

# Poland

## Transfer Pricing Country Profile

February 2022

		SUMMARY	REFERENCE
<b>The Arm's Length Principle</b>			
1	Does your domestic legislation or regulation make reference to the Arm's Length Principle?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Article 11c para. 1, 11j para. 1 of the Corporate Income Tax act ( <a href="#">CIT act</a> )  Article 23o para. 1, 23v para. 1 of the Personal Income Tax act ( <a href="#">PIT act</a> )
2	What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?	<p>The OECD Transfer Pricing Guidelines are not part of the Polish law, however they are used as an explanatory instrument. Also in accordance with regulations contained in the PIT and CIT act, the Minister of Finance act on TP assessments procedure and Minister of Finance act on TP documentation take into account mainly the OECD Transfer Pricing Guidelines. The minister competent for public finance, by regulation, determines the manner and procedure of the assessment of the compliance of the conditions agreed between the related subjects with the conditions which would be agreed between unrelated subjects, including the criteria for the comparability of those conditions. Such regulation regards ensuring correct verification of transfer prices carried out by taxpayers and tax authorities as well as taking into account the OECD TPG.</p>	CIT: Article 11j para. 1 and article 11q para. 4 of the Corporate Income Tax act ( <a href="#">CIT act</a> )  <a href="#">Minister of Finance act on TP assessments procedure</a>  <a href="#">Minister of Finance act on TP documentation</a>  PIT: Article 23v para. 1 and article 23zc para. 4 of the Personal Income Tax act ( <a href="#">PIT act</a> )  <a href="#">Minister of Finance act on TP assessments procedure</a>  <a href="#">Minister of Finance act on TP documentation</a>
3	Does your domestic legislation or regulation provide a definition of related parties? If so, please provide the	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Art. 11a para. 1 point 4 and para. 2 of the <a href="#">CIT act</a>

	<p><b>definition contained under your domestic law or regulation.</b></p>	<p>Related subjects – this shall mean:</p> <p>a) the subjects out of which one subject exerts considerable influence upon at least one other subject; or</p> <p>b) the subjects upon which the following subjects or persons exert considerable influence:</p> <p>– the same other subject or</p> <p>– a spouse, relative or relative by affinity up to second degree of a natural person exerts considerable influence upon at least one subject; or</p> <p>c) a partnership and its partners; or</p> <p>d) a taxpayer and its foreign establishment, and in the case of a tax capital group – a company belonging to the group and its foreign establishment.</p> <p>Exerting of significant influence referred to in letters a and b shall be understood as:</p> <p>1) holding directly or indirectly at least 25 per cent:</p> <p>a. of shares in capital or</p> <p>b. of voting rights in control bodies, decision-making bodies or managing bodies; or</p> <p>c. of shares or rights to share in profits or property or expectancy thereof, including participation units and investment certificates; or</p> <p>2) actual ability of a natural person to influence taking key economic decisions by a legal person or an organizational unit which has no legal personality; or</p> <p>3) remaining in a marriage or occurrence of consanguinity or affinity up to the second degree.</p>	<p>Art. 23m para. 1 point 4 and para. 2 of the <a href="#">PIT act</a></p>
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**Transfer Pricing Methods**

4	<p><b>Does your domestic legislation provide for transfer pricing methods to be used in respect of transactions between related parties?</b></p>	<p><input checked="" type="checkbox"/> <b>Yes</b></p> <p><input type="checkbox"/> <b>No</b></p> <p>If affirmative, please check those provided for in your legislation:</p> <table border="1" data-bbox="689 1289 1541 1449"> <thead> <tr> <th>CUP</th> <th>Resale Price</th> <th>Cost Plus</th> <th>TNMM</th> <th>Profit Split</th> <th>Other (If so, please describe)</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> </tr> </tbody> </table>	CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (If so, please describe)	<input checked="" type="checkbox"/>	<p>Art. 11d para. 1, 2 of the <a href="#">CIT act</a></p> <p>Art. 23p para. 1, 2 of the <a href="#">PIT act</a></p>					
CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (If so, please describe)										
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>										

