

Portugal amends transfer pricing legislation

September 23, 2019

In brief

On September 18, 2019, a new bill – [Bill 119/2019](#) – was published in Portugal that introduces changes to various tax codes, including significant amendments to current transfer pricing legislation. Among other aspects, the changes impact the use of transfer pricing methods, documentation requirements, and Advance Pricing Agreements. The new legislation takes effect on October 1, 2019.

In detail

Background

The draft bill 180/XXI, first presented by the Portuguese Government on January 24, 2019, focused on amending several tax codes with the purpose of improving the services provided by the Portuguese tax administration and clarifying reporting obligations of taxpayers.

This draft bill was considered a large-scale initiative since the proposed amendments covered fourteen tax diplomas, including the Individual Income Tax Code (CIRS), the Corporate Income Tax Code (CIRC) and the Value Added Tax Code (CIVA).

After being approved by the Portuguese Parliament on July 19, 2019, the final bill – [Bill 119/2019](#) – was published in Portugal's official journal (*Diário da República*) on September 18, 2019.

Changes to the transfer pricing legislation

As mentioned, the new bill introduces amendments to various tax acts. With regards to transfer pricing in particular, it introduces changes to Articles 63, 130, and 138 of the Corporate Income Tax Code and Article 117 of the General Regime for Tax Offenses. The various amendments are summarized below:

- Taxpayers that are monitored by the Large Taxpayers Unit are now required to submit transfer pricing documentation by the 15th day of the 7th month following the end of the preceding fiscal year with regards to said fiscal year;
- The definition of transactions subject to transfer pricing rules was broadened to explicitly include transactions with related entities within

the scope of business restructuring activities;

- The hierarchy of transfer pricing methods was removed, aligning Portuguese transfer pricing legislation with the guidance included in the 2017 version of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (the OECD Guidelines);
- Similarly, reference to the use of 'other methods or techniques of analysis' was introduced in the case where transfer pricing methods cannot be used due to the unique or singular character of transactions or due to the lack or scarcity of reliable comparable data;
- The content of the legislation was updated so that it is aligned with the information

that is currently required to be included in the annual statement of accounting and tax information (*Informação Empresarial Simplificada*) particularly with regards to the inclusion of information on any transfer pricing adjustments made during the year;

- The power of the Portuguese Tax Administration was strengthened to make corrections to the taxable income when transfer pricing rules are not followed;
- A fine up to € 20,000 (plus 5% for each day of delay in fulfilling the obligation) was introduced for noncompliance of Country-by-Country Reporting notification requirements;
- The term of Advance Pricing Agreements is extended from three years to four years;
- Finally, a revision of the Minister of Finance Decree n° 1446-C/2001, December 21, which regulates the application of transfer pricing rules in Portugal, is expected in order to align the current drafting of the decree with the new wording of the legislation.

as well as harmonize Portuguese transfer pricing legislation with the latest OECD Guidelines.

Significantly, the amendments also highlight the importance that the Portuguese Tax Authorities are placing on transfer pricing, namely by making the submission of transfer pricing documentation mandatory for its largest taxpayers. Taxpayers in Portugal should review their transfer pricing obligations in light of the new legislation to make sure they remain compliant.

The new legislation will enter into force on October 1, 2019.

The takeaway

This bill represents the most significant change in transfer pricing legislation in Portugal since publication of the Minister of Finance Decree n° 1446-C/2001, on December 21, 2001. These amendments are mainly intended to complement and clarify reporting obligations of Portuguese taxpayers

Let's talk

For a deeper discussion of how the changes to Portugal's transfer pricing legislation might affect your business, please contact:

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