

POLAND

TRANSFER PRICING PROFILE

1. Reference to the Arm's Length Principle

Article 11 of the CIT Law (similar regulations in article 25 PIT Law)

Clause 1

If:

an income tax payer having its seat (board of management) or place of residence within the territory of the Republic of Poland, hereinafter referred to as a "domestic entity", participates directly or indirectly in the management or control of an enterprise located abroad or has a share in its capital; or

2) a natural or legal person residing or having its seat (board of management) abroad, hereinafter referred to as a "foreign entity", participates directly or indirectly in the management or control of a domestic entity or has a share in its capital; or

3) the same legal persons or natural persons at the same time participate directly or indirectly in the management or control of a domestic entity and a foreign entity or have shares in their capitals – **and if, as a result of such relations, there are agreed or imposed conditions substantially different from those which would be agreed between independent entities and, as a result thereof, such entity does not disclose any income or discloses the income smaller than might be expected, if such relations did not exist – the income of a given entity and the tax due shall be assessed without taking into account the conditions resulting from such relations.**

Clause 8a

Regulations from clause 1-3 are applied when assessing the part of the income of the taxpayer, who is mentioned in article 3 clause 2 [non-resident], carrying on activities through a permanent establishment situated on the Polish territory, liable to be attributed to the permanent establishment.

2. Reference to the OECD Transfer Pricing Guidelines

Reference in Article 11 Clause 9 of the CIT law (similar regulations in article 25 PIT Law):

"Ordinance of Minister of Finance of 10 September, 2009 on the Mode and Procedure of Determining Legal Persons' Income by Estimation and Mode and Procedure of Elimination of Double Taxation of Legal Persons in Case of Adjustment of Profits of Associated Enterprises"

"Ordinance of Minister of Finance of 17 June, 2013 amending the Ordinance on the Mode and Procedure of Determining Legal Persons' Income by Estimation and Mode and Procedure of Elimination of Double Taxation of Legal Persons in Case of Adjustment of Profits of Associated Enterprises"

- has to take into account OECD Guidelines.

3. Definition of related parties

Related parties in international relations

Article 11 of the CIT law (similar regulations in article 25 PIT Law)

Clause 1

1) an income tax payer having its seat (board of management) or place of residence within the territory of the Republic of Poland, hereinafter referred to as a "domestic entity", participates directly or indirectly in the management or control of an enterprise located abroad or has a share in its capital; or

- 2) a natural or legal person residing or having its seat (board of management) abroad, hereinafter referred to as a "foreign entity", participates directly or indirectly in the management or control of a domestic entity or has a share in its capital; or
- 3) the same legal persons or natural persons at the same time participate directly or indirectly in the management or control of a domestic entity and a foreign entity or have shares in their capitals.

Related parties in domestic relations

Art. 11 of the CIT law (similar regulations in article 25 PIT Law)

Clause 4

- 1) a domestic entity participates, whether directly or indirectly, in the management of another domestic entity or its control or holds a share in the capital of another domestic entity
- 2) the same legal or natural persons participate at the same time, whether directly or indirectly, in the management of domestic entities or their control or hold a share in the capital of these entities.

Clause 5

The provisions of clause 4 also apply to the relations of family nature or those resulting from employment relationships or property relations between domestic entities or persons performing managerial, inspecting or supervisory duties with these entities or where any person combines managerial, supervisory or inspecting duties performed with such entities.

Clause 6

The family relation referred to in clause 5 shall be meant marriage and consanguinity or affinity (relationship by marriage) up to the second degree.

General rules applying to related parties in both international and domestic relations

Art. 11 of the CIT law (similar regulations in article 25 PIT Law)

Clause 5a

Holding a share in the capital of another entity referred to in clause 1 and 4 shall mean a situation where an entity, whether directly or indirectly, holds a share of **at least 5 per cent** in another entity's capital.