		Where it is impossible to apply the five basic methods, another method shall be applied, including the valuation technique, most appropriate in given circumstances.	
5	<b>Which criterion is used in your jurisdiction for the application of transfer pricing methods?</b>	<p>Please check all that apply:</p> <p><input type="checkbox"/> Hierarchy of methods</p> <p><input checked="" type="checkbox"/> Most appropriate method</p> <p><input type="checkbox"/> Other (<i>if so, please explain</i>)</p>	<p>Art. 11d para. 3 of the <a href="#">CIT act</a></p> <p>Art. 23p para. 3 of the <a href="#">PIT act</a></p>
		While choosing the most appropriate method in given circumstances, it should be analysed the conditions which have been agreed or imposed between related subjects, the availability of the information necessary for the proper application of the method, as well as the specific criteria for application thereof.	
6	<b>If your domestic legislation or regulations contain specific guidance on commodity transactions, indicate which of the following approaches is followed.</b>	<p><input checked="" type="checkbox"/> For controlled transactions involving commodities, the guidance contained in paragraphs 2.18-2.22 of the TPG is followed.</p> <p><input type="checkbox"/> Domestic legislation mandates the use of a specific method for controlled transactions involving commodities (<i>if so, please explain</i>)</p> <p><input type="checkbox"/> Other (<i>if so, please explain</i>)</p>	
		<p>Commodities transactions are not regulated by Polish TP legislation therefore Poland uses the OECD guidelines 2.18-2.22 as interpretation of the arm's length principle.</p> <p>See response in question 2 for further clarification.</p>	
<b>Comparability Analysis</b>			
7	<b>Does your jurisdiction follow (or largely follow) the guidance on comparability analysis outlined in Chapter III of the TPG?</b>	<p><input checked="" type="checkbox"/> <b>Yes</b></p> <p><input type="checkbox"/> <b>No</b></p>	<p>Art. 11q para. 1 point 3 letter a of the <a href="#">CIT act</a></p> <p>Art. 23zc para. 1 point 3 letter a of the <a href="#">PIT act</a></p>
		The local transfer pricing documentation should contain, inter alia, the analysis of the particulars of unrelated subjects or transactions concluded with unrelated subjects or between unrelated subjects deemed to be comparable to the conditions established in controlled transactions, hereinafter referred to the "comparable analysis".	

8	<p><b>Is there a preference in your jurisdiction for domestic comparables over foreign comparables?</b></p>	<p><input checked="" type="checkbox"/> <b>Yes</b>  <input type="checkbox"/> <b>No</b></p> <p>Preference for domestic comparables follows from general guidance on comparability.</p>	
9	<p><b>Does your tax administration use secret comparables for transfer pricing assessment purposes?</b></p>	<p><input type="checkbox"/> <b>Yes</b>  <input checked="" type="checkbox"/> <b>No</b></p>	
10	<p><b>Does your legislation allow or require the use of an arm's length range and/or statistical measure for determining arm's length remuneration?</b></p>	<p><input checked="" type="checkbox"/> <b>Yes</b>  <input type="checkbox"/> <b>No</b></p> <p>Polish TP regulations include only a general arm's length clause concerning the arm's length principle. There is no formal restriction on using AL ranges. The OECD TPG is applied as interpretation of the arm's length principle.</p>	
11	<p><b>Are comparability adjustments required under your domestic legislation or regulations?</b></p>	<p><input checked="" type="checkbox"/> <b>Yes</b>  <input type="checkbox"/> <b>No</b></p> <p>The comparative analysis shall be subject to updating not less frequently than once every 3 years, unless the economic environment changes to a degree significantly affecting the analysis made, providing the ground for conducting the revision in the year this change occurs.</p>	<p>Art. 11r of the <a href="#">CIT act</a>  Art. 23zd of the <a href="#">PIT act</a></p>
<b>Intangible Property</b>			
12	<p><b>Does your domestic legislation or regulations contain guidance specific to the pricing of controlled transactions involving intangibles?</b></p>	<p><input type="checkbox"/> <b>Yes</b>  <input checked="" type="checkbox"/> <b>No</b></p> <p>Polish domestic legislation does not contain specific guidance to the pricing of controlled transactions involving intangibles and tend to rely on the OECD TPG. However, issues related to intangible assets must also be addressed in the group transfer pricing documentation (master file), which must contain:</p> <ul style="list-style-type: none"> <li>- a general description of the group's strategy for the creation, development, ownership and use of intangible assets,</li> </ul>	<p>Paragraph 3 point 2 of Regulation of 21 December 2018 of the <a href="#">Minister of Finance on transfer pricing documentation for corporate income tax as amended</a></p> <p>Paragraph 3 point 2 of Regulation of 21 December 2018 of the <a href="#">Minister of Finance on transfer pricing documentation for personal income tax</a></p>

