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TRANSFER PRICING SERVICES

# Central and Eastern European Transfer Pricing Review

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TAX



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# Introduction

## Challenging and changing times, challenging and changing... transfer pricing regulations(!)

In present turbulent times, the economy continues to demonstrate that the only predictable factor is change: a change of business models, in the roles played in the market, of business attitudes, but also a changing environment with regards to regulation. The process is dynamic. What was new just a moment ago needs to be updated almost immediately. This is all also true for transfer pricing.

Central and Eastern Europe (CEE) was in the past a region which traditionally needed to play catch up to stay on par with modern market economies. Existing concepts from many western countries typically had to be adopted in the CEE environment, which is the case with transfer pricing. In some CEE countries transfer pricing regulations had even been introduced at the beginning of the 1990s, however in practice actual implementation did not take place.

The situation gradually changed, especially with the process of introducing the documentation requirements to related-party transactions which have been around since the beginning of the new millennium. Step-by-step, country-by-country, transfer pricing is becoming an increasingly important issue in CEE.

In general, CEE countries follow the same trail blazed by developments in the international business community and according to the standards set by the Organization for Economic Co-operation and Development, in particular, its continuously updated *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administration*, which demonstrates how transfer pricing regulations are developing in particular markets.

At present, almost all CEE countries have transfer pricing regulations in place. They begin with the definition of related parties, description of the arm's length concepts, followed by documentation requirements, the sum of

which is leading, in more and more countries, to much more sophisticated concepts such as the introduction of advance pricing agreements or competent authority matters.

Obviously various CEE countries sit in different places on the transfer pricing learning curve. However, they have one thing in common: their local application of transfer pricing concepts is extremely swift. Development of a country where these issues had not been thoroughly investigated or not even regulated in local law, into a country where transfer pricing is one of the most thoroughly investigated areas during tax audits now takes only months, not years. It is no longer a slow process where the authorities need to observe the market and its reactions, but the opposite: soon after introduction of any new regulation or new obligation, the authorities begin applying them in practice.

It is therefore important to stay updated with the latest developments in the area of transfer pricing when dealing with emerging CEE markets in international trade.

This publication aims at presenting basic knowledge on transfer pricing rules in CEE countries. The individual country files outline local transfer pricing information, including documentation requirements, deadlines, transfer pricing methods, penalties, special considerations, advance pricing arrangements, and competent authority matters.

I trust you will find this information valuable for your own purposes and encourage you to contact your local KPMG representative within CEE with any questions you might have regarding this material.

### **Jacek Bajger**

Partner

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KPMG in Central and Eastern Europe

# Country Overviews

# Albania

## KPMG's Views on Transfer Pricing in Albania

Transfer pricing rules have been present for more than a decade in Albanian income tax legislation, but detailed regulations on the application of these rules, necessary pricing documentations, etc. have never been published by the Ministry of Finance. However, due diligence should be taken with respect to the transfer pricing rules stipulated in the Income Tax Law since the Albanian tax authorities are becoming more aware of transfer pricing issues, and, in general, more often transfer pricing questions arise during their tax audits or during double tax treaty application requests.

### Basic information

#### Tax authority name

Transfer Pricing Commission at the Albanian General Tax Directorate

#### Citation for transfer pricing rules

- Articles 36 of the Law No. 8438 "On Income Tax" dated 28 December 1998
- Instruction No.5 dated 30 January 2006 of Income Tax
- Regulation No.1 "On Transfer Pricing" dated 11 February 2002

#### Effective date of transfer pricing rules

General rules have been present since 28 December 1998, while the latest amendments came into force on 11 February 2002. This document's observations relate to the latest amendments and rules in force.

#### What is the relationship threshold for transfer pricing rules to apply between parties?

In general, the Law considers as related parties in Albania companies, if one of the companies acts, or may act according to the instructions, requests,

or suggestions of the other company. In particular, if one of the companies owns directly or indirectly at least 50 percent of the shares in the other company, such companies are considered related parties. In addition, companies which are owned directly or indirectly for at least 50 percent of the shares by the same shareholder are considered related parties for transfer pricing purposes.

#### What is the statute of limitations on assessment of transfer pricing adjustments?

There is no special statute of limitations on assessment of transfer pricing adjustments. However, the general status of limitation of 5 years may apply.

### Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?

According to the Albanian tax legislation there is no such requirement. However, in accordance with the Albanian National Accounting Standards (or IFRS), a taxpayer

should prepare and submit documentation presenting related parties' transactions in the financial statements of the year in question (i.e. income statement and note of financial statements).

#### What types of transfer pricing information must be disclosed?

Not applicable.

#### What are the consequences of failure to prepare or submit disclosures?

Not applicable.

### Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

No.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?

Since there are no specific requirements regarding the documentation, preparing a transfer pricing study provides a benefit

of shifting the burden of proof to the tax authorities. By preparing transfer pricing documentation, taxpayers may mitigate the risk of additional tax and administrative penalty liabilities.

**To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?**

No specific requirements exist.

**When a transfer pricing study is prepared, should its content follow Chapter V of the OECD Guidelines?**

Although Albania is not a member of the OECD, according to the current wording of the local regulations, the Albanian tax authorities should follow the guidelines as published in the OECD commentary of 1995.

**Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?**

No.

## Transfer pricing methods

**Are transfer pricing methods outlined in Chapter II of the OECD Guidelines acceptable?**

Yes, however please note that only the traditional methods are prescribed by the regulation, i.e. the comparable uncontrolled price method (CUP), resale price method and cost plus method.

**Is there a priority among the acceptable methods?**

The primary method to be used by the Albanian tax authorities when evaluating the price of a transaction between related parties should be, if possible,

the CUP method. In case CUP cannot be applied in practice, other alternative methods like resale price method and cost plus method can be used, or in case of complex business situations that can create practical difficulties in applying these methods, or when there are no sufficient data available to apply one of the abovementioned methods, then other methods as presented in the 1995 Transfer Pricing Instruction of the OECD can be used.

**If there is no priority of methods, is there a “best method” rule?**

Not applicable.

## Transfer pricing audit and penalties

**When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?**

No particular transfer pricing documentation is specified by law, therefore no particular terms apply.

**If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?**

Adjustments assessed by the tax authorities must be applied and then the taxpayer has an option to appeal to the second instance degree procedure with the tax authorities, or finally to the administrative court.

**If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?**

No specific penalties are defined in the Albanian Tax Law for underpayment of tax due to transfer pricing. However,

under the Albanian Law “On Tax Procedures”, there is a potential penalty which arises in case of incorrect completion of a tax return. In practice it is not clear whether this penalty may apply in case of a transfer pricing review as there are no practical cases in which tax authorities may have initiated a transfer pricing review. This penalty varies from 5 percent to 25 percent of the assessed additional tax liability.

**To what extent are transfer pricing penalties enforced?**

No relevant practice has been observed.

**What defenses are available with respect to penalties?**

Normal procedures of administrative appeal and court appeal apply also in case of transfer pricing adjustments.

**What trends are being observed currently?**

Recently the Albanian tax authorities are becoming more aware of transfer pricing issues and, in general, more often transfer pricing questions arise during their tax audits or during double tax treaty application requests.

## Special considerations

**Are secret comparables used by tax authorities?**

In practice tax authorities may use comparables which are not publicly available.

**Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?**

Yes, the Albanian tax authorities show preference for local comparables in a benchmark set.

Do tax authorities have requirements or preferences regarding databases for comparables?

No.

What level of interaction do tax authorities have with customs authorities?

Interaction between tax and customs authorities regarding VAT is high. However, it is not possible to estimate the level of interaction regarding transfer pricing.

Are management fees deductible?

Generally, yes. Please note that non-documented costs are non deductible, as are costs that are not incurred for business purposes.

Are management fees subject to withholding?

Yes, 10 percent withholding tax may apply, unless there is a double tax treaty between Albania and the country of the beneficial owner of the income.

Are year-end transfer pricing adjustments permitted?

No relevant practice has been observed.

Other unique attributes?

Not applicable.

## Other recent developments

The Albanian General Tax Directorate is creating a special unit which shall specialize in transfer pricing issues. However, the project is in the initial stages.

## Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Currently, there are 34 double tax treaties in force signed between Albania and other countries.

If extensive, is the competent authority effective in obtaining double tax relief?

Not applicable.

When may a taxpayer submit an adjustment to competent authority?

There are no specific transfer pricing rules. Based on the general provisions of the Albanian tax law, the adjusted tax declaration should be submitted within 12 months from the deadline of submission of the first tax declaration.

May a taxpayer go to a competent authority before paying tax?

No formal rules exist regarding this.

## Advance pricing arrangement

What APA options are available, if any?

The law provides the possibility for the tax authorities to enter into an APA with taxpayers or tax authorities in other countries. However, no APA has been implemented in practice up to now.

Is there a filing fee for APAs?

No.

Does the tax authority publish APA data, either in the form of an annual report or through the disclosure of data in public forums?

Not applicable.

Please provide some information on how successful the APA program is and whether there are any known difficulties?

Not applicable.

## Language

In which language or languages can documentation be filed?

Albanian.

### KPMG in Albania

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# Belarus



## KPMG's Views on Transfer Pricing in Belarus

Light transfer pricing regulations went into force in Belarus effective from 2012. Now, the Belarusian tax code contains a procedure for adjustments for tax purposes to the prices of sold or purchased goods and of sold fixed assets.

### Basic information

#### Tax authority name

Ministry of Taxes and Duties of the Republic of Belarus/Міністэрства па падатках і зборах Рэспублікі Беларусь

#### Citation for transfer pricing rules

Article 30-1 of the Tax Code of the Republic of Belarus (which came into force on 1 January 2012) is as follows:

The tax authority has the right to make a decision on adjustment of the tax base for Corporate Profit Tax (CPT) and recalculation of tax so as if the results of transactions were recorded by the taxpayer based on market prices for the corresponding goods in the following cases:

- Export/import of goods. Adjustments may be applied if goods in the amount of more than BYR60 billion are sold during a calendar year between Belarusian and a specific foreign company (which may be related party or not) AND applied prices deviate from market prices by more than 20 percent;
- Sale of immovable property if the transaction price deviates by more than 20 percent from the market price at the date of property disposal.

The above adjustments are made if they lead to an increase in CPT. In any case, the Belarusian company is not required to change the price to its market value for any other purposes.

Tax base determination on the basis of the market price for goods is performed using of the following methods:

- method of the value of transaction with the identical (homogeneous) goods;
- method of the value of subsequent sale;
- cost method.

Each subsequent method is used if the market price of goods cannot be determined by application of the previous method.

#### *Method of the value of transaction with the identical (homogeneous) goods:*

This method involves comparison of the price applied in the transaction under analysis, with the prices of identical (in their absence – homogeneous) goods in comparable economic conditions that are within the range of market prices. Tax authorities take into account transactions between persons who are not mutually dependent. Transactions between mutually dependent persons may be taken into account only in cases where

the existence of relations between these persons did not affect the outcome of such transactions.

#### *Method of the value of subsequent sale:*

The market price of goods sold by the taxpayer is defined as the difference between the price at which the goods are resold by the buyer, and the costs incurred by this buyer at the resale, promotion of goods to the market and usual profit of the buyer of goods upon further resale.

#### *Cost method:*

The market price of goods sold by the taxpayer is defined as the amount of costs incurred and profit (profitability) typical for a taxpayer's activity.

#### Effective date of transfer pricing rules

1 January 2012

#### What is the relationship threshold for transfer pricing rules to apply between parties?

The relationship threshold is not applicable. Annual turnover between the parties is a measure of the use of price adjustments.

#### What is the statute of limitations on assessment of transfer pricing adjustments?

Not applicable.

## Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?

No.

## Transfer pricing methods

Are transfer pricing methods outlined in Chapter II of the OECD Guidelines acceptable?

Belarus is not an OECD member country, and Belarusian legislation does not provide for any reference to OECD methodology or approaches.

Nevertheless transfer pricing methods indicated in the Tax Code are similar to the methods outlined in Chapter II of the OECD Guidelines:

- 1) method of the value of the transaction with the identical (homogeneous) goods (the OECD method is CUP);
- 2) method of the value of subsequent sale (the OECD method is resale minus);
- 3) cost method (the OECD method is cost plus).

If there is no priority of methods, is there a “best method” rule?

Each method indicated above is used subsequently, if the market price of goods cannot be determined by the application of the previous method.

## Transfer pricing audit and penalties

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

Usually transfer pricing compliance in Belarus is tested within a regular tax audit.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?

