

Rödl & Partner

EXPERT ADVICE

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TRANSFER PRICING 2023



Dear Sir or Madam,

We present to you a brief study on documentation and reporting obligations and sanctions related to transfer pricing.

We have described the key requirements and measures necessary to fulfil the transfer pricing obligations for 2023 and to take into account new laws.

Due to the change in the statutory deadlines for preparing transfer pricing documentation and fulfilling other reporting obligations, we recommend planning an analysis of the obligations and preparing for their fulfilment well in advance.

If you would like to know more on that subject, please do not hesitate to contact us.

Yours faithfully

Rödl & Partner


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1. IMPORTANT DATES


DEADLINE FOR PREPARING THE LOCAL FILE

The Local File must be prepared **by the end of the 10th month** of the end of the tax year.

	If the tax year of your company is the same as the calendar year, the transfer pricing documentation must be prepared by 31/10/2024 .
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DEADLINE FOR PREPARING AND SUBMITTING THE TPR FORM

The information return on transfer pricing must be filed in electronic form **by the end of the 11th month** of the end of the tax year.

	If the tax year of your company is the same as the calendar year, the TPR-C form must be filed by 30/11/2024 . For more details on the filing procedure go to sec. 5.
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DEADLINE FOR PREPARING THE MASTER FILE

The Master File must be prepared **by the end of the 12th month** of the end of the tax year. For most taxpayers, the deadline for preparing the Master File will be **31/12/2024**.

DEADLINE FOR PREPARING AND SUBMITTING CBC-P AND CBC-R

CBC-R	The CBC-P form must be filed by the end of the 12th month of the end of the group's reporting period.
CBC-P	Entities obliged to submit the CBC-P form to tax authorities should do so within 3 months of the end of the group's reporting financial year.

2. LOCAL FILE



ENTITIES CONCERNED

Taxpayers carrying out transactions with associated enterprises or entities from tax havens must prepare the Local File once the value of their transactions exceeds the statutory thresholds for 2023.

DOCUMENTATION THRESHOLDS

The Local File is prepared for uniform controlled transactions whose net value exceeds the following documentation thresholds in the financial year:

Transaction involving goods	10,000,000 zloty
Financial transaction	10,000,000 zloty
Transaction involving services	2,000,000 zloty
Other transactions	2,000,000 zloty

In the case of transactions carried out with entities from tax havens, the following documentation thresholds apply:

Financial transaction	2,500,000 zloty
Other transactions	500,000 zloty



In the case of financial transactions involving the granting of a loan, we have noticed that the revenue authorities have taken a taxpayer-unfriendly approach. In line with this approach, it is the value of the capital disbursed and not the maximum value of the loan specified in the contract that is relevant for determining the documentation obligation.