Clause 5b

While determining the size of a direct share held by an entity in another entity's capital, a principle shall apply whereby if an entity holds a certain share in the capital of another entity, and the latter holds the same share in the capital of yet another entity, then the former entity holds an indirect share of the same size in the capital of this yet another entity; if these sizes differ, the indirect share shall be deemed to be of the smaller size.

Clause 8

Provisions of clause 4 shall **not apply to** performance made by companies which constitute **a tax capital group**.

Application of arm's length principle to transactions concluded with tax haven entities

Clause 4a

In cases when domestic entity concludes transactions with entity having the place of residence, seat or board of management within a territory of or in a country pursuing harmful tax competition, and conditions agreed in those transactions are substantially different from those which would be agreed between independent entities and, as a result thereof, such entity does not disclose any income or discloses the income smaller than might be expected - the income of a given entity shall be assessed using methods indicated in clause 2 and 3 or article 14 shall be applied accordingly.

4. Transfer pricing methods

Art. 11 of the CIT law (similar regulations in article 25 PIT Law)
Clause 2

- 1) a comparable uncontrolled price;
- 2) a resale price method;
- 3) a reasonable margin ("cost plus") method.

If application of the methods above is impossible, the transactional profit methods shall be applied (transactional net margin method and profit split method).

5. Transfer pricing documentation requirements

Art. 9a of the CIT Law/ 25a of the PIT Law

1. Taxpayers performing transactions with entities related with these taxpayers – within the meaning of Article 11, clauses 1 and 4 – or transactions in relation to which the payment of sums due as a result of such transactions is made directly or indirectly for the benefit of an entity having the place of residence, seat or board of management within a territory of or in a country pursuing harmful tax competition shall be obliged to prepare tax documentation of such transaction(s) comprising:

- 1) identification of the functions to be performed by the entities participating in the transaction (taking into account the assets used and the risk taken);
- 2) specification of all envisaged costs connected with the transaction and the form and payment term;
- 3) method and manner of calculating the profits and specification of the price of the subject of the transaction;
- 4) determination of the economic strategy and other actions within its framework, in the case when the strategy adopted by the entity has influenced the value of the transaction;
- 5) indication of other factors, in the case when the entities participating in the transaction took such factors into account for the purpose of determining the value of the subject of the transaction;
- 6) determination of the benefits expected by the entity obliged to prepare the documentation, such benefits being connected with the performances, in the case of contracts relating to intangible performances (including services).

2. The obligation referred to in clause 1 above shall apply to transaction(s) between related entities in which the total amount (or its equivalent) resulting from the contract or the total amount, actually paid in a tax year, of performances enforceable in the tax year is higher than the equivalent of:

- 1) EUR 100,000 if the value of transaction does not exceed 20 per cent of the initial capital, determined in accordance with Article 16, clause 7; or
- 2) EUR 30,000 in the case of performance of services, sale or making available intangible assets and legal values; or
- 3) EUR 50,000 in the remaining cases.

3. The obligation to prepare the documentation referred to in clause 1 shall also apply to a transaction in relation to which the payment of sums due as a result of such transaction is made directly or indirectly for the benefit of an entity having the place of residence, seat or board of management within a territory of or in a country admitting detrimental tax competition if the total amount (or its equivalent) resulting from the contract or the total amount, actually paid in a tax year, of performances enforceable in the tax year is higher than the equivalent of EUR 20,000.

Article 9a Clause 5a

Regulations from clause 1-5 are applied accordingly to taxpayers, which are mentioned in article 3 clause 2 [non residents] which carry on activities through permanent establishment situated on the Polish territory.