Any additional tax assessments can be contested by a taxpayer to a higher-level tax authority, or in court.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

If a transfer pricing adjustment results in an additional tax liability, the taxpayer is subject to late payment interest of 1/360th of the currently effective refinancing rate established by the National Bank of the Republic of Belarus (annual rate of 23.5 percent as at August 2013). The penalty for underpayment of tax arising from non-compliance with the transfer pricing regulations (as well as non-compliance with any other tax regulations) is 20 percent of the underpaid tax.

To what extent are transfer pricing penalties enforced?

Please refer to Chapter 5, article 52 of the Tax Code and Chapter 13 of the Code of Administrative Offences of the Republic of Belarus.

What defenses are available with respect to penalties?

If a taxpayer makes a tax self-adjustment and pays the additional tax liabilities and late payment interest prior to the tax audit, no penalties should apply.

What trends are being observed currently?

None.

## Special considerations

Are secret comparables used by tax authorities?

Not applicable.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

No.

Do tax authorities have requirements or preferences regarding databases for comparables?

No, all the available information may be used. Article 30-1 of the Tax code provides for the hierarchy of available sources of information, but the list of sources is open.

What level of interaction do tax authorities have with customs authorities?

High.

Are management fees deductible?

Management fees may be tax deductible if all of the following conditions are met: they must be supported by documentation evidencing them and the

recipient of the management service can prove that services have been factually rendered; the expense is incurred for the purpose of earning revenue and does not arise from a simple shifting of expenses incurred at group level with no factual benefit to the recipient; and the expense is not listed in Article 131 of the Tax code of the Republic of Belarus, which describes non-tax-deductible expenses.

#### Are management fees subject to withholding?

Yes. Withholding tax regulations apply, unless the double taxation treaty is in force. Therefore, in practice, there is no withholding tax on management fees for countries with treaty protection.

#### Are year-end transfer pricing adjustments permitted?

Such adjustments are not prohibited. The legislation does not provide for any rules or restrictions related to the year-end transfer pricing adjustments.

#### Other unique attributes?

None.

### Other recent developments

None.

### Tax treaty/double tax resolution

#### What is the extent of the double tax treaty network?

Extensive.

#### If extensive, is the competent authority effective in obtaining double tax relief?

Experience in this is limited.

#### When may a taxpayer submit an adjustment to competent authority?

There are no formal rules.

#### May a taxpayer go to competent authority before paying tax?

There are no formal rules regarding this.

### Advance pricing arrangements

#### What APA options are available, if any?

Not applicable.

#### Is there a filing fee for APAs?

Not applicable.

#### Does the tax authority publish APA data, either in the form of an annual report or through the disclosure of data in public forums?

Not applicable.

#### Please provide some information on how successful the APA program is and whether there are any known difficulties?

Not applicable.

### Language

#### In which language or languages can documentation be filed?

Belarusian or Russian.

#### KPMG in Belarus

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# Bosnia and Herzegovina



## KPMG's Views on Transfer Pricing in Bosnia and Herzegovina

Bosnia and Herzegovina (BiH) consists of two territorial and administrative entities: the Federation of Bosnia and Herzegovina (FBiH) and the Republic of Srpska (RS), as well as the District of Brcko (BD). Corporate Profit Tax legislation is enacted on the level of the FBiH, the RS and the BD. Given that the BD represents approximately 1 percent of BiH, it will be given no further consideration in information presented here.

Companies doing business in BiH should be aware that different transfer pricing rules apply in the FBiH and in the RS.

### Federation of Bosnia and Herzegovina (FBiH)

#### Basic information

##### Tax authority name

Federalno Ministarstvo finansija, Porezna uprava FBiH (Federal Ministry of Finance, tax authority of the FBiH).

##### Citation for transfer pricing rules

Articles 45 to 48 of the FBiH Corporate Profit Tax Law (CPT Law). Arm's length principle applies.

##### Effective date of transfer pricing rules

1 January 2008.

##### What is the relationship threshold for transfer pricing rules to apply between parties?

The definition of "related parties" is very broad and includes a physical or legal entity which has significant influence or control on business decisions (no specific thresholds). Applies to transactions between residents and non-residents.

##### What is the statute of limitations on assessment of transfer pricing adjustments?

Statute of limitations is 5 years and it commences from the date when the tax return was submitted or from the date when the tax liability arose, counting from the date that comes later (e.g. for the 2012 year, the statute of limitations expires at the end of 2018).

### Transfer pricing disclosure overview

##### Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?

The FBiH CPT Law requires a taxpayer to disclose on the annual tax return its transactions with related parties and market prices. Even though there is no official guidance on this subject, we are of the view that this applies only to transfer prices which are not at arm's length. The tax base should be adjusted for the difference between market and transfer prices which are not at arm's

length. There is no guidance on how market prices should be determined (information on available methods follows), and there is no developed practice on which to rely.

Apart from disclosures on the tax return, no other requirements to disclose are prescribed.

##### What types of transfer pricing information must be disclosed?

See Transfer pricing disclosure overview.

##### What are the consequences of failure to prepare or submit disclosures?

See Transfer pricing disclosure overview.

### Transfer pricing study overview

##### Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

Not explicitly stated in the CPT Laws. However, the tax authority have recently started requesting that transfer price studies be prepared.

### Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?

Although it is not a legal requirement to prepare a transfer pricing study, KPMG in BiH strongly recommends the preparation of one. If timely and correctly prepared, it shifts the burden of proof to the FBiH tax authority and can provide penalty protection. To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

Currently, there are no requirements or official guidelines, but if a taxpayer chooses to prepare a transfer pricing study, it should be prepared by the time the annual corporate profit tax return is submitted (i.e. by 31 March of the current year for the previous year).

### When a transfer pricing study is prepared, should its content follow Chapter V of the OECD Guidelines?

Yes. Please note that there are no official guidelines or developed practice on this subject. However, OECD Guidelines are commonly used as an underlying template for the preparation of the transfer pricing study.

### Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

## Transfer pricing methods

### Are transfer pricing methods outlined in Chapter II of the OECD Guidelines acceptable?

No. In accordance with the FBiH CPT Law, the only transfer pricing methods acceptable are the CUP and cost plus method.

### Is there a priority among the acceptable methods?

CUP is the preferred method.

### If there is no priority of methods, is there a “best method” rule?

Not applicable.

## Transfer pricing audit and penalties

### When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

There are no provisions required to prepare transfer pricing documentation (other than information prescribed previously by the CPT Law) or a deadline for the submission of such documentation. Although the preparation of a transfer pricing study is not required by the legislation, best practice would prescribe that the documentation be available immediately upon request.

### If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?

An adjustment is proposed following a tax audit or the basis of a tax assessment issued by the FBiH tax authority. The taxpayer can appeal against the tax assessment to an independent second degree body within the FBiH Ministry of Finance. In the case of a negative ruling by the independent second degree body the taxpayer can appeal to the Cantonal Court. However, the taxpayer can appeal to the Cantonal Court only after receiving a negative ruling by the independent second degree body and after paying the corporate profits tax assessed, any penalty interest and any fixed penalties.

### If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Additional taxable income assessed is subject to the standard corporate profit tax rate of 10 percent increased by the penalty interest of 0.04 percent per day of default in payment.

### To what extent are transfer pricing penalties enforced?

Given that transfer pricing is a relatively new topic in the FBiH, currently it is not common for the FBiH tax authority to scrutinize transactions with related parties.

### What defenses are available with respect to penalties?

Timely prepared transfer pricing documentation.

### What trends are being observed currently?

The topic of transfer pricing is relatively new in the FBiH. In practice KPMG in BiH have not seen many examples of the competent tax authority performing transfer pricing audits. However, based on experience in the region it is expected that the FBiH tax authority will increase performing audits of related party transactions.

## Special considerations

### Are secret comparables used by tax authorities?

There are no specific rules in the transfer pricing provisions.

### Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

No.

**Do tax authorities have requirements or preferences regarding databases for comparables?**

No.

**What level of interaction do tax authorities have with customs authorities?**

Low to moderate.

**Are management fees deductible?**

Yes, assuming documentary support exists and economic benefit can be proven.

**Are management fees subject to withholding?**

Yes, if provided in the FBiH.

**Are year-end transfer pricing adjustments permitted?**

Yes. In accordance with the CPT Law of FBiH, adjustments for transfer prices should be made in the CPT return at the end of the tax year.

**Other unique attributes?**

No.

## Other recent developments

Not applicable.

## Tax treaty/double tax resolution

**What is the extent of the double tax treaty network?**

Minimal. Treaties are negotiated on the level of BiH, but are applicable to both entities. A number of tax treaties signed by the former Socialist Federal Republic of Yugoslavia apply. New treaties are being signed by BiH.

**If extensive, is the competent authority effective in obtaining double tax relief?**

No experience in FBiH business practice with application of competent authority proceedings.

**When may a taxpayer submit an adjustment to competent authority?**

No formal rules.

**May a taxpayer go to competent authority before paying tax?**

No formal rules.

## Advance pricing arrangements

**What APA options are available, if any?**

No APAs or advance rulings of any kind.

**Is there a filing fee for APAs?**

Not applicable.

**Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?**

Not applicable.

**Please provide some information on how successful the APA program is and whether there are any known difficulties?**

Not applicable.

## Language

**In which language or languages can documentation be filed?**

Although there is a possibility of maintaining transfer pricing documentation in another language and translating it upon a request issued

by the FBiH tax authority, KPMG in BiH recommends having a local language translation prepared in advance.

## The Republic of Srpska (RS)

### Basic information

**Tax authority name**

Ministarstvo finansija RS, Porezna uprava RS (RS Ministry of Finance, tax authority of the RS).

**Citation for transfer pricing rules**

Article 9 of the RS CPT Law and Article 37 and Article 38 of the RS CPT Regulation. Arm's length principle applies.

**Effective date of transfer pricing rules**

1 January 2007.

**What is the relationship threshold for transfer pricing rules to apply between parties?**

The definition of "related parties" includes physical or legal entities that directly or indirectly have greater than 10 percent of shares in a legal entity. Applies to transactions between residents and non-residents.

**What is the statute of limitations on assessment of transfer pricing adjustments?**

Statute of limitations is 5 years and it commences from the date when the tax return was submitted or from the date when the tax liability arose, counting from the date that comes later (e.g. for the 2012 year the statute of limitations expires at the end of 2018).

## Transfer pricing disclosure overview

**Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?**

The RS CPT Law requires a taxpayer to separately disclose in the annual tax return transfer prices for transactions with related parties and market prices for such transactions. The tax base is adjusted for the difference between transfer prices and the prices which would have occurred if the transactions were at arm's length. There is no guidance on how the market price should be determined (information on available methods follows), and there is no developed practice to rely on.

The RS CPT Law prescribes that a taxpayer must submit information on related parties and business relations with the tax return. What types of transfer pricing information must be disclosed?

The taxpayer must submit information on related parties and business relations, such as legal status and business activities of a taxpayer and characteristics of these activities; identification of transactions between related parties, i.e. the volume and conditions under which transactions have been conducted in the last 5 years; list of activities and information on business partners relevant for the transactions; description of transfer pricing method used. This information is provided along with the annual tax return.

**What are the consequences of failure to prepare or submit disclosures?**

Failure to prepare and submit disclosures may result in the RS tax authority challenging transactions between related parties.

## Transfer pricing study overview

**Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?**

No.

**Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?**

Although it is not a legal requirement to prepare a transfer pricing study, in practice, it is strongly recommended. If the transfer pricing study is timely and correctly prepared, it shifts the burden of proof to the RS tax authority and can provide penalty protection.

**To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?**

There are no requirements or official guidelines, but if a taxpayer chooses to prepare a transfer pricing study, it should be prepared by the time the annual corporate profit tax return is submitted (i.e. by 31 March of the current year, for the previous year).

**When a transfer pricing study is prepared, should its content follow Chapter V of the OECD Guidelines?**

Yes. Please note that there are no official guidelines or developed practice on this subject. However, OECD Guidelines are commonly used as an underlying template for the preparation of the transfer pricing study.

**Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?**

No.

## Transfer pricing methods

**Are transfer pricing methods outlined in Chapter II of the OECD Guidelines acceptable?**

Yes, with some exceptions. In accordance with the RS CPT Law, acceptable methods are CUP, resale price method, net profit, cost plus gross profit and profit split method.

**Is there a priority among the acceptable methods?**

CUP is the preferred method.

**If there is no priority of methods, is there a "best method" rule?**

Not applicable.

