Transfer Pricing Documentation – Implementation in Liechtenstein

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The OECD has developed a new approach to Transfer Pricing Documentation under the BEPS project. The three-tiered documentation approach consists of Country-by-Country Reporting (CbCR), master documentation (master file) and country-specific documentation (local file). Country-by-Country Reporting[1] as well as the statutory general requirement to document transfer prices were already introduced in Liechtenstein on 1 January 2017. The Tax Ordinance [SteV] now regulates how transfer prices are to be determined and how their documentation must be prepared. The Tax Ordinance entered into force on 1 January 2018 and applies to the tax year 2018 for the first time.

OECD Transfer Pricing Guidelines

Taxpayers in Liechtenstein are now required to use the most up-to-date version of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations when determining transfer prices for transactions with associated entities and permanent establishments. The revised version of the OECD Transfer Pricing Guidelines, based on the BEPS project, was published on 10 July 2017.[2] Future changes to the OECD Transfer Pricing Guidelines will automatically be applied in Liechtenstein without any prior adjustments to the Tax Ordinance.

Selection of methods

When selecting the most suitable transfer pricing method, the actual facts and circumstances of the specific transaction must be taken into account in accordance with Article 31b (1) of the Tax Ordinance [SteV]. In compliance with the OECD Transfer Pricing Guidelines, one of the following methods has to be selected:

- comparable uncontrolled price method;
- resale price method;
- cost plus method;
- transactional net margin method;
- transactional profit split method.

If the listed methods do not appear to be suitable in a specific case, applying some other method is also permitted. It is however important that the applied method properly reflects the arm's length principle.

Documentation requirements in general

As of January 1, 2017, all taxpayers in Liechtenstein are generally required to document transfer prices. Only material transactions with associated entities and permanent establishments are to be documented. How the documentation has to be done is now specified in the Tax Ordinance with effect from 1 January 2018. Generally, the documentation differs according to the size of the enterprise / group of companies. A distinction is made between the documentation requirements for group companies with a consolidated turnover of more than CHF 900 million, documentation requirements for large enterprises, and simplified documentation requirements for Small and Medium-sized Enterprises (SMEs).

Documentation requirements for group companies with a consolidated turnover > CHF 900 million

Group companies (taxpayers that are part of a group of companies) with a consolidated turnover of more than CHF 900 million are required, under Article 31b (2) of the Tax Ordinance (SteV), to document the appropriateness of transfer prices by means of a master file and local file. The documentation requirements regarding a master file and local file are linked to the turnover threshold from Country-by-Country Reporting. By analogy with the application of CbCR, we assume that, subject to consistent interpretation, only taxpayers who are covered by CbCR have to create master files and local files. A difference to the CbCR is that not only the

[1] Further information on Country-by-Country Reporting in Liechtenstein can be found in our newsletter.
[2] http://www.oecd.org/tax/transfer-pricing/oecd-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations-20769717.htm

group parent company is subject to the documentation requirements, but all Liechtenstein-domiciled enterprises of a group of companies are required to create master files and local files.

Documentation by means of a master file and local file is based on the requirements of the OECD Transfer Pricing Guidelines. The **master file** should contain information that is relevant to the group of companies as a whole. It is standardized information that provides an overview of the operations of a multinational group of companies, including the nature of global operations, the overall transfer pricing policy, and the global allocation of its income and economic activity. Annex I of Chapter V of the OECD Transfer Pricing Guidelines contains a list of what should be included in the master file. It refers, in particular, to the following information about the group of companies:

- overview of the organizational structure (legal structure, ownership, geographic location of the operating companies);
- description of business activities (including supply chain information, service arrangement, main geographic markets, and analysis of contributions to value creation by individual enterprises and restructuring measures);
- information on intangibles (including general strategy for the development, ownership and exploitation of intangibles, listing of important arrangements among enterprises and description of the transfer pricing policies in relation to intangibles and information on transfers of intangibles);
- overview of intra-group financial activities (including information on the group's financing, group financing enterprises and the transfer pricing policies with regard to intra-group financing arrangements);
- survey of the financial and tax situation (including the group's annual consolidated financial statement, listing and brief description of unilateral Advance Pricing Agreements (APAs) and other tax rulings relating to the allocation of income among countries).

