

Rödl & Partner

EXPERT ADVICE

Legal status:
20.04.2021

TRANSFER PRICING DOCUMENTATION 2020



Dear Sir or Madam,

Transfer pricing is one of the most significant aspects of international tax law. Transfer pricing obligations have significantly changed in the last few years. We present to you this study in which we briefly describe documentation and reporting obligations, as well as sanctions related to transfer pricing.

Our experts describe the key requirements and steps to fulfil the transfer pricing obligations for 2020. We recommend planning a comprehensive review of the obligations and getting ready to fulfil them well in advance.

Correct transfer pricing of transactions with associated enterprises, documenting them properly and proving their arm's length nature can be particularly significant during the COVID-19 pandemic. Since the issue is complex, we recommend commencing work on transfer pricing documentation for 2020 in due advance.

If you are interested in details, you are welcome to contact our specialists.

Yours faithfully

Rödl & Partner

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1. LOCAL FILE



ENTITIES CONCERNED

Entities which make controlled transactions with associated enterprises in the meaning of the CIT Act and PIT Act must prepare the Local File required under the law once the value of the transactions exceed the statutory thresholds.



DOCUMENTATION THRESHOLDS

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

10 mln zloty
for financial transactions
or transactions in goods

2 mln zloty
for transactions
in services and
for other transactions

100 thousand zloty
for transactions made with an entity
residing, established or having
a management board in a territory or country
applying harmful tax competition



COMPONENTS OF THE LOCAL FILE

The Local File includes the following components:

1. description of the associated enterprise, including:
 - a) description of the management structure and the organisational chart of the associated enterprise;
 - b) description of the core business of the associated enterprise;
2. description of the transaction, including the analysis of functions performed, assets used and risks assumed:
 - a) subject matter and type of the controlled transaction;
 - b) information about associated enterprises involved in the controlled transaction;
 - c) functional analysis of the associated enterprises involved in the controlled transaction, taking into consideration significant changes compared to the previous financial year;
 - d) the transfer pricing method;
 - e) value of the controlled transaction;
 - f) payment(s) made or received in connection with the controlled transaction;
 - g) intra-group contracts, agreements or other documents concerning the controlled transaction;
 - h) tax agreements or advance tax rulings on the controlled transaction, including transfer pricing agreements made with or issued by tax administrations of countries other than Poland;
3. transfer pricing analysis, including:
 - a) indication of the transfer pricing method along with brief justification of the selection;
 - b) indication of the party or transaction investigated as part of the transfer pricing analysis;
 - c) description of benchmarking study carried out using the transfer pricing method;
 - d) relation of the transfer pricing to the analysis result;
4. financial information.

Detailed substance of the Local File has been specified in the PIT/CIT Acts and the regulations issued by the Minister of Finance with reference to the individual components.



PREPARATION DEADLINE

The Local File must be prepared by the end of the ninth month of the end of the financial year.

The deadline for preparation of the Local File has been extended:

– **until 30 September 2021** – for entities for whom the deadline expires between 1 February 2021 and 30 June 2021;

– **by 3 months** – for entities for whom the deadline expires between 1 July 2021 and 31 December 2021.

So in the case of taxpayers whose fiscal year is the same as the calendar year, the deadline for preparation of transfer pricing documentation for 2020 expires on **31 December 2021**.

2. STATEMENT ON TRANSFER PRICING



ENTITIES CONCERNED

Associated enterprises obliged to prepare the Local File.



WHO FILES THE STATEMENT

The statement is to be signed by electronic means by the entity's manager in the meaning of the Accounting Act, quoting his function. If several persons meet the criteria for entity's manager or if it is impossible to indicate one, the statement should be signed by each authorised representative.

According to special regulations, during the state of epidemic emergency or the state of epidemic announced in Poland due to COVID-19, the statement may be signed by:

1. a natural person – if an associated enterprise is a natural person;
2. a person authorised by a foreign enterprise to represent it in a branch office – in the case of a foreign associated enterprise with a branch office in Poland;
3. a person authorised to represent the entity – in the case of other associated enterprises.