## Transfer pricing audit and penalties

**When the tax authority requests a taxpayer's transfer pricing documentation, how long does the taxpayer have to submit its documentation?**

There are no provisions that require transfer pricing documentation (other than information prescribed by the

CPT Law as detailed previously) or a deadline for the submission of such documentation. Although the preparation of a transfer pricing study is not prescribed by the legislation, best practice would be that the documentation should be available immediately upon request as best practice.

**If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?**

An adjustment is proposed following a tax audit on the basis of a tax assessment issued by the RS tax authority. The taxpayer can appeal against the tax assessment to an "independent second degree body" within the RS Ministry of Finance. In case of a negative ruling by the "independent second degree body" the taxpayer can appeal to the County Court. However, the taxpayer can appeal to the County Court only after receiving a negative ruling by the "independent second degree body" and after paying the corporate profits tax assessed, any penalty interest and any fixed penalties.

**If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?**

Additional taxable income assessed is subject to the standard corporate profit tax rate of 10 percent increased by the penalty interest of 0.06 percent per every day of default in payment.

**To what extent are transfer pricing penalties enforced?**

Given that transfer pricing is a relatively new topic in the RS, currently it is not common for the RS tax authority to

scrutinize transactions with related parties. In practice we have seen limited cases of the RS TA inspecting transactions with related parties.

**What defenses are available with respect to penalties?**

Timely prepared transfer pricing documentation.

**What trends are being observed currently?**

The topic of transfer pricing is relatively new in the RS. In practice KPMG in BiH have not seen many examples of the RS tax authority performing transfer pricing audits. However, based on experience in the region it is expected that the RS tax authority will increase performing audits of related party transactions.

**Special considerations**

**Are secret comparables used by tax authorities?**

There are no specific rules in the transfer pricing provisions.

**Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?**

No.

**Do tax authorities have requirements or preferences regarding databases for comparables?**

No.

**What level of interaction do tax authorities have with customs authorities?**

Low to moderate.

**Are management fees deductible?**

Yes, assuming documentary support exists and economic benefit can be proven.

**Are management fees subject to withholding?**

Yes, regardless of where the service is provided.

**Are year-end transfer pricing adjustments permitted?**

Yes. In accordance with the CPT Law of RS, adjustments for transfer prices should be made in the CPT return at the end of the tax year.

**Other unique attributes?**

No.

**Other recent developments**

Not applicable.

**Tax treaty/double tax resolution**

**What is the extent of the double tax treaty network?**

Minimal.

Treaties are negotiated on the level of BiH, but are applicable to both entities. A number of tax treaties signed by the former Socialist Federal Republic of Yugoslavia apply. New treaties are being signed by BiH.

**If extensive, is the competent authority effective in obtaining double tax relief?**

No experience.

When may a taxpayer submit an adjustment to competent authority?

No formal rules.

May a taxpayer go to competent authority before paying tax?

No formal rules.

## Advance pricing arrangements

What APA options are available, if any?

No APAs or advance rulings of any kind.

Is there a filing fee for APAs?

Not applicable.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

Not applicable.

Please provide some information on how successful the APA program is and whether there are any known difficulties.

Not applicable.

## Language

In which language or languages can documentation be filed?

Although there is a possibility of maintaining transfer pricing documentation in another language and translating it upon a request issued by the RS tax authority, KPMG in BiH recommends having a local language translation prepared in advance.

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# Bulgaria

## KPMG's Views on Transfer Pricing in Bulgaria

Bulgarian taxpayers increasingly seek to prepare transfer pricing documentation or localize their group-level masterfiles in order to mitigate the tax risk associated with related party transactions.

Tax authorities are showing increased interest in the topic and in recent years KPMG in Bulgaria has observed several material tax audit assessments related to transfer pricing.

The Bulgarian tax authorities currently do not have access to the Amadeus database and their transfer pricing efforts are mainly focused on:

- scrutinizing available transfer pricing documentation
- exploring potential internal comparables
- obtaining comparable data from competitors of the taxpayer.

The preparation of transfer pricing documentation therefore provides the taxpayer with a relatively strong defense for the price levels of its related party transactions.

## Basic information

### Tax authority name

The tax authority in Bulgaria is the National Revenue Agency at the Ministry of Finance. The National Revenue Agency reviews transfer pricing issues in the course of ordinary tax audits.

### Citation for transfer pricing rules

The transfer pricing legislation in Bulgaria is contained in:

- Article 15 of the Corporate Income Tax Act
- Article 27, paragraph 3 of the VAT Act
- Article 116 of the Tax and Social Security Procedure Code (TSSPC)
- Ordinance N-9 of 14.08.2006 on the application of transfer pricing methods.

Under the rules set out in the legislation, if related parties perform transactions at prices different from market levels, the taxable base may be adjusted to market prices. This applies for

corporate income tax and, in limited cases, for VAT purposes. As a result of these adjustments, an additional 10 percent corporate income tax and in certain cases, a negative VAT effect of 20 percent may apply.

Further, the difference between related party transaction prices and market levels may be classified as hidden distribution of profits. In such cases, a 20 percent administrative penalty and 5 percent withholding tax may be applied.

Taxpayers are liable to prove to the authorities that their transactions are performed under market conditions. If they are unable to do so, the tax authorities are allowed to establish a respective market price and adjust the taxable base to it.

In 2010 a transfer pricing Manual was published by the tax authorities, containing guidance on transfer pricing issues. The Manual is generally based on the 2009 OECD Guidelines and the EU Transfer Pricing Code of Conduct.

### Effective date of transfer pricing rules

Detailed transfer pricing rules were first introduced through Ordinance N-9 of 14 August 2006.

### What is the relationship threshold for transfer pricing rules to apply between parties?

The TSSPC sets a threshold of direct ownership of 5 percent of the capital of a company. Other criteria for related parties also apply, including common directors, ability to exercise control, etc.

### What is the statute of limitations on assessment of transfer pricing adjustments?

The general statute of limitations for tax liabilities is 5 years from 1 January of the year following the year when the tax was payable (i.e. when the corporate tax return was filed). For example, the statute of limitations for 2007 expires at the end of 2013.

## Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?

No.

What types of transfer pricing information must be disclosed?

Not applicable.

What are the consequences of failure to prepare or submit disclosures?

Not applicable.

## Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

No. However, general tax consequences may follow from the lack of transfer pricing documentation.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?

By preparing transfer pricing documentation, taxpayers may mitigate the risk of additional tax and administrative penalty liabilities, which in the worst case scenario can amount to 57 percent of the value of the transaction.

If taxpayers provide transfer pricing documentation, the tax authorities tend to review its conclusions and accept them if no inconsistencies are found. If no documentation is available or if major inconsistencies are found, the authorities are allowed to assess the transfer prices under their own analysis.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

The transfer pricing Manual recommends preparing transfer pricing documentation for a given fiscal year by the date of submitting the corporate tax return. However, there is no statutory deadline for preparation of documentation.

When a transfer pricing study is prepared, should its content follow Chapter V of the OECD Guidelines?

Generally yes, although Bulgaria is not an OECD member and the OECD Guidelines are not mandatory for taxpayers and the tax authorities. However, the tax authorities usually accept the principles outlined in the OECD Guidelines.

The transfer pricing Manual of the tax authorities also refers to the EU Transfer Pricing Code of Conduct as a source for the content of transfer pricing documentation.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

## Transfer pricing methods

Are transfer pricing methods outlined in Chapter II of the OECD Guidelines acceptable?

Yes.

Is there a priority among the acceptable methods?

There is a priority among the methods in the following order:

- CUP method
- resale price and cost plus methods
- transactional net margin and profit split methods.

If there is no priority of methods, is there a “best method” rule?

Not applicable.

## Transfer pricing audit and penalties

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

Usually, the tax authorities submit a request for provision of documents and the taxpayer has 14 or 15 days to comply. However, this deadline may be extended or the tax audit procedure may be suspended for up to 3 months.

If the taxpayer does not submit the documentation within the required deadline, the tax authorities may assume that no documentation is available and may perform a transfer pricing analysis of their own.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?

The decision of the tax authorities may be appealed at the administrative level (before a regional appeal directorate) and subsequently at the judiciary level (before a court).

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

An administrative penalty of 20 percent may be applied where an expense charged by a related party is deemed to be hidden distribution of profits.

To what extent are transfer pricing penalties enforced?

The extent of enforcement cannot be monitored in detail as tax proceedings are not public until the court appeal phase. Nevertheless, in recent years KPMG in Bulgaria have observed a

significant increase in the number and materiality of transfer pricing issues being identified by tax authorities.

#### What defenses are available with respect to penalties?

The established way of substantiating related party transactions is by the preparation of a local transfer pricing file covering the Bulgarian market.

In a limited number of cases, transfer prices may be defended by building up arguments based on pricing policies, cost allocation methodologies, market analyses etc. However, such an approach highly depends on the specific circumstances of the case and its success may not be guaranteed.

#### What trends are being observed currently?

As noted, there is an increasing interest in transfer pricing issues by both taxpayers and the tax administration. It has been noted in transactions involving goods that the authorities generally seek price adjustments but in services transactions they tend to focus on the actual provision of the services.

### Special considerations

#### Are secret comparables used by tax authorities?

Tax authorities have indicated in informal discussions that they may use secret comparables. However, the feasibility of this approach is not yet certain.

#### Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

Yes, the authorities require a benchmarking study to start its search from the Bulgarian market.

#### Do tax authorities have requirements or preferences regarding databases for comparables?

No. However, Amadeus is generally accepted.

#### What level of interaction do tax authorities have with customs authorities?

Moderate, but currently increasing.

#### Are management fees deductible?

Yes, subject to proper documentation and benefit for the recipient.

#### Are management fees subject to withholding?

Yes, subject to tax treaty provisions.

#### Are year-end transfer pricing adjustments permitted?

Yes, subject to substantiation with documents, budgets and a transfer pricing study.

#### Other unique attributes?

None.

### Other recent developments

Tax authorities have recently issued rulings with guidance on the transfer pricing aspects of:

- cash pooling schemes
- selling goods at prices under market levels under certain conditions.

### Tax treaty/double tax resolution

#### What is the extent of the double tax treaty network?

Extensive. About 70 tax treaties are in force.

#### If extensive, is the competent authority effective in obtaining double tax relief?

With respect to the usual application of tax treaties – frequently.

With respect to MAPs – only one MAP has been initiated so far and is not yet complete, noting that it was initiated by a foreign tax administration.

#### When may a taxpayer submit an adjustment to competent authority?

No experience.

#### May a taxpayer go to competent authority before paying tax?

There are no formal rules. A taxpayer may submit a request for guidance from the tax authorities on specific issues. However, receiving an answer from the tax authorities does not guarantee consistent treatment of the issues in future.

### Advance pricing arrangements

#### What APA options are available, if any?

No APAs or advance rulings of any kind.

#### Is there a filing fee for APAs?

Not applicable.

#### Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

Not applicable.

#### Please provide some information on how successful the APA program is and whether there are any known difficulties?

Not applicable.

### Language

#### In which language or languages can documentation be filed?

Based on the TSSPC, all documentation must be submitted to the tax authorities in Bulgarian. If submitted in another language, the authorities are allowed to translate it at the expense of the taxpayer.

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# Croatia

## KPMG's Views on Transfer Pricing in Croatia

The Croatian Tax Authority (CTA) is regularly performing detailed transfer pricing audits, with the primary targets being large taxpayers. Other audit triggers, apart from size, include a sharp fall in profit, continuing losses and companies that are part of multinational groups.

### Basic information

#### Tax authority name

Ministarstvo Financijske, Porezna uprava (Ministry of Finance, Tax Authority).

#### Citation for transfer pricing rules

Croatian Corporate Profit Tax (CPT) Law, Article 13, and CPT Regulations, Article 40. Arm's length principle applies. Standard OECD methodology and documentary requirements.

The Institute for Public Finance, Ministry of Finance, issued in August 2009 the Manual for Inspection of Transfer Prices (the Manual). Although the Manual is not legally binding, it provides useful guidance in relation to transfer pricing matters and what the CTA might expect from taxpayers.

#### Effective date of transfer pricing rules

- 1 January 2005 – new CPT Law entered into force introducing definitions of related parties and transfer pricing methods
- 1 July 2010 – amendments to the CPT Law introducing provisions that transfer pricing rules also apply to domestic related parties, provided certain conditions are met
- March 2012 – amendments to the CPT Law to harmonize with OECD Guidelines by abolishing the provision that the CUP method is the preferred transfer pricing method
- June 2012 – amendments to the CPT Regulations introducing terms

“traditional transactional method” and “transactional profit based method” as well as “best method rule”

#### What is the relationship threshold for transfer pricing rules to apply between parties?

The definition of related parties is very broad but specifically includes situations where one party directly or indirectly participates in the management, control, or capital of another party (no specific thresholds), or if the same parties participate directly or indirectly in the management, control or capital of another party.