		<ul style="list-style-type: none"> <li>- a list of intangible assets or groups of intangible assets that are significant from the point of view of transfer pricing,</li> <li>- a list of significant contracts or agreements concluded between related parties of the group relating to intangible assets,</li> <li>- a description of the group's transfer pricing policy for research and development activities and intangible assets,</li> <li>- a general description of significant changes in control and ownership of intangible assets and the use of intangible assets.</li> </ul>	
13	<b>Does your domestic legislation or regulation provide for transfer pricing rules or special measures regarding hard-to-value intangibles (HTVI)?</b>	<input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	<a href="#">Ordinance of Minister of Finance of 21 December 2018 on transfer pricing in terms of corporate income tax</a>  <a href="#">Ordinance of Minister of Finance of 21 December 2018 on transfer pricing in terms of personal income tax</a>  <a href="#">HTVI Implementation Approach</a>
		Polish domestic legislation contains some guidance regarding HTVI.	
14	<b>Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving intangibles?</b>	<input type="checkbox"/> <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b>	
<b>Intra-Group Services</b>			
15	<b>Does your domestic legislation or regulations provide guidance specific to intra-group services transactions?</b>	<input type="checkbox"/> <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b>	
		Polish domestic legislation does not contain specific guidance or special measures regarding intra-group services transactions and tend to rely on the OECD TPG. Description of the object and scope of the group's activities in the master file should include a description of the principal service providers' capacity to provide significant intra-group services and information on the group's transfer pricing policy with regard to the allocation of costs for intra-group services and the rules for determining prices for such services.	
16		<input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	Art. 11f of the <a href="#">CIT act</a>  Art. 23r of the <a href="#">PIT act</a>

	<p><b>Do you have any simplified approach for low value-adding intra-group services?</b></p>	<p>In the case of controlled transactions constituting services of a low added value, the tax authority shall depart from determining the income (loss) of the taxpayer to the extent of the amount of a surcharge on the costs of those services, provided that the following conditions are jointly fulfilled:</p> <p>1) the surcharge on the costs of those services was determined with the application of the method referred to in Article 11d, paragraph 1, subparagraph 3 or 4 and amounts to:</p> <p>a) no more than 5 per cent of the costs – in the case of a purchase of the services;  b) no less than 5 per cent of the costs – in the case of provision of the services;</p> <p>1) the service provider is not a subject whose place of residence, seat, or management office is in the territory of or in a country applying harmful tax competition;  2) the service recipient is in possession of the calculation covering the following information:</p> <p>a) the type and the amount of the costs included in the calculation;  b) the manner of application and the grounds for the choice of the allocation keys for all related subjects using the services.</p> <p>The above provisions shall be applicable to the services listed in Schedule to the PIT Act and CIT Act, said services meeting the following conditions:</p> <p>1) they have a nature of services supporting economic activity of the service recipient;  2) they do not constitute the main object of activity of a group of related subjects;  3) the value of those services rendered by the service provider for unrelated subjects does not exceed 2 per cent of the value of those services rendered for related and unrelated subjects;  4) they are not subject to further resale by the taxpayer, excluding the resale of the services purchased on one's own behalf but for another related subject (re invoicing).</p>	
17	<p><b>Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving services?</b></p>	<p><input type="checkbox"/> Yes  <input checked="" type="checkbox"/> No</p>	
<b>Financial Transactions</b>			
18		<p><input type="checkbox"/> Yes  <input checked="" type="checkbox"/> No</p>	<p>Paragraph 3 point 3 of Regulation of 21 December 2018 of the Minister of Finance on</p>

