

# Transfer Pricing Country Summary

## Poland

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## 1. Introduction<sup>1</sup>

Transfer pricing regulations in Poland are well-established and apply to both cross-border and domestic transactions. These regulations heavily rely on the Guidelines of the Organization for Economic Cooperation and Development (OECD) (Poland has been a member of the OECD since 1996). The statutory documentation thresholds (implemented in 2001) are relatively low, and the requirements apply to a wide range of transactions. Since 2007, taxpayers have also been required to document the allocation of profits to permanent establishments.

Poland joined the European Union on May 1, 2004. As a result, Poland accepts the EU Transfer Pricing Code of Conduct. Nonetheless, tax authorities accept only documentation written in Polish that covers all items required by local law, according to local regulations.

Poland enacted APA legislation in January 2006, which, as of January 1, 2007, also applies to the allocation of profits to permanent establishments.

## 2. Laws & Regulations

### a) References to OECD/EU/Local Rules

The Polish transfer pricing regulations in general follow the OECD Transfer Pricing Guidelines. However, these guidelines are not formally accepted as the source of law in Poland. In practice, the OECD Transfer Pricing Guidelines are considered supporting reference material only.

Article 11 of the Corporate Income Tax Act ("CIT") serves as the legal basis for applying the arm's length principle. It also defines the concept of related parties and lists transfer pricing methods available to tax authorities when assessing the taxpayer's income.<sup>2</sup>

The statutory transfer pricing documentation requirements, including the definition of entities obliged to prepare it and the required items of such documentation, are introduced in article 9a of the CIT.

The regulations mentioned above are equivalent to the Personal Income Tax Act (articles 25 and 25a, respectively).

Furthermore, it should be noted that:

- articles 9a and 11 of the Corporate Income Tax Act of 15 February 1992 (Journal of Laws of 2017, item 1753 as amended),
- Decree of the Minister of Finance of 10 September 2009 on the method and procedure for assessing legal person's income by estimating the prices and the method and procedure for eliminating double taxation of legal persons resulting from an adjustment of related parties' profits (Journal of Laws no. 160, item 1268 as amended),

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<sup>1</sup> <https://www.pwc.com/gx/en/international-transfer-pricing/assets/poland.pdf>

<sup>2</sup> Art. 11 par. 1 of the Corporate Income Tax act (CIT act)  
Art. 25 par. 1 of the Personal Income Tax act (PIT act)

- Decree of the Minister of Finance of 12 September 2017 on the information to be included in transfer pricing documentation in the field of corporate income tax (Journal of Laws from 2017, item 1753),

apply to certain transactions with entities located in jurisdictions applying harmful tax competition, even if the counterparty in such a location is not a related party. In addition, article 9a applies to non-resident taxpayers carrying activities through a permanent establishment located on Polish territory.

## b) Definition of Related Party

According to the new definition, related entities will be capital-related entities directly or indirectly involved in management, supervision or share capital of at least 25% in the entity. This definition includes the family-related entities (spouse, relative, affinity up to the second degree). As of 1 January 2019, these entities will also be related entities in which the same natural person has an effective capacity to influence the taking of key economic decisions in both entities. The existence of relationships will also occur in situations where relationships are not established or maintained for legitimate economic reasons, including those aimed at manipulating the ownership structure or creating circular ownership structures, share or right to participate in profits, e.g. in the form of investment certificates and other condition creating links within the meaning of the new regulations. Polish transfer pricing regulations also apply to entities conducting operations in Poland through a permanent establishment and allocating profits between a permanent establishment and the head office.

## c) Nature of Transfer Pricing Documentation

The Polish Government has enacted on 30 November 2020 that certain taxpayers are obliged to prepare an “Executed tax strategy” report and publish it on their website no later than the end of the 12th month after the relevant tax year. This requirement pertains to (i) corporate income taxpayers (CIT) that has equivalent or more revenue than €50 million in the relevant tax year and (ii) tax capital groups without considering their revenues. In the report, this information related to transfer pricing must also be disclosed, amongst others;

- Transactions made with associated enterprises, which exceed %5 of the balance sheet total value. Transactions with foreign tax residents in Poland are also included. Here, the regulation addresses the transfer pricing provisions directly.
- The planned and/or performed restructuring activities that bear the possibility to intersect with the tax liabilities of the taxpayer or its associated enterprises in the sense of transfer pricing rules.