#### What is the statute of limitations on assessment of transfer pricing adjustments?

The statute of limitation is 3 years and commences after the end of the year in which any tax liabilities should have been assessed (e.g. for the 2012 year the statute of limitations expires at the end of 2016). Under certain conditions an absolute statute of limitations of 6 years may apply.

### Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?

No, unless specifically requested by the CTA.

#### What types of transfer pricing information must be disclosed?

Not applicable.

#### What are the consequences of failure to prepare or submit disclosures?

Not applicable.

### Transfer pricing study overview

#### Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

Yes, for all transactions with foreign related parties and in certain cases transactions with domestic related parties (more specifically, in transactions between two domestic related parties if one of them has a preferential tax position – e.g. is entitled to a preferential CPT rate, is CPT exempt or has tax losses available for utilization). In the case of an inspection, the CTA may impose penalties if a transfer pricing study is not available.

#### Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?

If the transfer pricing study is timely and correctly prepared, it shifts the burden of proof to the CTA and can protect the taxpayer from penalties.

**To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?**

There are no specific provisions indicating when the transfer pricing study should be prepared. However, generally speaking the expectation is that it will be ready at the same time the annual corporate profit tax return is submitted (i.e. 4 months after the year-end).

**When a transfer pricing study is prepared, should its content follow Chapter V of the OECD Guidelines?**

Yes. Croatian CPT legislation includes mandatory elements for a transfer pricing study and generally follows Chapter V of the OECD Guidelines.

**Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?**

No.

## Transfer pricing methods

**Are transfer pricing methods outlined in Chapter II of the OECD Guidelines acceptable?**

Yes.

**Is there a priority among the acceptable methods?**

No.

**If there is no priority of methods, is there a "best method" rule?**

Yes. The CPT Regulations stipulate that the selection of the transfer pricing method aims at finding the most appropriate method for a particular case, which is in line with Chapter II of the OECD Guidelines.

If a traditional transactional method and a transactional profit based method can be applied in an equally reliable manner, the traditional transactional method is preferred. For example, when the CUP method and another transfer pricing

method can be applied in an equally reliable manner, the CUP method is preferred.

## Transfer pricing audit and penalties

**When the tax authority requests a taxpayer's transfer pricing documentation, how long does the taxpayer have to submit its documentation?**

Documentation should be made available immediately upon request.

**If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?**

An adjustment is proposed following a tax audit on the basis of a tax assessment issued by the CTA. The taxpayer can appeal against the tax assessment to an independent second degree body within the Ministry of Finance.

After paying the corporate profits tax assessed, penalty interest and any fixed penalties, if the taxpayer receives a negative ruling from the independent second degree body they can then appeal to the Administrative Court.

**If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?**

Yes. The CPT Law prescribes fixed penalties between 2,000 and 200,000 Croatian kunas (HRK). Additional taxable income assessed is subject to the standard CPT rate of 20 percent increased by a penalty interest of 14 percent per annum, which has decreased to 12 percent per annum as of 1 July 2011.

**To what extent are transfer pricing penalties enforced?**

Transactions with foreign related parties are often scrutinized by the CTA and in the case of any non-compliance with the provisions of the tax legislation the

CTA can adjust taxable income, where any increase of taxable income can result in an additional CPT liability, along with penalty interest. In addition, the CTA may impose fixed penalties. Tax audits are regularly performed by the CTA. Domestic transactions in certain circumstances are also focused on with similar implications.

**What defenses are available with respect to penalties?**

Timely prepared transfer pricing documentation.

**What trends are being observed currently?**

As in previous years, the CTA has shown increasing interest in related party transactions and transfer pricing documentation. Transfer pricing audits are regularly performed. Audit triggers, apart from company size, include a sharp fall in profit, continuing losses and those companies that are part of multinational groups.

Further, the CTA requested a number of big taxpayers to submit transfer pricing studies with their annual CPT returns for 2011 (which were due 4 months after the end of the 2011 financial year). This trend is likely to continue.

## Special considerations

**Are secret comparables used by tax authorities?**

There are no specific rules in the transfer pricing provisions; however, they are often used by the CTA in practice.

**Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?**

No. There is no requirement to include local comparables in the benchmarking set. However, it is recommended to include them as local comparable entities are affected by the same developments, such as industry and economic trends.

### Do tax authorities have requirements or preferences regarding databases for comparables?

There is no requirement regarding the use of a certain database for performing searches for comparables. The CTA uses the Amadeus database.

### What level of interaction do tax authorities have with customs authorities?

High.

### Are management fees deductible?

Yes, assuming documentary support exists and economic benefit can be proven.

### Are management fees subject to withholding?

Generally yes, but it depends on the actual service that is provided. Domestic withholding tax is 15 percent, but can be reduced or eliminated under an effective double taxation treaty.

In certain circumstances, a withholding tax at the rate of 20 percent is applicable to payments for all services to non-residents who have their legal seat or place of effective management or control in countries where the general or average CPT rate is lower than 12.5 percent (the list of countries is published by the CTA).

### Are year-end transfer pricing adjustments permitted?

Yes. CPT legislation does not include specific provisions or rules related to year-end transfer pricing adjustments. However, year-end adjustments occur in practice.

Year-end adjustments may result in assessment and penalty interest on any customs duty/VAT that was not settled in a timely manner. Also, fixed penalties may be charged due to non-compliance with the relevant legislation.

### Other unique attributes?

No.

## Other recent developments

Due to the amendments of the Croatian CPT legislation of 1 March 2012 in relation to the provisions on transfer pricing, the CUP is no longer considered to be the preferred method in justifying that the transfer prices applied in related party transactions are at arm's length. The amendments of Croatian CPT legislation are in line with the amendments of the OECD Guidelines of July 2010, which outline that the most appropriate method for determining the arm's length nature of the applied transfer prices is selected based on the given circumstances.

## Tax treaty/double tax resolution

### What is the extent of the double tax treaty network?

Extensive.

### If extensive, is the competent authority effective in obtaining double tax relief?

Limited practical experience in Croatian business practice with application of competent authority proceedings.

### When may a taxpayer submit an adjustment to competent authority?

No formal rules.

### May a taxpayer go to competent authority before paying tax?

No formal rules.

## Advance pricing arrangements

### What APA options are available, if any?

No APAs or advance rulings of any kind.

### Is there a filing fee for APAs?

Not applicable.

### Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

Not applicable.

### Please provide some information on how successful the APA program is and whether there are any known difficulties?

Not applicable.

## Language

### In which language or languages can documentation be filed?

If accounting and other documentation is not in Croatian, the CTA will require a translation.

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# Czech Republic



## KPMG's Views on Transfer Pricing in the Czech Republic

Transfer pricing in the Czech Republic is an important issue. Relevant OECD and EU recommendations are reflected in the local official guidelines issued by the Tax Authority.

The Tax Authority has announced plans and is currently increasing their focus on transfer pricing audits. At present, transfer pricing is included in every tax audit of large taxpayers.

Adequate documentation serves as a tool to prove that prices applied are at arm's length. While not specifically required by tax legislation, it is in practice expected to demonstrate compliance.

### Basic information

#### Tax authority name

Finanční úřad (Tax Authority)

Specializovaný finanční úřad (Specialized Tax Authority for companies with turnover higher than 2 billion Czech koruna (CZK) and financial institutions), Generální finanční ředitelství (General Financial Directorate) and Odvolací finanční ředitelství (Appeal Financial Directorate).

#### Citation for transfer pricing rules

Income Tax Act 23 (7), legally non-binding regulations D-332, D-333, D-334 and D-10.

Czech Ministry of Finance decrees D-332 (international standards for taxation of transactions between related parties), D-333 (advanced pricing arrangements) and D-334 (recommended scope of transfer pricing documentation) and General Financial Directorate decree D-10 (low value intra-group services).

#### Effective date of transfer pricing rules

1 January 1993.

#### What is the relationship threshold for transfer pricing rules to apply between parties?

Ownership of greater than 25 percent based on voting power, share capital, common control, and entering a business relationship predominantly for tax evasion purposes.

#### What is the statute of limitations on assessment of transfer pricing adjustments?

General limits for additional tax assessment apply. Additional tax may be assessed within 3 years after the end of the respective taxable period. Theoretically, this deadline may be extended up to 10 years in case of repeated tax audits. Special rules further extend the deadline for companies with tax incentives and/or tax losses.

### Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?

Transfer pricing disclosure is not required by tax legislation. The Corporate Tax Return Form contains only information

about the existence of a link to foreign entities which can be viewed as a transfer pricing risk indicator. Limited information about transactions with related parties is a part of the enclosure to the financial statements.

#### What types of transfer pricing information must be disclosed?

The enclosure to the financial statements should theoretically include an overview of significant related party transactions that do not follow the arm's length principle.

#### What are the consequences of failure to prepare or submit disclosures?

Not applicable.

### Transfer pricing study Overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

No statutory requirement regarding transfer pricing studies exists. On the other hand, it is assumed by the Tax Authority that the documentation is a basic tool to defend the prices applied.

### Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?

The main benefits are meeting the expectation of the Tax Authority for transfer pricing documentation during a tax audit, shifting the burden of proof from the taxpayer to the Tax Authority and the consequent reduction of probability of additional tax assessment and the related penalty as a result of improper transfer pricing.

### To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

During a tax inspection, the Tax Authority can ask that the taxpayer justify prices used in transactions with related parties. In this situation it is practically expected that the taxpayer will provide transfer pricing documentation. The usual deadline set by the Tax Authority is within 15 days of the request. Tax Authorities may provide a longer deadline if requested by the taxpayer.

### When a transfer pricing study is prepared, should its content follow Chapter V of the OECD Guidelines?

Yes. All elements according to the OECD transfer pricing documentation requirements are usually included. The recommended scope is included in the Ministry of Finance Regulation D-334.

### Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No specific designation is necessary. Taxpayers can prepare transfer pricing documentation on their own or via their advisors. On the other hand, it is possible to have it officially prepared by a designated expert approved by the Interior Ministry. KPMG in the Czech Republic is one of a few companies with this authorization.

## Transfer pricing methods

### Are transfer pricing methods outlined in Chapter II of the OECD Guidelines acceptable?

Yes.

### Is there a priority among the acceptable methods?

No strict rules apply. OECD Guidelines are followed.

### If there is no priority of methods, is there a “best method” rule?

Nothing is explicitly mentioned in the legislation.

## Transfer pricing audit and penalties

### When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

The Tax Authority commonly expects documentation as a basic tool, assisting the taxpayer to justify its prices, within 15 days of request. This deadline can be extended by the Tax Authority upon the taxpayer’s request.

### If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?

Yes. The taxpayer can initiate an appeal to the Appeal Financial Directorate before going to a regional court.

### If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes. General tax penalties apply.

A penalty of 20 percent of the avoided tax or 1 percent (5 percent for tax liabilities before 2011) of the overstated tax loss is assessed when a transfer pricing adjustment is made by the Tax Authority. Furthermore, interest for late payment of approximately 15 percent is

assessed (Czech National Bank REPO rate + 14 percent). This interest is calculated beginning the 5th working day after the original maturity day. This interest charge is applicable for a maximum period of 5 years. In specific cases, withholding tax on a deemed dividend is assessed (together with penalty and interest).

Companies with investment incentives granted in the form of tax holidays may forfeit the right to the tax holidays (even retroactively).

### To what extent are transfer pricing penalties enforced?

Tax sanctions are automatically enforced.

### What defenses are available with respect to penalties?

Only shifting the burden of proof through using proper documentation or defense files.

### What trends are being observed currently?

The number of tax audits with a transfer pricing focus has increased considerably. The main focus is on services (benefit test) and profitability ratios. Interest rates and financial transactions are also being challenged by Tax Authorities.

The Tax Authorities cross-check the local documentation and its link to local accounting information and require a high level of detail during tax inspections. Investigating transfer pricing within a tax inspection is the rule rather than the exception for multinationals.

The Tax Authorities have specialized teams for transfer pricing and international tax. The Ministry of Finance regularly attends EU JTPF meetings and is part of the international information exchange within the EU.

## Special considerations

### Are secret comparables used by tax authorities?

Yes.

### Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

Yes. There is a preference to have local comparables in a benchmarking set. However, not having local comparables does not automatically mean that the benchmark will be rejected. Broader geographic sets can be used where relevant.

