The Hungarian transfer price rules in brief

March 2023

Introduction

With the development of the domestic and international regulatory environment, more and more emphasis is placed on the transparent, prudent operation of business associations. According to some analysts, thanks to globalization, more than 60 percent of world trade takes place between affiliated enterprises. In the current, highly globalized economy, where multinationals play a prominent role, transfer pricing is also a key issue on the agenda of the Organization for Economic Co-operation and Development ("OECD") and the European Union.

It can often be challenging to price intragroup transactions, to map out which transactions need to be documented year after year. The amendment to the law recently entering into force contains important changes related to transfer pricing ("TP"). Based on the new reporting obligation already in force for 2022, more focused and target oriented tax audits are expected to be launched.

The transfer pricing ...

is the price applied to transactions carried out between affiliated companies of the same group.

The price applied between independent parties under comparable circumstances is the **arm's length price.**

The arm's length principle requires related parties to design their prices as if they were independent of each other.

What is the importance of transfer pricing?

Multinational enterprises ("MNE's") are taxed at different rates in different countries. The pricing of transactions amongst them may therefore provide for the possibility of amending the tax base and artificially reallocating the tax liability.

For tax authorities, therefore, continuous monitoring of the intra-group prices applied, along with registration and documentation of intercompany transactions is of utmost importance. The Hungarian legislation is also in line with the relevant set of rules of the European Union and with the transfer pricing guidelines issued by the OECD.

When are two companies considered to be related?

According to the Hungarian legislation in force, two companies are considered related if:

- one has majority control in the other;
- a third company has majority control in both.

Thus, when examining equity interests, in contrast to many other countries, existence of majority control in Hungary is necessary in order to establish affiliation between two parties. It is important, however, that **not only direct but also indirect control** can result in affiliation.

There is also affiliation if...

... the same person has a dominating influence on the business and financial policies of two (or more) companies, in which case their management is the same.

Is it necessary to document all intercompany transactions for TP purposes?

No, certain companies and transactions are exempted from the obligation to keep transfer pricing records. Given the size of the company, there's no need to keep TP documentation for

- micro-enterprises employing fewer than 10 people and with an annual net turnover or balance sheet total of up to Hungarian Forints ("HUF") equivalent of EUR 2 million;
- small enterprises that employ fewer than 50 people and have an annual net turnover or balance sheet total of up to HUF equivalent of EUR 10 million.

Based on the nature of the transaction, among other things, it is not necessary to document the intercompany transaction if

- the arm's length value of the transaction (excluding Value Added Tax "VAT") between associated companies does not reach HUF 100 million (~ EUR 224,000) within the tax year (the contracts which may be consolidated are to be considered together);
- implemented by applying official price or the fixed price specified by law;
- free transfer and receipt of funds has taken place.

Andersen hint

To fully map out the transactions to be documented, you may also want to consider "low-visibility" transactions; e.g. transactions with branches, in-kind contributions, payment of dividends in-kind, reduction of capital, guarantees, sale of business, transfer of activities and services provided free of charge.

What elements does the transfer pricing documentation consist of?

The complete transfer pricing documentation consists of the following parts; a so-called master file, which presents the entire group of companies, and a so-called local file, which, in addition to the analysis of transactions, also contains the results of the economic analysis.

For comparable transactions, it is necessary to determine the arm's length price, a price range within the framework of economic analysis. In order to carry out the comparative analysis, we conduct research based on the nature of the transaction under consideration (the tasks performed by the parties, the assets used, the risks assumed and other characteristics affecting pricing), with databases also used and accepted by the tax authority.

Andersen hint

If the ultimate parent company does not prepare master file within the deadline or is not obliged to compile it under its local regulations, the group member may also be obliged to prepare a master file.

However, before preparing the documentation, it is recommended exploring untapped potentials, such as

- Examining, where there is relevant possibility for a corporate tax group, as this may subsequently partially exempt from the record-keeping requirement;
- Potentials for the use of the arm's length price range;
- Keeping certain asymmetries in the regulatory environment in mind.

