

Transfer Pricing Alert

September 2022

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New regulation on transfer pricing reporting (TPR) published

On September 13 this year, the regulation on transfer pricing reporting with respect to Corporate Income Tax was published in the Journal of Laws. The regulation enters into force 14 days after the date of promulgation, i.e. on September 28, 2022.

The published regulation **applies to transfer pricing information (TPR) filed for the tax year beginning after December 31, 2021** (i.e., for 2022).

The regulation also includes provisions regarding **transfer pricing reporting for the previous tax year, i.e. the one beginning after December 31, 2020**.

A parallel regulation on transfer pricing reporting has been published with respect to personal income tax.

Below are the most important details of the amendments:

New financial indicator

In the published regulation, the Ministry of Finance (despite the requests made during public consultations) did not abandon the introduction of a new financial ratio to be declared by the taxpayer submitting the form, i.e. **an indicator consisting of calculating the share of operating expenses with related parties in the entity's operating expenses**.

So far this ratio has not been calculated and reported by taxpayers for tax years 2019–2020, and for 2021, which means it may cause more problems when filling out the form for 2022.

Information on comparability adjustments made

According to the regulation, an additional obligation on the part of the taxpayer will also be to indicate whether a comparability adjustment of the results has been made as part of benchmarking and, if so, at what level it has been made in order to achieve a higher comparability to the audited controlled transaction.

The taxpayer will be required to choose one of the options:

- comparability adjustment changing the result by less than 30%,
- comparability adjustment changing the result by 30% or more,
- impossible to determine the impact of the adjustment on the result.

New TPR form for 2021

The existing TPR form does not technically enable the correct filing of transfer pricing information for 2021 in accordance with formal requirements by taxpayers documenting controlled transactions entered into by related parties that are micro or small businesses within the meaning of the Entrepreneurs' Law, as well as transactions where the new *safe harbour* mechanism applies.

As a result, the Ministry of Finance has announced that a new version of the form for 2021 will be prepared and published in the near future.

Deadline for submitting TP-R information for 2021

As a reminder, we would like to point out that the deadlines for preparing and submitting **TPR information** are expiring respectively:

- **on September 30, 2022** - in the case of taxpayers whose original deadline (i.e., 9 months after the end of the tax year) would have expired in the period from January 1, 2022 to June 30, 2022,
- **on December 31, 2022** – in the case of taxpayers whose tax year corresponds to the calendar year, and
- **in the case of other taxpayers** for whom the original deadline (i.e., 9 months after the end of the fiscal year) would expire between July 1, 2022 and December 31, 2022, **the final extended deadline should be reviewed on a case-by-case basis (the original deadline was extended by 3 months).**

More changes to the form for 2022

Given the fact that the legislative process is currently underway to amend the regulations on so-called 'tax haven transactions' (as referred to in Article 11o of the CIT Law/corresponding Article 23za of the PIT Law) (i.e., the planned repeal of regulations on indirect tax haven transactions and amendments to direct tax haven transactions), it is highly likely that the amendments in question will affect the scope of data reported in the TPR information.

Thus, depending on the final wording of the amended regulations, the TPR regulation for 2022 will be subject to appropriate revision in the future, about which we will keep you informed.

CONTACT US

This document has been prepared for information purposes only and covers general nature. Before taking any action based on the above information, we recommend that you obtain a valid opinion of TPA experts.



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