### Do tax authorities have requirements or preferences regarding databases for comparables?

The Tax Authority usually uses the Amadeus database. Other sources of information can be used as well.

### What level of interaction do tax authorities have with customs authorities?

Very close.

### Are management fees deductible?

Generally yes. However, taxpayers are often asked to document that the services were actually provided and consumed for the benefit of the taxpayer.

### Are management fees subject to withholding?

A 35 percent withholding tax on services rendered in the Czech Republic by a company from a country with which Czech Republic has not concluded a double taxation treaty or treaty about exchange of information. Permanent establishment risk exists if the services are physically rendered in the Czech Republic.

### Are year-end transfer pricing adjustments permitted?

Yes. No specific legal provisions on compensating adjustments exist in the legislation. However, domestic legislation does not forbid taxpayers to make these adjustments. The Tax Authority would firstly audit whether the original transaction was set in accordance with the arm's length principle.

Transfer pricing adjustments are generally made before submitting a tax return. After this deadline, it could only be done by submitting a supplementary tax return based on new facts that are fully documented. In practice, taxpayers gradually adjust prices during the calendar year to minimize the need for yearly transfer pricing adjustments.

### Other unique attributes?

There is no safe harbor defined.

## Other recent developments

Specialized transfer pricing teams at tax directorate level have been established. A specialized Tax Authority for both the biggest clients and financial institutions was established on 1 January 2012. This Authority has replaced the original local Tax Authorities for the biggest clients and financial institutions. Transfer pricing expertise is available under this supreme Tax Authority.

In December 2012, the General Financial Directorate issued Decree D-10, which is an implementation of EU JTPF Report: Guidelines on Low Value Adding Intra-Group Services.

## Tax treaty/double tax resolution

### What is the extent of the double tax treaty network?

Extensive.

### If extensive, is the competent authority effective in obtaining double tax relief?

Frequently.

### When may a taxpayer submit an adjustment to competent authority?

The taxpayer should submit an additional tax return by the end of the month following the month in which the taxpayer discovered the reason for the tax base increase or tax loss decrease.

### May a taxpayer go to competent authority before paying tax?

No formal rules exist except for APAs.

## Advance pricing arrangements

### What APA options are available, if any?

An APA for transfer pricing methods is available.

### Is there a filing fee for APAs?

CZK10,000.

### Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

Only information about the number of APA applications is published.

### Please provide some information on how successful the APA program is and whether there are any known difficulties?

Tens of APAs are approved each year. The APA process usually takes between 6 and 9 months to conclude.

## Language

### In which language or languages can documentation be filed?

Tax Authorities may require all documents in Czech. This is usually the case if they want to scrutinize transfer prices. However, some Authorities also voluntarily accept documentation in English, and taxpayers may agree with the Tax Authorities on which documents must be translated into Czech.

## KPMG in Czech Republic

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# Estonia



## KPMG's Views on Transfer Pricing in Estonia

The Estonian Tax and Customs Board's focus on transfer pricing issues has continuously increased during recent years. As a new trend, a considerable number of informal requests have been sent to taxpayers operating in different industries for transfer pricing documentation.

### Basic information

#### Tax authority name

Eesti Maksu- ja Tolliamet (Estonian Tax and Customs Board).

#### Citation for transfer pricing rules

General rules are established by the Income Tax Act. OECD compliant methods and pricing principles are established with the Decree by the Minister of Finance.

#### Effective date of transfer pricing rules

Current general rules are effective from 1 January 2000. Amended rules together with documentation requirements are effective from 1 January 2007. New regulations concerning related parties in the Income Tax Act are effective from 1 January 2011.

#### What is the relationship threshold for transfer pricing rules to apply between parties?

Ownership of at least 10 percent, based on voting power, share capital, having common economic interest, or if one party has a dominant influence over the other (subjective judgment, no ownership requirement).

#### What is the statute of limitations on assessment of transfer pricing adjustments?

Three years from the filing date of the tax return. In the event of intentional failure to pay or withholding an amount of tax, the limitation period for making

an assessment of tax is 6 years. In Estonia, tax returns are submitted on a monthly basis.

### Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?

No.

#### What types of transfer pricing information must be disclosed?

Not applicable.

#### What are the consequences of failure to prepare or submit disclosures?

Not applicable.

### Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

For companies which qualify under the documentation requirement, yes, for all transactions.

The documentation requirement applies to:

- credit and financial institutions and insurance companies

- if one party of the transaction is a person domiciled in a low tax rate territory
- a company:
  - which employs 250 persons or more including the personnel of its associated companies
  - which has annual turnover (associated persons' turnover included) of 50 million Euros (EUR) or more for the previous taxation period
  - whose consolidated balance sheet total was EUR43 million or more
- a non-resident through its permanent establishment registered in Estonia:
  - under the same conditions as a resident company.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?

Penalty protection, shifting the burden of proof.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

The transfer pricing study must be submitted within 60 days of request.

When a transfer pricing study is prepared, should its content follow Chapter V of the OECD Guidelines?

Yes.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

## Transfer pricing methods

Are transfer pricing methods outlined in Chapter II of the OECD Guidelines acceptable?

Yes.

Is there a priority among the acceptable methods?

No.

If there is no priority of methods, is there a “best method” rule?

Yes.

## Transfer pricing audit and penalties

When the tax authority requests a taxpayer's transfer pricing documentation, how long does the taxpayer have to submit its documentation?

The documentation must be submitted within 60 days of the tax authorities' request.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?

Disputes are generally resolved between taxpayers and the tax authorities. If they fail to reach an agreement, the taxpayer has the right to turn to administrative court. There is no tax arbitration institution or a special tax court in Estonia.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

General rules are applicable, but there is no special penalty for transfer pricing. Thus, if the taxpayer fails to submit the documentation, a penalty up to EUR3,200 may be imposed.

To what extent are transfer pricing penalties enforced?

So far no penalties have been imposed.

What defenses are available with respect to penalties?

Documentation.

What trends are being observed currently?

The number of tax audits related to transfer pricing is increasing every year.

In Estonia, the documentation requirement applies to certain companies that fulfill the threshold (number of employees or turnover or balance sheet total). In previous years the tax authorities have, during a general tax audit, asked for the documentation from companies to whom the documentation requirement applies. However, in 2012 the tax authorities have started to require the documentation with informal requests (from companies the documentation requirement applies, but without starting a tax audit). The purpose of these informal requests is to determine the need to start a tax audit. These informal requests are not compulsory, but if not submitted, the company will most likely be subject to a tax audit.

Estonian transfer pricing regulation applies to all companies, so the transactions with related parties have to be at arm's length irrespective of the documentation requirement. The tax authorities have stated that in the future they will start asking the proof about the arm's length nature of

related-party transactions also from companies to whom the documentation requirement does not apply (they have only concentrated on companies which qualify under the documentation requirement for now).

## Special considerations

Are secret comparables used by tax authorities?

No.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

Yes. Estonian comparables are preferred, but if not available, foreign comparables are accepted.

Do tax authorities have requirements or preferences regarding databases for comparables?

No.

What level of interaction do tax authorities have with customs authorities?

Unknown, but in Estonia, tax and customs authorities operate as one institution.

Are management fees deductible?

Yes.

Are management fees subject to withholding?

Management fees are subject to withholding tax only if a non-resident is rendering management services in Estonia. If a double tax treaty can be applied, the obligation to withhold income tax can be avoided.

Are year-end transfer pricing adjustments permitted?

Yes.

Other unique attributes?

None.

## Other recent developments

We are not aware of any planned significant developments in the transfer pricing regulations.

Discussions regarding possible APA rules have taken place.

## Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

The double tax treaty network of Estonia is extensive, with 50 treaties altogether.

If extensive, is the competent authority effective in obtaining double tax relief?

Almost always.

When may a taxpayer submit an adjustment to competent authority?

No formal rules. Basically anytime within 3 years of the submission of the tax return on the adjusted period.

May a taxpayer go to competent authority before paying tax?

Yes, but no formal rules.

## Advance pricing arrangements

What APA options are available, if any?

APAs are currently not available.

Is there a filing fee for APAs?

Not applicable.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

Not applicable.

Please provide some information on how successful the APA program is and whether there are any known difficulties?

Not applicable.

## Language

In which language or languages can documentation be filed?

The documentation may be presented in a foreign language, but the tax authority may request that they be translated into Estonian.

### KPMG in Estonia

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# Hungary



## KPMG's Views on Transfer Pricing in Hungary

The tax authority is paying special attention to transfer pricing issues. Previously, the mere availability of transfer pricing documentation was sufficient, but recent experience is showing that tax audits are moving towards more in-depth analysis of transactions (questioning qualitative screening, testing comparables, challenging benchmarking studies and functional analysis) and a comprehensive review of documentation (including contracts, calculations that support the arm's length pricing of transactions and deductibility of costs).

### Basic information

#### Tax authority name

Nemzeti Adó- és Vámhivatal (NAV) – National Tax and Customs Administration of Hungary.

#### Citation for transfer pricing rules

Act LXXXI of 1996 on Corporate Income Tax and Dividend Tax (CIT):

- Section 4 (23) a–e determines the concept of related parties
- Section 18 (1)-(4) regulates the determination of the arm's length price and the applicable methods
- Section 18 (5) determines transfer pricing documentation requirements for taxpayers. Decree 22/2009 of the Ministry of Finance (MF) effective from 1 January 2010 determines the formal requirements for transfer pricing documentation
- Section 18 (6)-(8) special cases (e.g. dividend payment in-kind, capital decrease/increase in-kind etc.) are listed which have to be supported by transfer pricing documentation.

Act XCII of 2003 on Rules of Taxation:

- Section 23 (4) (b) notification of related parties (both the start and the cessation of relationship)

- Section 172 (16) default penalty
- Section 132/B-C APA
- Section 178.17 definition of the related parties.

Act CXXVII of 2007 on VAT:

- Section 67 determination of VAT base provided the consideration is not considered as arm's length
- Section 255 determination of arm's length principle regarding VAT
- MF Decree 18/2003 detailed regulation of transfer pricing documentation (replaced by MF Decree 22/2009 effective from 1 January 2010)
- MF Decree 22/2009 detailed regulation of transfer pricing documentation
- MF Decree 38/2008 detailed regulation on APA procedures.

#### Effective date of transfer pricing rules

The new Decree (MF Decree 22/2009) on detailed regulation of transfer pricing documentation was effective from 1 January 2010 and is generally applicable for the 2010 financial year. However, if a company wished, the new regulations could be also applied for the fulfillment

of the obligations in connection with financial year 2009. From 1 January 2011, Section 18 of the CIT incorporated profit split and TNMM as equivalent approaches with traditional transactional methods. However, note that this modification is only applied on business years starting in 2011 and onwards.

As of 1 January 2012 certain sections of 22/2009 MF Decree changed. These modifications aimed to decrease the administrative burden on taxpayers. However, note that the understanding of the new regulation is still uncertain due to possible differences in the interpretation of the wording of the new sections. Further clarification is expected to be published in 2013.

For 2009 and prior financial years, transfer pricing obligations were regulated by the 18/2003 MF Decree.

#### What is the relationship threshold for transfer pricing rules to apply between parties?

Direct or indirect ownership with greater than 50 percent voting power, or the existence of majority control. Majority control means when any party has the right to appoint or dismiss the majority of executive officers and supervisory board members.

### What is the statute of limitations on assessment of transfer pricing adjustments?

Five years after the last day of the calendar year in which taxes should have been declared or reported, or paid in the absence of a tax return or declaration.

## Transfer pricing disclosure overview

### Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?

Yes. A company should prepare transfer pricing documentation and the underlying calculations before the submission of its tax return at the latest, and it should declare on the tax return form the transfer pricing documentation is prepared in line with the European documentation standards, but the documentation does not have to be submitted to the tax authority.

### What types of transfer pricing information must be disclosed?

A company should declare in the tax return that the transfer pricing documentation is prepared in line with the European documentation standards.

### What are the consequences of failure to prepare or submit disclosures?

If the taxpayer does not prepare its transfer pricing documentation before the statutory deadline, a default penalty can be imposed.

## Transfer pricing study overview

### Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

Yes. For certain intra-group transactions. However, there are different transfer pricing documentation requirements (e.g. simplified, standalone, consolidated, European transfer pricing documentation).

