Arrangements related to determination of transfer price

Information must be provided on the following transfer pricing arrangements which are independent of the main benefit criterion:

1. an arrangement that allows the use of unilateral safe-harbour rules;

Unilaterality is seen as a situation where a country has established rules that do not coincide with the international consensus reflected in the OECD Transfer Pricing Guidelines. Reporting obligation is created by safe-harbour rules in the form of official guidelines or similar documents with legal force publicly available to taxpayers on the websites of the tax authority or the Ministry of Finance. It is not necessary to report agreements with tax authorities, similar to binding tax rulings, which allow the use of safe-harbour rules by a particular taxpayer.

2. an arrangement that includes the transfer of intangible assets that are difficult to value, whereby the intangible asset that is difficult to value includes such intangible assets or rights related thereto in the case of which there are no reliable comparable transactions between the related parties upon their transfer and, during making the transactions the expected future cash flows or income projections from the intangible asset to be transferred or the assumptions used in the valuation of the particular intangible asset are extremely uncertain, making it difficult to estimate the ultimate return on the intangible asset at the time of its transfer;

3. an arrangement that enables by the transfer of the cross-border intra-group assignments, risks or assets to reduce the projected interest and pre-tax profit / earnings before interest and taxes (EBIT) in the financial year of the transferor of tasks, risks or assets by more than 50% during three years following the transfer compared to the interest and pre-tax profit under the condition where the transfer would not have happened.

EXAMPLE

- An enterprise that bears all risks and is located in one jurisdiction is restructured in such a way that part of the risks are borne by an enterprise in the same group but located in another jurisdiction, resulting in a reduction in the pre-interest and pre-tax profits of the transferring enterprise that initially bore all the risks by more than 50%. As a general rule, the purpose of such activities is to reduce the taxable profits of an enterprise located in a jurisdiction with a higher tax rate by shifting functions, risks and assets to a jurisdiction with a lower tax rate.

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