

Transfer Pricing Alert

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Significant legislative amendments regarding transfer pricing

ANAF published the Order no. 442/2016 regarding the values of the transactions, the deadline for the preparation, the content and conditions for the request of the transfer pricing file and the procedure of the adjustment / estimation of the transfer prices.

This Order brings significant amendments regarding the legislation applicable in the transfer pricing area.

The main legislative amendment is represented by the introduction of **the annual obligation for the preparation of the transfer pricing file** applicable to large taxpayers which carry out intra-group transactions exceeding certain thresholds. The deadline for the preparation is the legal deadline set for the submission of the annual corporate income tax return. These provisions apply to the intra-group transactions carried out starting with the year 2016.



Significant legislative amendments regarding transfer pricing

The National Agency for Fiscal Administration (“ANAF”) published today, the 2nd of February 2016, the Order no. 442/2016 regarding the values of transactions, the deadline for the preparation, the content and conditions for the request of the transfer pricing file and the procedure of the adjustment / estimation of transfer prices (“the Order”).

The Order includes significant amendments related to the transfer pricing legislation. Details regarding the most important changes are presented in the following sections.

A. Preparation and presentation of the transfer pricing file

1. Annual obligation regarding the preparation of the transfer pricing file

Who?

The provisions regarding the annual obligation for the preparation of the transfer pricing file is applicable to the large taxpayers which carry out intra-group transactions with a total annual value higher than any of the following thresholds:

- EUR 200,000 for interest received/paid for financial services;
- EUR 250,000 for services received/provided;
- EUR 350,000 for acquisitions/sales of tangible and intangible goods.

The aforementioned thresholds are computed by adding up the annual total values of the transactions carried out with related parties, excluding VAT.

When?

The deadline for the preparation of the transfer pricing file is the legal deadline for the submission of the annual corporate income tax return, for each fiscal year.

The deadline for the presentation of the transfer pricing file is of maximum 10 days from the request date, but not earlier than 10 days from the expiration of the preparation deadline.

How?

The presentation of the transfer pricing file will be made at the specific request of the tax authorities either during a fiscal inspection or outside such process.

The aforementioned requirements are applicable for the intra-group transactions carried out starting 2016.

2. Preparation of the transfer pricing file based on a specific request

Who?

The transfer pricing file will be prepared based on the specific request of the tax authorities by the following taxpayers:

- large taxpayers for which the criteria mentioned within point 1) above is not applicable; and
- small and medium taxpayers

which carry out intra-group transactions with a total annual value higher than any of the following thresholds:

- EUR 50,000 for interest received/paid for financial services;
- EUR 50,000 for services received/provided;
- EUR 100,000 for acquisitions/sales of tangible and intangible goods.

The aforementioned thresholds are computed by adding up the annual total values of the transactions carried out with related parties, excluding VAT.

When?

The deadline for the presentation of the transfer pricing file is of 30 to 60 days. The deadline can be extended only once with a period of maximum 30 days.

How?

The presentation of the transfer pricing file will be made based on the specific request of the tax authorities, within a fiscal inspection.

3. Documentation rules for other taxpayers

The taxpayers performing intra-group transactions for which the materiality thresholds are lower than those described at points above have the obligation to document the compliance with the arm's length principle during a fiscal inspection, according to general rules provided by the financial-accounting and fiscal legislation in force.

B. The content of the transfer pricing file

The Order brings certain amendments regarding the content of the transfer pricing file. In addition to the requirements of the legislation applicable up to the issuance of this Order, the transfer pricing file must include, among others, information regarding:

- The values of the outpayments / inpayments for each transaction performed with each related party;
- Description of transfer pricing policy related to intra-group financing, including the presentation of financing agreements concluded with both related parties and independent lenders;
- Description of intra-group services, including cost allocation keys and emphasis on the services that significantly contribute to value creation.

C. Transfer pricing adjustment and estimation procedures

The adjustment of the transfer prices will be performed by the tax authorities for the transactions which are not carried out in accordance with the arm's length principle.

The estimation of the transfer prices will be performed by the tax authorities when the taxpayer fails to submit the transfer pricing file or when an incomplete transfer pricing file is submitted.

The transfer prices will be adjusted / estimated by using the median of the market range.

D. Applicability of the Order

The legislative provisions introduced by the Order are applied to the administrative procedures initiated after 1st of January 2016.

The obligation for the preparation of the transfer pricing file by the large taxpayers performing intra-group transactions for which the thresholds provided at point A.1 above are exceeded will be applied to the transactions carried out starting 2016.

Source: Order no. 442/2016 regarding the values of the transactions, the deadline for the preparation, the content and conditions for the request of the transfer pricing file and the procedure of the adjustment / estimation of transfer prices issued by the National Agency for Fiscal Administration, published in the Official Gazette no. 74 / 02.02.2016

For further questions regarding the aspects mentioned in this alert, please contact us.

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