	<b>[NEW] Does your domestic legislation or regulations provide guidance specific to financial transactions?</b>	<p>Polish domestic legislation does not contain specific guidance or special measures regarding financial transactions and tend to rely on the OECD TPG. However, issues related to financial transactions must be addressed in the group transfer pricing documentation (master file), which must contain a description of significant financial transactions of this group such as:</p> <ul style="list-style-type: none"> <li>– a general description of the financing of the group's activities,</li> <li>– identification of the entities with a central financing function within the group and their domicile and place of effective management,</li> <li>– a general description of the transfer pricing policy for financing between related parties.</li> </ul> <p>Moreover, related parties shall provide to the Head of the Domestic Fiscal Administration the information on the transfer prices for the tax year prepared based on the standard form of the electronic document named Transfer Pricing Reporting (TPR). Intra-group financial transactions are subject to reporting in the TPR form.</p>	<p>transfer pricing documentation for corporate income tax as amended.</p> <p>Paragraph 3 point 3 of Regulation of 21 December 2018 of the Minister of Finance on transfer pricing documentation for personal income tax.</p> <p>Art. 11t. para. 2 point 3 of <a href="#">CIT act</a></p> <p>Art. 23zf. para. 2 point 3 of <a href="#">PIT act</a></p>
19	<b>[NEW] Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of financial transactions?</b>	<input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	Article 15c <a href="#">CIT act</a>
<b>Cost Contribution Agreements</b>			
20	<b>Does your jurisdiction have legislation or regulations on cost contribution agreements?</b>	<input type="checkbox"/> <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b> <p>Poland does not have separate regulations governing CCA issues. However, the wide scope of the definition of a controlled transaction adopted in the Polish transfer pricing regulations means that it also covers issues which may not be considered to be transactions in the ordinary meaning of the word. Thus, cost sharing agreements (CCA) are considered by Polish transfer pricing regulations to be controlled transactions.</p> <p>Despite the fact that the OECD Transfer Pricing Guidelines are not part of Polish law and are used as an auxiliary mean the application of the CCA in practice should be considered as in line with the OECD Guidelines. Due to the lack of separate CCA regulations in Polish TP regulations the OECD Transfer Pricing Guidelines are more applicable in practice.</p>	

## Transfer Pricing Documentation

21	<p><b>Does your legislation or regulations require the taxpayer to prepare transfer pricing documentation?</b></p>	<p><input checked="" type="checkbox"/> <b>Yes</b></p> <p><input type="checkbox"/> <b>No</b></p> <p><i>If affirmative, please check all that apply:</i></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Master file consistent with Annex I to Chapter V of the TPG</li> <li><input checked="" type="checkbox"/> Local file consistent with Annex II to Chapter V of the TPG</li> <li><input checked="" type="checkbox"/> Country-by-country report consistent with Annex III to Chapter V of the TPG</li> <li><input checked="" type="checkbox"/> Specific transfer pricing returns (separate or annexed to the tax return)</li> <li><input checked="" type="checkbox"/> Other (specify):</li> </ul> <p>Among other obligations, a declaration on the preparation of transfer pricing documentation is required. Related subjects which are obliged to prepare local documentation of transfer prices shall submit a declaration on the preparation thereof to revenue offices by the end of the ninth month following the end of the financial year.</p> <p>This obligation is transferred to the information on the transfer prices (TPR) according to Article 11t para. 2 point 7 from 1 January 2022.</p>	<p>Art. 23y of the <a href="#">PIT act</a></p> <p>Art. 11m of the <a href="#">CIT act</a></p> <p><a href="#">Papers Polish Parliament</a></p> <p><a href="#">Article 11t para. 2 point 7 from 1 January 2022</a></p>
22	<p><b>Please briefly explain the relevant requirements related to filing of transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)</b></p>	<p><u>Local file</u></p> <p>Related parties which are obliged to prepare local documentation of transfer prices shall submit a declaration on the preparation thereof to revenue offices by the end of the ninth month following the end of the financial year. The local file must be provided in the Polish language.</p> <p>The local documentation of transfer prices shall be prepared for a controlled transaction of a homogeneous nature, the value of which, reduced by the goods and services tax, exceeds in the financial year the following documentation thresholds:</p> <ul style="list-style-type: none"> <li>- PLN 10 000 000– in the case of a commodity transaction;</li> <li>- PLN 10 000 000– in the case of a financial transaction;</li> <li>- PLN 2 000 000– in the case of a service transaction;</li> <li>- PLN 2 000 000– in the case of a transaction other than the ones specified above.</li> </ul> <p><u>Master file</u></p>	<p>Art. 11k, 11m, 11p of <a href="#">CIT act</a></p> <p>Art. 23w, 23y, 23zb of <a href="#">PIT act</a></p> <p>Art. 82 para. 2, Art. 83 para. 1, Art. 84 para. 1, Art. 84 para. 2, of <a href="#">act on exchange of tax information</a> with other countries.</p>

Related subjects consolidated using the full consolidation method or proportional consolidation method shall append to this documentation the group documentation of transfer prices prepared for a financial year, by the end of the twelfth month following the end of the financial year, provided that they belong to the following groups of related subjects:

- for which consolidated financial statements are drawn up;
- whose consolidated revenues exceeded in the previous financial year the amount of PLN 200 000 000 or its equivalent.

#### Country-by-Country Reporting

Threshold of EUR 750 000 000 for members of the capital groups with consolidated revenues or PLN 3 250 000 are obliged to submit CbCR to the Polish tax authorities.

