

Transfer Pricing Country Profile
(to be posted on the OECD Internet site www.oecd.org/ctp/tp/countryprofiles)

Name of Country: POLAND / Date of profile: January 2012

1. Reference to the Arm's Length Principle

Article 11 of the CIT Law (similar regulations in article 25 PIT Law)

Clause 1

If:

- 1) an income tax payer having its seat (board of management) or place of residence within the territory of the Republic of Poland, hereinafter referred to as a "domestic entity", participates directly or indirectly in the management or control of an enterprise located abroad or has a share in its capital; or
 - 2) a natural or legal person residing or having its seat (board of management) abroad, hereinafter referred to as a "foreign entity", participates directly or indirectly in the management or control of a domestic entity or has a share in its capital; or
 - 3) the same legal persons or natural persons at the same time participate directly or indirectly in the management or control of a domestic entity and a foreign entity or have shares in their capitals
- and if, as a result of such relations, there are agreed or imposed conditions substantially different from those which would be agreed between independent entities and, as a result thereof, such entity does not disclose any income or discloses the income smaller than might be expected, if such relations did not exist – the income of a given entity and the tax due shall be assessed without taking into account the conditions resulting from such relations.**

Clause 8a

Regulations from clause 1-3 are applied when assessing the part of the income of the taxpayer, who is mentioned in article 3 clause 2 [non resident], carrying on activities through a permanent establishment situated on the Polish territory, liable to be attributed to the permanent establishment

2. Reference to the OECD Transfer Pricing Guidelines (if any)

Reference in Article 11 Clause 9 of the CIT law (similar regulations in article 25 PIT Law)

"Ordinance of Minister of Finance of 10 September, 2009 on the Mode and Procedure of Determining Legal Persons' Income by Estimation and Mode and Procedure of Elimination of Double Taxation of Legal Persons in Case of Adjustment of Profits of Associated Enterprises" has to take into account OECD guidelines

3. Definition of related parties

Related parties in international relations

Article 11 of the CIT law (similar regulations in article 25 PIT Law)

Clause 1

- 4) an income tax payer having its seat (board of management) or place of residence within the territory of the Republic of Poland, hereinafter referred to as a "domestic entity", participates directly or indirectly in the management or control of an enterprise located abroad or has a share in its capital; or
- 5) a natural or legal person residing or having its seat (board of management) abroad, hereinafter referred to as a "foreign entity", participates directly or indirectly in the management or control of a domestic entity or has a share in its capital; or

- 6) the same legal persons or natural persons at the same time participate directly or indirectly in the management or control of a domestic entity and a foreign entity or have shares in their capitals

Related parties in domestic relations

Art. 11 of the CIT law (similar regulations in article 25 PIT Law)

Clause 4

- 1) a domestic entity participates, whether directly or indirectly, in the management of another domestic entity or its control or holds a share in the capital of another domestic entity
- 2) the same legal or natural persons participate at the same time, whether directly or indirectly, in the management of domestic entities or their control or hold a share in the capital of these entities.

Clause 5

The provisions of clause 4 also apply to the relations of family nature or those resulting from employment relationships or property relations between domestic entities or persons performing managerial, inspecting or supervisory duties with these entities or where any person combines managerial, supervisory or inspecting duties performed with such entities.

Clause 6

The family relation referred to in clause 5 shall be meant marriage and consanguinity or affinity (relationship by marriage) up to the second degree.

General rules applying to related parties in both international and domestic relations

Art. 11 of the CIT law (similar regulations in article 25 PIT Law)

Clause 5a

Holding a share in the capital of another entity referred to in clause 1 and 4 shall mean a situation where an entity, whether directly or indirectly, holds a share of **at least 5 per cent** in another entity's capital.

Clause 5b

While determining the size of a direct share held by an entity in another entity's capital, a principle shall apply whereby if an entity holds a certain share in the capital of another entity, and the latter holds the same share in the capital of yet another entity, then the former entity holds an indirect share of the same size in the capital of this yet another entity; if these sizes differ, the indirect share shall be deemed to be of the smaller size.

Clause 8

Provisions of clause 4 shall **not apply to** performance made by companies which constitute **a tax capital group**.

