TRANSFER PRICING
GENERAL OVERVIEW 2023

I. INTRODUCTION

Transfer pricing plays an essential role in all jurisdictions, as it determines a large part of the profits of related parties, which entails a significant amount of income taxes that may be imposed on them. In this first Schindhelm Alliance tax newsletter we give you a general overview of the subject and then report on the specifics in some of the main jurisdictions in which our Alliance operates.

II. A BIT OF HISTORY

The Organisation for Economic Cooperation and Development ('the OECD') has been addressing transfer pricing since the 1970s due to the growing threat of tax shifting between countries. The works have been intensified in the BEPS (Action Plan on Base Erosion and Profit Shifting, approved September 2013) project, which addresses tax planning strategies used by multinational companies that exploit loopholes and mismatches in tax rules to avoid paying taxes.
On 10 July 2017 the OECD released the 2017 edition of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

III. CURRENT OECD'S GUIDANCE

The newest edition of OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations was published on 20 January 2022 [OECD (2022), OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022, OECD Publishing, Paris, https://doi.org/10.1787/0e655865-en] ('the Guidelines'). In particular, it includes the revised guidance on the application of the transactional profit method and the guidance for tax administrations on the application of the approach to hard-to-value intangibles agreed in 2018, as well as the new transfer pricing guidance on financial transactions approved in 2020.

IV. MAIN AREAS COVERED BY THE GUIDELINES

1. THE ARM'S LENGTH PRINCIPLE

The international standard that OECD member countries have agreed should be used for determining transfer prices for tax purposes. It is set forth in Article 9 of the OECD Model Tax Convention as follows: where "conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly".

2. FUNCTIONAL ANALYSIS

In transactions between two independent entities, according to the Guidelines, compensation will usually reflect the functions that each of the parties performs. This analysis seeks to identify the economically significant activities and responsibilities undertaken, assets used or contributed, and risks assumed.

3. TRANSFER PRICING METHODS

The selection of a transfer pricing method always aims at finding the most appropriate method for a particular case. This process should take account of the of the respective strengths and weaknesses of the OECD recognised methods, in view of the nature of the controlled transaction, determined in particular through a functional analysis. Traditional transaction methods (points: i-iii below) are regarded as the most direct means of establishing whether conditions in the commercial and financial relations between associated enterprises are arm's length. There are situations where transactional profit methods (points: iv-v below) are found to be more appropriate than traditional transaction methods. The arm's length principle does not require the application of more than one method for a given transaction. However, for complex cases, where no one approach is conclusive, a flexible approach would allow the evidence of various methods to be used in conjunction. The methods are:

i. Comparable uncontrolled price – the method that compares the price for property or services transferred in a controlled transaction to the price charged for property or services transferred in a comparable uncontrolled transaction in comparable circumstances.

ii. Resale price method – the method begins with the price at which a product that has been purchased from an associated enterprise is resold to an independent enterprise. This price is then reduced by an appropriate gross margin on this price representing the amount out of which the reseller would seek to cover its selling and other operating expenses and, in the light of the functions performed, make an appropriate profit. What is left after subtracting the gross margin can be regarded, after adjustment for other costs associated with the purchase of the product, as an arm's length price for the original transfer of property between the associated enterprises.

iii. Cost plus method – the method begins with the costs incurred by the supplier of property (or services) in a controlled transaction for property transferred or services provided to an associated purchaser. An appropriate cost plus mark-up is then added to this cost, to make an appropriate profit in light of the functions performed and the market conditions. What is arrived at after adding the cost plus mark up to the above costs may be regarded as an arm's length price of the original controlled transaction.

iv. Transactional net margin method – the method examines the net profit relative to an appropriate base (e.g. costs, sales, assets) that a taxpayer realises from a controlled transaction. It operates in a manner similar to the cost plus and resale price methods. In particular the net profit indicator of the taxpayer from the controlled transaction should ideally be established by reference to the net profit indicator that the same taxpayer earns in comparable uncontrolled transactions.

v. Transactional profit split method – the method seeks to establish arm's length outcomes or test reported outcomes for controlled transactions in order to approximate the results that would have been achieved between independent enterprises engaging in a comparable transaction or transactions. It first identifies the profits to be split and then splits them between the associated enterprises.

4. COMPARABILITY ANALYSIS

A comparison of a controlled transaction with an uncontrolled transaction or transactions. Controlled and uncontrolled transactions are comparable if none of the differences between the transactions could materially affect the factor being examined in the methodology (e.g. price or margin), or if reasonably accurate adjustments can be made to eliminate the material effects of any such differences.

