POLAND

Overview

Crido Taxand S.A., Taxand Poland

Crido Taxand is a tax advisory firm based in Warsaw and Cracow, offering the full scope of tax advisory and compliance services.

Our Transfer Pricing ("TP") Team is one of the largest and most experienced TP teams in Poland; we have a team of over 40 experts including 4 partners and 12 managers.

We are one of the most recognized transfer pricing teams in Poland. Our TP Team has also been recognized as the 'Poland Transfer Pricing Firm of the Year' at the ITR European Tax Awards for multiple years, 2016-2023, which is a result of our complex, innovative and often ground-breaking projects entrusted to us by our dedicated clients.

We offer full scope of transfer pricing services: designing TP models and policies, creating TP strategies, full range of TP analyses, valuations and benchmarking studies for all types of transactions, including financial and IP valuations, TP compliance, TP reporting, assistance in TP audits, litigation, APA and MAP procedures.

General: Transfer Pricing Framework

The Polish transfer pricing regulations generally follow the OECD Transfer Pricing Guidelines' ("OECD TPG") approach, adopting the arm's length principle, three-tier documentation, TP adjustments, and APA and MAP procedures. However, in some areas more detailed information in the TP documentation or more reporting obligations might be required.

OECD TPG are not part of the Polish law, however they are used as an explanatory instrument. In practice, when discussing transfer pricing cases with tax authorities, specifically the APAs with Polish competent authorities, OECD TPG are often used as supportive to the local regulations.

Not only foreign, but also domestic, transactions are subject to TP obligations.

Related parties are:

a) parties when one exerts considerable influence on another,

b) parties upon which a third party exerts considerable influence,

c) a partnership and its partners, or

d) a taxpayer and its foreign permanent establishment.

Exerting significant influence is understood as:

1) holding directly or indirectly at least 25 percent of shares in capital, or in voting rights in control or in decision-making bodies, or shares in profits or property or expectancy thereof,

2) actual ability of a person to influence taking key economic decisions by an entity, or

3) familial links up to a second degree.

Accepted Transfer Pricing Methodologies

All five transfer pricing methods from the OECD TPG are accepted. There is no preference of any method and the most appropriate to the transaction should be applied. Where it is impossible to apply one of the five standard methods, another method shall be applied, including the customary valuation techniques.

Transfer Pricing Documentation Requirements

Generally, the OECD TPG three-tier TP documentation approach is transposed to the TP regulations in Poland.

Country-by-country reporting (CbC)

Polish parent companies (or subsidiaries appointed by the parent company) of groups with an annual turnover of or over EUR 750 million must file the CbC form wihtin 12 months after the year-end. The CbC report must be also filed to Tax Authorities by the local subsidiary when the reporting entity resides in a country without the CbC obligations or without effective tax information exchange with Poland.

Additionally, Polish subsidiaries of reporting groups must file an annual CbC notification, before year-end, covering identification of the reporting entity and their residence jurisdiction.

Masterfile documentation

For capital groups with consolidated group revenues of, or exceeding, PLN 200 million in the previous year a Masterfile documentation is required.

Masterfile is in line with OECD TPG standards and there is a possibility to use the Masterfile prepared by another group entity. An English version is allowed. Masterfile documentation must be prepared by the end of 12th month after the year-end.

Local File documentation

For intercompany transactions exceeding certain materiality thresholds (PLN 10 million for goods and financial transactions, PLN 2 million for services and other transactions), a Local File documentation is required. The Local File documentation follows the OECD TPG standard, must be prepared in Polish, and be available by the end of the 10th month after the year-end.

The Local File documentation must always include a transfer pricing analysis with a benchmarking study or a compliance analysis, where a benchmarking study is impossible to procure.

TP documentation simplifications and exemptions

Micro and small enterprises are not obliged to include a transfer pricing analysis in their TP Local File documentation.

Domestic transactions between two companies reporting taxable income (not loss) are exempt from preparing the TP documentation.

POLAND

There are two safe harbours allowed under Polish TP regulations – 1) for low value-adding services and 2) for small financing transactions (loans or bonds). TP regulations list specific conditions to be met in order to apply the safe harbours. If safe harbour is applied, no TP analysis or TP Local File is necessary.

TP reporting

Each company that is preparing the TP documentation must report transfer prices to Tax Authorities through their respective Tax Office. Reporting is done electronically, with a dedicated TPR-C form, by the end of 11th month after the year-end. TPR-C form must be signed with a qualified electronical signature by a person authorized to represent the legal entity.

Local Jurisdiction Benchmarks

Transfer pricing analysis is an obligatory element of a TP documentation. When it comes to comparable data, generally global or Pan-European benchmarking studies might be accepted if these are the most appropriate for the documented transaction. There is a slight preference towards local comparables, which should at least be included in the search strategy. Both internal and external comparables are accepted. If a benchmarking study based on comparables cannot be prepared, for instance due to lack of appropriate data, a TP compliance analysis can be prepared. This analysis describes in a more general manner, or with other market data, the terms of the transactions to evidence that they were set at arm's length.

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

Unilateral, bilateral or multilateral APAs are all allowed in Poland. In fact they are the only measures to prevent transfer pricing disputes on the arm's length nature of the pricing of a transaction.

APAs can be concluded for up to five years and at the end of this period the agreement can be renewed. APAs are concluded through a negotiation process with the National Fiscal Administration – the Polish competent authorities for APAs.

