易或相关事项的类型以及参与实体；
- b) 财务数据，包括关联交易或者相关事项的现金流情况；
- c) 执行关联交易或者相关事项的关联方简介；
- d) 关联交易或者相关事项的描述，其中包括交易双方所承担的功能、使用的资产，其中包括非资产负债表中的资产，即人力资本以及承担的风险；

In addition, the amendments provide certain materiality thresholds depending on the taxpayer's revenues. Namely, transactions are deemed material for taxpayers, if in the year preceding the analyzed tax year the taxpayer's revenues exceeded the following thresholds:

- EUR 2,000,000 but not more than EUR 20,000,000 – transactions or other events of the same kind whose total value exceeds the equivalent of EUR 50,000 increased by EUR 5,000 per each EUR 1,000,000 of revenues in excess of EUR 2,000,000 are considered material;
- EUR 20,000,000 but not more than EUR 100,000,000 – transactions or other events of the same kind whose total value exceeds the equivalent of EUR 140,000 increased by EUR 45,000 per each EUR 10,000,000 of revenues in excess of EUR 20,000,000 are considered material;
- EUR 100,000,000 – transactions or other events of the same kind whose total value exceeds the equivalent of EUR 500 000 are considered material.

Content of transfer pricing documentation

The documentation prepared by taxpayers whose revenues or costs exceed the equivalent of EUR 2,000,000 in the year preceding the tax year in question should contain:

description of the transactions or other events, also contracts for finance management and cost sharing agreements, including:

- a) indication of the type and the object of the transactions or other events;
- b) financial data, including cash flows related to the transactions or other events;
- c) indication of the related parties executing the transactions or other events;
- d) description of the course of the transactions or other events, including the functions performed by the parties to the transactions, the assets engaged – also non-balance sheet assets – the human capital and the risks borne;

e) 确定关联交易定价政策所使用的转让定价方法以及选择该方法的理由描述，具体包括关联交易或者相关事项的定价政策，以及影响纳税人或者其关联方收入(亏损)的计算方法。

纳税人财务数据，用于与从会计角度出具的财务报表中所披露的数据进行比较：

纳税人基本情况描述，其中包括：

- a) 组织及管理架构；
- b) 业务描述；
- c) 经济战略，包括在当前纳税年度或在上一个纳税年度里对于关联方收入（或亏损）具有重大影响且具有实质的关联方之间功能、资产或风险的转移；
- d) 经营环境；

相关文件包括：

- a) 关联交易协议或其他相关文件，非法人企业实体相关的文件，合资经营合同以及其他可比协议；
- b) 确定关联交易参与方在交易中收入的转让定价政策文件；
- c) 与税务机关签订的与关联交易及相关事项的相关的税收协议，特别是预约定价安排。

对于在上一纳税年度收入或成本超过1,000万欧元的纳税人，以及收入或成本不超过1,000万欧元的持有非法人机构股票的纳税人，其需准备的转让定价文档中应额外含有基于可比公司的财务数据所进行的转让定价基准分析，从而证明其关联交易符合独立原则。该基准分析应该包含其实际经营地或管理职能在波兰境内的可比公司的相关数据，如果纳税人无法获得可比公司相关财务数据，则应该在转让定价文档中附加一份

e) description of the method and manner of calculating the income together with justification of their choice, including the algorithm for settling the transactions or other events, together with the method of calculating the values affecting the income (loss) of the taxpayer or the taxpayer's partner;

description of the taxpayer's financial data which will make it possible to compare the settlements with the data derived from the approved financial statements where the duty to prepare the financial statements arises from the accounting regulations;

Description of the taxpayer, including:

- a) the organizational and management structure;
- b) the conducted business activity;
- c) the economic strategy, including the transfers of economically material functions or assets or risks that have impact on the incomes (loss), made between related parties in the given tax year or in the year preceding the tax year;
- d) business environment;

Documents, in particular:

- a) agreements or other documents entered into by related parties which document the transactions or other events, agreements related to incorporation of entities that are not legal persons, joint venture contracts and other comparable agreements;
- b) documents that lay down the rules of the rights granted to partners (parties to the agreement) in respect of their participation in profits and losses;
- c) income tax agreements concluded with tax authorities concerning transactions and other events, especially advance pricing agreements.

As regards taxpayers whose revenues or costs exceed EUR 10,000,000 in the year preceding the tax year, and taxpayers holding shares in entities that are not legal persons the revenues or costs of which exceed EUR 10,000,000 in the preceding tax year, the documentation should additionally contain a benchmarking study based on benchmarking data used in calculating the intercompany settlements, indicating the source of the data. Such study should contain comparable data concerning entities with the registered office or the management in the territory of the Republic of Poland, and if such comparable data is not available to the taxpayer, then the taxpayer should

确认函，以说明其关联交易和其他关联事件的定价政策符合独立交易原则。

attach to the documentation a description confirming that the terms of the transactions and other events established with related parties are consistent with the terms that otherwise would have been established by unrelated entities.

