

Transfer pricing in Slovakia



Specific rules regarding transactions between a Slovak tax payer and its foreign related parties went into effect in 1993. From this time, Slovak tax law has required that taxpayers apply market prices in transactions carried out with their foreign related parties. When Slovakia entered the OECD in 2000, the OECD guideline for multinational enterprises was adopted, which defines the main transfer pricing rules.

The new 2009 Guideline

The current Slovak income tax law is consistent with the OECD transfer-pricing guidelines for cross-border transactions. Slovak taxpayers are obliged to support the tax deductibility of their costs with sufficient documentation.

Before 2009, Slovak tax legislation did not specify what the TP documentation should contain for transfer pricing ("TP") purposes. Thus there was some uncertainty about what Slovak tax payers should include in their TP documentation to show that prices were at arm's length (market prices). To reduce this uncertainty, the Slovak Ministry of Finance issued a guideline which sets out the content of obligatory TP documentation ("the Guideline"). The Guideline is applicable to transactions carried out by Slovak companies from January 1, 2009.

TP Documentation

Under the Guideline, a Slovak company's obligatory TP documentation should include information that explains how the prices applied in transactions with foreign related parties have been set, and justifies their arm's length nature. The basic TP documents under the Guideline are based on EU recommendations and should include general TP documentation (Masterfile) and specific TP documentation (local file).

The Masterfile outlines information about the pricing policy within the whole group of related entities (Slovak and foreign):

- the identification of the group members;
- group ownership structure;
- business description;
- industry identification;
- the business strategy of the group; and
- description of the functions undertaken and the risks assumed by individual entities within the group.

Although the basic TP documentation is not required for all taxpayers, it is advisable for all entities involved in transactions with foreign related parties to have detailed TP documentation.

The local TP documentation should contain specific information about the Slovak entity and its transactions with its foreign related parties:

- the identification of the entity and its ownership;
- a description of its business and industry;
- its planned business strategy and business plan;

- a list of intra-group transactions and their descriptions;
- an overview of the entity's intangible assets;
- a description of the functions undertaken and the risks assumed by the Slovak entity;
- benchmarking study / studies; and
- information on the choice and application of TP methods.

What is obligatory

The basic TP documentation is not obligatory for all Slovak taxpayers. It needs to be prepared only for material transactions undertaken by taxpayers that prepare their financial statements under International Financial Reporting Standards (IFRS). Other Slovak taxpayers should prepare simplified TP documentation that includes the information on transactions with foreign related parties that has to be disclosed in the notes to the financial statements of the Slovak taxpayer.

The obligatory TP documentation should be provided to the Slovak tax authorities in Slovak language (unless the tax authorities approve some other language based on the taxpayer's request) within 60 days of the tax authorities' request during a tax inspection.

Although the basic TP documentation is not required for all taxpayers, it is advisable for all Slovak entities involved in

transactions with their foreign related parties to have detailed TP documentation. This is because, during a tax inspection, the Slovak taxpayer should be able to prove that prices applied in transactions with its foreign related parties have been set at arm's length and the simplified TP documentation (as defined by the Guideline) is highly unlikely to be sufficient to prove this. Furthermore, the tax authorities now have a group of tax inspectors specialized in TP matters, and detailed tax inspections focused on TP are becoming increasingly common. A Slovak entity that lacks sufficient documentary evidence to support its prices with foreign related parties is exposed to the risk of significant increases in its tax charge should its pricing be examined during a tax inspection.

Penalties

If a Slovak taxpayer does not provide the Slovak tax authorities with the obligatory TP documentation within the required deadline, the tax authorities can impose a penalty for this.

In addition, if transactions between foreign related parties are not made based on the arm's-length principle, and this results in a reduction in the Slovak entity's corporate income tax base, then the tax authorities can adjust the corporate income tax base to that which they believe would have been achieved had arm's-length prices been used and assess related penalties. It is thus essential that the taxpayer is able to defend the prices used.



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