There is an exemption from being required to prepare transfer pricing documentation for certain entities after 1 January 2019. This exemption applies to the related entities established in Poland provided that they meet these conditions;

- Not having CIT-exempt status,
- Not benefiting from the Special Economic Zone,
- Not benefiting from R&D relief,
- Not reporting a tax loss.

Moreover, regulations on transfer pricing adjustments are being introduced in 2019 for the first time in the Polish legal regime. A change in the amount of revenue/deductible costs is recognised in the tax return for the tax year to which it applies. Correction is possible if:

- the conditions in the transaction correspond to conditions that unrelated parties would set;
- there is a change in the relevant circumstances justifying the adjustment;
- the taxpayer received a statement from the other party to the transaction to make the same adjustment;

#### d) Tax Havens & Blacklists

On 1 January 2021, Poland has enacted new transfer pricing rules determining transactions with the companies registered in tax havens. The regulation prescribes that the transfer pricing documentation requirements become obligatory if the envisaged thresholds are exceeded for those taxpayers;

- That are carrying out transactions with related entities or tax haven entities,
- That are concluding transactions with entities whose place of residence, seat or management in a tax haven.

The new obligations are broad and apply to all transactions completed after December 31, 2020 that exceed PLN 0.5 million in a given tax year. They refer not only to transactions with related parties, but also to transactions with unrelated entities. For each transaction exceeding the threshold and made with a counterparty whose beneficial owner is registered in a tax haven, the taxpayer is required to prepare the Local File documentation.

The scope of obligations is broad, but due to additional amendments, it only refers to cost-generating transactions (from the perspective of the taxpayer).

In those cases, however, taxpayers must verify their contracting parties and gather appropriate documentation confirming that these obligations have been met. Depending on the verification results, additional review of the beneficial owner's location or preparation of transfer pricing (TP) documentation may be required.

The new regulations include a presumption that if a counterparty conducts a transaction with a tax haven entity worth more than PLN 0,5 million, the counterparty's beneficial owner is a tax haven entity. If the necessary evidence is presented, this presumption can be refuted.<sup>3</sup>

#### e) Advance Pricing Agreement (APA)

Regulations relating to an APA have been in force in Poland since 1 January 2006. The APA regulations set out three different types of agreements, depending on the type of related parties involved:

1. Unilateral:
  - Domestic (for transactions between domestic entities); or
  - Foreign (for transactions between a domestic entity and a foreign entity).
2. Bilateral (for transactions with a foreign related entity, subject to acceptance by a foreign tax authority competent for the foreign entity).

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<sup>3</sup> <https://taxsummaries.pwc.com/poland/corporate/group-taxation>

3. Multilateral (for transactions with foreign related entities of more than one country, subject to acceptance by the foreign tax authorities competent for the foreign entities).

The APA is made by a decision issued by the Minister of Finance. The deadlines for the Minister of Finance to issue the decision concerning an APA are:

- Unilateral agreement - within 6 months after the procedure launch date;
- Bilateral agreement - within 12 months after the procedure launch date; and
- Multilateral agreements - within 18 months after the procedure launch date.

Bilateral and multilateral agreements are made by the Minister of Finance with the tax authority competent for the other party to the transaction (an entity related to the taxpayer). Once an agreement is signed, an administrative decision is issued for the taxpayer. The APA decision covers: (i) transfer pricing method and calculation algorithm(s) and (ii) terms and conditions for using the TP method approved. APA is binding on the tax authorities, and they cannot challenge the transfer price if the actual transaction is in line with the assumptions of the APA decision. In practice, even entering an APA procedure offers some protection as the tax office usually does not launch an audit if a transaction is discussed at the Ministry level.

