

## Do you know everything about transfer pricing? We have some news...



### A brief summary of the transfer pricing obligations for 2017

Starting with the transactions concluded in 2016, the **large taxpayers** which conclude annual transactions with all affiliated persons in an amount which exceeds or is equal to the materiality thresholds:

- EUR 200,000 EUR in case of interest received / paid;
- EUR 250,000 in case of performance of services received / provided;
- EUR 350,000 in case of transactions regarding purchases / sales of assets) have the obligation to prepare the transfer pricing file.

The deadline for preparing the transfer pricing file is 25 March 2017.

Be careful however! The transfer pricing file should not be submitted with the tax authority, but kept within the company and submitted to the tax authorities at their request. The tax inspectors may request the file in any case (irrespective of whether the company is subject to a tax control or not), and the company has the obligation to present it within 10 days as of the request.

# Clients & Friends Alert

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In case of large taxpayers **which conclude transactions below the said thresholds and small and medium taxpayers** which conclude annual transactions with all affiliated persons in an amount which exceeds or is equal to:

- EUR 50,000 EUR in case of interest received / paid;
- EUR 50,000 in case of performance of services received / provided;
- EUR 100,000 in case of purchases / sales of assets, the file may be requested by the tax authorities only during a tax inspection. The deadline for submission of the file is between minimum 30 days and maximum 60 days with the possibility of extension by another maximum 30 days.

## How are the materiality thresholds calculated?

The materiality thresholds are calculated by adding up the movements related to the receipts / payments for each category of transactions (interest / services / assets).

### For instance:

The large taxpayer Biriş Goran provided tax services in 2016 for 3 affiliated clients for which it received fees as follows:

Fees received from affiliated client 1 – EUR 150,000

Fees received from affiliated client 2 – EUR 50,000

Fees received from affiliated client 3 – EUR 5,000

All fees received for the provision of services to the affiliates = EUR 205,000

Furthermore, also in 2016, the large taxpayer Biriş Goran received fees of EUR 100,000 from granting the software use right to its affiliates.

All fees received for the services provided = EUR 205,000 (fees related to the tax services provided) + EUR 100,000 (fees for granting the software use right).

Therefore, the company Biriş Goran shall be obliged to prepare the transfer pricing file in 2017 for the transactions in 2016, since such transactions exceeded the materiality thresholds indicated in Order 442 / 2016.

## What is the risk in case the transfer pricing file is not prepared?

According to the law, the non-fulfillment by the taxpayer of the obligations to prepare the transfer pricing file under the conditions and in the periods provided by law, as well as the non-observance by the taxpayer of the obligation to submit the transfer pricing file at the request of the central tax authority is a contravention and is sanctioned by fine, as follows:

- from RON 12,000 to RON 14,000 for medium and large taxpayers
- from RON 2,000 to RON 3,500, for other legal entities and for natural persons.

Furthermore, the non-observance by the taxpayer, as well as by the persons with whom it has or had economic or legal relationships, of the obligation to provide the tax authority with registries, records, business documents and any other deeds is a contravention and is sanctioned by fine, as follows:

- from RON 25,000 to RON 27,000 for legal entities included in the category of large and medium taxpayers, and
- from RON 6,000 to RON 8,000 for other legal entities.

In addition to such contraventions, the tax authorities may adjust the result of the company subject to verification based on the level of the central trend of the market (as a rule, the central trend of the market is the one resulting following a benchmark study performed by the tax authority).

## Some questions without answer...

### 1. I receive notice in January that in 2017 I am a large taxpayer. Should I prepare the file until March 25th or not?

What is a large taxpayer? Redefinition:

(1) FINANCIAL CRITERION: Turnover - 50%, volume of the declared tax obligations - 30% and volume of personnel expenses - 20%.

(2) AFFILIATION CRITERION: The direct affiliation to a large taxpayer.

(3) INVESTMENT CRITERION: The newly-established taxpayers that, on the incorporation date, undertake to make investment of minimum 10 million EUR in maximum 3 consecutive years.

(4) SOLE TAX GROUP CRITERION: The members of a sole tax group are included in the category of large / medium taxpayers when the selection criteria are met by the tax representative or any of the members belonging to the group.

Effect:

2016: 1,418 large taxpayers

2017: 2,940 large taxpayers

### 2. What happens if:

- I do not have the support of the group management for preparing the file at the local level, the information required for the section "Group description" is not provided to me?
- The group does not have a company which provides support services for the entire group and, therefore, such information regarding the group is not centralized?
- The company analyzed in Romania is part of a multinational group with thousands of companies worldwide? In short: the section "Group description" cannot be presented?

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## About us

Biriş Goran extended its tax practice by providing transfer pricing services in collaboration with Cabot Transfer Pricing.

Cabot Transfer Pricing is active on the transfer pricing consultancy market since 2011 and assisted around 60 subsidiaries of large multinational and local groups in relation to the preparation of the transfer pricing files, the preparation of the transfer pricing policies, the preparation of the Master File at group level.

The collaboration between Biriş Goran and Cabot Transfer Pricing is aimed at providing comprehensive transfer pricing services from preparation of the transfer pricing file to assistance during the tax inspection and tax and legal assistance services in preparing appeals regarding transfer pricing and sustaining them in court.

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