

## Transactions with entities from tax havens should be documented regardless of the relation

A comprehensive revision of the transfer pricing regulations entered into force on January 1, 2019. The changes introduced as of the above date covered a wide range of important issues - from the innovations in determining documentation thresholds to the implementation of so-called safe harbours.

The wide range of amendments introduced by the lawmakers may distract the taxpayer's attention from an important element of transfer pricing regulations, i.e. the obligation to document economic events involving entities from countries applying harmful tax competition (so-called tax havens), which has been amended as well, although not as radically as other areas related to transfer pricing.

### The issues presented below need to be analyzed from the perspective of taxpayers having business relations with entities from the so-called tax havens:

#### Countries applying harmful tax competition (so-called tax havens)

The taxpayer should pay particular attention to economic events involving entities resident, established or managed in the territory or in a country applying harmful tax competition. Such events may be of particular interest to tax authorities during audits.

The so-called tax havens include, among others: Principality of Andorra, Kingdom of Bahrain, Principality of Monaco, British Virgin Islands, Republic of Marshall Islands or Hong Kong.

The full list of tax havens can be found in the Ordinance of the Minister of Finance on the definition of countries and territories applying harmful tax competition in the area of corporate income tax of March 28, 2019. (Journal of Laws of 2019, item 600).

#### Drawing up tax documentation also for economic events involving unrelated entities

It is important to remember that it is not necessary for a Polish taxpayer obliged to prepare the local tax documentation and an entity from a so-called tax haven **to have any relations**. It is sufficient that the entity which is involved in the economic event has its residence, registered office or management in a tax haven and the value of the transaction exceeds the materiality threshold obliging to prepare the documentation.

#### Nature of economic events subject to documentation

Local tax documentation should be prepared for transactions in connection with which the taxpayer has paid directly or indirectly to a tax haven entity where the total amount resulting from the contract, or actually paid in a financial year exceeds PLN 100,000 or its equivalent.

The obligation to draw up documentation also applies to the conclusion with an entity from a tax haven:

- of the articles of association of a company which is not a legal person, if the total value of the contributions made by the shareholders exceeds PLN 100,000 or the equivalent of that amount, or
- a joint venture contract or any other contract of a similar nature, where the value of the joint venture specified in the contract or, if no such value is specified in the contract, the value expected as of the date of conclusion of the contract exceeds PLN 100 000 or the equivalent of that amount.

	Values in a foreign currency shall be converted into PLN at the average exchange rate announced by the National Bank of Poland, applicable on the last business day preceding the date of the economic operation.
<b>Elements of local transfer pricing documentation</b>	It is also important to remember that transfer pricing documentation drawn up for economic events involving entities from tax havens <b>shall meet all formal requirements and contain elements required by applicable regulations</b> . In practice, this means not only the necessity of preparing detailed documentation, but also a benchmark analysis.
<b>Transfer pricing information (TP-R form)</b>	Economic events involving entities from tax havens documented in the local tax documentation should also be reported in the transfer pricing information (TP-R form) submitted via electronic means of communication to the Head of the National Revenue Administration (KAS) by the end of the ninth month after the end of the tax year.

**This document was prepared for informational purposes only and is of a general nature. Every time before taking actions on the basis of the presented information, we recommend obtaining a binding opinion of TPA Poland experts.**

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