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News Flash

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New transfer pricing documentation requirements in Romania

Romanian Tax Authorities Order 442/2016 regulating conditions under which the transfer pricing documentation is to be requested and presented and procedure for adjusting/estimating of transfer prices

On 2nd of February 2016, Order 442/2015 regulating the conditions in which the transfer pricing documentation is requested and presented and procedure for adjusting/estimating of transfer prices was published in the Official Gazette. For the purpose of documenting the compliance with the arms length principle of transfer prices practiced between affiliated parties transactions, taxable persons are obliged to produce and present a transfer pricing file based on the conditions imposed by the present order.

It is mentioned that large taxpayer performing operations with related parties in total amount exceeding certain thresholds, excluding VAT, are obliged to prepare and present with a transfer pricing file on annual basis. **The official deadline for submitting the transfer pricing documentation will be the deadline for submitting the annual corporate income tax declarations, for each fiscal year.**

Large taxpayers who perform transactions with related parties, the following threshold are proposed, depending on the type of transaction, on an annual basis:

- **EUR 200.000**, excluding VAT for cashed/paid interest registered for financial services;
- **EUR 250.000**, excluding VAT for acquisition or provisions of services;
- **EUR 350.000**, excluding VAT acquisitions or sales of tangible/intangible goods.

The thresholds are applicable starting with 1st of January 2016 and will be calculated by using the exchange rate published by the Romanian National Bank in the last day of the fiscal year.

For small or medium taxpayers, or large taxpayers who are not obliged to submit on the annual basis the TP file, the obligation of preparing will occur solely at the moment of request made by the Romanian tax authorities during tax audits. In certain conditions, the transfer pricing documentation can be requested by the Romanian tax authorities in other circumstances, as provided by the Romanian Fiscal Procedure Code.

Furthermore, it is provided by the current order that, a transfer pricing documentation will be mandatory to be provide during tax audits by small, medium or large taxpayers, if transaction with affiliated parties exceed the following thresholds:

- **EUR 50.000**, excluding VAT for cashed/paid interest registered for financial services;
- **EUR 50.000**, excluding VAT for acquisition or provisions of services;
- **EUR 100.000**, excluding VAT acquisitions or sales of tangible or intangible goods.

The up mentioned threshold will be calculated by using the exchange rate published by the Romanian National Bank in the last day of the fiscal year.

The deadline for presenting the transfer pricing file will be as follows:

- **For large taxpayers who record operations over the thresholds stated above: maximum 10 calendar days from the request date but not sooner than 10 days** from the preparing date imposed by the fiscal legislation;
- **For small, medium or large taxpayers who are below the above mentioned thresholds: between 30 and 60 calendar days**, with the option to extend once up to 30 calendar days.

In addition it is mentioned that in case the transfer pricing file is not submitted or submitted incomplete, the Romanian tax authorities will proceed and adjust the level of the transfer prices, according to the arm's length principle. According to the provisions of the Order, transactions carried out between related parties fall under the arm's length principle if the financial indicators of the transactions (price/margin/result) is within the comparison range.

Present order provisions are applicable starting with 1st of January 2016. For administrative procedures initiated prior 1st of January 2016 the legal provisions valid at the initiation moment are applicable.

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