

Transfer pricing - Changes in regulation

In 2017, the two main changes in domestic transfer pricing regulation were as follows:

1. The new Decree No. 32/2017. (X. 18.) of Ministry for National Economy on the Documentation Requirements Related to Transfer Pricing is released and it replaces the former Decree No. 22/2009. (X. 16.) of the Minister of Finance, and
2. Act XXXVII of 2013 on Certain Regulations on International Administrative Cooperation in the Field of Taxes and Other Charges, has been expanded with data provision and automatic information exchange by Country-by-Country Reporting and with automatic information exchange.

The following are the most important parts of the legislations above.

New 3 pillar transfer pricing obligation:

1. Master file;
2. Local file; and
3. Country-by-Country Reporting (CbCR).

The 32/2017. (X. 18.) NGM Decree

The new regulation eliminates the former single documentation form, instead of that, it is mandatory to make a transfer pricing report every tax year, including a Master file and a Local file suggested by the OECD Guidelines. The deadline for preparing the reports is still the date of corporate tax return, but if the taxpayer has prepared the Local file till the deadline, the term for the preparation of the Master File may be prolonged up to the deadline for documenting the parent company but no later than 12 months after the last day of the financial year.

The new form of the report requires compulsory disclosure of new content elements (such as presentation of intangible assets within the group of companies, value chain analysis, structure of the management of Hungarian group members, etc.) in the documentations in order to obtain a more comprehensive view of the companies for the Tax Authority.

There is also a significant change in the comparative analysis as the law clearly states regarding the search for comparable data, that in the future, it will be mandatory to conduct and execute the search in a way that it could surely be reproduced. Likewise, the comparative analysis is affected by the modification that any method can justify the use of the interquartile range.

If the taxpayer has not properly or incorrectly made the transfer pricing documentation, it is necessary to modify it which can only be done until the beginning of the tax audit. In this case, the transfer pricing documentation will consist of the original and the modified reports.

The arm's length range of the low value added intra-group services has also changed. According to the new regulation in case of low value adding intra-group services, 3-7% margin on gross costs are considered as market value.

Country-by-Country Reporting

As a result of the BEPS action plan, in addition to the transfer documentation, the group of companies should also produce a Country-by-Country Report, which aims to help the international exchange of information.

All Hungarian companies that are members of a Group with a total annual consolidated revenue of more than EUR 750 million are subject to a new reporting and/or notification obligation from the fiscal year commencing on or after 1 January 2016. These obligations must be fulfilled electronically, by filling the forms issued recently by the Hungarian Tax Authority before 31th December 2017 for financial year 2016 and 2017, in the case of a fiscal year corresponding to the calendar year.

Failing to submit the report, late submission, or providing incorrect, false or incomplete information may be subject to a default penalty of up to HUF 20 million.