

# Tax authority has started enforcing transfer pricing documentation filing requirements 2/43/22



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Amendments to the Taxes and Duties Act that require taxpayers to prepare and file a specified form of transfer pricing (TP) documentation with the State Revenue Service (SRS) took effect back in 2018, yet we had not seen any active enforcement steps from the SRS until the end of this summer, when several Latvian companies received an informational report on the submission of TP documentation via the SRS's e-filing system ("EDS"). These reports imply that the SRS is checking the companies' obligation to file TP documentation for 2020 and urging them to do so by the deadline stated in the report or to explain why they should not file TP documentation. This article reminds you of the TP documentation preparation and filing requirements and of the SRS's activities in enforcing them, and we also suggest steps your company might take after receiving such a report.

## Requirements for preparing and filing TP documentation

Under section 15.2 of the Taxes and Duties Act, Latvian-registered companies and permanent establishments that perform transactions (1) with related foreign companies, (2) with related individuals and (3) with persons based in tax havens, if those transactions total over EUR 5 million in the financial year, are required to prepare and file a specified form of TP documentation via EDS within 12 months after the end of the financial year. The form and content of TP documentation are detailed in the Taxes and Duties Act and in the Cabinet of Ministers' Rule No. 802, *Transfer pricing documentation and how the taxpayer and the tax authority may enter into an advance agreement on determining an arm's length price (value) for a transaction or type of transaction*.

It's important to note that the Taxes and Duties Act prescribes penalties for failure to file your TP documentation on time or for a substantial breach of preparation requirements. The SRS has the power to charge a penalty of up to 1% of your controlled transaction but not to exceed EUR 100,000 per transaction.

## Data available to the SRS

To check how taxpayers meet the requirements for preparing and filing TP documentation, the SRS needs information on the amount of controlled transactions with certain business partners, which we have listed before.

The SRS's access to this information was quite limited because from the corporate income tax (CIT) reform in 2018 through 2021 the CIT return had only one informational line 6.5.1, which had to show the amount of transactions with related persons (including residents) for the financial year, which does not count towards determining the TP documentation filing requirement.

This is the likely reason why from 1 December 2021 line 6.5.1 on the CIT return has been renamed "The total value of transactions with related *non-resident* persons during the financial year" and there is a new line 6.5.2 "The total value of transactions with related *resident* persons during the financial year". So line

6.5.1 should now show the amount of controlled transactions excluding transactions with residents, which the SRS and the taxpayer can use to determine whether TP documentation has to be prepared and filed.

Receiving an informational report means that the SRS has checked whether the company has filed TP documentation in past years, as an additional source of information on its obligation to file TP documentation for 2020. Thus, if your company has filed TP documentation for 2018 and/or 2019 but not for 2020, then you could also receive such a report from the SRS asking you to check that the requirements for filing TP documentation for 2020 are satisfied.

## Steps you should take after receiving an informational report

As stated above, the SRS has limited access to information on company transactions with related resident/non-resident persons, and the SRS often merely assumes a taxpayer may be liable to file TP documentation.

So, if your company receives such an informational report but you were not liable to file TP documentation according to your own information, then you should provide the SRS with a suitable explanation. If you find that your company has missed the filing deadline, you should try to file it by the deadline stated in the report.

However, if you are unable to meet the new filing deadline for various reasons, then it's advisable to provide the SRS with an objective explanation of your reasons and to state your expected filing date.

## The working hours of the EDS “kiosk” and signals of penalties

As stated above, the rules effective from 28 November 2018, subject to meeting certain conditions, require a taxpayer to file TP documentation via the EDS kiosk within 12 months after the end of the financial year. Unfortunately the rules do not permit the SRS to extend the statutory filing deadline, so missing it poses a risk that the SRS will exercise its power to charge a penalty for failure to file TP documentation on time.

We are aware that on receiving a taxpayer's statement explaining why he missed the filing deadline and stating the expected filing date, the SRS often replies that “if the taxpayer's TP documentation is not filed or is filed after the statutory deadline, he faces a **penalty** of up to 1% of his controlled transaction”.

This answer implies that even if your company files TP documentation after the statutory deadline, you still risk receiving the SRS's decision to charge a penalty.