

The summary of the transfer pricing documentation regulations in effect from January 1, 2019 (POLAND)

**Who are associated entities and who should prepare a local file?
(new, broader definition)**

According to the new definition, parties are associated if:

- a) one of them has a significant impact on any other,
- b) there is a third-party, natural person or a group of first- and second-degree relatives that has a significant impact on two or more parties,
- c) they include a non-legal entity and its shareholders,
- d) they include a taxpayer and his foreign establishment, or
- e) they have a relationship that is not economically justified including relations with purpose of manipulating ownership structure or establishing circular ownership structures.

Significant impact occurs if:

- a) an entity has, directly or indirectly, at least 25% of another entity's share capital, 25% of voting rights in its meetings or rights to 25% of its profit, assets, investment certificates or investment fund units,
- b) a natural person can actually impact key business decisions of a legal entity or organizational unit not having legal personality, or
- c) there is either marriage or family relation of first or second degree between such natural persons.

Entities prepare a local file for transactions with an associated party if in a given fiscal year their value net of VAT (calculated separately for groups of transactions of homogeneous nature) exceeds:

- PLN 10 000 000 in case of tangible and financial transactions,
- PLN 2 000 000 in case of service transactions and others,
- PLN 100 000 in case of transactions with entities from tax havens.

**What transactions are exempt from local file obligation?
(new opportunity for taxpayers)**

Local file exemption applies to transactions:

- concluded by Polish associated entities:
 - who are not exempt from CIT based on subjective exemption or Special Economic Zone exemption, and
 - did not incur a tax loss,
- covered by Advance Pricing Agreements,
- the value of which does not constitute revenue or tax-deductible expense (except for financial transactions, capital transactions and for transactions concerning investments, fixed assets or intangibles),
- between members of tax capital group,
- by entities held solely by State or municipalities,
- with the price determined in the open tender procedure,
- concerning the attribution of income to a foreign establishment in Poland if, based on relevant international agreements, such income is subject to taxation only outside of Poland.

Who should supplement local file with benchmarking analysis? (obligatory benchmark)

All entities preparing local file documentation (unless safe harbour applied).

Which transactions are exempt from benchmarking analysis obligation? (new opportunity for taxpayers)

Benchmarking analysis exemption (safe harbour – please see below) applies to transactions:

- constituting services with little value added, or
- concerning financial transactions

provided that they meet a range of specific criteria.

Who should prepare a TP-R form? (a new form - broad scope of information)

All entities obliged to prepare local file documentation and those exempt from such obligation based on article 11n, section 1 of the CIT Act.

When to prepare a local file?

Until the end of the ninth month after the end of the fiscal year for which documentation is prepared.

When to submit a statement?

Until the end of the ninth month after the end of the fiscal year for which documentation is prepared.

Who should sign a statement?

All individuals authorized to represent the entity as defined in the Accounting Act (most often: all board members).

What does the statement include?

The statement includes confirmation of (i) local file preparation (with benchmarking analysis) and (ii) documented transactions being compliant with arm's length principle and is submitted under penalty of perjury.

Who should prepare a master file?

Consolidated entities obligated to prepare local file and belonging to a capital group if the group:

- prepares financial statements using full or proportional consolidation, and
- had more than PLN 200 000 000 of revenue in the preceding fiscal year.

When to prepare a master file?

Until the end of the twelfth month after the end of the fiscal year for which documentation is prepared.