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News Flash

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Transfer Pricing rules in Slovakia

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Transfer pricing rules have been implemented in Slovak legislation before 2001; however, it has become a hot topic in Slovakia only during past years. Since January 1st, 2015 obligation to keep transfer pricing documentation has applied not only to foreign related parties but to domestic related parties as well. Pursuant to the Slovak tax legislation, all related parties are obliged to prove the method applied for setting the prices of controlled transactions (domestic or cross-border) between related parties and keep a relevant documentation justifying this method. This has caused an increased interest in the topic not only by entrepreneurs, but mainly by tax authorities conducting tax inspections.

Does Slovakia follow the transfer pricing methods outlined in the OECD guideline?

Yes, as a member of the OECD and the EU, Slovakia accepts and uses the OECD transfer pricing Guidelines as a means of interpretation for transfer pricing issues and also takes into account the EU Code of Conduct on Transfer Pricing documentation for associated enterprises. It means that any traditional or other transfer pricing methods in compliance with OECD guidelines can be used while the principle of the best method should apply. If appropriate, other methods may be used too.

The Income Tax Act also refers to the use of the OECD Guidelines. On February 12, 2024, the Ministry of Finance of Slovak republic published in the Financial reports (No. 3/2024) the official Slovak translation of the OECD Guidelines, which was presented by the OECD in January 2022.

The translation of the OECD Guidelines came after several partial versions that were published in the Financial reports over several years (No. 14/1997, No. 20/1999 and No. 3/2002) and were no current due to several updates of the OECD Guidelines.

In addition, the rules for transfer pricing in Slovakia are also regulated in the Income Tax Act and Double Tax Treaties.

What should the transfer pricing documentation contain?

The documentation consists of a general part, which provides an overall picture of the related parties, and specific part, which contains information about the taxpayer and controlled transactions they are engaged in.

The type of the documentation can differ in terms of the minimum required scope, and therefore they can be either complete, basic (simplified) or abridges (extra simplified) documentations. Regardless the type, each documentation shall be prepared separately for each controlled transaction or for each group of aggregated controlled transactions and kept in the respective tax period.

Can documentation be submitted in other than Slovak language?

Yes, transfer pricing documentation can be prepared and submitted in another language. However, the Slovak tax authority may request documentation in the Slovak language. Slovak tax authorities most often accept transfer pricing documentation in English language.

What are the most common problems of Slovak companies regarding transfer pricing documentations?

In general, transfer pricing documentation follow the Guidance issued by the Ministry of Finance of Slovak republic, but content-wise they are often missing some fundamental basics, in the case

where the company has an obligation to prepared full transfer pricing documentation or demonstrate the correctness of setting the transfer pricing method based on the interval of comparable values. In addition, companies very often incorrectly aggregate transactions into one in documentation, incorrectly assess their functional and risk profile, and then choose the wrong transfer pricing method and choose the wrong comparability indicator considering functional and risk analysis.

When should the documentation be submitted and what are the risks if the documentation is not ready on time?

The deadline for submitting the documentation is 15 days from the date of delivery request from tax office or Financial Directorate of Slovak republic. This period is not possible to extended. The Income Tax Act gives to tax office the opportunity to ask the taxpayer to submit documentation at any time, not only when opening a tax audit. Therefore, it is necessary to pay attention to the preparation of the documentation already during the tax period and not after the delivery request from tax office. Failure to submit documentation may not only be sanctioned by a penalty but may also lead to the tax officer's suspicion that the company does not have evidence of compliance with arm's length principle, and therefore failure to submit documentation may also lead to the opening of the tax audit.

Why is it worthwhile for companies to prepare full documentation?

The obligation to prepare full documentation is determined by the Guidance of the Ministry of Finance for the selected category of companies. However, preparing complete documentation also has advantages for companies that are only required to keep abbreviated or basic documentation. The tax officer may, in accordance with this Guidance and the Slovak tax regulations, request the company to submit additional information serving to prove the compliance of the prices used with the arm's length principle, even beyond the requirements

specified in the Guidance. Pursuant to the Tax Process Code, it can impose a deadline for submitting additional information of at least 8 days, i.e. this period can be even shorter than that given in the Income Tax Act (15 days). In order to avoid time stress when finalizing additional documents in a very short period of time, it is more appropriate to have the full documentation ready. By paying due attention to the preparation of the documentation, the company can ultimately avoid additional administrative costs, and by consistent processing the documentation, company can avoid the opening of a tax audit, which may result in calculation of additional tax.

What are the penalties for non-compliance?

In Slovakia, the current fine can go up to EUR 3,000 for breaching a non-financial obligation, which is failure to submit transfer pricing documentation. In addition, the tax base may be adjusted and tax authorities may impose additional obligations. Tax authorities can collect the difference in tax up to 10 years after the end of the year in which the obligation to submit a tax return arose, that is, transactions with foreign dependents can be subject to tax control for almost 11 years. Since January 1, 2017, stricter sanctions have been applied to international violations of the principle of independent relationship. Taxpayers who intentionally increase their tax losses or reduce their tax base through transfer pricing face doubled fines, specifically the fine rate is 6 times the annual ECB interest rate (but at least 20% p.a.). instead of 3 times the annual ECB interest rate (or at least 10%).

When is the documentation obligation fulfilled by filling in table "I" in the corporate income tax return?

In the case of controlled transactions, for which, in accordance with the Ministry of Finance's Guidance, documentation is not prepared in full, basic or abbreviated scope, the documentation obligation of companies is fulfilled by submitting a properly completed corporate income tax return

for the relevant FY. That is, if the company is not required to prepare any of the three types of documentation, it is sufficient to fill in table "I Transactions with related companies" in the corporate income tax return. These are mainly cases of transactions that have been assessed as insignificant.

What are the most frequent transactions between related parties and what challenges do the parties face?

The most frequent transactions in Slovakia are usually the manufacturing, distribution and services provided between related parties. The main challenge in those transactions is the determination of the type of manufacturer or distributor, as which company operates as. Also, another challenge is to find the comparable companies in the market, which operates as same type of manufacturer or distributor. Currently, financial transactions such as the provision of intra-group loans, cash-pooling, guarantees and others are coming to the fore. In the case of these transactions, it is a challenge for companies to monitor their ratings.

Are there any trends observed recently?

The main trend in transfer pricing is that tax authorities do not look only if the price agreed between companies are in compliance with the arm's length principle, but also if the transaction as whole is in compliance with the arm's length principle. It means, that transaction and all condition of transaction should be determined same as between independent companies (for example the type of payments, transfer of risk and so on). In addition to the transfer price of the transaction, the tax officers also focus on economic sense of the transactions.

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Within Accace Slovakia, we have a dedicated team for transfer pricing that annually produces more than 60 documentations. In case you need assistance with the preparation of such documentation, do not hesitate to contact us at slovakia@accace.com



About Accace Slovakia

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