5. DOCUMENTATION

The appropriate domestic transfer pricing documentation should be designed taking into account the below objectives:

i. To ensure that taxpayers give appropriate consideration to transfer pricing requirements in establishing prices and other conditions for transactions between associated enterprises and in reporting the income derived from such transactions in their tax returns.

ii. To provide tax administrations with the information necessary to conduct an informed transfer pricing risk assessment.
iii. To provide tax administrations with useful information to employ in conducting an appropriately thorough audit of the transfer pricing practices of entities subject to tax in their jurisdiction, although it may be necessary to supplement the documentation with additional information as the audit progresses.

A three-tiered approach to transfer pricing documentation – jurisdictions should adopt a standardised approach to transfer pricing documentation:

i. Master file containing standardised information relevant for all multinational enterprise group members.
ii. Local file referring specifically to material transactions of the local taxpayer.
iii. Country-by-Country Report containing certain information relating to the global allocation of the multinational enterprise group's income and taxes paid together with certain indicators of the location of economic activity within the multinational enterprise group.

6. ADMINISTRATIVE APPROACHES TO AVOIDING AND RESOLVING TRANSFER PRICING DISPUTES

i. Mutual agreement procedure.
ii. Simultaneous tax examination.
iii. Safe harbours.
iv. Advance pricing arrangements.
v. Arbitration.

V. CONCLUSIONS

In the current legal and economic reality, the design and control of pricing policies adopted in related-party transactions is essential for both companies and tax authorities. The vast majority of jurisdictions have introduced regulations into their legal orders based on the long-standing OECD acquis. The preparation of transfer pricing documentation has become a key tax law obligation to be performed by taxpayers. This obligation is particularly relevant in the transnational context, i.e. when operations are carried out by related companies established in different jurisdictions, which requires specific knowledge of the regulations of two or more countries.

This newsletter aims to provide an overview of country specificities in some of the main jurisdictions in which the Schindhelm Alliance operates, with special focus on the thresholds that require the preparation of specific transfer pricing documentation, as well as the penalties in case of non-compliance with this obligation.

VI. CZECH REPUBLIC

1. DOCUMENTATION OBLIGATIONS

Under Czech law, there is no general statutory obligation to prepare transfer pricing documentation. However, the taxpayers must be able to prove that the transfer prices used correspond to market conditions once requested by the tax office. Czech tax laws apply the arm's length principle as the basis in this regard.

There are no thresholds for specific obligations in respect of transfer pricing documentation stipulated by Czech law.

2. TYPES OF DOCUMENTATION

As regards the transfer pricing documentation, there are no fixed rules issued by Czech authorities. The guidelines of General Financial Directorate correspond in principle to the OECD Guidelines. The Comparable Uncontrolled Price Method should be preferred where applicable. Other methods of the OECD Guidelines are also permissible.

VII. GERMANY

1. DOCUMENTATION OBLIGATIONS

In Germany, taxpayers may also be required to prepare three-tier documentation consisting of a master file, a local file and a country-by-country report.

2. TYPES OF DOCUMENTATION

Master File (Stammdokumentation): Taxpayers that are part of a multinational group of companies and had a total (non-consolidated) turnover of at least EUR 100 million in the previous fiscal year are required to prepare a master file in addition to country-specific, company-related documentation.

Local File (Landesspezifische Dokumentation): Companies with cross-border business relationships with related parties are affected by the documentation requirements if, in the previous fiscal year, deliveries of goods from such business relationships exceeded EUR 6 million or other services, in particular services, exceeded EUR 600,000. Deliveries made and services received must be added together. In addition, the business relationships of all German group companies and all otherwise affiliated German companies must be added together when examining the amount limits. The regulations apply accordingly to permanent establishments.

A transfer pricing documentation must contain at least the following items:

- General information, such as organizational structure, market analysis
- Description of business relationships with affiliated companies or parts of companies
- Functional and risk analysis as well as value creation analysis
- Selection of the transfer pricing method applied in the specific case
- Transfer pricing analysis using comparative data (usually from databases)
- Information on the time of the transfer pricing determination
- Extraordinary business transactions

Country by country report: A domestic company is obliged to prepare a country-by-country report if it is required to prepare consolidated financial statements (group parent company) and the consolidated group turnover in the previous fiscal year was at least EUR 750 million.