An APA is binding for up to five years. However, it may be extended for a further five-year period (provided the critical assumptions of the methodology used are not changed and the taxpayer applies for the extension of the agreement at least 6 months before it expires). The Ministry of Finance imposes an administrative fee for an APA application. In general, it is equal to 1% of the transaction value. However, the following ranges are used:

1. Unilateral agreement:
  - in the case of domestic entities: PLN 5,000 minimum – PLN 50,000 maximum; and
  - in the case of a foreign entity: PLN 20,000 minimum – PLN 100,000 maximum.
2. Bilateral / Multilateral agreements: PLN 50,000 minimum – PLN 200,000 maximum.

The fee for extending an APA is equal to half the fee due for the initial APA application.

As of 1 January 2016, an APA can be conducted by entities without legal personality, and the provisions of a prior agreement may be applied earlier, i.e. from when the taxpayer formally applies to the Ministry of Finance (the provisions before the amendment did not provide for such a possibility and the provisions of the APA could be applied from the date when the Minister of Finance served APA decision to the taxpayer). APA is the only tool that can be used to secure transfer pricing.

Additionally, the draft amending CIT law was signed by the President on 22 November 2017. Amendment of CIT law introduces these modifications:

- Unlimited expenditures on intangible services in the case of APA

The amendment adopted provides a possibility of recognising all intangible and legal assets as costs of revenues only if the taxpayer enters into the Advanced Pricing Agreement (APA) with the Chief of National Tax Administration (NTA). Such a general rule can be applied for the APA term as well as the tax year when the decision was made and the year before.

- Abandoned obligation to prepare transfer pricing documentation for transactions covered by APA

Taxpayers who have signed an APA have another advantage. APA is an effective method of mitigating tax risk, and from 1 January 2018, it additionally lifts documentation obligations on transactions being under such an agreement for taxpayers who will receive a decision regarding APA from the Chief of NTA.

- Arm's length nature of the transactions in tax capital groups (TCG)

Since 1 January 2018, provisions were repealed under which companies setting up TCGs could agree on the conditions for transactions that differ from those unrelated entities would apply. Therefore, starting 1 January 2018, entities being part of TCG must set the terms and conditions of transactions made with other members of TCG at arm's length. Moreover, an exclusion was introduced from the obligation to prepare transfer pricing documentation between entities that are part of TCG. Such an obligation will only apply to transactions or other events between entities of TCG with related parties outside the TCG.

## f) Audit Practice

The audit risk is medium to high for all types of transactions and other events. In 2014, the Ministry of Finance appointed a special transfer pricing audit team. It was tasked with supporting other tax authorities to conduct transfer pricing audits with their expertise and share access to external databases for benchmarking studies, such as Amadeus, and other databases, e.g. for royalties and financial transactions. The aim was for audits to become more substantive. In January 2015, a Competence Center for Transfer Pricing at the Tax Chamber in Łódź was established. Sample tasks of competence centres include detailed analysis of industries, issues and risks associated with them, coordination of detection activities and selection of entities for a tax audit. Competence Center for Transfer Pricing coordinates tax audits towards large entities operating within transnational corporations.

Additionally, in 2017 Transfer Pricing and Valuation Department was established to shape the Minister of Finance's policy in the field of transfer pricing (i.e. preparing legislative solutions with regards to transfer pricing regulations, developing guidelines for taxpayers, international cooperation with other jurisdictions, preparing economic valuations and analyses for tax purposes). Transfer Pricing and Valuation Department has employed a number of experienced practitioners well-versed in transfer pricing matters.

The number of transfer pricing audits in 2016 was up by about 59% (in 2015), and the value of transfer pricing adjustments boosted from PLN 29 million (in 2015) to PLN 657 million (in 2016).

The Ministry of Finance-released data shows that transfer pricing audits are becoming more and more important and taxpayers applying harmful tax policy pay much bigger penalties. The Ministry keeps training transfer pricing specialists to expand their knowledge.