- 在纳税年度的前一年收入或成本超过 2,000 万欧元的纳税人，也将有义务向税务机关提供包含所在集团全球业务基本情况的报告（即“主体文档”），其中应包含的文件有：
 - 确认关联方已在年度纳税申报中准备了相关集团信息；
 - 集团组织结构；
 - 集团内部关联交易定价政策（即集团转让定价政策）制定规则说明；
 - 集团业务描述；
 - 集团实质控制、创造、开发和使用的无形资产的说明；
 - 集团内关联实体财务状况，其中包括集团合并财务报表信息；
 - 集团内关联实体与其他国家的税务机关达成的税收裁定，特别是单边预约定价安排。
- Taxpayers whose revenues or costs exceed the equivalent of EUR 20,000,000 in the year preceding the tax year will also be obliged to provide tax authorities with documentation concerning a group of entities (the so-called “Master File”) which should contain, *inter alia*:
 - indication of the related party that has prepared the information concerning the group along with the date on which the related party files its annual tax declaration;
 - the organizational structure of the group of related parties,
 - description of the rules for determining transactional prices (group transfer pricing policy) followed by the group;
 - description of the business conducted by the group;
 - description of material intangible assets possessed, created, developed and used by the group;
 - description of the financial situation of the entities comprising the group, specifically including the consolidated financial statements prepared;
 - description of agreements with tax authorities of other countries concerning income tax, especially unilateral advance pricing agreements, concluded by entities comprising the group of related parties.

其他修订

此外，修订案还约定以下义务和相关要求：

- 准备并提交转让定价文档的日期不应晚于相应的纳税申报时间限制（根据税务机关要求出具转让定价文档的截至日期保持不变，即：在税务机关通知以后 7 天之内）；
- 转让定价文档应确保定期更新检查，即至少每年进行一次更新（然而，针对转让定价基准分析，则要求每三年进行验证更新）；
- 在纳税人收入或成本超过 1,000 万欧元的情况下，该纳税人有义务在企业年度纳税申报时一同附上有关其与关联交易情况的简化报告；
- 对于关联交易或相关事项的交易金额未超过准备转让定价文档限额或重要性水平门槛的纳税人，如有情形表明其试图通过降低关联交易金额从而达到免除准备转让定价文档义务时，该纳税人有义务准备相关转让定价文档。

新规定要求纳税人向其主管税务机关呈交一份确认已准备完整文档的确认函。该确认函应在纳税申报提交日期前呈交。

此外，修正案针对现行法规对于关联方的定义进行了修订。根据更新草案，关联方被定义为持有其他实体所有者权益（直接或间接）等于或大于 25%（初期草案对于持股比例限值的规定为 20%）的集团内实体。

Other changes

Furthermore, the amendments include, *inter alia*, the following obligations and requirements:

- duty to prepare tax documentation not later than until the date of submission of the tax return for the respective tax year (the deadline for the obligation to produce tax documentation at the authorities' call remains unchanged, i.e. within 7 days of the date of being served with the call);
- requirement to have the transfer pricing documentation verified periodically, at least once a year (however benchmarking analyses should generally be subject to verification once every three years);
- Obligation to attach a simplified report on transactions with related parties to the tax return - in the case of taxpayers whose revenues or costs exceed EUR 10,000,000. Information on the draft report is presented later in this alert.
- obligation to prepare tax documentation (within 30 days of the date of being served with the inspection authorities' call to do so) in respect of the transactions or other events the value of which does not exceed the documentation limits or the materiality thresholds, if the circumstances of the case indicate that their value could have been underreported to avoid the documentation obligation.

The new regulations include the requirement to submit to the competent tax office a statement confirming preparation of complete documentation. Such statement should be filed not later than until the date of submission of the tax return.

Additionally, the amendments modify the current definition of related parties – pursuant to the updated draft, related parties should be understood as entities that possess interest (direct or indirect) in the capital of another entity which is equal to not less than 25% (earlier drafts indicated the threshold of 20%).

新企业所得税-转让定价/个人所得税-转让定价表格以及年度纳税申报

新法规规定企业所得税-转让定价表格需附在年度纳税申报表中一并提交。纳税人将采用该种方式来披露其关联交易具体信息以及相关事件如，提供支付给位于避税港的关联企业的具体金额等详细信息。企业所得税-转让定价/个人所得税-转让定价将包括以下信息：

- 纳税人经营活动（如生产、分销、服务）；
- 纳税人的功能风险定位（如：承担有限风险的分销商、合约制造商）；
- 关联方交易的类型（如集团内部劳务交易、购买无形资产、特许权使用费支付）；
- 关联交易金额 - 交易金额小于 1,000 万欧元、高于 1,000 万欧至 5,000 万欧元以及超过 5,000 万欧元；
- 根据交易种类确定其重要性水平，针对特定的关联交易种类，判断该项交易金额是否超过关联交易总金额的 50%。

