

# TAX Alert

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## 2023 in transfer pricing - what has changed?

The new calendar year means more regulatory changes for taxpayers. These changes have not spared the area of transfer pricing. What will change? What are the important deadlines? What should be kept in mind?

### New documentation and reporting deadlines

Deadline for **preparing the Local File** - by the end of the 10th month following the end of the fiscal year.

Deadline for **preparing and submitting transfer pricing information** (TPR form) - by the end of the 11th month following the end of the fiscal year.

Deadline for submitting the Local File by the taxpayer at the request of the tax authority - 14 days.

### Important dates in 2023 - for companies with a fiscal year coinciding with the calendar year

31.03.2023	Deadline for preparing the Master File for 2021 Submission of CIT-8 (transfer pricing adjustment information) Submission of ORD-U (be aware of possible exemptions) Submission of CBC-P (for 2022)
31.10.2023	Deadline for preparing the Local File and benchmark/ compliance analyses
31.11.2023	Deadline for submitting TPR form (with a market-price clause - no need to submit a statement as in previous years)
31.12.2023	Deadline for preparing the Master File and submission of CBC-R for 2022

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## Statement on transfer pricing documentation

Preparation of the TP statement as a separate document was abolished and the modified content of the statement was transferred to information on transfer pricing (TPR-C/TPR-P). The new TP-R forms (containing the statement) are not yet available.

In the submitted statement, the taxpayer will declare that the local transfer pricing documentation has been prepared in accordance with the actual state, and the transfer prices covered by the documentation are determined on terms that would be agreed upon between unrelated entities.

## TPR form – information on transfer pricing

The taxpayer is obliged to submit the TPR form to the competent **Head of the Tax Office**, and not to the Head of the National Revenue Administration as it was before.

The TPR form with a market-price clause should be signed by the head of the entity, and in case the entity is headed by several members, by a distinguished person who is part of the management body. It is not permissible to sign this information through a proxy, **except for a proxy who is a lawyer, legal adviser, tax advisor or statutory auditor**.

TP-R is submitted on the basis of data contained in the local documentation, if the taxpayer was obliged to prepare the documentation.

## Who is responsible for submitting the TP-R form?

- a natural person - where the affiliated entity is a natural person
- a person authorized by a foreign entrepreneur to represent them through a branch - where the affiliated entity is a foreign entrepreneur whose branch is located in the territory of the Republic of Poland
- entity's manager and where the entity is managed by a body composed of multiple members - by the designated person who is a member of that body
- a proxy who is a lawyer, legal adviser, tax advisor or statutory auditor

**Important:** The proxy must have the power of attorney to sign the declaration submitted by means of electronic communication UPL-1.

## ORD-U

No obligation to submit ORD-U form for taxpayers who are obliged to submit TPR form and do not carry out transactions with tax havens.

From January 1st, 2023, the reference to indirect transactions has been removed (due to their complete elimination). At the same time, a new exception was added in relation to Art. 11k of the CIT Act.

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*The provision (submission of an ORDU) does not apply to entities obliged to prepare information on transfer pricing, excluding entities obliged to prepare information on transfer pricing that carry out controlled transactions in a given tax year, referred to in Art. 23 in sec. 2a of the PIT Act or art. 11k sec. 2a of the CIT Act.*

The obligation to submit an ORD-U arises in the case of:

- controlled transactions (with a value exceeding PLN 2,500,000.00 - financial transactions and PLN 500,000.00 - transaction other than a financial transaction) concluded with entities located in tax havens (direct haven transactions).

In the case of an entity whose related entity has its registered office in a tax haven and with which it enters into mutual controlled transactions, this entity cannot take advantage of the exemption and will be required to submit both the TPR and the ORD-U.