Intangible assets transactions, including management services and royalties, and financial transactions (such as loans and guarantees) are under special scrutiny of tax authorities.

### 3. Transfer Pricing Documentation

#### g) Level of Documentation

##### i) Tax Return Disclosures

Polish entities (legal and natural persons) must file information on revenues paid out to foreign entities (both related and unrelated) and derived from dividends, interests, royalties, intangible services, etc. (deadline: by the last day of the third month of the year following the tax year);

In their tax returns, Polish taxpayers under the Corporate Income Tax Act state that annual CIT returns should be submitted to the tax office within three months (31 March latest) following the end of the tax year. The statements do not cover Master File documentation.

##### ii) Local File requirements

Polish regulations addressing Local File documentation came into force on 1 January 2017. The obligation for preparing Local File documentation is imposed if a taxpayer's (or partnership's) revenues or costs (as defined by the Accounting Act) exceeded the threshold of EUR 2M in the previous tax year. The Local File should feature:

1. Description of the transaction (including cash pooling agreements and cost contribution agreements):
  - indication of the type and subject of the documented transaction,
  - financial data,
  - identification data of entities involved in this transaction,
  - description of the course of documented transactions (in the form of functional analysis).
2. Description of taxpayer's financial data or data from the financial report (in the case of taxpayers receiving revenue from shares in partnership),
3. Information about taxpayers, including:
  - organisational and management structure,
  - subject and scope of business activities,
  - implemented business strategy including restructuring,
  - business environment.
4. Documents, in particular:
  - agreements,
  - APAs,
5. Digitally signed declaration of the Board of Directors that the prices are compatible with the arm's length principle and the TP files have been prepared. This declaration consists of the description of the method and manner for calculating profits in the form of a statement of being aligned with market conditions.
6. A benchmarking study, which is an obligatory element of Local File since 1 January 2017. This study must include the description of analysis prepared based on data of unrelated entities or data agreed on with unrelated entities identified as comparable to conditions established in the transaction. (This is only mandatory for the entities whose revenue or costs exceeded EUR 10m in the previous tax.)

### iii) Master file requirements

It is prepared by entities consolidated by full or proportional method, which are obliged to prepare local documentation and if they belong to a group of related entities:

- for which the consolidated financial statements are prepared;
- whose consolidated revenues exceeded PLN 200.000.000 in the previous financial year.

The documentation must be prepared by the entity obliged to own the documentation in Poland or other related entity by the end of the twelfth month following the end of the financial year.

The Master File should feature such elements as:

1. Identification of the related enterprise which had prepared Master File;
2. The group's organisational, legal and operational structure (including an organisational chart, a list of group members and a description of the participation of the parent company in the subsidiaries);
3. Description of the principles for determining transfer prices (transfer pricing policy):
  - method of allocating the cost of intragroup services and determining the remuneration for intragroup services,
  - presentation of R&D works made within the group,
  - the summary of remuneration payable due to use or share of intangible assets between related entities,
  - manner of financing the entities within the group;
4. Description of the subject and scope of business activities made by the group:

general description of functions performed and risks assumed, including the description of changes in respect of functions and risks compared to previous tax years, e.g. the change from a full-fledged distributor to a commissionaire;

- major factors affecting the profit,
  - list of major services transactions,
  - information about the largest suppliers and recipients,
  - the geographical allocation of main markets of business activities,
  - significant mergers, acquisitions and sales of investments,
  - description of accomplished restructuring (i.e. the transfer of essential functions, assets and risks);
5. Description of essential intangible assets used within the group should include:
    - Strategy for development, possession and use of intangible assets by each related entity in the group,
    - List of intangible assets owned by entities in the group, which are essential to the Group business activities, including information about the legal or economic owner of each intangible asset,
    - List of deals or agreements concerning intangible assets, including joint venture agreements, R&D agreements and license agreements,
    - Description of changes in ownership or use of intangible assets in the given tax year, including changes in legal or economic ownership as well as changes of the entity using each intangible asset,
  6. Description of the financial situation within the group;

#### 7. Description of agreements made with fiscal authorities;

- description of income tax agreements made by entities from the group with tax authorities other than Polish includes the description of unilateral advance pricing agreements made by related entities from the group.