3. TRANSFER PRICING ANALYSIS

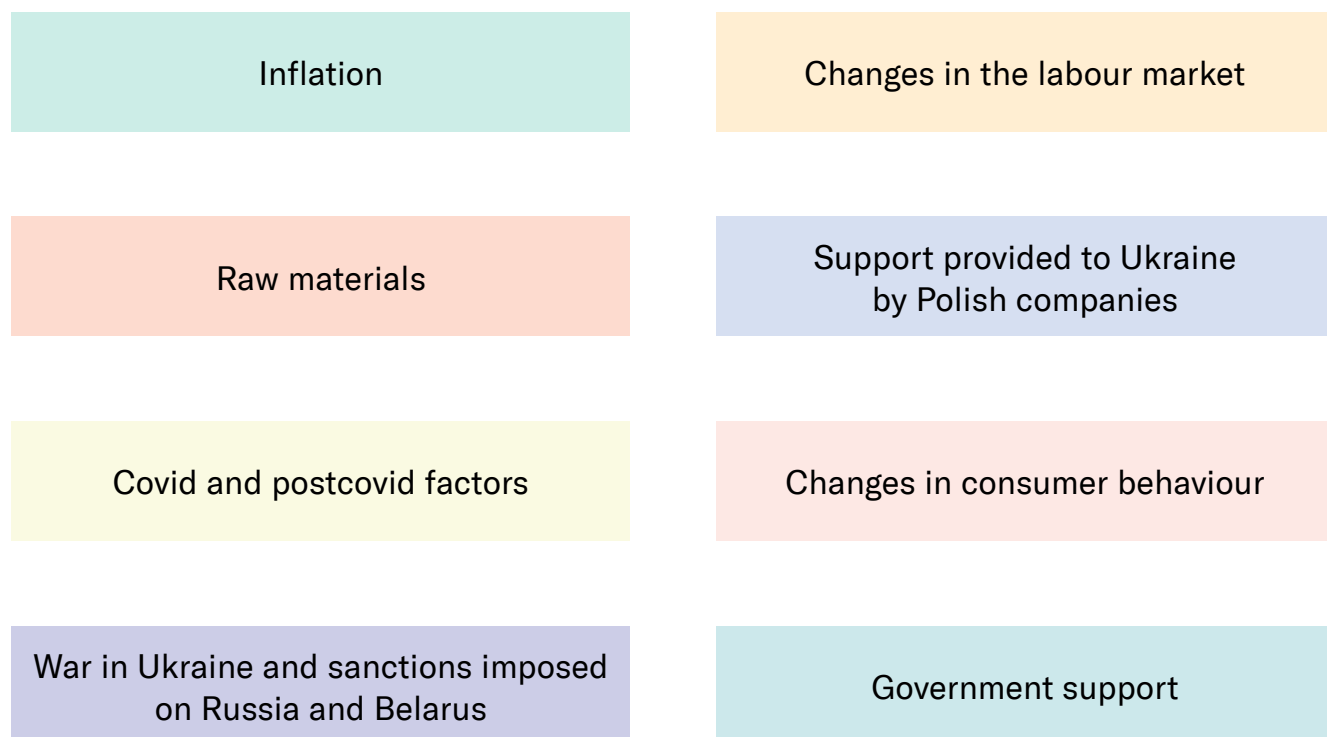


ENTITIES CONCERNED

With regard to documented transactions, a transfer pricing analysis (benchmarking study or conformity analysis) must be updated at least once every 3 years, unless the economic circumstances change so much that the analysis has to be revised in the year in which the change occurs.

IMPACT OF CRISIS FACTORS ON TRANSFER PRICING

The crisis factors affecting transfer pricing can be varied. They can overlap and interact with each other, as external factors can be related to the Covid-19 pandemic, the new geopolitical situation caused by the war on Ukrainian territory and the actions of individual countries. The guidelines of the Transfer Pricing Forum list the following crisis factors:



4. DOCUMENTATION SIMPLIFICATION

Documentation simplification mainly includes partial or total exemption: the taxpayer may be exempt from the obligation to prepare transfer pricing documentation or a transfer pricing analysis. This often requires fulfilling additional statutory conditions.

TOTAL EXEMPTION - NO OBLIGATION TO PREPARE TRANSFER PRICING DOCUMENTATION	
>	Transaction carried out by associated entities based in Poland
>	Transaction uses a simplification scheme classified as safe harbour - financial transactions
>	Transaction uses a simplification scheme classified as safe harbour - low value-added service
>	The transaction concerns recharge invoicing without margin/mark-up
>	Transactions carried out by permanent establishments located in Poland
>	Transactions covered by an APA

PARTIAL EXEMPTION - NO OBLIGATION TO PREPARE TRANSFER PRICING ANALYSIS	
>	Transactions made by micro or small enterprises
>	Transactions made with independent entities from tax havens



5. INFORMATION ON TRANSFER PRICING (TPR-C/TPR-P FORMS)



WHO SUBMITS THE TPR FORM

TPR form should be submitted by entities:

- obliged to compile the Local File;
- carrying out transactions exempt from certain documentation obligations.

INFORMATION COVERED BY TPR

- key financial figures presented in the transfer pricing documentation;
- statement confirming the preparation of the Local File and the arm's length nature of the applied prices.



