

# Hungary amends decree prescribing special requirements for transfer pricing documentation

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## In brief

Hungary published on December 28, 2022 an amendment to Decree No. 32/2017 (X. 18.) of the Ministry of National Economy on the Documentation Requirements Pertaining to Determining the Arm's-Length Price (Decree), which imposes significant changes regarding the obligations of taxpayers concerned.

The amendments to the Decree affect the HUF 50 million value threshold that provides an exemption from the obligation to prepare documentation. As a result, effective beginning tax year 2022, related-party transactions that do not exceed HUF 100 million are exempt from the documentation obligation.

Within the framework of the amendment to the Decree, the legislator has made several clarifications to aid legal interpretation. The list of definitions related to functional profiles and profit level indicators used during economic analyses has been expanded. In addition, the conceptual system of the structure of transfer pricing documentation has been amended.

In previous years, the master file and the local file together constituted one document for each tax year. However, from the tax year starting in 2023, the master file and the local file will be considered separate documents, with the latter being prepared per transaction or per consolidated transaction. As a result of this change, the administrative default penalty for breaching the transfer pricing documentation obligation can be imposed multiple times per tax year, compared to the one-time imposition previously applicable.

The amended Decree also is in line with the previous 2022 amendment to the part of Act CL of 2017 on the Rules of Taxation concerning default penalties. The default penalty increased from HUF 2 million per documentation to HUF 5 million. For repeat infringements, the previous default penalty of up to HUF 4 million per documentation increased to HUF 10 million.

**Action item:** The changes in the Decree with respect to documentation may have significant implications for the documentation of transactions between affiliated companies and the timing of preparing the documentation. Taxpayers should take steps to identify any possible company or transaction-specific consequences, along with reviewing internal corporate governance processes, if needed. Also, given the increase in default penalties under the amended Decree, taxpayers should take any needed steps in seeking to avoid defaulting.

## In detail

### Amendments pertaining to transfer pricing documentation

Regarding the local file, the amendment to the Decree emphasizes that the local file consists of a joint section, including taxpayer-level information, as well as a part at a transactional level covering the relevant related-party transaction. According to the amendments to the Decree, the joint, taxpayer-level section must be prepared only once per tax year, with the same information content as before. However, there are two key changes to the transactional-level part of the local file:

- (1) More detailed information disclosure is required (e.g., disclosure of general ledger accounts, cost centers, and cost drivers) on how the related-party transactions are connected to the annual report.
- (2) The previous rules regarding consolidation have been amended, the most significant part of which is that procurement transactions and the sales transactions of the products manufactured from the materials procured, as well as transactions affecting expenses and transactions primarily affecting revenues, cannot be consolidated.

These amendments will apply from the tax year starting in 2023.

### New data provision obligation

Based on the 2022 amendment of Act LXXXI of 1996 on Corporate Tax and Dividend Tax, in addition to the previous documentation (transfer pricing documentation) obligation related to the determination of the arm's-length price, taxpayers also must meet a new data provision obligation as part of the annual corporate tax return. The related detailed rules are contained in the amendments of the Decree.

The Decree defines the scope of transactions subject to the data provision, which can be divided into three categories:

#### *Transactions exempt from the data provision:*

- Transactions not exceeding HUF 100 million at an arm's-length price.
- Stock-exchange transactions concluded under the Act on Capital Markets.
- Transactions applying a fixed price determined by any competent authority.

#### *Transactions subject to limited data provision:*

- Any transaction that the taxpayer has concluded with a private individual in a capacity other than that of private entrepreneur.
- The recharge of independent third-party costs in an unchanged amount and value.
- Liquid assets that are transferred or received without consideration.

#### *Transactions subject to full data provision:*

- All transactions that do not belong to the above-mentioned limited or fully exempted transactions, including transactions for which a resolution (APA resolution) has been issued in an advance pricing agreement procedure.

The data provision obligation must first be fulfilled for corporate tax returns filed after December 31, 2022. **Note:** For the tax year ending in 2022, no data provision obligation arises yet for the recharge of independent third-party costs in an unchanged amount and value.

The provision of data per transaction or, where appropriate, per consolidated transaction, includes the following:

- (1) Designation of the type of the related-party transaction, which can be selected from a predefined list of 52 items or categorized as other transaction.
- (2) Assignment of the most appropriate NACE code for certain transactions based on the transaction type selected in point 1.
- (3) The tax number and tax residency of the related parties involved in the given related-party transaction.
- (4) The net value of the related-party transaction determined in HUF and accounted for in the current business year, per related party.
- (5) The amount (with the correct positive or negative sign) of the corporate tax base adjustment carried out in relation to the given related-party transaction, per related party.
- (6) The transfer pricing method chosen to determine the arm's-length price of the given related-party transaction.
- (7) The provision of additional transaction-specific information (e.g., profitability indicator) in some cases, depending on the type of the given related-party transaction and/or the method chosen to determine its arm's-length price.
- (8) In the case of certain transactions, the indication of the accounting standard used for the company chosen as the tested party, based on a predefined list.
- (9) The value or range of the arm's-length price determined for the given related-party transaction expressed in the unit specific to the transaction (e.g., profitability indicator).
- (10) The actual consideration of a given related-party transaction calculated together with any tax base adjustments, expressed in the unit specific to the transaction (e.g., profitability indicator). In the case of limited data provision, taxpayers must provide information regarding points 1 through 5 above, summarizing the content elements.

**Observation:** In the case of full data provision, taxpayers must comply with all data provision requirements while taking into account the specifics of the given related-party transaction.

## Let's talk

For a deeper discussion of how Hungary's amended decree might affect your business, please contact:

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