Implementation of the Code of Conduct on Transfer Pricing documentation for associated enterprises in the European Union (EU TPD) - summary of Member States' responses to the 2013 JTPF questionnaire on the implementation of the EU TPD:

http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/transfer_pricing/forum/jtpf/2013/summary-ms.pdf

6. Specific transfer pricing audit procedures and / or specific transfer pricing penalties

Article 19 of the CIT Law

Clause 4

If tax authorities or fiscal control authorities determine, under Article 11, taxpayer's income in an amount higher (loss in an amount lower) than the amount declared by the taxpayer in relation to the transactions referred to in Article 9a and the taxpayer does not produce to such authorities the tax documentation required by these provisions – the difference between the income declared by the taxpayer and that assessed by these authorities shall be subject to taxation at a rate of 50 per cent.

Remark: should the penal tax rate of 50% be applied, no additional interest on tax due (which would be a normal procedure) are applied.

7. Information for Small and Medium Enterprises on TP

Information relevant for SMEs in tackling transfer pricing matters is available on the JTPF webpage at: http://ec.europa.eu/taxation_customs/taxation/company_tax/transfer_pricing/forum/index_en.htm#achievements

8. Information on dispute resolution

Competent Authority

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Organization

Department of Income Taxes in the Ministry of Finance

Scope of MAP & MAP APA

- As the general rule, MAP is used to solve the double taxation cases related to

the particular taxpayer.
 - If there is a need, MAP may be also used for interpretation or application of tax treaties, however such cases are not very common.

Domestic guidelines & administrative arrangements	N/A
Time for filing	N/A
Form of request	N/A
Documentation requirement	No special requirement.
User fees	N/A
Tax collection / penalty / interest	N/A
Other dispute resolution mechanisms	The EU Arbitration Convention.
Government Website	http://www.mf.gov.pl

Dispute resolution under the Arbitration Convention does not need to be initiated and may be suspended if one of the enterprises involved is subject to a 'serious penalty' for the transactions giving rise to the profit adjustment (Article 8).

Unilateral Declaration of Poland on Article 8 of the Arbitration Convention (*Official Journal C 160, 30/06/2005, p. 11-22*)

"The term "serious penalty" means penalty of fine, penalty of imprisonment or both of them imposed jointly, or penalty of deprivation of liberty for culpable infringement of tax law provisions by a taxpayer."

Unilateral Declaration of Poland on Article 7 of the Arbitration Convention (*Official Journal C 160, 30/06/2005, p. 11*).

Poland declares that will apply Article 7(3).

9. Relevant regulations on Advance Pricing Arrangements

Section IIA of the Tax Code

10. Links to relevant government websites

Information on APA procedure (Polish version):

http://www.mf.gov.pl/documents/766655/1446440/19970829_ustawa_ordynacjapodatkowa.pdf

Section IIA

General information about APA and application fee (Polish version):

http://www.finance.mf.gov.pl/abc-podatkow/znajdz-informacje/-/asset_publisher_faceted/e8GP/porozumienia-w-sprawach-ustalenia-cen-transakcyjnych?_101_date_INSTANCE_e8GP_type=content&_101_date_INSTANCE_e8GP_categoryId1=0&_101_date_INSTANCE_e8GP_categoryId2=0&_101_date_INSTANCE_e8GP_categoryId3=0&redirect=http%3A%2F%2Fwww.finance.mf.gov.pl%2Fabc-podatkow%2Fznajdz-informacje%3Fp_p_id%3D101_date_INSTANCE_e8GP%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-2%26p_p_col_pos%3D1%26p_p_col_count%3D2

11. Other relevant information

Secondary and compensating year-end adjustments may result in double taxation. Two questionnaires launched by the EU Joint Transfer Pricing Forum (JTPF) in 2011 took stock of the situation prevailing in each EU Member State with respect to secondary and compensating year-end adjustments as on 1 July 2011.

http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/transfer_pricing/forum/jtpf/2012/jtpf_018_rev1_2011_en.pdf

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CIT Law

The Ordinance of the Minister of Finance (issued under art. 9a of the CIT Law/art. 25a of the PIT Law) defines a list of tax havens. Transactions with tax haven countries are subject to documentation requirements even when the transactions are concluded between independent enterprises.