The exemptions are, briefly, as follows:

- to date, a taxpayer has been exempt from transfer pricing document preparation liability in the case of agreements concluded with private individuals and being a small or medium sized enterprise
- effective 1 January 2012, the exemption rules were extended. Accordingly, taxpayers are not liable to prepare transfer pricing documents:
  - for transactions covered by an APA
  - for cost recharges originally invoiced by third (independent) parties
  - for cash gifts
  - for transactions performed between the taxpayer's foreign branch office and related parties (where the exemption method might apply in order to avoid double taxation under the double taxation arrangement between the relevant country and Hungary)
  - for any transactions where the accumulated value does not exceed 50 million Hungarian forints (HUF) (175,000 Euros (EUR)), calculated from the date of the agreement until the end of the tax year.

### Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?

The benefit of preparing a transfer pricing study is that the taxpayer shifts the burden of proof to the tax authority.

Otherwise, the preparation of transfer pricing documentation is obligatory based on the relevant Hungarian regulations. If a company fails to prepare its documentation or the documentation prepared is incomplete, it will be subject to a default penalty of up to HUF2 million (approximately EUR7,000) per missing documentation per year.

Where a taxpayer repeatedly fails to comply with the transfer pricing documentation obligation the upper cap of the default penalty can be doubled. And, in the case of repeated transgressions, four times the general penalty might be applicable. The upper cap of the default penalty can reach HUF8 million (approximately EUR28,000) per missing or incomplete documentation per business year.

### To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

The transfer pricing documentation should be prepared for every financial year. The deadline is the submission date of the corporate tax return. However, this date must not be later than the 150th day after the end of the financial year. If the tax authority requests the documentation during an audit of the company, it must be presented within 3 days of the request.

### When a transfer pricing study is prepared, should its content follow Chapter V of the OECD Guidelines?

Yes. However, it should be noted that Chapter V is not directly applicable, rather only through the 22/2009 MF Decree on detailed regulation of transfer pricing, which is based on the OECD Guidelines, including Chapter V.

### Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

## Transfer pricing methods

### Are transfer pricing methods outlined in Chapter II of the OECD Guidelines acceptable?

Yes.

### Is there a priority among the acceptable methods?

Up to 31 December 2010, the traditional methods (CUP method, RPM (Resale Price Method), CPLM (Cost Plus Method)) were preferred. Basically, the traditional methods should have been applied, but if these methods were not applicable, other methods could have been used.

While the traditional transaction methods are still preferred by the tax authority, according to the modification of Section (18) of CIT, effective from 1 January 2011,

the TNMM and profit split method should be treated equally with the traditional transaction methods.

### If there is no priority of methods, is there a “best method” rule?

Not applicable.

## Transfer pricing audit and penalties

### When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

Normal practice is to expect documentation within 3 days of request.

### If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?

After unsuccessful exhaustion of administrative procedures, a company is entitled to bring the matter before the competent court.

### If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

If the applied price is not in line with arm’s length prices, the adjustment will have an effect on the amount of tax payable. Accordingly, a default penalty of 50 percent and a late payment penalty interest might be levied on the basis of the tax arrears due to such adjustments.

### To what extent are transfer pricing penalties enforced?

Unknown.

### What defenses are available with respect to penalties?

Default penalties can only be avoided by complying with transfer pricing requirements.

### What trends are being observed currently?

More and more attention is being paid to the transfer pricing requirements during tax audits, and tax authority inspectors are being trained accordingly. Although special industry focus or transaction focus has not yet been observed, management fees and royalties are usually inspected thoroughly, as well as benchmarking studies (the screening steps, geographical selection, qualitative screening, and loss making comparables in the benchmarking set, etc.).

## Special considerations

### Are secret comparables used by tax authorities?

No.

### Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

Yes. The tax authority prefers local comparables. Where existing local comparables are left out of the benchmarking set, the tax authority may challenge the benchmarking study prepared by the taxpayer and perform its own search.

### Do tax authorities have requirements or preferences regarding databases for comparables?

Databases used by the taxpayer are obliged to be publicly available or verifiable by the tax authority. The preferred database is Amadeus, published by BvD, but not required.

### What level of interaction do tax authorities have with customs authorities?

Medium, but cooperation is increasing due to the merger of the National Tax and Customs Administrations in 2011.

### Are management fees deductible?

In principle yes, but only if it can be supported that the management fees incurred are in the interest of the company.

### Are management fees subject to withholding?

No.

### Are year-end transfer pricing adjustments permitted?

Year-end adjustments are basically permitted, but they should be sufficiently justified by the taxpayer as to why their application is deemed economically necessary (e.g. in order to achieve a targeted level of profitability in line with the functional profile of the taxpayer etc.) i.e. their business nature should be defensible. Where the tax authority does not recognize such adjustments – true-ups – as costs

that arose in the business interest of the taxpayer, its tax base might be increased with the amount of the true-ups and taxed accordingly.

In certain cases, such adjustments might also entail VAT or local business tax issues (e.g. if the adjustments are directly related to transactions subject to VAT, the costs of goods sold or services intermediated are adjusted etc.).

Year-end adjustments are generally recordable in the financial statements, pursuant to Hungarian GAAP, i.e. no special treatments are required.

### Other unique attributes?

Effective from 1 January 2012, in the case of certain low value-added services (as defined by the 22/2009 MF Decree e.g. IT services, translation, interpreting, accounting and legal activities, language education, administrative services, storage, canteen service, etc.). Special rules were introduced in order to ease the associated burden to prepare transfer pricing documentation.

According to the new rules on simplified documentation applicable for these services, if the service provider applies a margin between 3 and 7 percent, the price applied is qualified as an arm's length price without any further analysis or benchmark study. Accordingly, the transfer pricing documentation can be prepared with limited content. However, the condition for applying the new rule is

that the arm's length price of the service needs to be assessed by means of the cost-plus method.

Please note that, pursuant to the MF Decree, there are a limited number of conditions that if not met, can result in the simplified documentation being rejected. First, if the margin applied falls outside the previously mentioned range of 3 and 7 percent or the pricing method of cost-plus 3 and 7 percent does not reflect the arm's length price, the taxpayer is not entitled to apply the simplified documentation. Furthermore, the net value of the services, taking into consideration all transactions which can be consolidated in one document, cannot exceed HUF150 million (EUR526,000), 5 percent of the seller's net sales revenue and 10 percent of the operation costs of the purchaser in the tax year.

However, note that the understanding of the new regulation is currently uncertain due to possible differences in the interpretation of the wording of the new sections.

## Other recent developments

None.

## Tax treaty/double tax resolution

### What is the extent of the double tax treaty network?

Extensive.

### If extensive, is the competent authority effective in obtaining double tax relief?

No experience. In the case of transfer pricing issues, it is not usually effective.

### When may a taxpayer submit an adjustment to competent authority?

The taxpayers are entitled to submit an adjustment to the tax authorities, as competent authority, at any time. However, we would note that such claims made directly to the tax authorities are very rare in the Hungarian market.

### May a taxpayer go to competent authority before paying tax?

Yes. The possibility to file an APA exists.

## Advance pricing arrangements

### What APA options are available, if any?

Advance rulings and APAs have been available since 1 January 2007 (unilateral, bilateral and multilateral). Completion of an APA can help mitigate transfer pricing-related risks arising from price setting. Note, effective from 1 January 2012, the taxpayer is not obligated to prepare transfer pricing documentation covering a transaction supported by an APA.

### Is there a filing fee for APAs?

Yes. The filing fee depends on the type of APA (unilateral, bilateral, or multilateral procedure) and on the type of applicable approach (transfer pricing methods).

- for unilateral procedures with traditional methods (i.e. CUP method, RPM and CPLM), the fee payable is from HUF500,000 (approximately EUR1,700) to HUF5 million (approximately EUR17,500)
- for unilateral procedures with other methods, the fee payable is from HUF2 million (EUR7,000) to HUF7 million (approximately EUR24,500)
- for bilateral procedures the fee payable is from HUF3 million (approximately EUR10,500) to HUF8 million (approximately EUR28,000)
- for multilateral procedures the fee payable is HUF5 million (approximately EUR17,500) to HUF10million (approximately EUR35,000).

If the exact arm's length price could not be established or the subject of the agreement is only the methodology, the filing fee is the minimum amount of the fee ranges shown above.

### Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

No.

### Please provide some information on how successful the APA program is and whether there are any known difficulties?

Unilateral APAs are quite common now due to the 2009 decrease in procedure fees. Contemporaneously bilateral APAs, nontraditional approaches or more complex cases may cause difficulties for the tax authority. Based on general experience, an APA procedure might be time consuming (depending on the type of the APA, the complexity of the intra-group transaction as well as the capacity of the tax authority).

## Language

### In which language or languages can documentation be filed?

The documentation needs to be prepared in Hungarian for financial years 2008 and before. Effective 1 January 2010 (applicable retroactively for financial year 2009 as well) the documentation may be prepared in a language other than Hungarian. However, it should be made available in Hungarian within a defined period of time upon request of the tax authority.

In the case of tax investigations carried out by the tax authority after 1 January 2012, where documentation is prepared in English, German or French (besides Hungarian), translation cannot be requested by the tax authority.

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# Latvia



## KPMG's Views on Transfer Pricing in Latvia

As of 1 January 2013 current legislation requires a written transfer pricing study with specific information included, if a taxpayer's annual net turnover exceeds 1 million Latvian lats (LVL) and intra-group transactions undertaken exceed LVL10,000.

### Basic information

#### Tax authority name

Valsts ienemumu dienests.

#### Citation for transfer pricing rules

The Latvian law on taxes and duties sets the requirement for particular taxpayers in preparing transfer pricing documentation. It lists the information that must be included in the transfer pricing documentation. General transfer pricing rules are set out in the Latvian law on corporate income tax. The related Cabinet of Ministers regulations No. 556 of 21 December 2009 provides the methods to be used when determining arm's length prices. The tax legislation in Latvia allows the use of OECD Guidelines when choosing a transfer pricing method.

#### Effective date of transfer pricing rules

1 April 1995 in general. 1 July 2006 for transactional net margin method and profit split. 1 January 2013 for transfer pricing documentation requirements and APAs.

#### What is the relationship threshold for transfer pricing rules to apply between parties?

Ownership of greater than 20 percent, based on voting power, share capital and is under common control.

#### What is the statute of limitations on assessment of transfer pricing adjustments?

Transfer pricing adjustments and a penalty can be applied by the tax authority for the previous 5 years – starting from the corporate income tax return payment date.

### Transfer pricing disclosure overview

#### Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?

Yes. An entity is required to submit disclosures on transfer pricing to the tax authority through the annual corporate income tax return.

#### What types of transfer pricing information must be disclosed?

Along with the annual corporate income tax return, the following information must be submitted:

- the name of the related party to the transaction
- the registration number and country of registration
- the transaction type and amount
- the transfer pricing method applied
- the amount for which taxable income is increased, if any.

The taxpayer also must show in the corporate income tax return the amount where its Latvian-related party has increased its taxable income for non-compliance of arm's length principle, if any.

#### What are the consequences of failure to prepare or submit disclosures?

A penalty can be applied for late filing of a tax return varying from 50 – 500 Latvian lats (LVL). If no return is filed, the maximum penalty can be applied – LVL500.

### Transfer pricing study overview

#### Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

Yes, for certain transactions. If the annual net turnover of a Latvian resident or a non-resident's permanent establishment in Latvia exceeds LVL1 million and the intra-group transaction value exceeds LVL10,000, they are required to prepare a full transfer pricing study. The tax authority will determine the transaction prices based on its own information if a transfer pricing study cannot be submitted upon request.

**Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?**

Shifting the burden of proof, and requirement in practice/expectation of tax authorities.

**To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?**

If the taxpayer is required to prepare full transfer pricing documentation (net turnover and transaction value criteria are met), it must be submitted to the tax authority within 1 month of the request.

Based on KPMG in Latvia's experience, extensions are possible. However, each case must be negotiated.

**When a transfer pricing study is prepared, should its content follow Chapter V of the OECD Guidelines?**

Yes, with some exceptions.

Latvia is not a member of the OECD, thus the OECD Guidelines are not applicable. However, Latvian legislation is based on the OECD Guidelines.

**Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?**

No.

## Transfer pricing methods

**Are transfer pricing methods outlined in Chapter II of the OECD Guidelines acceptable?**

Yes, with some exceptions. Latvian legislation accepts transaction methods: CUP, resale price, and cost plus. They also accept profit-based methods: profit split, and TNMM. However, the

legislation does not recognize the use of other methods, as allowed by the OECD Guidelines.

**Is there a priority among the acceptable methods?**

Comparable uncontrolled price method, resale price method and cost-plus method have priority.

**If there is no priority of methods, is there a "best method" rule?**

No.

