

Adó Hírlevelek

Tax Law – Transfer Pricing



Changes in transfer pricing documentations in line with the practice of the European Union



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The Ministry of Finance recently issued an amendment of Decree no. 18/2003 PM on documentation liability related to the determination of arm's length prices. With these changes, the Hungarian regulations are aligned with the code of conduct on transfer pricing documentation for associated enterprises in the European Union. The amended decree also provides new alternatives for documentation. In our newsletter, we provide a summary of the most important changes in the decree coming into effect from January 2010.



Nóra Juhász

Separate or common documentation?

Beginning from next year, associated enterprises may decide whether they wish to keep their transfer pricing records in accordance with the requirements for separate or common documentation. If they decide on using the requirements for common documentations, then they have to observe the rules in the code of conduct on transfer pricing documentation for associated enterprises in the European Union. The enterprises have to indicate their choice in their corporate tax return.

Separate documentation

The required content of the documentation is the same as in the regulations currently in effect. Accordingly, the main elements of the documentation:

- the most important data of associated enterprises in controlled transactions;
- the subject and content of the contract, market analysis, functional analysis;
- the definition and source of the data used for identifying the arm's length remuneration, the process of selection;
- the name of the method used and the justification for its selection;
- differences between the independent and the controlled transactions, adjustments;
- arm's length price, margin and profit (after adjustments, if any);
- pending or closed proceedings of authorities or courts in connection with the determination of the arm's length price;
- the date of preparation and modifications.

Common documentation

Common documentation may be prepared by taxpayers who have associated enterprises established in any member state of the European Union as well as those who only have associated enterprises in Hungary. The documentation consists of two parts:

1. The masterfile, summarising the common standardised information relevant for all group members in the European Union. The masterfile refers to the whole of the group, and its most important elements are the following:
 - a general description of the enterprise and the business strategy, including changes compared to the previous tax year;
 - a general description of the group's organisational, legal and operational structure;
 - the identification of the associated enterprises engaged in controlled transactions and the general description of the controlled transactions;
 - a description of functions performed and the risks assumed, as well changes compared to the previous tax year;
 - information concerning the ownership of intangibles;
 - the group's inter-company transfer pricing policy and the description of the transfer pricing system;
 - the cost contribution agreements;
 - proceedings of courts and authorities in connection with the determination of the arm's length price;
 - the date of preparation and modifications.
2. Specific documentation, which supplements the masterfile and describes the contract(s) between the taxpayer and its associated enterprise(s). The specific documentation should contain at least the following elements:
 - the most important data of associated enterprises in controlled transactions;
 - the description of the business enterprises and the business strategy of the taxpayer, as well as of changes in the same;
 - the subject of the contract, the description and the value of the transaction, the date of conclusion and amendment, as well as the term of the contract;
 - analysis of the comparable data;
 - the description of comparables;
 - the description of the application of the group's inter-company transfer pricing policy
 - the date of preparation and modifications.

The group may nevertheless include any element of the specific documentation in the masterfile as long as it is done with the same level of detail as in the specific documentation.

The reason for preparing a common documentation is that the masterfile can be

	prepared centrally and is generally applicable at all members of the group, and the members established in Hungary only have to supplement it with the specific documentation. This means that the tasks related to the preparation of the documentation can be shared within the group.
Sources that can be used in the determination of the arm's length price	The decree requires that the public sources and databases used in determining the arm's length prices should be verifiable by the authorities.
Simplified documentation	Taxpayers can prepare simplified documentations if the value (without VAT) of the transactions under the contract was less than HUF 50 million calculated at arm's length price during the period from the date of the contract until the last day of the tax year.
Documentation in a foreign language	From January 2010 it is no longer necessary that the documentation be available in the Hungarian language by the prescribed deadline; however, translations of the whole or a part of the documentation should be made available at the request of the tax administration.
Definitions	A new section was added to the decree in which concepts such as "controlled transactions", "functional analysis" and "company group" are defined.
The effective date of the decree	The decree will enter into effect on 1 January 2010, and it will be first applicable to documentations related to tax obligations in the 2010 tax year. The provisions concerning simplified documentations and the language of the documents, however, can also be applied in connection with tax obligations in the 2009 tax year.

Should you have any question about the topic discussed in this Newsletter, we are always happy to be of service.

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