3. PENALTY REGIME

If no documentations or unusable documentation are submitted to the tax auditor upon request, it is presumed that the company's domestic taxable income is higher than the declared income. In this case, the tax authority will generally make an estimate. A possible estimation framework can be exhausted to the detriment of the taxable company. The rebuttable presumption leads to a kind of reversal of the burden of proof and companies must prove that their transfer prices are arm's length. If usable documentation is provided, the burden of proof remains with the tax office, unless extraordinary business transactions were not documented in a timely manner.

Failure to submit documentation or submission of (essentially) unusable documentation will result in a "penalty surcharge" of at least 5% and no more than 10% of the additional income resulting from the estimate (minimum € 5,000). Since this surcharge is only based on the additional income, it is also applied if no income tax is payable due to any losses carried forward.

Late submission of documentation (Master and Local file): If usable documentation and information are not submitted within 60 days or, in the case of extraordinary business transactions, within 30 days of request, the surcharge shall be at least EUR 100 per day of delay and may be assessed up to EUR 1 million.

Effective January 1, 2025, the submission of transfer pricing documentation will be required at any time. The records must be submitted within 30 days of request or notification of an audit order. In effect, this introduces a requirement for timely transfer pricing documentation.

If the taxpayer fails to comply with a qualified cooperation request in a timely manner, a cooperation delay penalty of up to EUR 11,250 is to be assessed. In addition, a surcharge on the cooperation delay penalty may be imposed if it is feared that the taxpayer will otherwise not comply with the request; this may amount to up to EUR 3.75 million.

Breach of the duty to cooperate: If, in connection with the submission of a CbCR, a taxpayer intentionally or recklessly fails to comply with its duties to cooperate, fails to do so completely or fails to do so in a timely manner, this constitutes an administrative offense punishable by a fine of up to EUR 10,000. The fine may be directed against the company or the persons (not) acting.

VIII. ITALY

Transfer pricing consists of a set of techniques, adopted by groups of companies and multinationals, aimed at shifting and transferring income from one country to another, where the tax burden is usually lower. This shift in income is effected through the application of lower prices and fees than would apply in a normal market transaction between two independent parties.

In order to contrast this phenomenon, it is therefore necessary to verify that the pricing policies adopted in related parties' transaction observe the "arm's length principle". This principle is disciplined in the Article 9 of the OECD Model Tax Convention and the Italian Fiscal Authirity has recently issued a document (Circ. 16 of 24/05/2022) in which is stated that the arm's lenght principle is respected when the price adopted in a related party transaction falls within that range of values formed by financial indicators, selected in accordance with the most appropriate method for each transaction between independent third parties, which is equally comparable with the controlled transaction.

1. DOCUMENTATION OBLIGATIONS

Transfer pricing policies are set forth in the Article 110 of the Italian fiscal legislation. This article disciplines the main aspects of transfer pricing and explains the main method that can be used to determine the appropriate price in related parties transactions. In addition to this article, which tells us about pricing methods and other key aspects, there are other and measures which have integrated the broad rules of transfer pricing.

Transfer pricing technical aspects were initially regulated by the Decree number 78 of 2010. The article 26 indicated the documentation to be submitted by companies or permanent organisations resident in Italy for tax purposes with regard to the transfer pricing policies adopted in intra-group transactions; However, that provision did not establish the obligation to submit such documents, but only for the possibility for the taxpayer. Therefore, the law didn't request to compulsorily disclose this kind of documentation; it was just a possibility, with the aim to improve the cooperation between taxpayers and the italian fiscal authority. In case of disclosure, the taxpayer would have had access to a penalty reduction scheme.

Following the changes that were made to OECD Model Tax Convention first in 2017 and then in 2022, the article 110 has been modified and the Italian government has issued of a series of measures with the aim of providing information on the structure and content of the required documentation.

First of all, it should be pointed out that the new measures, unlike the previous legislation, imply the obligation to draw up the documentation and to update it every year. With regard to the updating of the documentation, however, there is a particular exemption: if the entity required to submit the documentation is qualified as a small-medium enterprise having a turnover of less than EUR 50 million during the tax period to which the documentation should relate, the update may not be carried out annually. This category of subjects, in fact, has the right not to update certain data indicated within one of the documents to be submitted with reference to the two tax periods following that to which the documentation refers, provided that the comparability analysis is based on information from publicly available sources and that no significant changes have occurred.

