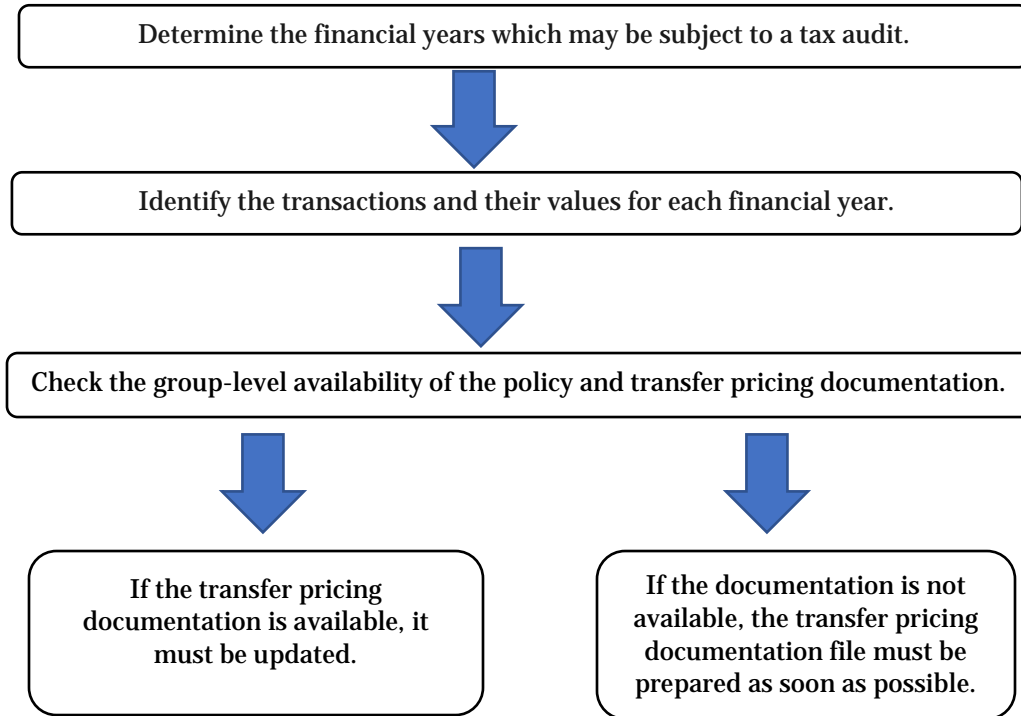


The Transfer Pricing Documentation File in 2017 – The Procedure

Aside from its mandatory nature - the transfer pricing documentation file is the document that justifies before the tax authority why a certain price for a given transaction was chosen - the file can be seen as a tool for an effective management of financial flows.

Therefore, in order for the file to contain every detail requested by the tax authorities, the following steps should be followed:



Preparing the file can take from two weeks to three months, depending on:

- the number of transactions to be documented;
- the number of financial years for which transfer pricing documentation is prepared;
- the existence of group-level documentation which could be used as a starting point for local documentation.

The content of the transfer pricing documentation file

The transfer pricing documentation file should include:

A. Information on the group:

1. the organizational, legal and operational structure of the group (list of all entities within the group, including the permanent establishments and their identification data), the geographical location of the component entities specifying the shareholdings at the level of the group, during the period for which the transfer pricing documentation file is prepared;

2. overview of the group's activities and business strategy, including changes in the business strategy within the period for which the transfer pricing documentation file is prepared;
3. description of any transfer pricing policy at the level of the group, if the case;
4. general description of transactions carried out between related parties;
5. general description of functions performed, risks assumed and assets employed in the transactions carried out between related parties (functional analysis), including changes in the functional profile of the entities within the group, during the period for which the transfer pricing documentation file is prepared;
6. general description of functions performed, risks assumed and assets employed at group level that contribute significantly and definitively to the undertaken value-adding processes, taking into consideration each entity which is part of the group;
7. description of owners of intangibles and pertaining property rights, within the group (patent, license, trade name, brand, logo, knowhow, etc.), if the case;
8. general description of the transfer pricing policy regarding financial arrangements (intra-group financing services) between related parties, if the case;
9. description of any business restructuring within the group, during the period for which the transfer pricing documentation file is prepared;
10. general description of research and development activities within the group, if the case;
11. description of advance pricing arrangements entered by the taxpayer or by other entities that are part of the group, except for those issued by the National Agency for Tax Administration.