Thin capitalisation rules art. 16 clause 1 60) and 61) of the CIT Law (3:1 debt to equity ratio with 25% shareholding limit) Polish tax law restricts financing granted by certain related entities both Polish residents and foreign entities (a shareholder or a sister company held by the same parent holding at least 25% of share capital measured by voting power)

- if the debt to equity ratio exceeds 3:1, the interest payable in respect of any excess over this limit cannot be regarded as tax deductible,
- for thin capitalization purposes, a "loan" is any kind of debt claim including debt securities and certain deposits or interest-bearing investments.

Article 14 of the CIT Law (general rule for all companies)

Clause 1

Revenue from transfer for consideration of things and property rights, subject to paragraphs 4 and 5, shall be their value reflected in the price specified in the agreement. Where the price differs significantly from the fair market value of these things or rights, the revenue shall be determined by the tax authority in such amount as the fair market value.

Clause 2

The fair market value of things and property rights, referred to in paragraph 1, shall be determined based on market prices used in the circulation of things and rights of the same type and kind, taking into account, in particular, their condition and degree of wear and tear, as well as the time and place of their transfer for consideration.

Clause 3

Where the value reflected in the price specified in the agreement differs significantly from the fair market value of these things or rights, the tax authority shall call the parties to the agreement to change this value or provide grounds for specifying a price that differs significantly from the fair market value. In the event of failure to reply, to change the value or to provide the grounds for specifying a price that differs significantly from the fair market value, the tax authority shall determine the value taking into account the opinion issued by an expert or experts. Where the value determined in such a way differs by more than 33 per cent from the value reflected in the price, the cost of obtaining the opinion of an expert or experts shall be borne by the transferor.

Tax Code

Art. 82 clause 6 together with Ordinance of Minister of Finance - requirement to submit to tax authorities as attachment to yearly tax return (Form ORD-U) information on contract with associated enterprises (5% association limit) if contract or sum of contract in fiscal year exceed 300.000 Euro limit, information on each individual contract shall be mentioned if 5.000 Euro limit is exceeded.

VAT Law

Article 32 VAT Law

Clause 1

Where the relationship referred to in paragraph 2 exists between the acquirer and the entity performing the supply of goods, and the consideration is:

- 1) lower than the market value, and the acquirer of the goods or services does not enjoy, pursuant to Articles 86, 88 and 90, and the regulations issued under Article 92, paragraph 3, the full right to deduct the input tax from the amount of the output tax;
- 2) lower than the market value, and the supplier of goods or service provider does not enjoy, pursuant to Articles 86, 88 and 90, and the regulations issued under Article 92, paragraph 3, the full right to deduct the input tax from the amount of the output tax, and the supply of goods or provision of services are exempt from tax;
- 3) higher than the market value, and the supplier of goods or service provider does not enjoy, pursuant to Articles 86, 88 and 90, and the regulations issued under Article 92, paragraph 3, the full right to deduct the input tax from the amount of the output tax

- the tax authority shall determine the value of the turnover on the basis of the market value, net of tax, if it shows that the aforementioned relationship influenced the manner in which the remuneration for the supply of goods or provision of services was determined.

Clause 2

The relationship referred to in paragraph 1 exists when ties of family nature or resulting from adoption, links of capital, property or employment character exist between the parties to a contract, or persons performing management, supervisory or inspection-related duties in entities being such parties.

Clause 3

The family ties referred to in paragraph 2 are marriage and consanguinity or affinity up to the second degree.

Clause 4

The capital links referred to in paragraph 2 are to be construed as a situation where one of the persons or of the contracting parties has a right of vote which makes up at least 5 per cent of all voting rights, or commands such right, either indirectly or directly.

Clause 5

The provisions of paragraphs 1-4 shall not apply to transactions between related parties, in respect of which the relevant tax authority has issued a decision, by virtue of the regulations of the Tax Code certifying the correctness of the choice and application of the method by which the transaction price between related parties is determined.