2. TYPES OF DOCUMENTATION

The set of documents to be presented, therefore, consists of:
- Master File
- Country File or National Documentation

The first document gathers all the information about the group and the policies that are adopted regarding transfer pricing. It is drawn up in unamended paragraphs and sub-paragraphs, unless additions are made to make the document more intelligible. If the multinational group carries out several activities, both industrial and commercial, independent of each other and with specific transfer pricing policies, it will be necessary to prepare more Master Files, since each individual document can, at most, to group homogeneous categories of goods or services.

The Country File can be defined as an extraction of the Master File, as it contains the specific information related to the intra-group transactions that the entity tax resident in Italy intends to document. In this document, in fact, the company must deepen and give more detail in relation to the transactions that it entertains with the other entities of the group.

Both documents must be written in Italian, except for the possibility of presenting the Master File in English and must be signed by the legal representative of the taxpayer. In addition, electronic editing is required.

3. PENALTY REGIME

The legislation requires that a communication is made in the tax return, in a special line (RS 106). For this reason, it is necessary that the preparation of the documentation takes place before the submission of the declaration model.

As mentioned above, the preparation of the set of documents in a correct and compliant with the rules may lead to a significant reduction in penalties, in case of investigation. It was planned, in fact, the disapplication of the penalty regime of d.lgs. 471/1997 which provides for a penalty ranging from 90% to 180% of the higher tax payable or the difference in credit used.

IX. POLAND

1. DOCUMENTATION OBLIGATIONS

As of 1 January 2019, the Polish tax law system was amended according to the OECD transfer pricing guidance – the Guidelines 2017 edition. Currently the transfer pricing issues are comprehensively regulated in the corporate income tax law and personal income tax law. The legal acts contain norms concerning in particular: legal definitions of terms relevant to the transfer pricing issue, the arm's length principle, transfer pricing documentation, transfer pricing verification and adjustment.
Related parties are required to prepare local transfer pricing documentation for the financial year in order to demonstrate that transfer prices have been determined on terms that unrelated parties would have determined between themselves. The affiliation of the entities results from the exercise of significant influence and may result, in particular, from the ownership of an equity stake, voting rights, as well as from family ties. There is a catalogue of exemptions from such an obligation.
In addition to related parties, taxpayers who are not related parties are also obliged to prepare local transfer pricing documentation in cases specified in the law, and it concerns taxpayers' relations with entities established in territories or in a country applying harmful tax competition. The additional obligation (e.g. in the case the value of the controlled transaction did not exceed the statutory thresholds) to prepare local transfer pricing documentation may also apply to related parties other than micro-entrepreneurs on request of the tax authority in the event of a likelihood of an understatement of the value of a controlled transaction

2. TYPES OF DOCUMENTATION

The local transfer pricing documentation is prepared for a controlled transaction of a homogeneous nature whose value, less value added tax, exceeds the following documentation thresholds in a financial year:
• PLN 10M (ca. EUR 2M) - in the case of a commodity transaction.
• PLN 10M (ca. EUR 2M) - in the case of a financial transaction.

• PLN 2M (ca. EUR 425k) - in the case of a service transaction.
• PLN 2M (ca. EUR 425k) - in the case of a transaction other than those specified in points above.
In the case of controlled transactions with an entity having its place of residence, seat or management in a territory or in a country applying harmful tax competition or a foreign permanent establishment located in a territory or in a country applying harmful tax competition, the documentation threshold is:
• PLN 2.5M (ca. EUR 500k) - in the case of a financial transaction.
• PLN 500k (ca. EUR 100k) - in the case of a transaction other than a financial transaction.

A controlled transaction is an activity of an economic nature identified on the basis of the actual behaviour of the parties, including the attribution of income to a foreign establishment, the terms of which have been established or imposed as a result of the relationship. Documentation thresholds are set separately for each controlled transaction of a homogeneous nature regardless of the mapping of the controlled transaction to commodity, financial, service or other transactions; the cost and revenue side.

Related parties obliged to prepare local transfer pricing documentation - to the extent of transactions covered by this obligation, or carrying out controlled transactions specified in the regulations submit to the competent head of the tax office a statement on its preparation, by the end of the eleventh month after the end of the financial year.

3. PENALTY REGIME

The imposition of an additional tax liability by the tax authority is provided for in the event of a breach of the transfer pricing provisions. The additional tax liability concerns both the lack of transfer pricing tax documentation and the application of a non-market price to intra-group transactions.
The absence of transfer pricing documentation, in cases where it is required, allows for an increase in the sanction rate in the event of a reassessment. As a general rule, the amount of the additional tax liability is 10% of the sum of the improperly reported or overstated tax loss and unreported taxable income in its entirety.
The rate of the additional tax liability shall be doubled in the event that a party has not submitted tax documentation to the tax authority. The rate of additional tax liability shall be tripled if the basis for its determination exceeds PLN 15M (ca. EUR 3M) and the party has not submitted tax documentation to the tax authority (to the extent of the excess over the amount of PLN 15M).