A parent entity included in a group of entities, having its registered office or management board on the territory of the Republic of Poland, shall, within 12 months from the end of the reporting financial year, submit information on the group of entities to the Head of the National Revenue Administration via electronic communication.

Constituent Entity which is not Parent Entity, that has its permanent place of business or management on the territory of the Republic of Poland or has the permanent place of business or management outside the territory of the Republic of Poland, but carries out its business through a foreign permanent establishment, submits CbC report, if:

- 1) Parent Entity of this MNE Group is not required to forward the information on the MNE Group for this reporting financial year in the jurisdiction or territory where it has its principal place of business or management; or
- 2) the jurisdiction or the territory where the Parent Entity of such MNE Group has its principal place of business or management, is a party to the international agreement ratified by the Republic of Poland providing grounds for the exchange of tax information, but it did not conclude, within 12 months following the last day of this Reporting Financial Year, a qualifying CbC agreement between competent authorities where the Republic of Poland is a party, or
- 3) the jurisdiction or the territory where the Parent Entity of such MNE Group has its principal place of business or management has suspended the automatic exchange of information on MNE Groups for reasons other than permitted under the provisions of a qualifying CbC agreement between competent authorities, or recurrently failed to comply with the automatic reporting to the Republic of Poland of information in its possession on MNE Groups comprising entities with the principal place of business or management on the territory of the Republic of Poland, or carrying out their business through a foreign permanent establishment

		<p>on the territory of the Republic of Poland, and such Constituent Entity has been notified thereof.</p> <p>In case of local filing described above, Poland has also provisions which foresee a surrogate filing option.</p>	
23	<p><b>Does your legislation provide for specific transfer pricing penalties and/or compliance incentives regarding transfer pricing documentation?</b></p>	<p><input checked="" type="checkbox"/> <b>Yes</b></p> <p><input type="checkbox"/> <b>No</b></p> <p><u>Transfer Pricing – Arm’s Length Principle</u></p> <p>If, as a result of existing links, there are agreed or imposed conditions different from those which would be agreed between unrelated subjects and, as a result thereof, the taxpayer shows an income (loss) lower than might be expected, if such links did not exist, a tax authority shall determine the income (loss) of the taxpayer without taking into account the conditions resulting from such links.</p> <p>While determining the amount of the income (loss) of the taxpayer in the situation mentioned above, the tax authority shall take account of the actual course and circumstances of the conclusion and conduct of the controlled transaction and the behaviour of the parties to this transaction.</p> <p>If the tax authority considers that in comparable circumstances unrelated subjects guided by economic viability would not conclude a given controlled transaction or would conclude another transaction or would carry out another action, hereinafter referred to as the "proper transaction", the said authority shall determine the income (loss) of the taxpayer without taking account of the controlled transaction, and, where justified, shall determine the income (loss) of the taxpayer earned (incurred) by the taxpayer based on the proper transaction as compared to the controlled transaction.</p> <p>In doing so, the tax authority takes into account:</p> <ul style="list-style-type: none"> <li>- the conditions agreed between the related subjects;</li> <li>- the fact that the conditions agreed between the related subjects render it impossible to determine the transfer price at the level that the unrelated subjects guided by economic viability would agree upon, taking account of the realistic possibilities available at the moment of concluding the transaction.</li> </ul> <p><u>Country-by-country Reporting</u></p> <p>An entity in a group of entities which fails to comply with the obligation to provide group information or notification, or provides such information or notification</p>	<p>Art. 11c of <a href="#">CIT act</a></p> <p>Art. 23o of <a href="#">PIT act</a></p> <p>Art. 90, Art. 91 of act on exchange of tax information with other countries.</p> <p>Art. 80e of <a href="#">penal fiscal code</a></p> <p>Art. 56c of <a href="#">penal fiscal code</a></p> <p><a href="#">Articles 56c and 80e of penal fiscal code, amended with effect from January 1, 2022</a></p>

which is incomplete or inconsistent with the data held, shall be subject to a financial penalty.

Only the parent entity or the designated group entity shall be subject to a financial penalty.

A financial penalty is imposed by the Head of the National Revenue Administration, by way of a decision, in the amount not exceeding PLN 1 000 000.

#### 56c penal fiscal code

Para. 1 - Whoever, contrary to his obligation, does not submit to the competent tax authority the statement (statement on preparing local transfer pricing documentation) referred to in Article 23y paragraph 1 of the PIT act and in Article 11m paragraph 1 of the CIT act or submits this statement after the deadline or certifies information therein which is inconsistent with the actual state of affairs, is subject to the penalty of a fine of up to 720 daily rates.

