

News Flash

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**Transactions with tax havens:
New transfer pricing obligations in Poland**

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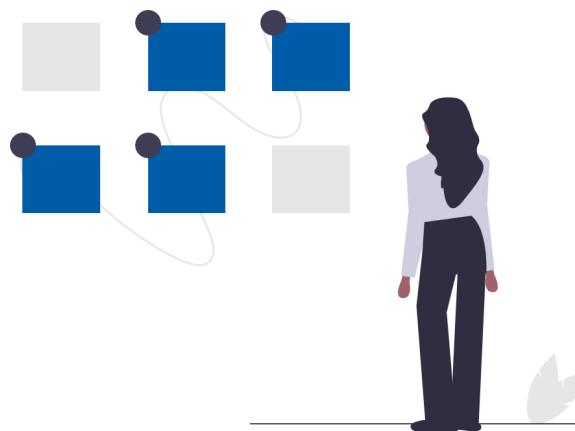
Starting from 2022 the taxpayers will have to deal with further changes in the area of transfer pricing. Documentations prepared for 2021 will have to include not only transactions with related parties and settlements made directly with entities from tax havens (as before), but also a large part of transactions with unrelated parties.

What is new in the regulations

Starting from 2022 (so for transactions realized in 2021) taxpayers will be obliged to prepare local transfer pricing documentation:

- **Performing transactions with an unrelated entity with a place of residence,** registered office or management in a territory or country applying harmful tax competition, if the value of this transaction exceeds PLN 100 000 during a tax year
- **Performing transactions with a related or unrelated entity,** if the actual owner of the receivables has a place of residence, registered office or management in a territory or country applying harmful tax competition and the value of the transaction exceeds PLN 500 000 during a tax year.

The above means that each settlement of our contracting party with the tax haven entity may be treated as a tax haven transaction. It means any transaction – e.g. purchase of electronic equipment – realized by our counterparty with one of the countries recognized as tax haven – e.g. Hong Kong (list of tax havens is presented at the bottom of the material). Then, if our settlements with the contractor exceed PLN 500 000 in a given tax year, the taxpayer is obliged to prepare transfer pricing documentation.



What is important, the legislator has introduced a presumption that the beneficial owner has a place of residence, registered office or management in the so-called tax haven in a situation when our counterparty makes settlements with an entity having its registered office in the tax haven. It means that any settlements of the contracting party with an entity from the tax haven are sufficient to apply the presumption that this entity is a real owner in this case.

The presumption is applied in a situation where it is confirmed that the other party to the transaction exceeding the value of PLN 500 000 (our contractor) makes settlements with the tax haven entity directly.

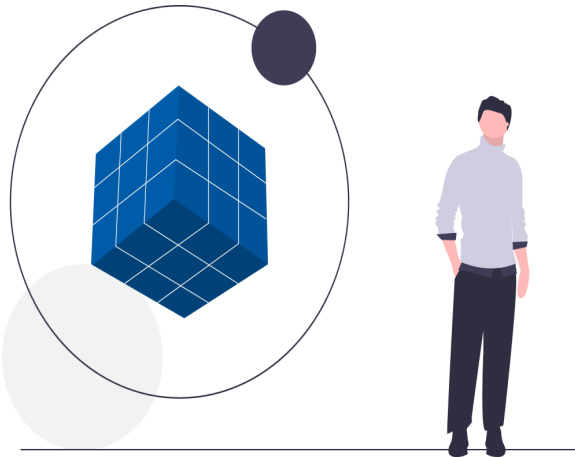
In determining these circumstances, the legislator requires taxpayers to exercise due diligence.

How to exercise due diligence while verifying settlements of a counterparty?

In order to exercise due diligence it will be necessary to obtain a statement from the counterparty confirming that it does not make any settlements with the tax haven entity in a given tax year.

In the case of transactions with related parties, due diligence means, in addition to obtaining the aforementioned statement, verification of information available in connection with the relationship, i.e. transfer pricing documentation, financial statements, ownership structure.

The statement should be obtained ex post, i.e. after the end of the taxpayer's fiscal year. We suggest that the parties undertake to mutually submit the statements in question as part of their agreements with counterparties.



Scope of documentation

In case of detection of tax haven transactions performed with unrelated entities, taxpayers will be exempt from the obligation to prepare benchmarking studies. At the same time, apart from the necessity to verify the beneficial owner, the taxpayer will be obliged to prepare local file documentation and submit a TPR report.

Deadlines

The new regulations will apply to documentation covering the year 2021. **According to the amendments resulting from the so-called Polish Deal, the deadline for preparation of documentation for 2021, which includes e.g. tax haven transactions, falls at the end of the 10th month after the end of the tax year** (for taxpayers with tax year coinciding with the calendar year it will be the end of October 2022).

Be prepared!

Accace strongly recommends analyzing your business activity to see if the new rules could potentially affect your settlements and, therefore, how to determine due diligence process for verifying contractors.

If you need more information on changes in transfer pricing regulations and their impact on your business, please contact us.

List of tax havens

Principality of Andorra	Principality of Monaco
Anguilla Overseas Territory of the United Kingdom of Great Britain and Northern Ireland	Republic of Nauru
Antigua and Barbuda	Niue Self-Governing Territory Associated with New Zealand
Sint-Maarten	Republic of Panama
Curaçao Countries included in the Kingdom of the Netherlands	Independent State of Samoa
Kingdom of Bahrain	Republic of Seychelles
British Virgin Islands Overseas Territory of the United Kingdom of Great Britain and Northern Ireland	Saint Lucia
Islands Cook Self-Governing Territory Associated with New Zealand	Kingdom of Tonga
Dominica	Virgin Islands United States Unincorporated Territory
Grenada	Republic of Vanuatu
Sark Dependent Territory of the British Crown	Republic of Fiji
Hong Kong Special Administrative Region of the People's Republic of China	Guam
Republic of Liberia	Cayman Islands
Macau Special Administrative Region of the People's Republic of China	Republic of Palau
Republic of Maldives	Sultanate of Oman
Republic of Marshall Islands	Republic of Trinidad and Tobago
Republic of Mauritius	American Samoa

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About Accace Poland

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