Furthermore, the criminal sanction is imposed on a person who fails to comply with the obligation to file transfer pricing information or, when filing it, provides data in it that is inconsistent with the local transfer pricing documentation or with the factual state. The fine that may be imposed is currently (1st half of 2023) up to PLN 33.5MPLN (ca. EUR 7M). If the information is submitted after the deadline, the fine is up to PLN 11M (ca. EUR 2.5M). In the event of a lesser gravity, the fine for a fiscal offence is imposed.

X. SLOVAKIA

1. DOCUMENTATION OBLIGATIONS

The guidelines for the transfer pricing documentation were issued by the Ministry of Finance, following the principles set forth in the OECD Guidelines.
Specific transfer pricing penalties (double compared to standard penalties) may be imposed by the tax office if the tax is adjusted after a tax audit. A penalty of up to EUR 3,000 may also be imposed for non-compliance with the transfer pricing documentation requirements.
For transfer pricing purposes, Slovak tax laws recognize methods based on price comparison and methods based on profit comparison. Any of these methods (or combination of them) or other transfer pricing methods may be used. The transfer pricing method must be based on arm's length principle.

2. TYPES OF DOCUMENTATION

Slovak tax laws differentiate between full, basic and shortened transfer pricing documentation. Basically, full transfer pricing documentation is required in the case of cross-border transaction (or a group of cross-border transactions) the value of which exceeds EUR 10,000,000 during the taxation period, and for basic documentation the threshold is EUR 1,000,000.

3. PENALTY REGIME

The transfer pricing documentation must be submitted to the tax office within 15 days upon the request of the tax office.

XI. SPAIN

1. DOCUMENTATION OBLIGATIONS

If transactions are carried out with one and the same person or related entity and the amount of the consideration for all the transactions in the tax period exceeds 250,000 euros, there is an obligation to document these transactions.

There is also an obligation to document the following specific transactions between related parties if the total amount of each of these transactions exceeds 100,000 euros in the tax period:

- Operations carried out by natural persons in the course of an economic activity, who are taxed according to objective method of assessment and whose participation, individually or jointly with their family members, amounts to ≥ 25% of the capital or own funds.
- Transfers of securities or holdings in the equity of entities not admitted to trading or admitted to trading in tax havens.
- Business transfer operations.
- Transfers of immovable property.
- Transactions with intangible assets.

In addition, independent of the amount of the consideration for the transactions carried out with the same person or related entity, similar transactions which, in turn, use the same valuation method must be documented, provided that the amount of all such transactions in the tax period exceeds 50% of the entity's turnover.

2. TYPES OF DOCUMENTATION

There are three types of documents to be prepared depending on several determining factors:

1. Local file: This refers to taxpayer-specific information and should include transactions that exceed the above limits.

This documentation will have a simplified content for those persons or related entities whose Net Turnover is less than 45 million euros.

In addition, for taxpayers with a net turnover of less than 10 million euros, this can be done by filing Form 232 in the month following the ten months after the end of the tax period.

2. Master file: This is the specific documentation of the group, its structure, main activity, financial and tax activity.

This documentation should only be prepared when the entity's net turnover exceeds 45 million euros.

3. Country by Country Report (Form 231): This form will be obligatory for groups whose parent company is resident in Spain and whose net turnover exceeds 750 million euros.

As well any entity resident in Spain that is part of a group obliged to file this document has to inform the tax authority of the identification and country of residence of the entity obliged to prepare it. This has to be communicated before the end of the tax period to which the information refers.

3. PENALTY REGIME

There are several transfer pricing penalties:
• Documentary non-compliance without valuation adjustment. This offence is committed if the documentation of related transactions is not provided or is provided incompletely or contains incorrect data, without the tax administration making a value adjustment

The penalty is €1,000 for each item of data and €10,000 for each group of omitted or false data.

The upper limit of the penalty shall be the higher of the following amounts:
• 10% of the total amount of the transactions subject to corportate tax, income tax or non-resident income tax.
• 1% of the net amount of turnover.
• Documentary non-compliance with valuation adjustment. In this case the infringement is the same as the one described above, but the tax administration has made a valuation adjustment.
• Declaration of a value that differs from the value derived from the documentation with value adjustment. In this case, the market value derived from the documentation was not included as correct in the corporate income tax, personal income tax (IRPF) or non-resident income tax return (IRNR) after a correction was made by the tax administration.