An attorney cannot sign the statement.



ELEMENTS OF THE STATEMENT

Pursuant to the Polish PIT/CIT Acts, the statement must include:

1. a declaration that the Local File is ready;
2. an assurance that the prices used in transactions with associated enterprises are at arm's length.



SANCTIONS

Failure to file the statement on preparation of the Local File, filing it late or providing false information in it is punishable under Article 56c of the Polish Fiscal Crime Code.



PREPARATION DEADLINE

The statement must be filed in electronic form, by the end of the ninth month of the end of the financial year.

The deadline for filing the statement has been extended:

- **until 30 September 2021** – for entities for whom the deadline expires between 1 February 2021 and 30 June 2021;
- **by 3 months** – for entities for whom the deadline expires between 1 July 2021 and 31 December 2021.

So in the case of taxpayers whose fiscal year is the same as the calendar year, the deadline for filing the statement for 2020 expires **on 31 December 2021**.

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



ENTITIES CONCERNED

The obligation to file a TPR form is based on different criteria than in the case of the old CIT-TP/PIT-TP form.

TPR form should be filed by associated enterprises:

1. obliged to compile Local File;
2. which make transactions exempt from documentation obligations under Article 11n(1) CIT Act and Article 23z(1) of the PIT Act (domestic entities which did not incur a tax loss).



HOW TO GET READY

Transfer pricing analysis (or conformity analysis) will be the key document in preparing the TPR form. Therefore, taxpayers should check whether such an analysis has been prepared or updated. Taxpayers whose results fall outside the arm's length range identified in the analysis should also consider adjusting their transfer pricing.



EXAMPLES OF INFORMATION TO BE INCLUDED IN THE TPR FORM

TPR form includes very detailed information. In order to fill out the form correctly, the taxpayer will have to, among others, calculate the profit(loss) on the individual transactions (profitability) and compare the result with data on comparable transactions. Tax authorities will undoubtedly use that data and information to select entities for tax and tax and customs inspection.

The TPR form should include information on, among others:

- the taxpayer's profitability ratios;
- the type of the transaction (taking into account approx. 13 types of transactions considered restructuring);
- transfer pricing method;
- loan interest rates;
- comparison method (external/internal);
- profitability ratio applied to verify the price;
- comparability adjustment;
- transfer pricing analysis result (range, value);
- transaction profit (loss);
- transfer pricing adjustment value.



SANCTIONS

Failure to file the information on transfer pricing, filing it late or providing false information in it is punishable under Article 80e of the Polish Fiscal Crime Code.

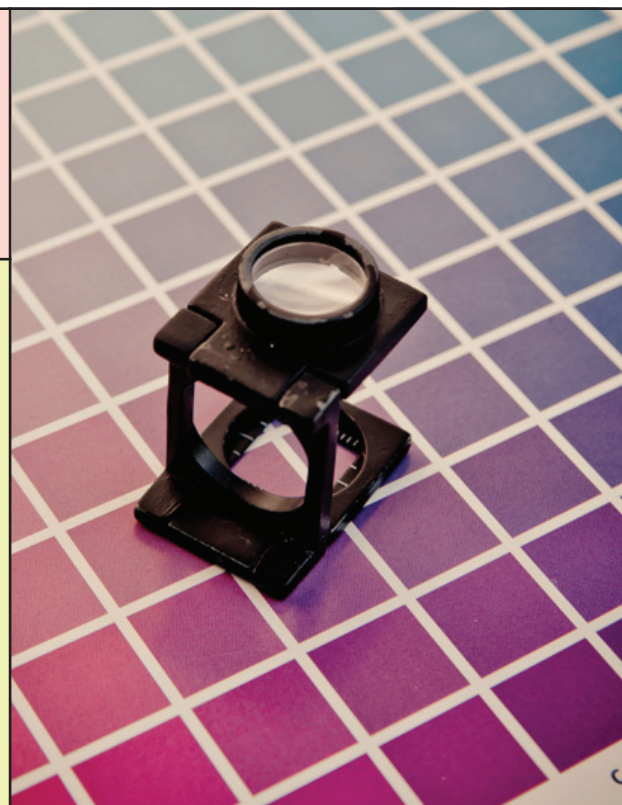


PREPARATION DEADLINE

The information on transfer pricing must be filed in electronic form by the end of the ninth month of the end of the financial year. The deadline for filing the information on transfer pricing has been extended:

- **until 30 September 2021** – for entities for whom the deadline expires between 1 February 2021 and 30 June 2021;
- **by 3 months** – for entities for whom the deadline expires between 1 July 2021 and 31 December 2021.

So in the case of taxpayers whose fiscal year is the same as the calendar year, the deadline for filing the information for 2020 expires on **31 December 2021**.



4. MASTER FILE



ENTITIES CONCERNED

Taxpayers making controlled transactions with associated enterprises in the meaning of the CIT Act and PIT Act must prepare the Master File required by law if the consolidated revenues of the group exceed 200 million zloty in the previous year, i.e. in 2019.



COMPONENTS OF THE MASTER FILE

The Master File includes the following components:

1. a description of the group, including:
 - a) a description of or a chart showing the ownership structure of the group, including the name and the registered office or the location of the management board of the group entities;
 - b) a description of the scope and line of business of the group;
2. a description of significant intangible assets of the group, including:
 - a) a general description of the group's strategy for intangible assets as well as information on the location of key R&D facilities and location of R&D management;
 - b) a list of intangible assets or groups of intangible assets which are important for transfer pricing purposes, and which entities legally own,
 - c) a list of important contracts or agreements made between the group's associated enterprises, related to intangibles, including cost contribution arrangements, agreements for R&D work and licence agreements;
 - d) a description of the group's transfer pricing policy related to R&D work and intangible assets;
 - e) a general description of any important changes in the control and ownership of intangible assets and their use with the indication of entities engaged, their registered offices or the place of management, as well as the fee or compensation paid on account of these changes;
3. a description of significant financial transactions made by the group, including:
 - a) a general description of how the group is financed;
 - b) identification of entities that provide a central financing function for the group, including the registered addresses and the place of effective management of such entities;
 - c) a general description of the transfer pricing policies as regards the financing arrangements between associated enterprises;
4. financial and tax information of the group.

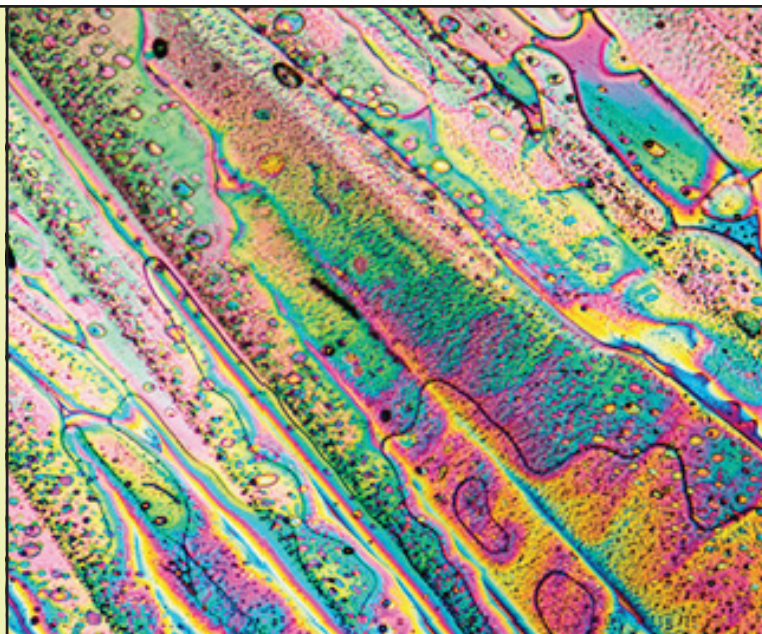
Detailed substance of the Master File has been specified in the PIT/CIT Acts and the regulations issued by the Minister of Finance with reference to the individual components.