Para. 2 - In cases of lesser significance, the offender of act specified in para. 1 is liable to the penalty of a fine for a fiscal offence.

#### 80e penal fiscal code

Para. 1 - Whoever, contrary to his obligation, does not submit to the Head of the National Fiscal Administration the transfer pricing information referred to in Art. 23zf Section 1 of PIT Act and in Art. 11t Section 1 of the CIT Act, or submits such information after the deadline or submits false information, shall be subject to the penalty of a fine of up to 720 daily rates.

Para. 2 - In cases of lesser significance, the offender of act specified in para. 1 is liable to the penalty of a fine for a fiscal offence.

Articles 56c and 80e of penal fiscal code will be amended effective January 1, 2022.

#### Art. 56c penal fiscal code

Para.1 - Whoever, contrary to his obligation, does not prepare local transfer pricing documentation referred to in Art. 23w (1) of the PIT act and in Art. 11k (1) of the CIT act or does not attach to the local transfer pricing documentation group transfer pricing documentation referred to in Art. 23 zb (1) of the PIT Act and in Art. 11p (1) of the CIT act shall be subject to a fine of up to 720 daily rates.

Para. 2 - The same punishment shall be imposed on anyone, who draws up documentation referred to in para. 1, contrary to the actual state.

Para. 3 - Whoever, contrary to his obligation, prepares the documentation referred to in para. 1 after the deadline shall be subject to the penalty of a fine of up to 240 times a daily fine.

		<p>Para. 4 - In cases of lesser significance, the offender of act specified in para. 1-3 is liable to the penalty of a fine for a fiscal offence.</p> <p>Art. 80e penal fiscal code</p> <p>Para. 1 - Whoever, contrary to his obligation, does not submit to a competent tax authority information on transfer prices, referred to in Art. 23zf Section 1 of PIT Act and in Art. 11t Section 1 of the CIT Act, or when submitting it gives data that are inconsistent with the local transfer pricing documentation or with the actual state of affairs, shall be subject to a fine of up to 720 times a daily fine.</p> <p>Para. 2 - Whoever, contrary to his obligation, submits the information referred to in para. 1 after the deadline shall be subject to the penalty of a fine of up to 240 times a daily fine.</p> <p>Para. 3 - In cases of lesser significance, the offender of act specified in para. 1 or 2 is liable to the penalty of a fine for a fiscal offence.</p>	
24	<p><b>If your legislation provides for exemption from transfer pricing documentation obligations, please explain.</b></p>	<p>Transfer pricing rules are not applied to:</p> <ul style="list-style-type: none"> <li>- the controlled transactions in which the price or the manner of fixing the price of the object of such a transaction is stipulated in the provisions of statutory law or legislative instruments issued on the basis of those provisions;</li> <li>- transactions between the Banking Guarantee Fund and a bridge institution or transactions between a subject managing assets and a bridge institution as defined in the Act of 10 June 2016 on the Banking Guarantee Fund, deposit-guarantee scheme and compulsory restructuring;</li> <li>- transactions between a medical higher education institution as understood under Article 2, paragraph 1, subparagraph 13 of the Act of 15 April 2011 on Curative Activity and a healthcare subject referred to in paragraph 6 of this Act.</li> </ul> <p>Moreover, there are some exclusions from transfer pricing documentation obligations.</p> <p>The obligation to prepare the local documentation of transfer prices shall not apply to the following cases:</p> <ul style="list-style-type: none"> <li>- controlled transactions concluded exclusively by related subjects having their places of residence, seat or management office within the territory of the Republic of Poland that did not demonstrate a tax loss for the documented period and did not take advantage of selected tax exemptions;</li> <li>- controlled transactions covered by an advance pricing agreement within the period to which this agreement relates;</li> </ul>	<p>Art. 11b, Art. 11n of the <a href="#">CIT act</a></p> <p>Art. 23n, Art. 23z of the <a href="#">PIT act</a></p>