In these two cases, the penalty will be 15% of the amounts resulting from the corrections applied to each transaction.

XII. TURKEY

1. DOCUMENTATION OBLIGATIONS

As OECD member, Turkey met with Transfer Pricing Principals first with New Corporate Income Tax Law nr. 5520 valid from June 21, 2006.

In the legal ground for Article 13 of the new Corporate Income Tax Law, it is stated that transfer pricing legislation is prepared by taking the OECD Transfer Pricing Guidelines into account together with international developments.

Arm's length principle: According to the article 13(3) of Corporate Income Tax Law, "Arm's length principle means that the price or consideration charged for the purchase or sale of goods or services between related parties should be the price or consideration which would have been occurred in the absence of such a relationship between them."

Related Party: In general, related party refers to:
• Shareholders of the corporation.
• Individuals or legal entities related to the corporation or its shareholders.
• Individuals or legal entities which control the corporation directly or indirectly in terms of management, supervision or capital.
• Individuals or legal entities which are controlled by the corporation directly or indirectly in terms of management, supervision or capital.

Transfer Pricing Methods: Turkey's domestic legislation provide for all below mentioned transfer pricing methods to be used in respect of transactions between related parties.
• CUP
• Resale Price
• Cost Plus
• TNMM
• Profit Split

2. TYPES OF DOCUMENTATION

Turkey's domestic legislation require the taxpayer to prepare below mentioned transfer pricing documentation:

• **Master file**, which is prepared by corporate income taxpayers who are affiliated to a multinational enterprise group and whose both asset size in the balance sheet and net sales amount in the income statement as an attachment to the annual Corporate Income Tax Return related to the preceding fiscal year are 500 million Turkish Lira and above until the end of the fiscal year following the relevant fiscal year and after the end of this period, it must be submitted, if requested, to the Turkish Revenue Administration or other tax authorities entitled to make tax examination.

• **Local file** (Annual Transfer Pricing Report), which must be prepared by all corporate income taxpayers until the deadline for filing the annual Corporate Income Tax Return and, upon request, submitted to Turkish Revenue Administration or other tax authorities entitled to make tax examination.

• **Country-by-Country Reporting**: According to the consolidated financial statements of the immediately preceding fiscal year prior to reporting fiscal year, the ultimate parent entity or surrogate parent entity, resident in Turkey, of the multinational enterprise group whose total consolidated group revenue is equal to and exceeds 750 million Euro prepares country-by-country reporting until the end of the twelfth month after the Details are provided in Section 6 and 7 of Transfer Pricing General Communiqué No.1 Turkey Updated July 2021 reporting fiscal year and files it electronically to the Turkish Revenue Administration.

• **Notification form related to country-by-country reporting**: The members of the multinational enterprise group that is included in the scope of Country-by-Country Reporting inform the Turkish Revenue Administration about whether they are the ultimate parent entity or surrogate parent entity and which entity will be reporting Country by Country Reporting on behalf of the group and its fiscal year. This information will be provided electronically on an annual basis through Internet Tax Office until the end of June of the year following the reporting fiscal year.

• **Transfer Pricing, Controlled Foreign Corporations and Thin Capitalisation Form**, which must be filled by all corporate income taxpayers and submitted to the relevant tax office as an attachment to the annual Corporate Income Tax return. However, when total transaction volume does not exceed TL 30 000; the transfer pricing section of the form is not mandatory.

As a general rule, tax administration or tax inspectors need to provide at least fifteen days to taxpayers to submit any written information including transfer pricing documentation.

The transfer pricing documentation should be prepared in the Turkish language. If the documents are prepared in a foreign language, a Turkish version is required.

3. PENALTY REGIME

There are no specific transfer pricing penalties regarding transfer pricing documentation. The provisions of Tax Procedural Law regarding irregularity penalties apply. According to Article 13(8) of the Corporate Income Tax Law, if the transfer pricing documentation requirements are fulfilled timely and properly, tax penalties in case of a tax assessment due to the application of non-arm’s length prices will be reduced by 50%.

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Publisher, media owner, editorial office: Kancelaria Prawna Schampera, Dubis, Zając i Wspólnicy sp.j. | 50-077 Wrocław, ul. Kazimierza Wielkiego 3, Tel. +48 71 326 51 40, wroclaw@sdzlegal.pl
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