

30 December 2011

Ernst & Young Tax Express

Transfer pricing - new documentation rules

Decree No. 22/2009 (X. 16.) of the Ministry of Finance has been amended effective from 1 January 2012. The majority of the amendments aims for simplification and hence, the administrative burden should decrease. We summarize the new rules in the first part of our newsletter.

Exemption from the documentation obligation

The amendments introduce new exemptions from the transfer pricing documentation obligation. These are the following:

- ▶ 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, 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 (APA);
- ▶ Cash transfers;
- ▶ Transactions carried out between a Hungarian resident taxpayer's foreign permanent establishment and its related party if the taxpayer's corporate income tax base does not include the income attributable to the foreign permanent establishment.





Low value adding intra-group services

Based on the work of the European Union Joint Transfer Pricing Forum, Decree No. 22/2009 of the Ministry of Finance introduced a new type of transaction (i.e. low value adding intra-group services) in the Hungarian transfer pricing regulation.

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 of the Decree includes a non-exclusive list of these kinds of services (for example information technology services, administration services).

For low value adding intra-group services, taxpayers may prepare transfer pricing documentation encompassing a relatively less detailed technical analysis, essentially along the lines of the former simplified documentation rules. This type of documentation is applicable if the value of 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 given tax year. 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.

The amendments of Decree No. 22/2009 (X. 16.) of the Ministry of Finance will come into force on 1 January 2012. However, it is important to note that **the new rules can be applied for all documentation due with respect to FY2011.**

Other amendments in terms of transfer pricing

Act CLVI of 2011 on the amendment of certain tax laws and other relevant acts has been published in the 140th issue of Magyar Közlöny (Hungarian Official Journal). We summarize below these amendments that relate to transfer pricing. The amendments are effective from 1 January 2012.

Default penalty

The amendments prescribe more stringent sanctions relating to the transfer pricing documentation. Accordingly, in case of repeated non-compliance with the transfer pricing documentation requirements, the default penalty of up to HUF 4 million may be levied per documentation. If the documentation is not prepared at all related to a specific transaction, the amount of the penalty may be four times the penalty previously levied, i.e. it may be up to HUF 16 million.

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 or French.



Reporting the cessation of related party relationship

Taxpayers will be obliged to report certain data of their related parties to the tax authority within 15 days of the cessation of the related party relationship.

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.

Foreign permanent establishments

Transfer pricing rules will not need to be observed in those cases where the corporate income tax base would not change even if a non-arm's length price was applied (if the income attributable to the foreign establishment is exempt from Hungarian tax based on the applicable double tax treaty).

Ernst & Young

Assurance | Tax | Transactions | Advisory

About Ernst & Young

Ernst & Young is a global leader in assurance, tax, transaction and advisory services. Worldwide, our 152,000 people are united by our shared values and an unwavering commitment to quality. We make a difference by helping our people, our clients and our wider communities achieve potential.

For more information, please visit www.ey.com

The information in this newsletter is correct to the best of our knowledge and belief at the time of going to press. Please note that the information in our newsletter is not intended to be relied on as tax advice and cannot replace consultation with tax advisors.

If you would like to include anyone from your organization to our newsletter mailing list, or would like your name to be removed from the list of recipients, please reply to our e-mail address (ey.tax@hu.ey.com), or fax: (+36 1) 451 8199.

For further information please contact:

Botond Rencz
+36 1 451 8602
botond.rencz@hu.ey.com

Róbert Heinczinger
+36 1 451 8262
robert.heinczinger@hu.ey.com

Zoltán Lipták
+36 1 451 8638
zoltan.liptak@hu.ey.com

Tibor Pálszabó
+36 1 451 8601
tibor.palszabo@hu.ey.com

Balázs Szölgvény
+36 1 451 8608
balazs.szolgyeny@hu.ey.com

Péter Vaszari
+36 1 451 8616
peter.vaszari@hu.ey.com

Tamás Vékási
+36 1 451 8220
tamas.vekasi@hu.ey.com

Hedvig Solyomvári
+36 1 451 8611
hedvig.solyomvari@hu.ey.com

Géza Kristóf Tóth
+36 1 451 8633
kristof.toth@hu.ey.com

Péter Király
+36 1 451 8635
peter.kiraly@hu.ey.com

Ágnes Neheli
+36 1 451 8205
agnes.neheli@hu.ey.com

Krisztina Papp
+36 1 451 8136
krisztina.papp@hu.ey.com

© 2011 Ernst & Young Advisory Ltd.
All rights reserved.

Ernst & Young refers to the global organization of member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients.