In addition, it is of particular importance that the company uses the right pricing method, as this can have a significant impact on the results obtained. This is also a special focus during tax audits.

Failure to comply with the arm's length price principle carries a number of risks.

The application of an inappropriate transfer pricing may affect, inter alia, the following taxes

- Corporate, small business and local business tax, innovation contribution;
- Income tax on energy suppliers ("Robin Hood"); as well as
- Determination of the VAT base and customs value.

In addition to establishing the tax shortfall, failure to prepare the transfer pricing documentation may result a maximum default penalty of HUF 5 million payable per transaction with affiliated companies. However, the existence of properly prepared documentation is important not only to avoid penalties, but also in case of a possible inspection or judicial proceedings (whether domestic or international), it can be an efficient tool in the hands of the taxpayer.

Transfer pricing today – special attention to the challenges posed by the current economic situation

- After the economic growth and development experienced in recent years, a downturn is expected in many industries due to currently increasing commodity prices also greatly affecting financial results. And this can also change the transfer pricing process!
- The search for comparative transactions, as well as their reliability, is changing, and taxpayers need to keep an eye on this. In addition, due to the rapidly changing economic environment, it has become a priority to use as recent financial data as possible in comparative analyses.

Reporting requirements

Companies subject to TP documentation also have to provide transaction-level details as part of their corporate income tax ("CIT") returns. These include, inter alia, the volume of the intercompany transactions among affiliated entities, the transfer pricing method used, the results of database research and the prices applied.

Services

With our services, we are at the disposal of our clients throughout the entire transfer pricing cycle.

Planning

01 Company relationship mapping and identification of affiliated companies.

02 Exploration and systematization of related transactions and transactions to be documented.

03 Exploring potential "low-visibility" services, activities, developing the right pricing strategy.

04 Analysis of ownership activities and shareholder services.

05 Review or localisation of intra-group contracts and existing transfer pricing records.

06 Identification of risks arising in relation to related transactions.

07 Transfer pricing consultancy, review or planning of transfer pricing principles applied.

08 Advice on one-off transactions (e.g. high-value loans, intercompany loans, provision of services free of charge).

09 Support in business restructuring, exploration of tax consequences, determination of market price.

10 Consultation on changes in the legislative environment; BEPS Action Plan, Country-by-Country Reporting ("CbCR"), Anti-Tax Avoidance Directive ("ATAD").

Implementation

11 Assistance in developing adequate transfer pricing policy.

12 Accomplishment of comparative analysis using databases accepted and used by the tax authorities to support the transfer pricing used.

13 Preparation and submission of Advance Pricing Agreement ("APA") application to the Finance Ministry, professional representation and direct contact with the Finance Ministry.

14 Comprehensive preparation of transfer pricing documentation.

15 Review and, if necessary, preparation of the group's master file.

16 Assistance in preparing and filing the CbCR report.

17 Support in the preparation of the transfer pricing data report (as part of the CIT return).

Tracking

18 Representation with the tax authority in disputes, inspections, preparation of submissions and provision of professional support in connection therewith.

19 Annual review of transfer pricing documentation, updating economic analyses.

20 Annual review of transfer pricing data report.

For more information, please contact our colleagues!

This document was prepared in accordance with the legislation in force at the time of its preparation.
This document is for information purposes only and does not constitute tax advice.
The use of any information contained in this document is entirely at the user's own risk.

Radnai Károly
Managing Partner
karoly.radnai@hu.andersen.com

Székely György
Managing Partner
gyorgy.szekely@hu.andersen.com

Boár György
Managing Partner
gyorgy.boar@hu.andersen.com

Matuss Gábor
Partner
gabor.matuss@hu.andersen.com

Hegedüs Sándor
Director
sandor.hegedus@hu.andersen.com

Bánkuti Gábor
Manager
gabor.bankuti@hu.andersen.com

Andersen Adótanácsadó Zrt. **+36 1 920 6800**

1124 Budapest, Csörsz utca 43. MOM Park

hu.andersen.com/hu