	<ul style="list-style-type: none"> <li>- controlled transactions which the value in whole does not permanently constitute revenue or revenue earning cost, exclusive of financial transactions, capital transactions and transaction concerning investments, tangible assets or intangible fixed assets;</li> <li>- controlled transactions between companies which constitute a tax capital group;</li> <li>- controlled transactions in the case where the links result exclusively from a link with the State Treasury or territorial self-government units or their unions;</li> <li>- controlled transactions in which the price has been determined under an open tendering procedure under the Act Public Procurement Law;</li> <li>- controlled transactions conducted between a group of agricultural producers in cases provided by act;</li> <li>- controlled transactions conducted between preliminarily recognized groups of producers of fruits and vegetables or recognized organizations of producers of fruits and vegetables in cases provided by act;</li> <li>- taxpayers who do not have their seat or management office within the territory of the Republic of Poland and who are subject to tax liability imposed only on the incomes which they earn within the territory of the Republic of Poland and who conduct controlled transactions consisting in attributing income to a foreign establishment located in the territory of the Republic of Poland shall not apply the obligation to prepare the local documentation of transfer prices if the provisions of relevant international agreements to which the Republic of Poland is a party envisage that those incomes may be taxable exclusively in a state other than the Republic of Poland.</li> </ul>	
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## Administrative Approaches to Avoiding and Resolving Disputes

25	<p><b>Which mechanisms are available in your jurisdiction to prevent and/or resolve transfer pricing disputes?</b></p>	<p>Please check those that apply:</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Rulings</li> <li><input checked="" type="checkbox"/> Enhanced engagement programs</li> <li><input checked="" type="checkbox"/> Advance Pricing Agreements (APA)             <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Unilateral APAs</li> <li><input checked="" type="checkbox"/> Bilateral APAs</li> <li><input checked="" type="checkbox"/> Multilateral APAs</li> </ul> </li> <li><input checked="" type="checkbox"/> Mutual Agreement Procedures</li> <li><input type="checkbox"/> Other (<i>please specify</i>):</li> </ul> <hr/> <p>Advance Pricing Agreements can be in force for up to five years and at the end of this period the agreement can be renewed (through a simplified procedure) if the key elements have not changed substantially.</p> <p>In case of a change of economic relations causing a significant change in the scope of the elements of the APA, the APA may be amended or repealed by the Head of the National Fiscal Administration before the lapse of its determined term. The alteration and repeal of APA takes place by application of a party or ex officio.</p> <p>A MAP request may be submitted if a domestic related party believes that the actions of one or both of the administrations lead, or are likely to lead, to taxation that is inconsistent with the relevant international treaty (Double Tax Agreement (DTA), EU Arbitration Convention (AC)). In the case of a non-resident permanent establishment in Poland, an application for a MAP on the basis of a DTA may not be submitted in Poland and such application should be submitted in the country of residence of the taxpayer (non-resident).</p> <p>Taxpayer is required to indicate in its MAP request one of the dispute resolution procedures under which it is to be conducted.</p> <p>The MAP request does not interfere with the APA request. Both procedures can run in parallel.</p> <p>Among other mechanisms to prevent and/or resolve transfer pricing disputes, tax agreement and tax co-operation agreement should be noted.</p>	<p>Art. 86, Art. 87, Art. 106 of <a href="#">DRM Tax Act</a></p> <p>Art. 14a, 14b, 20s, 20zb of <a href="#">Tax Ordinance Act</a></p> <p><a href="#">Poland's MAP Profile</a></p>
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		<p>The Head of the National Fiscal Administration may conclude with a taxpayer, at his request, an agreement on cooperation in the field of taxes falling within the competence of the National Fiscal Administration.</p> <p>The cooperation agreement serves to ensure that the taxpayer complies with the provisions of tax law in conditions of transparency of actions taken and mutual trust and understanding between the tax authority and the taxpayer, taking into account the nature of the activities conducted by the taxpayer.</p> <p>A request for the conclusion of a cooperation agreement may be submitted by a taxpayer whose revenue in the previous tax year exceeded the equivalent of EUR 50 000 000, converted into PLN according to the average EUR exchange rate published by the National Bank of Poland on the last working day of the calendar year preceding the year in which the request was submitted.</p> <p>In case of tax agreement, the Head of the National Fiscal Administration may conclude with a taxpayer who is a party to a co-operation agreement, in a written form, a tax agreement within the scope covered by the agreement, inter alia, on transfer pricing.</p>	
<b>Safe Harbours and Other Simplification Measures</b>			
26	<p><b>Does your jurisdiction have rules on safe harbours in respect of certain industries, types of taxpayers, or types of transactions?</b></p>	<p><input checked="" type="checkbox"/> <b>Yes</b></p> <p><input type="checkbox"/> <b>No</b></p> <p>Polish transfer pricing rules recognise safe harbour regulations of financial transactions (loans) and low value-adding services.</p> <p>To qualify for the safe harbour on low value-adding services, the transaction must meet certain conditions:</p> <ul style="list-style-type: none"> <li>- a mark-up on costs is not higher than 5%, in the case that the taxpayer purchases the services;</li> <li>- a mark-up on costs is not lower than 5%, in the case that the taxpayer renders the services;</li> <li>- the service provider is not a subject whose place of residence, seat, or management office is in the territory of or in a country applying harmful tax competition;</li> <li>- the service recipient is in possession of the calculation covering the following information:</li> </ul>	<p>Art. 11f, Art. 11g of <a href="#">CIT act</a></p> <p>Art. 23r, Art. 23s of <a href="#">PIT act</a></p> <p><a href="#">Announcement of the Minister of Finance of 21 December 2021 on the types of the base interest rate and margin for the purposes of transfer pricing in the scope of personal income tax and corporate income tax</a></p> <p>More information can be found in: <a href="#">Changes to the law – types of base interest rate and margin for transfer pricing purposes in 2022</a></p>