B. Information on the taxpayer

1. the organizational, legal and operational structure of the taxpayer (a list of its related parties, including their permanent establishments and identification data), the geographical location of the related parties, specifying the direct and indirect affiliation relations of the taxpayer, during the period for which the transfer pricing documentation file is prepared, highlighting any occurred changes;
2. general description of activities performed by the taxpayer, of the business strategy, including any changes within the business strategy during the period for which the transfer pricing documentation file is prepared;
3. general description of transactions carried out between the related parties, as well as the context surrounding them;
4. description of the transfer pricing policy established at the level of the taxpayer;
5. description of the implementation procedure when applying the transfer pricing methodology for transactions carried out between the taxpayer and its related parties;
6. description of research and development activities at the level of the taxpayer, if the case;
7. general description of the transfer pricing policy regarding the intra-group financing services of the taxpayer with related parties, along with the presentation of financing agreements concluded both with related parties and independent lenders, if the case;
8. description of the agreements concluded between the taxpayer and its related parties, regarding cost contribution arrangements;

9. description of intra-group transactions consisting in provision of services, detailing the allocation keys, if any, and describing the services which have a significant and definitive contribution to the undertaken value-adding processes;

10. presenting the main outlets for tangible goods delivery/services provision of the taxpayer with its related parties;

11. description of transactions related to any business restructuring that involve the taxpayer, during the period for which the transfer pricing documentation file is prepared;

12. detailed description of the transactions carried out with related parties:

a) flow of transactions;

b) invoicing flow;

c) amount of transactions carried out with the related party/parties;

d) amount of payments/receipts associated with each transaction performed by the taxpayer with each related party.

13. detailed presentation of the functional analysis and comparability analysis:

a) characteristics of the tangible and intangible goods or services, including the financing services subject to the transaction/transactions with related parties;

b) specific business strategies (e.g., market penetration strategies, extraordinary events, etc.);

c) functions performed, risks assumed and assets employed by the taxpayer and by the related party/parties within the transaction(s) carried out;

d) contractual terms of the transaction(s), with attached copies of the contracts/agreements acting as legal framework of the transaction(s) carried out with related parties;

e) particular economic circumstances of the transaction(s);

f) comparability analysis: information regarding the external or internal comparable transactions (description of the search strategy for comparable companies and of the information sources, presenting the values of the financial indicators used for the comparability analysis, description of possible comparability adjustments that were made, presenting the list of comparable entities as well as the list of entities rejected from the comparable sample as a result of the manual search, also providing the reasons for rejection, etc.). Justification of the arm's length principle shall be based on reasonable availability of data for the taxpayer at the time of identification/preparation of the transfer pricing documentation, by presenting documents which support such justification;

g) presentation of critical assumptions that formed the basis for establishing the transfer pricing policy;

h) presentation of reasons for using a multiannual or annual analysis of data, as the case may be;

14. description of the method used for determining the transfer prices for each transaction and validation of the selection criteria; if transfer pricing methods that involve selection of the tested party are used, the rationale for its selection shall be presented;

15. presentation of unilateral or bilateral/multilateral advance pricing agreements, related to the transaction(s) carried out, in which the National Agency for Tax Administration does not take part;

16. description of other information that is relevant for the taxpayer.

The transfer pricing documentation file should be presented to the tax authorities in Romanian. In case the file is prepared in another language, an official translation is required.

Failure to submit the transfer pricing documentation file or submittal of an incomplete file is punishable by a fine which can reach EUR 6,000. In addition, the tax authorities have the right to make adjustments to the transfer pricing if they consider that the prices related to inter-company transactions are inconsistent with the market value. This will lead to an additional tax, and also interest and penalties.