PREPARATION DEADLINE

The Master File must be prepared by the end of the twelfth month of the end of the financial year.

The deadline for preparing the Master File has been extended by 3 month. So in the case of taxpayers whose fiscal year is the same as the calendar year, the deadline for preparation of the Master File expires on **31 March 2022**.



5. CBC-P NOTIFICATION FORM



ENTITIES CONCERNED

Group members 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 CBC-R notification must submit a CBC-P notification form.



NOTIFICATION COMPONENTS

The general information to be disclosed in the first part of the CBC-P notification form includes in particular:

period	details	role
covered by the CBC-P notification	of the entity filing the CBC-P form	in CBC-R reporting

If the entity notifies that it is not a CBC-R filing entity, it must indicate whether the entity in charge of filing the CBC-R form is a Polish or foreign entity and provide its details and the country of CBC-R reporting.

Details on information to be included in the notification report are laid down in the Act on Exchange of Tax Information with Other Countries.



FILING METHOD AND FORM

The CBC-P notification form may be filed in electronic form only, using the template published by Polish tax authorities at: www.podatki.gov.pl.

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).



SANCTIONS

Submitting untrue information about group entities is punishable under the Polish Fiscal Crime Code.

In addition, failure to submit the notification form or submitting incomplete or untrue information is subject to a fine of up to 1 million zloty under the Act on Exchange of Tax Information with Other Countries.



PREPARATION DEADLINE

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.



6. 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.



INFORMATION TO BE INCLUDED IN CBC-R FORM

The CBC-R form must include:

1. the identification details of the group members;
2. information on the revenues, profit(loss) before tax, income tax paid, income tax due, share capital, undistributed profits carried forward, headcount, (non-current and current) assets other than cash and cash equivalents, the type of activity pursued by the members of the group – broken down by countries or territories;
3. additional information or explanations.

Details to be included in the CBC-R form are described in the Act on Exchange of Tax Information with Other Countries.



SANCTIONS

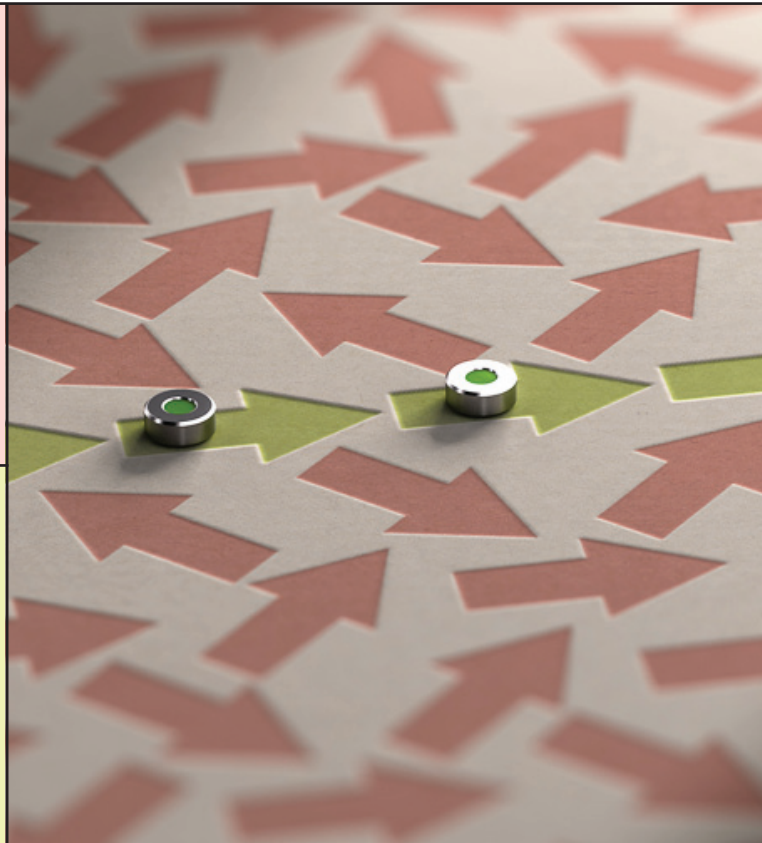
Submitting untrue information about group entities is punishable under the Polish Fiscal Crime Code.