The **local file** complements the master file, which shows the compliance with the arm's-length principle of domestic taxpayers with regard to material transactions with associated enterprises and permanent establishments. Transactions are considered material if purchases and sales of goods exceed the amount of CHF 1 million per associated entity or permanent establishment and year. Regarding other expenses and income, transactions are to be documented which exceed the amount of CHF 250,000 per expenses / income category, associated entity / permanent establishment and year. Only cross-border, but not purely domestic transactions are subject to the documentation requirements regarding a master file and local file.

The information that a local file should contain is listed in Annex II of Chapter V of the OECD Transfer Pricing Guidelines. A local file should, in particular, include the following information:

- description of the local company (including management and organizational structure, business activities and strategy, key competitors);
- information on controlled transactions (including description and scope of controlled transactions with associated enterprises (e.g. procurement of manufacturing services, purchase of goods, provision of services, loans, financial guarantees, licenses), copies of intra-group agreements, detailed comparability and functional analysis, description of the selection of the transfer pricing method including the reasons for selecting that method, copies of existing APAs and other tax rulings);
- financial information (annual financial statements, ties between the annual financial statement and the financial data used for transfer pricing, statements of comparables used).

Documentation requirements for large companies

Taxpayers who are not required to prepare master files and local files must document the appropriateness of transfer prices in accordance with the provisions of Article 31b (4) of the Tax Ordinance [SteV]. This includes enterprises that exceed all three size criteria pursuant to Article 1064 (2) of the Persons and Companies Act:

- total assets > CHF 25,9 Mio.
- net turnover of the previous year > CHF 51,8 Mio.
- number of employees > 250 on average in the business year.

Large companies that do not create master files / local files must document cross-border transactions, if purchases and sales of goods exceed CHF 500,000 per associated entity / permanent establishment and year, and for other expenses and income, if they exceed CHF 125,000 per expenses / income category, associated entity / permanent establishment and year.

Furthermore, the documentation has to contain the following basic information:

- description of the local enterprise (including the business model as well as the legal and organizational structure);
- listing of all business relationships with associated entities and permanent establishments (type and scope);
- description of the allocation of relevant functions, risks and assets;
- description of the selection of the transfer pricing method including the reasons for selecting that method;
- documents or analyzes regarding the specific determination / appropriateness of transfer prices.

Submission of the documentation

The documentation of enterprises of multinational groups of companies with a consolidated turnover of more than CHF 900 million and large companies must be submitted to the Tax Administration on request within 60 days. These documentation requirements include transactions with associated entities, if the shareholding or beneficial interest amounts to at least 25%. The documentation may be created in German or English.

Simplified documentation requirements

Small and medium-sized enterprises (SMEs), i.e. enterprises that do not qualify as group companies with a consolidated turnover of more than CHF 900 million or large companies, have simplified documentation requirements. SMEs have to document compliance with the arm's length principle by suitable documents.

The simplified documentation requirements also cover domestic transactions of enterprises of multi-national groups of companies with a consolidated turnover of more than CHF 900 million and large companies, cross-border transactions below the respective threshold, and transactions among associated entities with a share-holding / beneficial interest of less than 25%. The relevant documents must be submitted to the Tax Administration on request. There is no deadline for this.

International Aspects

The documentation requirements regarding a master file and local file represents a best practice approach and is, internationally, inconsistently implemented with temporal offsets. Due to applicable national regulations, multinational Liechtenstein enterprises abroad may be required to document the appropriateness of transfer prices at a much lower threshold. As a result, not only national but also international requirements may be relevant for Liechtenstein enterprises.

Non-compliance with documentation requirements may not only lead to high fines, but also to disadvantageous double taxation. Liechtenstein enterprises are well advised to continuously update their Transfer Pricing Documentation in order to be ready to timely respond to any request from the Tax Administration and to provide proper documentation.

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