

APPENDIX NO. 3 TO ORDER 442/2016 THAT IS GOVERNING

THE CONTENT OF THE TRANSFER PRICING DOCUMENTATION FILE IN ROMANIA

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 has been prepared;
2. overview of the group's activities, its business strategy, including the changes in the business strategy within the period for which the transfer pricing documentation file has been 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 the changes in the functional profile of the entities within the group, during the period for which the transfer pricing documentation file has been prepared;
6. general description of functions performed, risks assumed and assets employed, at the level of the group, that contribute significantly and definitive to the value-adding processes undertaken, taking into consideration each entity part of the group;
7. description of owners of intangibles and property rights pertaining, within the group (patent, license, trade name, brand, logo, know-how, etc.), if the case;
8. general description of 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 has been prepared;
10. general description of research and development activities within the group, if the case;
11. description of advance pricing arrangements entered into by the taxpayer/payer or by other entities part of the group, except for those issued by the National Agency for Tax Administration.

B. Information on the taxpayer/payer

1. the organizational, legal and operational structure of the taxpayer/payer (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/payer, during the period for which the transfer pricing documentation file has been prepared, highlighting the occurred changes;
2. general description of activities performed by the taxpayer/payer, business strategy, including any changes within the business strategy during general description of transactions carried out between each related party as well as the context surrounding them;
3. general description of transactions carried out between each related party as well as the context surrounding them;
4. description of the transfer pricing policy established at the level of the taxpayer/payer;

5. description of the implementation procedure when applying the transfer pricing methodology for the transactions carried out between the taxpayer/payer and its related parties;
6. description of research and development activities at the level of the taxpayer/payer, if the case;
7. general description of the transfer pricing policy regarding the intra-group financing services of the taxpayer/payer 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/payer and its related parties, regarding cost contribution arrangements;
9. description of intra-group transactions consisting in provision of services, detailing the allocation keys, if the case, describing the services which have a significant and definitive contribution to the value-adding processes undertaken;
10. presenting the main outlets for tangible goods delivery/services provision of the taxpayer/payer with its related parties;
11. description of transactions related to any business restructuring that involve the taxpayer/payer, during the period for which the transfer pricing documentation file has been 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/payer with each related party.
13. detailed presentation of the functional analysis and comparability analysis:
 - a) characteristics of 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/payer 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 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 comparable entities list as well as the list of rejected entities from the comparable sample as a result of the manual search, with the provision of the rejection reasons, etc.). Justification of the arm's length principle shall be based on reasonable availability of data for the taxpayer/payer at the moment the identification/preparation of the transfer pricing documentation, by presenting documents which support the 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;
14. description of the method used for determining the transfer prices for each transaction and validation of the selection criteria; if using transfer pricing methods that involve the selection of the tested party, 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, for which the National Agency for Tax Administration does not take part;
16. description of other relevant information for the taxpayer/payer.