		<ul style="list-style-type: none"> <li>- the type and the amount of the costs included in the calculation,</li> <li>- the manner of application and the grounds for the choice of the allocation keys for all related subjects using the services.</li> </ul> <p>To qualify for the safe harbour on loans, the transaction must meet certain conditions:</p> <ul style="list-style-type: none"> <li>- the interest rate of the loan is based on the base interest rate and margin published by the Polish Minister of Finance;</li> <li>- the disbursement of fees other than the interest related to granting or handling the loan, including commissions or bonuses, is not envisaged;</li> <li>- the loan has been granted for a period not longer than 5 years;</li> <li>- during a financial year the total amount of liabilities or dues of a related subject on account of capital or loans, including related subjects, calculated separately for the loans granted and taken out amounts to not more than PLN 20 000 000 or its equivalent;</li> <li>- the lender is not a subject whose place of residence, seat, or management office is in the territory of or in a country applying harmful tax competition.</li> </ul> <p>The minister competent for public finance shall, by announcement, publish at least once a year, the type of the basic interest rate and the margin.</p>	
27	<b>Does your jurisdiction have any other simplification measures not listed in this questionnaire? If so, please provide a brief explanation.</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>Other Legislative Aspects or Administrative Procedures</b>			
28	<b>Does your jurisdiction allow/require taxpayers to make year-end adjustments?</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Art. 11e of <a href="#">CIT act</a> Art. 23q of <a href="#">PIT act</a>
		<p>A taxpayer is allowed to make a correction of transfer prices by changing the amount of the revenues earned or revenue earning costs incurred, provided that the following conditions are jointly fulfilled:</p> <ul style="list-style-type: none"> <li>- in controlled transactions conducted by the taxpayer during a tax year the same conditions have been determined as would be determined by unrelated subjects;</li> </ul>	

		<ul style="list-style-type: none"> <li>- there has occurred a change of material circumstances having an impact on the conditions determined during a tax year or the actually incurred costs or earned revenues are known which provide the grounds for calculating the transfer price, and ensuring their compliance with the conditions that would be determined by unrelated subjects requires a correction of the transfer prices;</li> <li>- upon making the correction, the taxpayer is in possession of a declaration of a related subject that this subject has made a correction of transfer prices in the same amount that the taxpayer;</li> <li>- the related subject referred to in the bullet above has its place of residence, a seat or a management office in the territory of the Republic of Poland or a state or in the territory with which the Republic of Poland concluded a double taxation avoidance agreement and there are legal grounds for the exchange of tax information with this state;</li> <li>- the taxpayer confirms making the correction of the transfer prices in the annual statement for a tax year to which said correction refers.</li> </ul>	
29	<b>Does your jurisdiction make secondary adjustments?</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>Attribution of Profits to Permanent Establishments</b>			
30	<b>[NEW] Does your jurisdiction follow the Authorised OECD Approaches for the attribution of profits to PEs (AOA)?</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  <p>In Polish bilateral treaties, this provision has not been amended and still reflects the previous approach of the OECD. However, the Polish provisions on transfer pricing, amended in 2019, are closer to the AOA, because they consider the parent company and the permanent establishment to be related entities which may provide services to each other on arm's length terms.</p>	
31	<b>[NEW] Does your jurisdiction follow also another approach?</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

## Other Relevant Information

32	<b>Other legislative aspects or administrative procedures regarding transfer pricing</b>	N/A	
33	<b>Other relevant information</b> (e.g. <i>whether your jurisdiction is preparing new transfer pricing regulations, or other relevant aspects not addressed in this questionnaire</i> )	N/A	

For more information, please visit: <https://oe.cd/transfer-pricing-country-profiles>

