



# New Guideline of the Ministry of Finance on the content of transfer pricing (TP) documentation

At the end of 2022, the Ministry of Finance of the Slovak Republic ("MFSR") published a new Guideline No. MF/020061/2022-724 (hereinafter referred to as "Guideline") in the Financial Bulletin No. 23/2022, stipulating the content of the transfer pricing documentation. The new Guideline is now available on the MFSR's website<sup>1</sup>.

We summarize the most important changes that will be applicable for the tax period after 31 December 2022, in the below newsletter. The changes will have to be applied starting from 1 January 2023, i.e., already to the transfer pricing documentation for the 2023 tax period.

## Definition of a significant transaction

In order to reduce the administrative burden, [the amendment](#) to the Act No. 595/2003 Coll. on Income Tax („ITA“), introduced a threshold of

controlled transaction or a group of controlled transactions which are subject to transfer pricing rules. According to the new threshold, a transaction or group of transactions is only considered for transfer pricing purposes if the taxable income and/or tax expenditure in the relevant tax period exceeds EUR 10,000 (EUR 50,000 for the principal on loans and borrowing) for any of the related parties involved in the transaction. Transactions below this level are not subject to transfer pricing rules.

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<sup>1</sup> <https://www.mfsr.sk/sk/dane-cla-uctovnictvo/priame-dane/dane-z-prijmu/transferove-ocenovanie/novinky-oblasti-transferoveho-ocenovania/>

The new Guideline is implementing this rule into the area of transfer pricing documentation and abolishes the obligation to document transactions below EUR 10,000 (EUR 50,000 in case of loans and borrowings). In practice, this means that only transactions or groups of transactions exceeding EUR 10,000 (EUR 50,000 in case of loans) may trigger the documentation obligation.

As regards quantitative criteria for determining the documentation scope of controlled transactions (so-called materiality threshold criterion), no changes have been made under the new Guideline, despite numerous discussions among the professional public. Therefore, the rather 'subjective' materiality threshold defined under the Act No 431/2002 Coll. on Accounting ('the Accounting Act') is applied also after 2022. This 'subjective' materiality threshold under the Accounting Act will thus coexist with the clearly defined thresholds (i.e. EUR 1,000,000 and EUR 10,000,000). By keeping also the 'subjective' materiality threshold, the new Guideline maintains a certain flexibility in defining the scope of documented controlled transactions, which, on the other hand, does not contribute to legal certainty. The absence of explicitly defined materiality thresholds gives room for different interpretation of the materiality by the tax authorities, what may lead to disputes as regards to the scope of the transfer pricing documentation.

### **Extension of the documentation obligation for permanent establishments**

The amended ITA from 1 January 2023 aligns the method of determining the tax base of a permanent establishment with the Authorized OECD Approach. Accordingly, the new Guideline reflects those changes in the TP documentation obligation for permanent

establishments. Yet, the obligation to prepare a TP documentation by permanent establishments is not new and has been in force in the past.

Starting from 2023, in addition to the standard elements of a full, standard, or simplified documentation, a new obligation to document the attribution of capital and financing costs to the permanent establishment is introduced, if it is to claim such costs as tax deductible. This represents a rather complicated analysis particularly for permanent establishments outside the financial sector which do not prepare capital allocation calculations for their internal and/or regulatory purposes. This obligation may thus impose additional administrative burden for the preparation of a TP documentation of a permanent establishment.

### **Simplification of the conditions for the simplified scope of documentation**

As announced by the MFSR, the scope of documentation has been updated under the new Guideline. This is achieved by simplifying the conditions for preparation of simplified TP documentation.

Going forward, the obligation to prepare a simplified TP documentation will only apply to those taxpayers that are not obliged to prepare documentation in a full or standard scope and meet one of the following criteria:

- Taxpayers facing losses while simultaneously having significant transactions under the Accounting Act, i.e., taxpayers who have recognized a tax loss<sup>2</sup> or utilized a tax loss<sup>3</sup> in the given tax period,
- Taxpayers who do not qualify for the reduced 15% income tax rate (with a turnover above 49 790 EUR in a

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<sup>2</sup> Article 2 point k) ITA.

<sup>3</sup> Article 30 ITA.

consecutive 12 month period) while simultaneously having significant transactions under the Accounting Act,

- Taxpayers who claim tax incentives.

The simplified documentation obligation has thus been extended to all taxpayers whose turnover exceeds 49,790 EUR for 12 consecutive calendar months (e.g., natural persons, entrepreneurs, and legal entities) or taxpayers whose turnover is lower but report or amortize a tax loss.

From 2023, the obligation to prepare a simplified TP documentation will no longer apply to situations such as: natural or legal person classified as “micro-entity”<sup>4</sup> with no tax losses nor domestic transactions of public entities.

## Entry into force

The new Guideline will apply to preparation of TP documentation for the tax period starting after 31 December 2022.

## Conclusion

In view of the above changes, it can be concluded that no major changes have been introduced. However, for taxpayers with a turnover above 49 790 EUR and with transactions that are considered significant under the Accounting Act, there will be an extension in preparation of the shortened documentation obligation compared to the past criteria.

In particular, the administrative burden has been reduced for transactions below 10 000 EUR or in case of loans and borrowings below 50 000 EUR.

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<sup>4</sup> An entity with a turnover up to EUR 49,790 for no more than 12 consecutive calendar months

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