

TaxAlert

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Changing transfer pricing documentation rules

The Ministry of Finance promulgated the Decree NO. 22/2009 (16.10) Decree in connection with changing transfer pricing documentation rules, effective January 1, 2010.

In this newsletter we would like to draw attention to next year's amendments to the transfer pricing documentation regulation and obligations.

The goal of new 22/2009 Decree of the Ministry of Finance ('New Decree')

The primary aim of the New Decree is to harmonize the Hungarian legislation with the Resolution of the Council of the European Union dated 27 June 2006 related to the code of conduct on transfer pricing documentation for associated enterprises in the EU.

According to the new legislation, effective January 1, 2010, taxpayers have the possibility to choose between preparing 'stand-alone documentation' (or 'full documentation' according to the definition of the effective 18/2003 Decree of the Ministry of Finance) or 'EU transfer pricing documentation' ('EU TPD') regarding intercompany transactions.

Stand-alone documentation

The New Decree does not modify significantly the content of the stand-alone documentation which should contain at least the following elements:

- identification information for the related companies involved in the intercompany transaction;
- subject of the contract, date of its conclusion, the date of modifications and the duration of the contract;
- summary of relevant ongoing or closed juridical or authority processes;
- functional analysis;
- definition and characteristic of the market;
- the method applied and the reasons for the method selection;
- comparable data and the sources of data, benchmarking study;
- reason and method of the adjustments required on the comparable data.
- date of preparation and modification of the documentation;

EU Transfer Pricing Documentation

EU TPD consists of two main components: a 'Masterfile' and 'Country-specific file(s)'. The Masterfile contains common standardized information relevant for all EU group members.

The content of the *Masterfile* according to the New Decree should be at least the following:

- general description of the company and its business strategy;
- description of the organizational and operating structure of the group;
- list of intercompany transactions with group members operating in the EU;
- general description of the intercompany transactions;
- description of the functions performed and risks shared by the related parties;
- description of the transactions related to intangible assets, received or paid royalties;
- summary of the group transfer pricing policy;
- description of cost contribution arrangements;
- summary of relevant ongoing or closed juridical or authority processes;
- date of preparation and modification of the documentation.

The other part of the EU TPD is the *Country-specific file* which should include the details of the intercompany contracts and contain at least the following elements:

- identification data of the related companies involved in the intercompany transaction;
- general description about the company and its business strategy;
- subject of the contract, date of conclusion, the date of modification of the contract, the duration of the contract and the transaction value;
- comparable data and the sources of data, benchmarking study;
- description about the implementation of the transfer pricing policy of the group;
- date of preparation and modification.

The New Decree, in line with the international practice, allows taxpayers to present elements to be included in the Country-specific file, in the Masterfile. However, this does not limit the substantive requirements.

Preparation of documentations in foreign languages

According to Section 6 Paragraph 6 of the New Decree, transfer pricing documentation could be prepared languages other than Hungarian. However, the Tax Authority could oblige the Taxpayer – based on Section 95, Paragraph 2 of the Act of 2003 on the Rules of Taxation – to translate and present the documentation in Hungarian.

Changes relating to the simplified documentation concept

The New Decree extends the applicability of the simplified documentation, as taxpayers will be allowed to prepare simplified documentation for those transactions where the value does not exceed a 50 million HUF threshold within the period between the effective date of the contract and the end of the fiscal year.

Definitions

In order to harmonize the Hungarian legislation to EU legislation, the New Decree contains some basic definitions such as 'controlled transaction', 'functional analysis' and 'multinational enterprise group'.

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