该文件将允许税务机关收集纳税人关于关联交易交易类型，重要性水平和交易金额等非常详细的相关信息。这意味着在企业所得税-转让定价/个人所得税-转让定价表格中所披露的信息将作为税务机关选择转让定价调查对象以及确定需被重点关注的关联交易的重要依据。

为配合新法规执行，从会计角度而言，收入或成本在当年纳税年度超过 1,000 万欧元的纳税人同样具有提交企业所得税-转让定价/个人所得税-转让定价表格的义务。

The new CIT-TP / PIT-TP forms accompanying the annual tax return

New regulations provide for an obligation to attach a CIT-TP form to the annual tax return. The taxpayer will use it to disclose detailed information concerning related-party transactions, as well as, other events on account of which dues are paid to entities seated in tax havens. CIT-TP / PIT-TP will, *inter alia*, include information concerning:

- the sector of the taxpayer's business activity (such as production, trade, services);
- the taxpayer's functional profile (e.g. limited risk distributor, contract manufacturer);
- types of related-party transactions (e.g. intra-group services, purchase of intangibles, payment of royalties);
- values of transactions according to their types – transactions up to EUR 10,000,000, up to EUR 50,000,000 and above EUR 50,000,000;
- Materiality of transactions by their type – whether the value of transactions within a specific type exceeds 50% of the value of all related-party transactions.

This document will allow the tax authorities to gather very detailed information about the taxpayer, the types of transactions, their materiality and value. By implication, it appears that CIT-TP / PIT-TP will become an important tool in the process of selecting entities for tax audits and identifying transactions that will be the focus of the authorities' interest.

In line with the new legislation the obligation to file the CIT-TP / PIT-TP forms will apply to taxpayers whose revenues or costs within the meaning of the accounting regulations exceed the equivalent of EUR 10,000,000 in the tax year.

评论

经修订后企业所得税和个人所得税法案及相关实施条例草案，以及新企业所得税-转让定价/个人所得税-转让定价的表格针对准备转让定价文档的纳税人义务范围造成显著影响。这些修订的影响将延伸覆盖提供给税务机关的关联交易信息范围，这些信息将有助于简化转让定价调查目标企业的筛选流程以及实际调查流程。

因此，我们强烈建议波兰纳税人主动审视现行关联交易定价政策，并基于独立交易原则，进行转让定价基准分析。如有需要，在新规定出台前进行调整，特别是针对转让定价文档中的相关调整。

若纳税人在波兰被进行转让定价调查，这些事前的准备工作可以降低波兰税务机关对于关联方交易定价政策产生质疑的风险。

除上述讨论的问题，仍需特别注意的是对于提交转让定价文档的语言要求并没有改变，即应使用波兰语准备转让定价文档（本地文档、主体文档和国别报告）。

Comments

The amendments to the CIT and PIT Acts, the draft implementing ordinances, as well as, the new CIT-TP / PIT-TP forms will have a significant impact on the scope of the taxpayers' responsibilities in connection with the preparation of transfer pricing documentation. The changes extend the scope of the information about related-party transactions to be provided to tax offices, which might streamline the process of selecting entities for tax audits and the tax audits themselves.

Therefore, we strongly recommend that the Polish taxpayers should proactively review their related party settlements and consider their arm's length character, perform benchmarking studies and, if necessary, make an adjustment prior to the introduction of the new requirements, especially in regards to transfer pricing documentation.

Such efforts in advance may result in mitigating the risk of questioning settlements between related parties in case of eventual tax audit in Poland.

Apart from the above, it is important also to note that the approach to the language in which the documentation should be prepared has not been changed – the documentation is expected to be submitted in Polish language (the Local file, the Master file and the Country-by-Country Report).

德勤转让定价团队被国际税务评论评为波兰和中欧 2015 年年度最佳转让定价公司

德勤获得了中欧地区转让定价年度最佳公司奖、波兰转让定价最佳公司奖以及波罗第海国转让定价奖最佳公司奖。此外，德勤中欧再次被评为 2015 年度最佳税务服务公司。该奖项是由一家著名的总部位于伦敦的杂志：国际税务评论在第 11 期欧盟税务奖中颁发给德勤的。德勤为客户提供的创新方案以及综合的跨境咨询服务得到了广泛认可和肯定。

被国际税务评论提名先进的候选公司在该历年之中应该包含最富创造性、突破性以及最有价值的项目。候选公司在 2014 年 1 月至 12 月之间的业务都可以被考虑在范围之内。获胜者是由参选者中提交的案例业务中选择出的最佳案例。所有提交参选的案例都由杂志社编辑人员审核，并且根据市场、客户以及专家意见进行为其数月的审核后得出答案。

如果您有任何关于近期波兰转让定价文档要求的疑问，请不要犹豫直接联系我们，联络方式见本期月报最后。



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