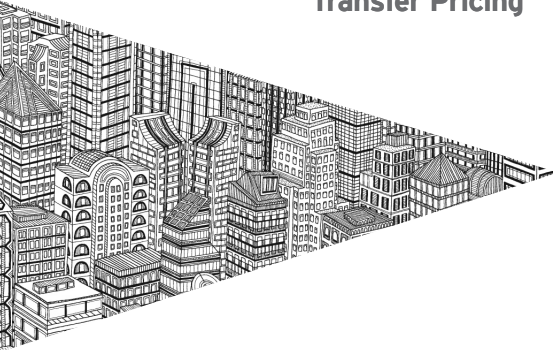


International Tax Alert

News and views from
Transfer Pricing



Hungary updates transfer pricing rules

Amended documentation rules

Transfer pricing documentation rules have existed in Hungary since 2003. Besides the implementation of the EU code of conduct on documentation, the end of 2011 brought about the most significant changes to date in the Hungarian regulations. This Alert provides a summary of the new or amended documentation rules.

Low value adding intra-group services

Based on the work of the EU JTPF, the Hungarian transfer pricing regulations now include special treatment for low value adding intra-group services.

Low value adding intra-group services are typically low value adding routine services provided between related parties outside the scope of the main business activity. The annex to the new regulation includes a non-exclusive list of these kinds of services (i.e., information technology services, administration services).

For low value adding intra-group services, taxpayers may prepare transfer pricing documentation that encompasses a relatively less detailed technical analysis that is essentially along the lines of the former simplified documentation rules. This type of documentation is applicable if the value of the transactions does not exceed HUF 150 million, 5% of the service provider's net income and 10% of the recipient's operational costs, and expenditures in the tax year in question. In this case, the cost plus method is accepted without a separate analysis, and mark-ups chosen from the range between 3% and 7% are considered by the law to be at arm's length.

Exemption from the documentation obligation

The amendments introduce new exemptions from the transfer pricing documentation obligation. They are as follows:

- ▶ Transactions that could be covered by simplified documentation based on the former rules (i.e., the value of the transactions performed on the basis of the contract does not exceed HUF 50 million); consequently,

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the simplified transfer pricing documentation obligation no longer applies.

- ▶ When costs are recharged without applying any mark-up; provided that the transaction is not the main activity of either party, and the service provider is not a related party from the perspective of the taxpayer or the cost bearing entity.
- ▶ Where the tax authority established the applicable arm's length price in a resolution (existing APA).
- ▶ Cash transfers.
- ▶ Transactions carried out between a Hungarian resident taxpayer's foreign permanent establishment and its related party, if the Hungarian taxpayer's corporate income tax base does not include the income attributable to the foreign permanent establishment.

The amendments to the documentation rules (Decree No. 22/2009 of the Minister of Finance) came into force on 1 January 2012. However, it is important to note that the new rules can also be applied for all documentation due, with respect to FY2011.

Other amendments

In addition to the new technical documentation rules, there are several other important tax law changes related to transfer pricing. The amendments described below are effective as of 1 January 2012.

Default penalty

The amendments prescribe more stringent sanctions relating to the transfer pricing documentation. Accordingly, in the event of repeated non-compliance with the transfer pricing documentation requirements, the default penalty of up to HUF 4 million (approximately EUR 13,000) may be levied per piece of

documentation. If documentation is not prepared at all for a specific transaction, the penalty may be four times that previously levied, i.e., it may be up to HUF 16 million (approximately EUR 52,000).

Thin capitalization

Thin capitalization rules will be extended to non-interest bearing liabilities if a transfer pricing adjustment has been applied to them. Therefore, when calculating the tax base adjustment related to thin capitalization, not only interest recorded in the books but also interest imputed as a result of the transfer pricing adjustments must be taken into account.

Documentation in foreign languages

The tax authority should accept transfer pricing documentation and the related supporting documents not only in Hungarian, but also in English, German and French.

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