The taxpayers whose revenues or costs in the current tax year exceeded EUR 10 million must prepare the TPR-C form. It enables tax authorities to select taxpayers and the transactions subject to a potential tax control in transfer pricing.

The taxpayers must fill in more than 140 items in the TPR-C form. It is divided into 6 main categories:

- Data identifying the taxpayer,
- Identification of taxpayers' transfer pricing relationships with related parties,
- Information about related entities
- Main taxpayer's business activity and functional profile,
- Restructurings,
- Related party transactions or other events (divided into other 6 subcategories).

#### iv) Country-by-Country Reporting

With CBCR requirement, Poland keeps the OECD template as same by requiring the capital groups with consolidated revenues more than PLN 3.250.000.000 or EUR 750.000.000. In certain circumstances, a company must notify Tax Authority about the location of where CBCR filed.

There are no special transfer pricing rules for small and medium-sized enterprises that deviate from the general transfer pricing regime. In accordance with the amended regulations, small enterprises are excluded from the transfer pricing regulations, and medium enterprises have limited requirements regarding transfer pricing issues.

Thresholds related to the size of a company are abolished. Controlled transactions of a homogeneous nature, the value of which, net of value added tax, in the year is equal, will be documented:

- PLN 10.000.000 - in case of goods and financial transactions;
- PLN 2.000.000- in case of service transactions and transactions other than a commodity, financial or service transactions;
- PLN 100.000 - in case of transactions with a country from a tax haven.

Documentation thresholds will be set separately for the cost and revenue sides of the transaction.

The most significant change is that under the new regulation's taxpayers' obligations are differentiated by revenues/costs value (in accordance with accounting regulations) exceeded in the previous tax year. Additionally, the value threshold of transactions or other events triggering the documentation obligation depends on taxpayers' revenues/costs.

Under regulations in force since January 2017, all restructuring transactions must be presented in Local File and Master File. The restructuring should be understood as (i) transfer of significant functions, assets, risks or (ii) change of structure or legal form.

The information on restructuring must also be included in the TPR-C form. The restructuring documentation is a specific one and besides the standard items listed in Article 9a of the CIT Act/25 of the PIT Act, it also covers additional elements (such as a description of other realistic

available options) set forth in the Decree of the Minister of Finance of 10 September 2009 on the method and procedure for assessing legal person's income by estimating the prices and the method and procedure for eliminating double taxation of legal persons resulting from an adjustment of related parties' profits.

#### h) Industry Analysis

By identifying value drivers for the relevant industry, a first indication of the level of profitability common in the industry is being given.

#### i) Company Analysis

A description of the management structure of the local entity, a local organisation chart, and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.

A detailed description of the business and business strategy pursued by the local entity including an indication whether the local entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediately past year and an explanation of those aspects of such transactions affecting the local entity.

#### j) Functional Analysis

In conducting a functional analysis, an assessment is made of the significant activities and responsibilities that are performed by the related parties relevant to the Intercompany Transactions under review, the tangible and intangible assets that are employed and the risks that are borne in undertaking the business activities. Such an assessment is consistent with the recommendations that have been made in the OECD Guidelines in paragraph 1.51.

#### k) Choice of Transfer Pricing Method

There is no direct reference to OECD accepted methods. However, methods similar to the OECD methods are enacted in a Minister of Finance decree of 10 September 2009 regarding method and procedure of determination of taxpayers' income as well as the method and procedure of eliminating double taxation in case of related party profit adjustment:

The traditional methods:

- Comparable Uncontrolled Price ("CUP");
- Resale Price; and
- Reasonable Margin (Cost Plus).

The transactional profit methods:

- Profit Split; and
- Transactional Net Margin Method.

These five methods are binding for the tax authorities to assess the taxpayer's income. There is a priority that traditional methods should be used before transactional methods. If the traditional methods cannot be applied, the use of the transactional profit methods is allowed.