Application of arm's length principle to transactions concluded with tax haven entities

Clause 4a

In cases when domestic entity concludes transactions with entity having the place of residence, seat or board of management within a territory of or in a country pursuing harmful tax competition, and conditions agreed in those transactions are substantially different from those which would be agreed between independent entities and, as a result thereof, such entity does not disclose any income or discloses the income smaller than might be expected– the income of a given entity shall be assessed using methods indicated in clause 2 and 3 or article 14 shall be applied accordingly.

4. Transfer pricing methods

Art. 11 of the CIT law (similar regulations in article 25 PIT Law)

Clause 2

- 1) a comparable uncontrolled price;
- 2) a resale price method;
- 3) a reasonable margin (“cost plus”) method.

If application of the methods above is impossible, the transactional profit methods shall be applied.

Attached: “Ordinance of Minister of Finance of 10 September, 2009 on the Mode and Procedure of Determining Legal Persons’ Income by Estimation and Mode and Procedure of Elimination of Double Taxation of Legal Persons in Case of Adjustment of Profits of Associated Enterprises” (English version)

5. Transfer pricing documentation requirements

Art. 9a of the CIT Law/ 25a of the PIT Law

1. Taxpayers performing transactions with entities related with these taxpayers – within the meaning of Article 11, clauses 1 and 4 – or transactions in relation to which the payment of sums due as a result of such transactions is made directly or indirectly for the benefit of an entity having the place of residence, seat or board of management within a territory of or in a country pursuing harmful tax competition shall be obliged to prepare tax documentation of such transaction(s) comprising:
 - 1) identification of the functions to be performed by the entities participating in the transaction (taking into account the assets used and the risk taken);
 - 2) specification of all envisaged costs connected with the transaction and the form and payment term;
 - 3) method and manner of calculating the profits and specification of the price of the subject of the transaction;
 - 4) determination of the economic strategy and other actions within its framework, in the case when the strategy adopted by the entity has influenced the value of the transaction;
 - 5) indication of other factors, in the case when the entities participating in the transaction took such factors into account for the purpose of determining the value of the subject of the transaction;
 - 6) determination of the benefits expected by the entity obliged to prepare the documentation, such benefits being connected with the performances, in the case of contracts relating to intangible performances (including services).
2. The obligation referred to in clause 1 above shall apply to transaction(s) between related entities in which the total amount (or its equivalent) resulting from the contract or the total amount, actually paid in a tax year, of performances enforceable in the tax year is higher than the equivalent of:
 - 1) EUR 100,000 if the value of transaction does not exceed 20 per cent of the initial capital, determined in accordance with Article 16, clause 7; or
 - 2) EUR 30,000 in the case of performance of services, sale or making available intangible assets and legal values; or
 - 3) EUR 50,000 in the remaining cases.
3. The obligation to prepare the documentation referred to in clause 1 shall also apply to a transaction in relation to which the payment of sums due as a result of such transaction is made directly or indirectly for the benefit of an entity having the place of residence, seat or board of management within a territory of or in a country admitting detrimental tax competition if the total amount (or its equivalent) resulting from the contract or the total amount, actually paid in a tax year, of performances enforceable in the tax year is higher than the equivalent of EUR 20,000.

Article 9a Clause 5a

Regulations from clause 1-5 are applied accordingly to taxpayers, which are mentioned in article 3 clause 2 [non residents] which carry on activities through permanent establishment situated on the Polish territory.

6. Specific transfer pricing audit procedures and / or specific transfer pricing penalties.

Article 19 of the CIT Law

Clause 4

If tax authorities or fiscal control authorities determine, under Article 11, taxpayer's income in an amount higher (loss in an amount lower) than the amount declared by the taxpayer in relation to the transactions referred to in Article 9a and the taxpayer does not produce to such authorities the tax documentation required by these provisions – the difference between the income declared by the taxpayer and that assessed by these authorities shall be subject to taxation at a rate of 50 per cent.

