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# ***ANAF President Order on the local transfer pricing documentation***

3 February 2016

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## ***In brief***

On 2 February 2016, the National Agency for Fiscal Administration (“ANAF”) published Order 442 governing the value of the transactions, the terms for preparing, the conditions and content of the transfer pricing (TP) documentation and TP adjustment / estimation procedures.

This Order includes a number of significant changes in respect of the local TP documentation requirements, the TP documentation content and the procedure for adjustment to, or estimation of transfer prices.

The Order provides for specific TP documentation requirements based on certain materiality thresholds. There is a distinction between:

- Large taxpayers with a total annual value of inter-company transactions equal to or above the euro 200,000 – euro 350,000 materiality threshold, based on the type of transaction,
- The rest of large taxpayers with a total annual value of inter-company transactions equal to or above the euro 50,000 – euro 100,000 materiality threshold, but under the euro 200,000 – euro 350,000 materiality threshold, based on the type of transaction, and
- Small and medium-sized taxpayers with a total annual value of inter-company transactions equal to or above the euro 50,000 – euro 100,000 materiality threshold, based on the type of transaction.

This Order enters into force on 2 February 2016, with some transitional provisions.

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## ***In detail***

### ***1. Requirements for request and presentation of TP documentation***

- Specific requirements have been detailed for the preparation and presentation of TP documentation, according to the category of taxpayer (large or small and medium-sized), the annual value of inter-company transactions and the type of transaction.
- The Order provides for a first set of materiality

thresholds, that is, for large taxpayers with a total annual value of inter-company transactions of:

- euro 200,000, for interest on financial services;
- euro 250,000, for supply of services;
- euro 350,000, for purchases / sales of tangible or intangible assets.
- For large taxpayers, others than those referred above, and also for small and medium-sized taxpayers,

the order provides a second set of materiality thresholds, as listed below:

- euro 50,000, for interest on financial services;
- euro 50,000, for supply of services;
- euro 100,000, for purchases / sales of tangible or intangible assets.
- The materiality thresholds above represents the total annual value of all inter-company transactions,

- exclusive of value added tax (VAT).
  - The amounts in local currency are calculated by reference to the exchange rate communicated by the central bank (NBR) for the last day of each fiscal year.
  - The Order describes the following cases:
    - A. Large taxpayers that carry out inter-company transactions equal to or above the first set of materiality thresholds**
      - Large taxpayers that carry out inter-company transactions at or exceeding the first set of materiality thresholds will be required to prepare TP documentation on an **annual basis**.
      - The deadline for preparing TP documentation is the legal deadline for submitting their annual corporate income tax return for the relevant year (i.e. currently, 25 March).
      - These taxpayers are required to present their TP documentation at the request of the tax inspectors, during a tax audit.
      - These taxpayers may also be requested to present their TP documentation on other occasions, pursuant to their obligation to provide information and documents to enable the ascertaining of fiscal circumstances in accordance with the Fiscal Procedure Code. It should also be noted the affiliate of a taxpayer, party to the transaction, may also be requested to present TP documentation.
    - B. The rest of large taxpayers, and also the small and medium - sized taxpayers that carry out inter-company transactions equal to or above the second set of materiality thresholds.**
      - The deadline for presenting the documentation in the cases above is 10 days from the date of the request, but not earlier than 10 days after the expiry of the deadline for their preparation.
      - These taxpayers will still have an obligation to prepare TP documentation, where a written request is made by the tax inspector during a tax audit.
      - The deadline for presenting their TP documentation is between 30 and 60 calendar days. A one-off extension of no more than 30 calendar days is allowed.
      - Taxpayers that do not meet the second set of materiality thresholds are required to document the arm's length principle, during a tax inspection, based on the general principles provided for by the financial/ accounting and tax regulation.
      - Regardless of a taxpayer's category, there are exceptions from preparing TP documentation, which are limited to the following circumstances:
        - for transactions and periods that are covered by an advance pricing agreement issued by ANAF, or
        - for transactions in respect of which an adjustment / estimation of revenues or expenses of one of the taxpayer's affiliates has been issued.
- 2. TP documentation content**
    - The content of TP documentation has been modified to include the elements referred to in Chapter V: Documentation of the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations issued by the Organisation for Economic Cooperation and Development (OECD) – in its latest version.
  - 3. Procedure for TP adjustment / estimation by tax inspectors**
    - Transfer prices will be adjusted for taxpayers that fail to substantiate that those prices are in accordance with the arm's length principle.
    - Transfer prices will be estimated, where the TP documentation is incomplete, or the taxpayer / the relevant payer has failed to provide it. Incomplete presentation is equated to a lack of data required to assess whether the transfer prices comply with the arm's length principle.
    - The Order provides clarification on how the interquartile range should be determined to assess whether a transaction was carried out in compliance with the arm's length principle.

- Transfer prices will be adjusted / estimated by using the median of the interquartile range, if such range can be determined. Where three or fewer comparables are identified, the arithmetic mean will be used as benchmark.

#### **4. Entry into force and its application**

- This Order enters into force once on 2 February 2016.
- The provisions of this Order apply to all administrative procedures initiated after 1 January 2016.
- For the administrative procedures initiated prior to 1 January 2016, the

legal procedures in force at the time the respective procedures were initiated are applicable.

- Large taxpayers with inter-company transactions that exceed the first set of materiality thresholds will be obliged to prepare TP documentation annually for transactions occurring in 2016 and onwards.

[Source: ANAF President's Order no. 442/2016 published in Official Gazette no. 74 on 2 February 2016]

#### ***The takeaway***

- Taxpayers' obligations for preparing and presenting TP documentation are significantly amended.

- Materiality thresholds are established for the preparation and presentation of the TP documentation.
- The content of the TP documentation is modified to include the elements referred to in Chapter V: Documentation of the OECD Transfer Pricing Guidelines, in its latest version.
- Clarification is brought to the TP adjustment and estimation procedure, as appropriate, for cases of inter-company transactions carried out without substantiating the observance of the arm's length principle.

## Let's talk

For a deeper discussion of how this issue might affect your business, please contact:



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