Failure to submit the CBC-R form or submitting incomplete or untrue information is subject to a fine of up to 1 million zloty under the Act on Exchange of Tax Information with Other Countries.



PREPRARATION DEADLINE

The CBC-R form must be submitted by the end of the twelfth month of the end of the financial year.



7. TRANSFER PRICING ADJUSTMENT



ENTITIES CONCERNED

Regulations on transfer pricing adjustment are applicable to taxpayers who decide to adjust transfer pricing in their dealings with associated enterprises.



HOW TO GET READY

The regulations on transfer pricing adjustments in force since 1 January 2019 say explicitly that transfer pricing adjustments are taxable revenues or tax-deductible costs.

A transfer pricing adjustment may be recognised either as revenue or as tax-deductible cost only after the taxpayer meets the following statutory conditions:

1. the transacting parties agree the arm's length terms and conditions already in the course of the fiscal year;
2. significant circumstances influencing the terms agreed in the course of the financial year change or the actual costs incurred or revenues earned being the basis for calculating the transfer price are known;
3. upon adjusting the transfer prices, the taxpayer holds a statement from the associated enterprise confirming that the associated enterprise adjusted the transfer prices by the same amount as the taxpayer;
4. the other party to the adjusted transaction is established in Poland or in the country with which Poland has concluded a tax treaty and a tax information exchange agreement;
5. the adjustment is confirmed in the tax return for the year to which the adjustment refers.

In connection with the regulations on transfer pricing adjustments for settlements made in 2019 or later, the accounting for transactions made with associated enterprises require detailed analysis and review. It is important to follow up on this issue as the Ministry of Finance is working on detailed explanatory notes concerning the subject-matter scope of transfer pricing regulations.



PREPARATION DEADLINE

The transfer pricing adjustment made with an associated enterprise must be disclosed in the annual tax return. To avoid filing an amended tax return it is recommended to first review the settlements with associated enterprises.



8. TRANSFER PRICING IN THE CONTEXT OF COVID-19



ENTITIES CONCERNED

The COVID-19 pandemic has caused a number of economic consequences which can also translate into terms and conditions of transactions made so far with associated enterprises.



HOW TO GET READY

The impact of the pandemic on transfer pricing obligations should be investigated on many levels, i.e. the taxpayer should:

1. analyse whether and how much the existing models and the group's transfer pricing policy have changed and to what extent the group entities had to respond to the pandemic;
2. properly document new transactions (restructurings, renegotiating contractual terms, transfer pricing adjustments made) and changes to the existing model of settlements between associated enterprises;
3. make sure that the settlements between associated enterprises are made at arm's length;
4. duly fulfil the documentation obligations, including prepare a complete Local File and transfer pricing analysis.

To effectively manage the transfer pricing risk, processes which take place in the company and which may result from the pandemic must be analysed in detail. The Organisation for Economic Cooperation and Development (OECD) published in December 2020 their guidance on the impact of COVID-19 on transfer pricing. The Ministry of Finance is also working on explanatory notes in this regard.



PREPARATION DEADLINE

The lawmakers have set longer deadlines for the fulfilment of documentation obligations, i.e.:

- **until 30 September 2021** – for entities for whom the deadline expires between 1 February 2021 and 30 June 2021;
- **by 3 months** – for entities for whom the deadline expires between 1 July 2021 and 31 December 2021.

As the COVID-19 pandemic affects transfer pricing on many levels, it is best not to leave transfer pricing obligations until the last minute.



9. CONTACT

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