### **Possibility of refraining from preparing a comparative analysis for a specific group of entities**

The amendment assumes the possibility of **not preparing benchmark and compliance analyses for:**

- controlled transactions concluded by taxpayers who are **micro or small enterprises**
- **transactions other than controlled transactions** concluded with so-called **tax havens** covered by the obligatory documentation

**Micro-entrepreneur** - an entrepreneur that met all of the following conditions in at least one of the last two financial years:

- had an average annual employment of fewer than **10 employees** and
- achieved an annual net turnover from the sales of goods, products, and services and from financial operations not exceeding the PLN equivalent of **EUR 2 million**, or the total assets in the entrepreneur's balance sheet prepared at the end of one of those years did not exceed the PLN equivalent of EUR 2 million

**Small entrepreneur** - an entrepreneur that met all of the following conditions in at least one of the last two financial years:

- had an average annual employment of **less than 50 employees** and
- achieved an annual net turnover from the sales of goods, products, and services and from financial operations **not exceeding the PLN equivalent of EUR 10 million**, or the total assets in the entrepreneur's balance sheet prepared at the end of one of those years did not exceed the PLN equivalent of EUR 10 million

These amounts are converted into Polish zlotys at the average exchange rate announced by the National Bank of Poland on the last day of the financial year selected to determine the status of the entrepreneur.

### **Change of documentation thresholds - haven transactions**

In the case of controlled transactions with an entity which has its place of residence, registered office or management board in the territory or in a country applying harmful tax competition or a foreign permanent establishment located in the territory or in a country applying harmful tax competition, the documentation threshold is:

- PLN 2,500,000 – in the case of a financial transaction;
- PLN 500,000 – in the case of a transaction other than a financial transaction.

### **Exemption from the obligation to prepare transfer pricing documentation**

The catalogue of **exemptions from the obligation to prepare local file documentation** has been expanded for:

- controlled transactions covered by the investment agreement and the tax agreement
- transactions on settlements for “pure re-invoicing” (under specific conditions)
- controlled transactions covered by the safe harbour mechanism for low value added services (under fulfillment of conditions in art. 11f)
- controlled transactions covered by the safe harbour mechanism for loans, credits, bonds (under fulfillment of conditions in art. 11g)

The exemption will apply to re-invoices, provided that when making them:

- no added value is created and the settlement is made without taking into account the margin or profit mark-up
- settlement takes place without using the allocation key
- the settlement is not related to another controlled transaction
- the settlement took place immediately after the payment was made to an unrelated entity
- the related entity is not an entity with its place of residence, registered office or management board in the territory or in a country applying harmful tax competition

**Important:** The tax authority has the right to examine the market value of transactions between related parties regardless of the question of whether the obligation to prepare transfer pricing documentation arises.

### **Transaction value**

According to the introduced changes, the value of the transaction is:

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- in the case of a loan, credit or deposit – capital value
- in the case of an insurance or reinsurance contract - the sum insured
- in the case of a partnership agreement without legal personality – the total value of contributions made

The transaction value should not include VAT if it is neutral for the taxpayer. If this tax is not neutral, the value of the transaction should include it.

Important: in the case of taxpayers who do not have the full right to deduct VAT, the thresholds will be lowered.

### **Gratuitous payments**

The arm's length condition will be met in the case of gratuitous/partially paid services, when the market revenue on this account is recognized.

### **Transfer pricing adjustment**

The obligation to confirm the transfer pricing adjustment in the tax return has been waived.

It is allowed to use an accounting document (and not only a statement) to confirm that the adjustment was made by the other entity.

# About KR Group

KR Group was established in Poland in 2000. Over the years the company has built a considerable position on the highly competitive market of accounting, tax, audit, payroll and HR services. KR Group applies an excellent understanding of business realities to its core services, thus attracting the most renowned companies in its portfolio of clients.

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- Centralized payment process management services
- Pan-regional tax team capable of dealing with cross-border transfer-pricing projects and accounting software localization
- Interfaces and integration developed for most accounting and reporting software
- Knowledge-sharing tools and procedures ensuring time efficiency
- In-house developed accounting data warehouse connected with local accounting software.

For more information visit our website at [www.krgroup.eu](http://www.krgroup.eu)



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