Remark: should the penal tax rate of 50% be applied, no additional interest on tax due (which would be a normal procedure) are applied

7. Relevant regulations on Advance Pricing Arrangements

Section IIA of the Tax Code

Attached summary of APA regulations in Poland (with contact information)

8. Link to relevant Government Internet sites

Information on APA procedure (Polish version)

http://www.mf.gov.pl/_files_/podatki/system_podatkowy/ordynacja_podatkowa_1_stycznia_2012_r..pdf

9. Other relevant information

CIT Law

The Ordinance of the Minister of Finance (issued under art. 9a of the CIT Law/art. 25a of the PIT Law) defines a list of tax havens. Transactions with tax haven countries are subject to documentation requirements even when the transactions are concluded between independent enterprises.

Thin capitalisation rules Art. 16 of the CIT Law (3:1 debt to equity ratio with 25% shareholding limit) Polish tax law restricts financing granted by certain related entities both Polish residents and foreign entities (a shareholder or a sister company held by the same parent holding at least 25% of share capital measured by voting power)

- if the debt to equity ratio exceeds 3:1, the interest payable in respect of any excess over this limit cannot be regarded as tax deductible

- for thin capitalization purposes, a "loan" is any kind of debt claim including debt securities and certain deposits or interest-bearing investments

Article 14 of the CIT Law (general rule for all companies)

Clause 1

The revenue from the sale of things or property rights, subject to clause 4 , shall be their value expressed by the price set up in the contract of sale. If such price, however, without a good reason, substantially

differs from the market value of such things or rights, the revenue shall be assessed by the tax authority in the amount of the market value.

Clause 2

The market value, referred to in clause 1, of things or property rights shall be assessed on the basis of market prices applied in trade in things of the same kind and sort, taking into account their condition and degree of wear-and-tear, and the time and place of the transfer against consideration.

Clause 3

If the value expressed in the price set in the contract of sale substantially differs from the market value of such things or rights, the tax authority shall require the parties to the contract to change such value or to give the reasons justifying the price substantially different than the market value. In the case of failure to reply, to change the value or to give reasons justifying the price substantially different than the market value, the tax authority shall assess the value taking into account the opinion of experts. If the value so assessed differs from the value expressed in the price by at least 33 per cent, the costs of the experts' opinion shall be paid by the seller.

Tax Code

Art. 82 clause 6 together with Ordinance of Minister of Finance - requirement to submit to tax authorities as attachment to yearly tax return (Form ORD-U) information on contract with associated enterprises (5% association limit) if contract or sum of contract in fiscal year exceed 300.000 Euro limit, information on each individual contract shall be mentioned if 5.000 Euro limit is exceeded

VAT Law

Article 32 VAT Law

Clause 1

Wherever:

3) there exists a relationship between the buyer and the seller, referred to in clause 2;
– the tax authority shall establish the level of turnover on the basis of average prices used in a given locality or market on the day of effecting the performance, reduced by the tax, where it turns out that said cases have affected the price.

Clause 2

The relationship referred to in clause 1, point 3, shall be deemed to exist, where the trading partners or persons performing for them managerial, supervisory or inspecting functions are related as a family, connected by relations of capital or property nature or relations resulting from employment relationship. Said relationship shall also be deemed to exist, where any of the above persons combines performing managerial, supervisory or inspecting functions for the trading partners.

Clause 3

Family relations referred to in clause 2 shall mean marriage, consanguinity or affinity up to second degree.

Clause 4

Capital relations referred to in clause 2 shall mean a situation where one of the persons or trading partners possesses or has at his disposal, directly or indirectly, at least **5 per cent** of all voting rights.

Note

1. Relevant provisions of domestic legislation referring to the Arm's Length Principle.
2. Reference if any to the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations in domestic legislation or regulations.
3. Relevant legislation or regulations containing a definition of related parties or associated enterprises.
4. Relevant legislation or regulations containing guidance on transfer pricing methods including hierarchy among them if any.
5. Relevant regulations if any in relation to transfer pricing documentation requirements.
6. Relevant regulations if any on specific transfer pricing audit procedures and / or specific transfer pricing penalties.
7. Relevant regulations if any on Advance Pricing Arrangements.
8. Addresses of the Internet sites of the relevant authorities in charge of transfer pricing policy, its administration and Advance Pricing Arrangements.
9. Other relevant information, for instance having gone through a peer review, or having new transfer pricing regulations in preparation.

Remark: please keep in mind that presented translation of the acts of law is not official.