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highlights

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Due to tax law amendments adopted at the end of 2014, an increasing number of companies may be affected by the tighter obligations on transfer pricing records. In this newsletter we would like to draw attention to these changes.

The related company concept defined in Act LXXXI of 1996 on Corporate Tax and Dividend Tax (hereinafter referred to as: "CDT Act") was broadened as of 1 January 2015. On this basis, parties shall also qualify as related companies if there is controlling influence over business and financial policy between the companies based on overlaps in the respective management teams.

Companies that fell under the scope of related companies due to the above legislative changes had to report this fact on the tax authority's designated report form by 15 January 2015. It is important to note that related companies only need to be reported if a contract had previously been concluded between the parties. If the taxpayer has not yet concluded a contract with a party that would qualify as a related company pursuant to the new legislation, some of the related company's data must be reported to the tax authority within 15 days only after concluding the first contract. Failure to fulfil the notification obligation may be penalised by the tax authority with a default penalty of up to HUF 500,000 during a tax inspection.

In addition to the notification obligation, the amended definition of the related company also involves the reviewing of transfer prices applied in mutual transactions of "new" related companies, which may even generate an obligation to keep transfer pricing records. The CDT Act contains general rules pertaining to transfer pricing records, whereas detailed provisions are included in Ministry of Finance Decree 22/2009 on the obligation to keep records on arm's length prices (hereinafter referred to as: MoF Decree).

Based on the MoF Decree, if the taxpayer is obliged to keep records on transfer pricing, the taxpayer may use its own contracts concluded with independent parties, contracts between its related companies and independent enterprises, contracts between independent enterprises as well as public information or data in databases that can be checked by the tax authority to determine the arm's length price. Given that data in contracts between independent enterprises and, in many cases, in contracts between related companies and independent companies qualify as business secrets, taxpayers may rely on information included in their own contracts with independent parties or, in the absence of such, information gained from databases when determining arm's length prices.

The new Section 18 (9) of the CDT Act and the amendments to the MoF Decree promulgated on 31 December 2014 tighten the rules further on the most frequently used comparative analyses prepared using databases, which must first be applied upon fulfilling documentation obligations from tax year 2015. Consequently, it is justified to apply interquartile ranges when using statistical methods if the following circumstances prevail simultaneously:

- the taxpayer determines the arm's length price using the resale price method, the cost plus method, the transactional net margin method, the profit split method or other method;
- the taxpayer determines the arm's length price based on public information, data stored in a database that can be checked by the tax authority or data available from other sources, publicly accessible data or data that can be checked by the tax authority;
- comparative analyses take into account the figures of at least 10 companies over a minimum of three financial years, or the comparative sample is higher than 15 percentage points.

However, interquartile ranges should not be applied even under the above circumstances if the taxpayer conducted a functional analysis of every single element of the sample resulting from the comparative analysis, and verifies without doubt that the controlled transaction and the compared transaction are comparable, and there are no shortcomings that rule out the determination of comparativeness.

It should also be noted that the above rule pertaining to the use of interquartile ranges was already applied by the tax authority in practice during earlier tax inspections, so the amendment applicable from 1 January 2015 can be considered as written confirmation of earlier procedural practice, thus encouraging taxpayers to be more careful in determining arm's length prices.

The newsletter accurately reflects the statutory provisions as they stand at the time of its issue.
The authors of the news articles have endeavoured to provide general information that both reads well and is professional. Given the general nature of the content and possible changes to legal regulations, please contact us if you require this information tailored to your personal circumstances.

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