## I) Economic Analysis – Benchmark Study

Under the new regulations, the obligation to conduct a benchmarking analysis was introduced for each transaction covered by the documentation obligation. Contrary to previous practice, it is only applicable if the company's revenues or costs exceed the threshold of EUR 10.000.000. In the TPC-R form, it will be necessary to present both the approach used in the benchmarking analysis and the selected financial data from the analysis.

A benchmarking study should include data on the comparable entities whose headquarters or management is located on the Polish territory, provided that the data is accessible for the taxpayer. In the case of a lack of data serving to conduct an analysis of comparison data, the taxpayer shall append to the tax documentation a description of compliance of the conditions of transactions and other events determined with related subjects with the conditions determined by and between independent subjects. The approach to be displayed by the Polish Tax Authority towards Pan-European benchmarking studies prepared by the group is unknown at this point. We believe they will be accepted yet based on the current tax practice, such studies would likely have to include Polish entities in the analysis process and, ideally, within the accepted companies. The absence of Polish comparables triggers a high risk that the study will be challenged by Polish tax authorities in which case Transfer Pricing Documentation Local File may be assessed as incomplete, and a 50% tax rate may apply. Unfortunately, even if the 'Polish entities' condition is met, during a tax audit Polish tax authorities may still ask for a benchmarking study based on the Polish database Quick TPA, to which they have access.

Report from benchmarking study should feature:

1. An indication of the associated entity which was chosen as the tested party and an explanation of the reason for this choice,

A summary of the main assumptions made while performing the analysis and an explanation of the reasons behind these assumptions, including:

- Characteristics of goods or services being the subject matter of the analysed transaction,
  - The course of the transaction, including functional analysis,
  - The conditions of the comparable transactions between unrelated parties, business strategy of associated entities and market conditions if they affect the value of the transaction,
2. An explanation of the reasons for applying multi-year or one-year data,
  3. Data on comparable business operations between unrelated entities, including data on the relevant financial indicators and data on business operations rejected during the process of benchmarking study because of incomparability with the analysed transaction, including the source of data,
  4. A description of any comparability adjustments made to eliminate the differences between comparable transactions,
  5. A description of profitability indicators applied.

Furthermore, Polish transfer pricing regulations include "safe harbour" measures which give relief from benchmarking study. For two categories of transactions the safe harbour rules can be applied. In order to make use of the regulation, the criteria must be met that is enacted in the act:

- Low value-added services (is not more than 5% of the cost - for the purchase of services and not less than 5% of the cost - in the case of the provision of services and being one of the services from the catalogue of services listed in the appendix to the CIT Act) and
- Financial transactions (i.e. loans, credits, bond issues), if the conditions in transactions are in accordance with the announcement of the Minister of Finance.

### m) Inter-company (IC) Legal Agreement

Although an Inter-company legal agreement formalises the business and financial relationship between group entities, the legal agreements have a lower ranking since the OECD 2017 Guidelines made the “conduct of parties” the prevailing concept.

### n) Financial Statements

Since the OECD 2017 Guidelines made the “conduct of parties” the prevailing concept, parties also need to ensure their conduct is in line with what is reported in their accounts.

### o) Production Process for TP Relevant Returns, Documents, Forms and Financials

In the chart below, the existence of the filing requirements with the details of which format is used, the latest filing date, notification requirement and its deadline, thresholds to be applied in case it exists, and the required languages are demonstrated. This information can be seen respectively for CIT, master file, local file, CbCR, local forms, annual accounts and segmented P&L documentations.