SIGNING THE TPR FORM

- the company's manager should sign the TPR form on the company's behalf;
- the TPR form may now be signed by the taxpayer's attorney holding the qualification of an attorney at law [adwokat, radca prawny], tax adviser or statutory auditor.
- in practice, therefore, a declaration by a management board member will be required; accountants will no longer be allowed to sign and submit the TPR-C form.



6. MASTER FILE



ENTITIES CONCERNED

The obligation to attach the Master File applies to taxpayers:

- obliged to compile the Local File;
- operating in a group of entities for which consolidated financial statements are prepared (using the full or proportional method);
- belonging to a group whose revenues for the previous year (2022) exceeded the equivalent of 200 million zloty.

Consolidated group revenue

THRESHOLD: up to 200,000,000 zloty



DOCUMENTATION PREPARED BY THE GROUP

- Group documentation may be prepared by another group entity, but must comply with Polish regulations.
- The taxpayer may have group documentation in English.



Failure to prepare the Master File or preparing it after the deadline is subject to fiscal penalties, more details in section 9.



7. CBC-R AND CBC-P

CBC-R FORM



ENTITIES CONCERNED

Parent companies which have their registered office or management in Poland and which belong to a group whose consolidated revenues following from the financial statements exceeded 750 million euro (3.25 billion zloty) in the previous year must submit a CBC-R form.

A non-parent entity is required to file a CBC-R information form if no other group entity files it.

Consolidated group revenue

THRESHOLD: 750,000,000 euro

CBC-P NOTIFICATION FORM



ENTITIES CONCERNED

Members of groups whose consolidated revenues following from the financial statements for the previous year exceed 750 million euro (3.25 billion zloty) and which, at the same time, do not file an independent information return about the group (CBC-R) must submit a CBC-P notification form.

Consolidated group revenue

THRESHOLD: 750,000,000 euro



FILING METHOD AND FORM

The CBC-P notification form is submitted in electronic form only.

The CBC-P notification form can be submitted by an attorney holding a power of attorney to sign declarations/returns filed by means of electronic communication (UPL-1 form).

8. TRANSFER PRICING ADJUSTMENT



Despite transfer pricing for the year being set at market level, unexpected material circumstances may arise in the course of the year which the taxpayer could have neither foreseen nor controlled, and which ultimately render the original terms and conditions non-arm's length.

It is important to check after the end of an accounting period whether the above circumstances have occurred and whether they have affected the compliance of the accounts with the arm's length principle.

TRANSFER PRICING NON-ADJUSTING EVENTS

price changes relating to future periods (not the past)

goods returns

changes in the number of services provided

changes due to calculation errors or other mistakes

changes caused by complaints, discounts/rebates, price

adjustment in response to actions of tax administrations

Due to the separate regulations for transfer pricing adjustments, it is crucial to determine whether a given transaction fits the definition of a transfer pricing adjustment. This may have implications for:

- recognition of the adjustment in the correct period, which may affect the income tax liability;
- correct definition of VAT obligations.



9. TAX AND FISCAL CRIME PENALTIES

ADDITIONAL TAX LIABILITY UNDER THE POLISH TAX ACT (ORDYNACJA PODATKOWA)

10%	>	a tax liability arising as a result of, among other things, arrangements on transactions between associated entities
20%	>	if the basis for determining the additional tax liability exceeds 15 million zloty or the taxpayer fails to submit transfer pricing documentation
30%	>	if both above-mentioned premises (15 million zloty and missing documentation) are fulfilled

FISCAL CRIME CODE – PERSONAL LIABILITY OF BOARD MEMBERS

Failure to prepare	Post-deadline preparation of	Preparation of an untrue	Failure to include the Master File in
∨			
Local File			
∨			
is subject to fiscal crime liability			

Failure to submit	Late submission of	Submission of data inconsistent with the Local File or with the facts in
∨		
a transfer pricing report (TPR)		
∨		
is subject to fiscal crime liability		

10. CONTACT

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