

Transfer Pricing Alert

KPMG in Poland



January 2019

Publication of decrees to the amended transfer pricing regulations

At the end of December 2018, the Minister of Finance issued decrees, specifying and supplementing amended transfer pricing regulations of the Corporate Income Tax Act and the Personal Income Tax Act. The new regulations will be fully applicable to transactions carried out from 2019, with additional possibility to be used by taxpayers to a limited extent for controlled transactions carried out in the tax year starting after 31st December 2017.

Implementing decrees:

- The Decree of the Minister of Finance of 21st December 2018 on transfer pricing documentation in the scope of corporate income tax, specifying a detailed scope of elements of local transfer pricing documentation and group transfer pricing documentation;
- The Decree of the Minister of Finance of 21st December 2018 regarding information on transfer prices in the terms of corporate income tax, specifying the detailed scope of data and information provided in transfer pricing information in the scope of corporate income tax ("TP-R"), along with explanations on how to prepare such information;
- The Decree of the Minister of Finance of 21st December 2018 regarding transfer pricing in the scope of corporate income tax, specifying the manner and mode of:

- ✓ assessing the compliance of conditions established by related entities with the conditions that would have been established between the unrelated parties, including comparability criteria for these conditions;
- ✓ estimation of income (loss) of the taxpayer, using the methods specified in the provisions of the Corporate Income Tax Act, including the determination of remuneration for the transfer of economically significant functions, assets or categories of risk between related entities (restructuring fee);
- The Decree of the Minister of Finance of 21st December 2018 on the manner and mode of eliminating double taxation in the event of adjustment of related entities' profits in the scope of corporate income tax.

A similar set of decrees was also issued in relation to the provisions of the Personal Income Tax Act.

Safe harbour in relation to interest on loans, credits and bonds in 2019

On 21st December 2018, the Minister of Finance issued the announcement with respect to the type of the base interest rate and the margin for the transfer prices purposes in the area of personal income tax and corporate income tax.

The publication of the announcement is related to the introduction of the so-called simplified settlement rules (*safe harbour*) with regard to loan transactions (as well as credits or bonds), concluded between

related entities. If the taxpayer meets certain conditions of the transaction, including setting the interest rate of the loan on the day of the agreement, based on the base interest rate and the margin specified in the announcement valid as at the date of conclusion of such agreement, the tax authority will waive the determination of taxpayer's income (loss) in the scope of the interest rate on this loan. It should be stressed that the safe harbour institution will be possible to be applied by taxpayers for income (revenues) obtained from 1st January 2019.

For the above reasons, the Minister of Finance specified in the announcement five types of base interest rates for five different currencies (PLN, USD, EUR, CHF and GBP), which increased by a margin of 2 percentage points, set acceptable levels of interest rates (maximum level for the borrower and minimal level for the lender), allowing the use of safe harbour institution. If the value of the base interest rate is less than zero, the acceptable margin will amount to the sum of the absolute value of the base interest rate and 2 percentage points.

List of tax havens to be announced soon

With regard to new regulations in the field of transfer pricing, the Minister of Finance will also issue a decree specifying the list of countries and territories applying harmful tax competition.

Please contact us if you would like to obtain more information on the aforementioned changes or discuss their potential impact for your organization.

Contact

Jacek Bajger

Partner

Tel. : +48 22 528 11 73

Fax : +48 22 528 11 59

jbajger@kpmg.pl

Monika Palmowska

Partner

Tel. : +48 22 528 11 93

Fax : +48 22 528 11 59

mpalmowska@kpmg.pl



KPMG Offices

Warszawa

ul. Inflancka 4a

00-189 Warszawa

Tel. : +48 22 528 11 00

Fax: +48 22 528 10 09

kpmg@kpmg.pl

Gdańsk

al. Zwycięstwa 13a

80-219 Gdańsk

Tel. : +48 58 772 95 00

Fax: +48 58 772 95 01

gdansk@kpmg.pl

Kraków

ul. Opolska 114

31-323 Kraków

Tel. : +48 12 424 94 00

Fax: +48 12 424 94 01

krakow@kpmg.pl

Katowice

ul. Francuska 36

40-028 Katowice

Tel. : +48 32 778 88 00

Faks: +48 32 778 88 10

katowice@kpmg.pl

Poznań

ul. Roosevelta 22

60-829 Poznań

Tel. : +48 61 845 46 00

Fax: +48 61 845 46 01

poznan@kpmg.pl

Łódź

ul. Składowa 35

90-127 Łódź

Tel. : +48 42 232 77 00

Fax: +48 42 232 77 01

lodz@kpmg.pl

Wrocław

ul. Szczytnicka 11

50-382 Wrocław

Tel. : +48 71 370 49 00

Fax: +48 71 370 49 01

wroclaw@kpmg.pl

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future.

No one should act on such information without appropriate professional advice after a thorough examination of the particular situation. The KPMG name and logo are registered trademarks or trademarks of KPMG International.

© 2019 KPMG Tax M.Michna sp.k. a Polish limited partnership and member firm of KPMG network of independent member firms affiliated with KPMG International Cooperative("KPMG International"), a Swiss entity. All rights reserved.