	Prepare or File?	Format	Deadline	Notification Deadline*	Threshold* (Yes/No)	Local Language (Yes/No) *(If “No”, it can be filed in English)
<b>Corporate Income Tax</b>	File	N/A	3 months after the end of a fiscal year	N/A	N/A	Yes (Polish)
<b>Master File</b>	Prepare	N/A	12 months after the end of a fiscal year	N/A	EUR 20 million.	No
<b>Local File</b>	Prepare	N/A	9 months after the end of a fiscal year	N/A	Transactions: PLN 2 million- PLN 10 million. Tax Havens or partnerships: PLN 100,000 Transaction with beneficial owner in tax havens: PLN 500,000	Yes (Polish)

<b>CbCR</b>	e-Filing	Special Form <sup>4</sup>	12 months after the end of a fiscal year	3 months after the end of a fiscal year	PLN 3,250 million (EUR 750 million)	Yes (Polish)
<b>Local form TPR-C</b>	File	Electronic form on BIP page	9 months after the end of a fiscal year	N/A	EUR 10 million	Yes (Polish)
<b>Form CbC-P</b>	File	XSD / Available on the website of the tax authority <sup>5</sup>	3 months after the end of a fiscal year	N/A	PLN 3,250 million (EUR 750 million)	Yes (Polish)
<b>Annual Accounts</b>	File	Local IFRS	30 June 2022	N/A	N/A	Yes (Polish)
<b>Segmented P&amp;L</b>	N/A	N/A	N/A	N/A	N/A	N/A

\* Poland has signed the MCAA agreement for the filing of CBCR.

\* Poland does not request as much and detailed information from smaller and less complex enterprises (SME's included) than it does from large and complex enterprises.

#### a. Deadline to Prepare and Submit Documentation

The deadline to prepare the transfer pricing documentation is 31 March, and the deadline to submit the documentation is:

- 7 days following the request of tax authorities for transactions exceeding the statutory thresholds, or
- 30 days following the tax authorities' request for transactions not exceeding the statutory thresholds, after receiving a request to present such documentation. The authorities must clarify the reasons for submitting this kind of request.

Additionally, the taxpayer must submit within 9 months after the end of the fiscal year:

- statement of preparation of the tax documentation, and
- TPR-C form (the successor of CIT-TP) contains a wide range of detailed information.

#### b. Statute of Limitations

The tax liability is enforceable during 5 years from the end of the calendar year in which the tax for a given tax year is due. In practice, as the tax return should be submitted (and the tax due should be paid) three months after the end of the tax year, the tax liability e.g. the tax year 2012 expires at the end of December 2018 (provided the tax year matches the calendar year as in most cases).

<sup>4</sup> <https://www.podatki.gov.pl/e-deklaracje/inne/pozostale-interaktywne/>

<sup>5</sup> <https://www.podatki.gov.pl/e-deklaracje/inne/pozostale-interaktywne/#/>

### p) Mandatory Language

The documentation should be prepared in the Polish language as default. However, the master file can also be in English with the condition of providing Polish translation if Tax authorities request so.

### q) Notification Requirement

All capital groups running their business in Poland are required to submit a notification to the Head of the National Tax Administration via CbC-P form. This form consists of the information of which entity, and in which country the subject capital group will submit a CbCR. The notification is required to be submitted within 3 months after the end of a fiscal year.

### r) Record Keeping

Taxpayers must keep records until the tax obligation expires, i.e. for 5 years from the end of the calendar year in which the tax for a given tax year is due. In practice, as the tax return should be submitted (and the tax due should be paid) three months after the end of the tax year, the tax liability for the tax year 2012 (an example) expires at the end of December 2018 (provided the tax year matches the calendar year as in most of the cases). The records should be kept during this period.

### s) Penalties and Interest Charges

If the tax authorities decide that the remuneration for a transaction is not in line with the arm's length principle but the taxpayer did file the documentation, tax authorities may estimate the taxpayer's profit and tax it at a 19% tax rate.

If the taxpayer fails to file the documentation on the tax authorities' request, it must pay a 50% tax rate on profit estimated by fiscal authorities. This rate may be applied for 3 years after the end of the calendar year in which the tax obligation arose (afterwards, the tax authority may apply only the regular 19% rate). Such conclusions result from the judgment of the Supreme Administrative Court of 13 October 2016 (ref. II FSK 2288/14).

There are sanctions under penal and fiscal code for failure to file the statement on having prepared tax documentation and TPR-C form or for making a false statement.