Concluding an APA is subject to an administrative fee to be paid in advance of submitting the APA application. The fee varies depending on the type of the APA:

- up to PLN 100 thousand for a unilateral APA, and
- up to PLN 200 thousand for a bilateral or multilateral APA

It may take a few years to conclude the APA, depending on the merit of the transaction and if it is a uni-, bi- or multilateral procedure. The APA provisions state 6 month for uni-, 12 months for bi- and 18 months for multilateral APAs.

Transfer Pricing Audits

Polish tax authorities can perform audits randomly, as a separate process or jointly with a general corporate income tax audit. Following the introduction of the TP reporting with TPR-C form in 2019, Polish tax authorities have access to much detailed data about intragroup transactions, their pricing and comparability analyses results. Therefore, TP audits are becoming more and more targeted. Also, certain tax inspection offices specialize in conducting the TP audits, having the ability to target taxpayers for the audit countrywide, even outside of their local jurisdiction.

The Burden of Proof in Transfer Pricing: Theory versus Practice

In the Polish tax system, the allocation of the burden of proof in transfer pricing matters is a critical aspect of dispute resolution. In principle, the burden of proof lies with the tax authorities, who must demonstrate that the prices set by a taxpayer are not at arm's length. However, Polish regulations emphasize the importance of taxpayers maintaining comprehensive documentation to support their transfer prices (the OECD three-tiered transfer pricing documentation with benchmarking study for each documented transaction).

What is more important, taxpayers must also submit the transfer pricing reporting file (TPR-C form) to the tax authorities, which not only details the financial data of a transaction and of the benchmarking study's results but also includes a statement confirming the preparation of the Local File documentation and the arm's-length nature of the documented and reported transactions.

In practice, while the legal framework places the burden of proof on the tax authorities, taxpayers often find themselves in a defensive position. The Polish tax authorities have become increasingly stringent in their audits, focusing not only on the formal compliance with documentation requirements but also on the technical content and justification of the transfer prices. Recent trends indicate that taxpayers must provide robust and detailed documentation to support their pricing, even when the tax authorities have not fully demonstrated that the prices deviate from the arm's-length principle.

Given this trend, Polish taxpayers must ensure that their transfer pricing documentation is comprehensive and robust. This includes fulfilling the Local File and Master File obligations, maintaining up-to-date comparable studies, and providing economic justification for their pricing decisions. High-quality documentation is not just a compliance requirement; it is a strategic necessity to minimize the risk of an unfavorable shift in the burden of proof during disputes. While the OECD guidelines emphasize reasonableness and caution in making transfer pricing adjustments, the practical reality in Poland increasingly revolves around whether a taxpayer can sufficiently substantiate its pricing, rather than whether the tax authorities have adequately proven their case.

POLAND

Transfer Pricing Penalties

If transfer prices are questioned by tax authorities, an additional tax liability may be charged, which amounts to 10% of total amount of unduly reported or overstated tax loss and not fully or partially reported tax income to the extent resulting from the decision. The legislation stipulates also a possibility of doubling the penal liability (20%) if the basis for determining additional tax liability exceeds PLN 15 million (for the part exceeding this amount) or the taxpayer fails to submit TP documentation for a given transaction (unless it is completed within the deadline specified by the tax authority, no longer than 14 days) and even tripling (30%) if the amount exceeds PLN 15 million and at the same time the taxpayer fails to submit TP documentation (unless it is completed within the deadline specified by the tax authority, no longer than 14 days). The additional tax liability will be increased by the interest on arrears.

For non-filing, late-filing or wrong-filing of the TPR-C reports to the tax office and the TP documentation to the tax authorities (upon their request), there are also fiscal penalties for board members of the company. The size of the penalty fine will depend on multiple factors, it may be up to 720 daily rates (they are based i.e. on the persons income), which may amount up to approx. PLN 30 million.

Local Hot Topics and Recent Updates

Since TPR-C reporting is happening in Poland since 2019, tax authorities start targeting taxpayers for TP audits based on the information reported in those forms. Hot topics include: confirmation of arm’s length nature of any flows (service charges, interest rates, intangible royalties) that are subject to withholding tax in Poland. Financial transactions are on a constant agenda of the tax inspectors, the same as multiple-year loss making companies.

POLAND

Documentation threshold

Master file	PLN 200 million of the group consolidated revenue in the year before the documented year
Local file	PLN 10 million for goods and financing PLN 2 million for services and other transactions PLN 2.5 million and PLN 0.5 million for the respective transactions with tax havens
CbCR	EUR 750 million

Submission deadline

Master file	12 months after the reportable year-end
Local file	10 months after the reportable year-end
CbCR	12 months after the reportable year-end

Penalty Provisions

Documentation – late filing provision	Personal-fiscal penalties for the board members up to approx. PLN 30 million
Tax return disclosure – late/incomplete/no filing	Penalty up to PLN 30 million for incorrect data or failure to submit the TPR-C return. Penalty up to PLN 10 million for late submission of the TPR-C return.
CbCR – late/incomplete/no filing	Penalty up to PLN 1 million for late submission, incorrect data or failure to submit CBC-R report or the CBC notification
Non-compliance with the arm's length principle	Personal-fiscal penalties for the board members up to approx. PLN 30 million for late submission or incorrect transfer pricing statement. For the company - additional tax liability of 10%, 20% or 30% tax rate on reassessed taxable income, increased by penalty interest for tax arrears

CONTACT
Anna Wcislo
Crido
anna.wcislo@crido.pl
+ 48 604 259 126