

August 2019

CHANGES TO THE BULGARIAN TRANSFER PRICING DOCUMENTATION RULES

Amendments to the Bulgarian tax law addressing the introduction of mandatory transfer pricing documentation for transactions with related parties have been recently implemented. On 31 July 2019 the Bill for amendment and supplementation to the Tax and Social Security Procedural Code ("the Bill") aiming to bring Bulgaria's transfer pricing rules in line with the recommendations of the OECD has been adopted by the Bulgarian Parliament.

Businesses concerned

The Bill sets for new obligations to Bulgarian companies, Bulgarian permanent establishments of non-resident foreign companies and locally registered sole traders to maintain mandatory transfer pricing documentation.

The Bill exempts the following persons from the obligation to maintain mandatory transfer pricing documentation:

- (i) Persons, which are exempt from Bulgarian corporate income tax (i.e., certain collective investment schemes, national investment funds and alternative investment funds as well as SPVs under the Bulgarian Special Purpose Investment Companies Act);
- (ii) Persons, which are subject to alternative taxes (e.g., gambling or ship operating industry);
- (iii) Persons, which do not exceed the following thresholds as of 31 December of the previous calendar year:
 - balance sheet value of the assets - BGN 38 million (app. EUR 19,4 million), and
 - net sales revenue - BGN 76 million (app. EUR 38,8 million), or
 - average number of the personnel for the reporting period – 250 persons.
- (iv) Persons, which carry out transactions with related parties only in Bulgaria.

Controlled transactions

The new framework aims to ensure the taxable persons concerned shall create and maintain evidence of the arm's length basis of their transactions with related parties by way of specific transfer pricing documentation. This documentation may be requested and reviewed by the Bulgarian tax authorities within a tax check or tax audit.

Record is to be kept of related-party transactions with value (excluding VAT and excise duties) exceeding the following annual thresholds for the previous year:

- Transactions for sale of goods - BGN 400,000 (app. EUR 205,00);
- Loan transactions - BGN 1 million (app. EUR 511,000) for the loan principal or BGN 50,000 (app. EUR 25 564) for the accrued interest or other revenues and expenses related to the loan.
- All other transactions - BGN 200,000 (app. EUR 102,000);

No transfer pricing documentation should be prepared for transactions with related *individuals* regardless of their value, unless the individuals act in their capacity of sole traders.

Transfer pricing documentation

Bulgarian businesses operations must prepare and keep local transfer pricing file for all related-party transactions subject to disclosure undertaken during the respective year by 31 March of the following year. Entities which are part of a multinational group must also be able to provide a transfer pricing master file prepared at group level by the end parent company or another member of the group. The master file should be available with the local taxpayer not later than 12 months after the deadline for preparation of the local file.

No obligation is imposed for submission of the transfer pricing documentation to the Bulgarian tax authorities. Both the local and the master file are to be kept by the taxpayer and should be provided to the authorities upon their request.

The first year for which transfer pricing documentation should be prepared is 2020. The documentation is to be updated on an annual basis. To reduce the administrative burden benchmarking studies of comparable transactions underlining the transfer pricing files are to be updated at least once every three years (e.g. by identifying new comparable transactions and/or persons), provided that the financial information for the transactions and/or persons, which have already been identified as comparable in the benchmarking studies, is to be updated annually.

Failure to prepare or keep the required transfer pricing documentation may result in significant administrative sanctions:

- In case of failure to prepare a local transfer pricing file, the amount of the administrative sanctions can reach 0.5 % of the total value of the transactions for which transfer pricing document should have been prepared. It will be considered that a local transfer pricing file has not been prepared, when such file has not been provided to that Bulgarian tax authorities upon their request and within the term required by them.
- In case of failure to keep transfer pricing master file, when such is required, the amount of the administrative sanctions can reach BGN 10,000 (app. EUR 5,110).

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