## Transfer pricing audit and penalties

**When the tax authority requests a taxpayer's transfer pricing documentation, how long does the taxpayer have to submit its documentation?**

Thirty days if the taxpayer is required to prepare full transfer pricing documentation.

**If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?**

Yes. If the taxpayer appeals the decision of the tax authority on transfer prices, it can submit an application to the Transaction Evaluation Commission (in Latvian – Darījumu novērtējuma komisija) established under the Ministry of Economics of the Republic of Latvia. Generally, the Commission issues a decision on the market value of the particular transaction within 30 days after the receipt of the taxpayer's application. If the tax authority does not agree to it and the matter is taken to court, the Commission's decision is in the nature of a recommendation.

If the appeal of the tax authority's decision is not beneficial to the taxpayer, matters are more often taken to court and not to the Transaction Evaluation Commission.

**If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?**

Yes. A penalty of 20 percent or 30 percent is applied. It can be halved i.e. 10 percent or 15 percent if certain criteria are met.

**To what extent are transfer pricing penalties enforced?**

Always.

**What defenses are available with respect to penalties?**

Transfer pricing documentation.

**What trends are being observed currently?**

The tax authority's interest in transfer pricing has increased and therefore pricing in all intra-group transactions may be questioned. More transfer pricing audits are performed by the tax authority.

## Special considerations

**Are secret comparables used by tax authorities?**

KPMG in Latvia has no information about the use of any secret comparables.

**Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?**

Yes, if local comparables can be found. If local comparables are not available, a European benchmarking study is acceptable.

If local comparables are found by the tax authority but they are not included in the entity's benchmarking study, the tax authority could reject the entity's results.

### Do tax authorities have requirements or preferences regarding databases for comparables?

No. The tax authority itself uses the Amadeus database. However, there are no requirements or recommendations on the use of any specific database. Some entities prefer to use the Amadeus database because it is more likely that the tax authority would obtain the same, or at least similar, benchmarking study results.

### What level of interaction do tax authorities have with customs authorities?

High. It is combined.

### Are management fees deductible?

Yes.

### Are management fees subject to withholding?

Yes.

### Are year-end transfer pricing adjustments permitted?

Yes. The taxpayer may reduce its corporate income tax base by the difference between intra-group prices and market prices by which its qualified related party has increased its corporate income tax base.

### Other unique attributes?

None.

## Other recent developments

As of 1 January 2013 there is a transfer pricing documentation requirement in Latvia. The amendments to the law also introduce APAs. Cabinet of Ministers Regulations that will provide practical guidance on concluding APAs are still in development.

## Tax treaty/double tax resolution

### What is the extent of the double tax treaty network?

Extensive.

### If extensive, is the competent authority effective in obtaining double tax relief?

Almost always.

### When may a taxpayer submit an adjustment to competent authority?

No formal rule.

### May a taxpayer go to competent authority before paying tax?

Yes.

## Advance pricing arrangements

### What APA options are available, if any?

The following options are available:

- advance rulings
- APAs are possible.

### Is there a filing fee for APAs?

It is planned that the fee per APA would be LVL8,000.

### Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

No.

### Please provide some information on how successful the APA program is and whether there are any known difficulties?

APAs are a new option that have not yet been implemented. It is planned that conclusion of an APA would take 6 months.

## Language

### In which language or languages can documentation be filed?

There are no language requirements. Therefore submission of transfer pricing documentation in English is acceptable. However, the tax authority is entitled to ask for a translation of either the full documentation or parts in Latvian.

It is uncommon to submit transfer pricing documentation in languages other than Latvian or English.

### KPMG in Latvia

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# Lithuania



## KPMG's Views on Transfer Pricing in Lithuania

Transfer pricing rules were implemented in Lithuania in 2004. In general, they are a condensed form of the OECD Guidelines.

Over the past few years, transfer pricing has been subject to increased focus. The tax authorities are now requesting that companies submit transfer pricing documentation for review.

The Lithuanian tax authorities have direct access to the Amadeus database allowing them to analyze benchmarking studies and perform adjustments. They are also increasing investigations of transactions involving management services, centralized purchasing services, loans and license agreements.

### Basic information

#### Tax authority name

Valstybine mokesciu inspekcija  
(State Tax Authority).

#### Citation for transfer pricing rules

Order No. 1K-123 of the Minister of  
Finance (9 April 2004).

#### Effective date of transfer pricing rules

2004.

#### What is the relationship threshold for transfer pricing rules to apply between parties?

Ownership higher than 25 percent, based on voting power, or under common control, or in cases where the parties can otherwise influence each other.

#### What is the statute of limitations on assessment of transfer pricing adjustments?

Generally the current year and 5 previous taxable years.

### Transfer pricing disclosure overview

#### Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?

Disclosures related to transfer pricing (form FR0528 – transactions with related parties) must be submitted to the tax authorities with the tax return. Transfer pricing documentation must be prepared but not submitted.

#### What types of transfer pricing information must be disclosed?

Annual statement (form FR0528) should include the following information:

- associated parties
- number of transactions
- type of transactions performed with each associated party (sale/purchase of tangible fixed assets, sale/purchase of intangibles, sale/purchase of raw

materials, goods, production items, provision/acquisition of financial services, provision/acquisition of other services, sale/purchase of shares and/or derivatives, lease of real estate and other property, as well as any other transactions).

The statement must specify income received/expenses incurred for each type of transaction.

A transfer pricing study must be prepared every year (if the criteria are met) but submitted to tax authorities only upon request.

#### What are the consequences of failure to prepare or submit disclosures?

Administrative penalties for non-submission may be imposed. In practice, one does not observe penalties being imposed.

## Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

Yes, for all transactions. A requirement to prepare a written transfer pricing study is applicable to companies if at least one of the criteria listed below is met:

- sales income of the entity before the taxable year when the transaction was actually carried out exceeded 10 million Lithuania litas (LTL) (approximately 2.9 million Euros (EUR))
- financial companies, credit institutions or insurance companies
- foreign entities engaged in activities through permanent establishments, if the attributable income of the foreign entity's establishment in Lithuania exceeds LTL10 million (approximately EUR2.9 million).

If one of these criteria is met, a transfer pricing study should include all transactions with associated parties.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?

The following benefits can be identified:

- shifting of the burden of proof. Tax authorities will accept the methods used by the taxpayer unless it is proven that the methods are inappropriate
- mitigating the risk that the tax authority will propose adjustments based on secret comparables (the tax authorities are entitled to use comparables/information not available to the taxpayer if the taxpayer has provided incorrect information)
- penalty protection
- meets the tax authority's expectations.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

The law states that the taxpayer should be in possession of transfer pricing documentation. There are no guidelines on when the transfer pricing documentation should be prepared. Documentation must be submitted within 30 days of a written request from the tax authorities.

When a transfer pricing study is prepared, should its content follow Chapter V of the OECD Guidelines?

Yes.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

## Transfer pricing methods

Are transfer pricing methods outlined in Chapter II of the OECD Guidelines acceptable?

Yes.

Is there a priority among the acceptable methods?

Yes. There is a priority rule in Lithuanian legislation: the taxpayer has to choose the CUP method. If the information available is not sufficient, the resale price method or the cost-plus method will be chosen before the application of the profit-based methods.

If there is no priority of methods, is there a "best method" rule?

Not applicable.

## Transfer pricing audit and penalties

When the tax authority requests a taxpayer's transfer pricing documentation, how long does the taxpayer have to submit its documentation?

The statutory requirement is to present transfer pricing documentation within 30 days of the request.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?

The procedure of ordinary dispute resolution should be followed, i.e. the taxpayer may file a claim with the central tax authorities or with the Commission of Tax Disputes.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Generally, the tax penalties imposed range from 10 to 50 percent of the outstanding tax amount.

To what extent are transfer pricing penalties enforced?

Often.

What defenses are available with respect to penalties?

The penalties can be reduced by up to 10 percent of the outstanding corporate income tax if the taxpayer properly communicates with the tax authorities and presents all requested documents/explanations.

What trends are being observed currently?

The number of tax audits (by the tax authority) related to transfer pricing issues is increasing. As well, the number of disputes and proposed tax adjustments has increased. Transfer pricing audits are particularly likely for loss making companies and

companies having substantial volume in international transactions. The transactions subject to an increased scrutiny are: financial transactions, royalty payments and intra-group services (particularly management services).

## Special considerations

### Are secret comparables used by tax authorities?

Yes, the tax authorities can use comparables which are not disclosed to the taxpayer.

### Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

No.

### Do tax authorities have requirements or preferences regarding databases for comparables?

No.

### What level of interaction do tax authorities have with customs authorities?

High.

### Are management fees deductible?

Generally, yes.

### Are management fees subject to withholding?

No.

### Are year-end transfer pricing adjustments permitted?

No.

### Other unique attributes?

Not applicable.

## Other recent developments

As of 1 January 2012 it is possible to apply for an APA. Changes to the transfer pricing rules have been initiated. In May 2013, the Conference of Ministers of the OECD will be deciding about the membership of Lithuania.

## Tax treaty/double tax resolution

### What is the extent of the double tax treaty network?

Extensive. Currently, Lithuania has 49 double tax treaties.

### If extensive, is the competent authority effective in obtaining double tax relief?

No experience (in transfer pricing cases).

### When may a taxpayer submit an adjustment to competent authority?

No formal rules.

### May a taxpayer go to competent authority before paying tax?

Not permitted.

## Advance pricing arrangements

### What APA options are available, if any?

Unilateral and bilateral.

### Is there a filing fee for APAs?

No.

### Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

No information yet.

### Please provide some information on how successful the APA program is and whether there are any known difficulties?

No information yet.

## Language

### In which language or languages can documentation be filed?

Documentation can be prepared in any language but it must be translated into Lithuanian at the request of the tax authorities.

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# Macedonia



## KPMG's Views on Transfer Pricing in Macedonia

Macedonian transfer pricing rules have been strengthened in the last few years. The amendments to the Corporate Income Tax (CIT) Law from April 2011 introduced a separate sub-category of a tax base which referred to overstated expenses and understated revenues from transactions with related parties. Later in December of the same year, the amendments to the Rulebook on the application of the CIT Law (the "Rulebook") on the application of the CIT Law introduced the arm's length principle as well as the requirement for taxpayers at the request of the tax authorities to present satisfactory information and evidence which would confirm that related-party transactions have been carried at arm's length. Accordingly, it is expected that transfer pricing will become one of the focal points of the Macedonian tax authorities in the coming years.

### Basic information

#### Tax authority name

Министерство за финансии  
(Ministry of Finance)

Управа за Јавни Приходи  
(Public Revenue Office)

#### Citation for transfer pricing rules

Articles 13 and 14 of the Corporate Income Tax Law; article 2 paragraph 4 of the Rulebook on the application of the CIT Law.

#### Effective date of transfer pricing rules

Certain provisions have been present in the CIT legislation since January 1994, while the latest amendments relating to transfer pricing came into force in 2011.

#### What is the relationship threshold for transfer pricing rules to apply between parties?

The CIT Law refers to the Macedonian Law on Trading Companies for the definition of related parties to which transfer pricing rules apply, according to which two parties will be considered as

related if one has at least a 10 percent interest in the other, or if one party directly or indirectly has controlling influence over the other.

It is deemed that a company exercises a controlling influence over another company if that company holds, directly or indirectly, over 40 percent of the total number of votes that can be cast at the shareholders' meeting, and if no other shareholder directly or indirectly holds a number of votes which is greater than the votes held by the respective company.

#### What is the statute of limitations on assessment of transfer pricing adjustments?

The statute of limitation is set at 5 years, and commences as of 1 January of the year following the year when the tax liability became due. If the tax authorities bring a tax administrative act, a new statute of limitation of 5 years begins to elapse. The absolute statute of limitation is set at 10 years.

There is no special statute of limitations in respect of transfer pricing.

### Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?

No, a taxpayer is not obliged to prepare and submit documentation to the tax authorities.

#### What types of transfer pricing information must be disclosed?

Not applicable.

#### What are the consequences of failure to prepare or submit disclosures?

Not applicable.

### Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

A taxpayer is obliged to present satisfactory information and evidence

which would confirm that related-party transactions have been carried at arm's length only upon request.

Preparation of a transfer pricing study as such is not required, as the CIT legislation does not set out any requirements or more detailed guidance on the manner in which the information and evidence should be prepared (i.e. the format), nor provides greater details about the type of information which should be included (i.e. the content).

As a result, the taxpayer may not be penalized for mere failure to prepare a study. However, tax authorities might request provision of an explanation and/or additional information, and failure to provide such information could lead to penalties being assessed.

**Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?**

Documentation is not required to be submitted to the tax authorities unless requested in a tax audit. However, in practice it is recommended that companies have readily available information and evidence which would confirm that related-party transactions have actually been carried at arm's length, considering that the general tax procedure deadlines for submitting requested information by the authorities is 1 month. Furthermore, having readily available information and evidence shifts the burden of proof from the taxpayer to the tax authorities.

**To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?**

Not applicable.

**When a transfer pricing study is prepared, should its content follow Chapter V of the OECD Guidelines?**

The CIT legislation does not set out any further requirements or more detailed guidance on the manner in which this information and evidence should be prepared, nor provide greater details about the type of information which should be included.

Considering the provisions within the Macedonian CIT legislation in regards to preparation of transfer pricing documentation, as well as the limited practice in regard to evidencing transactions between related parties, taxpayers generally apply the guidance available in the OECD Guidelines.

**Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?**

Not applicable.

## Transfer pricing methods

**Are transfer pricing methods outlined in Chapter II of the OECD Guidelines acceptable?**

The CIT Law prescribes that market prices are determined on the basis of comparable prices that could have been realized between unrelated parties on the domestic market or a similar foreign market, i.e. the comparable uncontrolled prices (CUP) method.

If such comparative prices cannot be determined, the CIT Law prescribes that the cost plus method be used.

**Is there a priority among the acceptable methods?**

Under the current CIT legislation if comparable prices cannot be determined, then the cost plus method should be applied.

**If there is no priority of methods, is there a "best method" rule?**

Not applicable.

## Transfer pricing audit and penalties

**When the tax authority requests a taxpayer's transfer pricing documentation, how long does the taxpayer have to submit its documentation?**

The documentation should be available on request, i.e. there is no specific deadline in respect of submission of transfer pricing documentation; however the general deadline for submission of requested information to the tax authorities is 1 month.

**If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?**

Adjustments assessed by the tax authorities must be applied and then the taxpayer has an option to appeal in the second instance (with the Ministry of Finance), or finally to the Administrative Court. The appeal does not prolong the payment of taxes and penalties.

**If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?**

There are no transfer pricing-specific penalties.

Under the general penalty regime, in regards to the amount of understated tax liability a late payment penalty interest is assessed at the rate of 0.03 percent per each day starting from the day the CIT is due for payment. Additionally, the taxpayer can be assessed a penalty for underreporting their tax base. The maximum penalty is set at 10 times the understated tax, whereby the tax authorities have a discretionary right

to set the exact amount of the penalty. As per the general penalty regime if taxpayers do not provide the facts necessary for the tax assessment, penalty can be imposed ranging from EUR1,500 to EUR2,000 for the taxpayer and EUR750 for the person responsible. The tax authorities can assess a ban on performing business activities for a period of 30 days.

#### To what extent are transfer pricing penalties enforced?

Rarely, although it is expected that the practice followed by the tax authorities will be changed in the forthcoming period.

#### What defenses are available with respect to penalties?

It is recommended that companies have readily available information and evidence which would confirm that related-party transactions have been carried at arm's length, thus providing a stronger argument against assessing (maximum) penalties in cases of dispute with the tax authorities.

#### What trends are being observed currently?

Considering the (i) specifics of the Macedonian taxation system, and (ii) recent changes in the CIT legislation in relation to transfer prices, it is expected that transfer pricing will become one of the focal points for the tax authorities. However, currently we are not seeing many cases where the tax authorities have challenged transfer prices.

### Special considerations

#### Are secret comparables used by tax authorities?

Considering the recent changes to the CIT legislation in regard to evidencing transfer pricing, there is not yet a well

developed transfer pricing practice, and, accordingly, it is difficult to ascertain whether or not the tax authorities use such information.

However, in past years the tax authorities have used similar types of information in regards to the assessment of personal income tax on rental income.

#### Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

The CIT Law prescribes that market prices are determined on the basis of comparable prices that could have been realized between unrelated parties on the domestic market or a similar foreign market. However, use of local comparables might be considered as an advantage.

#### Do tax authorities have requirements or preferences regarding databases for comparables?

Not applicable.

#### What level of interaction do tax authorities have with customs authorities?

High, particularly in the area of VAT, yet, no particular cases have been witnessed in regard to transfer pricing.

#### Are management fees deductible?

Yes, under the general requirements that the receipt of services can be witnessed and that they relate to the taxpayer's business activities.

#### Are management fees subject to withholding?

Management services paid to foreign entities is subject to a 10 percent withholding tax under local legislation,

however the withholding tax can be reduced down to 0 percent under an effective double tax treaty.

#### Are year-end transfer pricing adjustments permitted?

Yes, as generally under the CIT Law taxpayers should report any differences due to overstated expenses/understated revenues in their annual CIT return.

#### Other unique attributes?

The Macedonian tax system is rather unique, considering that, starting from 1 January 2009, the Macedonian income taxation regime was changed, whereby the base for income tax computation was shifted from the "profit before tax" concept to the "income distribution" concept.

In this respect, on an annual basis taxpayers pay tax at 10 percent on expenses not recognized for tax purposes and understated revenues (including transfer pricing), whereby the tax is due irrespective of the taxpayer's financial result.

### Other recent developments

There were recently amendments made to the Macedonian Law on Trading Companies, which introduced the requirement of an auditor's opinion in the process of approval of business deals with "interested parties". Among others, the auditor's opinion should address whether the transaction is fair, and at market level. The respective provisions apply to listed companies where the transaction exceeds the set thresholds (exceptions do apply).

## Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Moderate.

If extensive, is the competent authority effective in obtaining double tax relief?

Yes, with respect to the usual application of tax treaties.

In regard to avoidance of double taxation derived from transfer pricing, we have not witnessed such cases.

When may a taxpayer submit an adjustment to competent authority?

No formal rules exist.

May a taxpayer go to competent authority before paying tax?

No formal rules exist.

## Advance pricing arrangements

What APA options are available, if any?

No APAs or advance rulings of any kind exist.

Is there a filing fee for APAs?

Not applicable.

Does the tax authority publish APA data, either in the form of an annual report or through the disclosure of data in public forums?

Not applicable.

Please provide some information on how successful the APA program is and whether there are any known difficulties?

Not applicable.

## Language

In which language or languages can documentation be filed?

Macedonian.

### KPMG in Macedonia

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# Montenegro



## KPMG's Views on Transfer Pricing in Montenegro

Transfer pricing rules have been present for more than a decade in Montenegrin Corporate Income Tax (CIT) Law, but specific and detailed regulations on the application of these rules have never been published by the Ministry of Finance. However, due diligence should be taken with respect to the transfer pricing rules stipulated in the CIT Law (even though they are not applied in practice) since the tax authorities may change their current practice retroactively.

### Basic information

#### Tax authority name

Tax Administration of Montenegro.

#### Citation for transfer pricing rules

Articles 19, 20 and 38 of the Corporate Income Tax (CIT) Law.

#### Effective date of transfer pricing rules

1 January 2002.

#### What is the relationship threshold for transfer pricing rules to apply between parties?

A company is defined as being related to another company or an individual if this other company or the individual has a direct effect on the conditions or economic results of the transactions between these entities.

Special conditions are: participation in the capital or in the voting power of at least 25 percent, the existence of a subordinated relationship between two entities, or if one entity is under control (direct or indirect) of another entity the two subsidiaries of the same entity or entities are under direct or indirect control of a third entity.

#### What is the statute of limitations on assessment of transfer pricing adjustments?

Generally 5 years from the end of the year in which a tax liability should have been determined. The absolute period of limitation is 10 years. There is no special statute of limitations on assessment of transfer pricing adjustments.

### Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?

Yes.

#### What types of transfer pricing information must be disclosed?

Income and expenses generated from related party transactions during the year must be separately disclosed in the CIT return.

#### What are the consequences of failure to prepare or submit disclosures?

No consequences are defined in the CIT Law for failure to prepare or submit disclosures.

### Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

No. However, supporting documentation for disclosed transfer prices is recommended (specific form is not prescribed).

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?

Since there are no specific requirements regarding the documentation, preparing a transfer pricing study provides a benefit of shifting the burden of proof to the tax authorities.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

No specific requirements.

### When a transfer pricing study is prepared, should its content follow Chapter V of the OECD Guidelines?

As there is no required documentation necessary to support transfer prices applied, KPMG in Montenegro advises following the OECD Guidelines.

### Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

## Transfer pricing methods

### Are transfer pricing methods outlined in Chapter II of the OECD Guidelines acceptable?

Yes. However, please note that only the traditional methods are prescribed by the regulations i.e. CUP, resale minus and cost plus.

### Is there a priority among the acceptable methods?

Yes. When CUP is not possible, the cost plus method or the resale price method should be used.

### If there is no priority of methods, is there a “best method” rule?

Not applicable.

## Transfer pricing audit and penalties

### When the tax authority requests a taxpayer's transfer pricing documentation, how long does the taxpayer have to submit its documentation?

The taxpayer should in principle possess documentation to support transfer prices declared at the moment of request from

the tax authorities. Time may be granted for the preparation of documentation during the tax audit.

### If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?

Adjustments assessed by the tax authorities must be applied and then the taxpayer has an option to appeal to the second instance degree procedure with the tax authorities or finally to the administrative court.

### If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

No penalties are defined in the CIT Law for underpayment of tax due to transfer pricing.

### To what extent are transfer pricing penalties enforced?

Not applicable.

### What defenses are available with respect to penalties?

Not applicable.

### What trends are being observed currently?

The government is currently rarely doing transfer pricing audits due to lack of experience and a relatively low corporate income tax rate (9 percent), which results in much more attention paid to indirect and payroll taxes. Taking into account that the tax authorities in neighboring countries in South Eastern Europe have started to pay much more attention to transfer pricing, it is expected that this trend will spread to Montenegro as well.

## Special considerations

### Are secret comparables used by tax authorities?

No.

### Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

No.

### Do tax authorities have requirements or preferences regarding databases for comparables?

No, none in practice.

### What level of interaction do tax authorities have with customs authorities?

Interaction between tax and customs authorities regarding VAT is high. However, it is not possible to estimate the level of interaction regarding transfer pricing.

### Are management fees deductible?

Generally, yes. Please note that non-documented costs are non-deductible as well as costs that are not incurred for business purposes.

### Are management fees subject to withholding?

Yes, 9 percent withholding tax, unless there is a double taxation treaty between Montenegro and the country of the beneficial owner of the income.

### Are year-end transfer pricing adjustments permitted?

No.

### Other unique attributes?

Not applicable.

## Other recent developments

Not applicable.

## Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Minimal.

If extensive, is the competent authority effective in obtaining double tax relief?

No experience.

When may a taxpayer submit an adjustment to competent authority?

No formal rules.

May a taxpayer go to competent authority before paying tax?

No formal rules.

## Advance pricing arrangements

What APA options are available, if any?

No APAs or advance rulings of any kind are available.

Is there a filing fee for APAs?

Not applicable.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

Not applicable.

Please provide some information on how successful the APA program is and whether there are any known difficulties?

Not applicable.

## Language

In which language or languages can documentation be filed?

Montenegrin.

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# Poland



## KPMG's Views on Transfer Pricing in Poland

In recent years transfer pricing has been mentioned as one of the top priorities in the circular issued each year by the Polish Ministry of Finance to the tax inspectors describing the main areas which should be subject to thorough scrutiny during tax audits. Polish tax authorities prefer to rely on Polish comparables when analyzing benchmarking studies. Due to the economic downturn, transfer pricing restructurings are being implemented in the multinational companies operating in Poland. As some of them may be perceived as abusive by the tax authorities, transfer pricing audits aimed at challenging the new transfer pricing structures are expected. The Polish Ministry of Finance is encouraging taxpayers to conclude APAs for their important transactions and we have noticed a change in their approach in recent years towards taxpayers who want to conclude APAs, becoming more business-friendly.

### Basic information

#### Tax authority name

Ministerstwo Finansów.

#### Citation for transfer pricing rules

Reassessment of income: Article 11 Corporate Income Tax (CIT) Act.

Decree of the Ministry of Finance of 10 September 2009 establishing the taxpayers' income through the assessment of prices, and on the method and procedure for the elimination of double taxation of the legal person in the case of profit adjustments for related parties, in force as of 17 October 2009.

Information requirements: Article 82 and 82a of the Tax Ordinance Act and the Decree of the Ministry of Finance of 24 December 2002 on tax information.

Documentation requirements: Article 9a CIT.

Documentation requirements (sanctions): Article 19, sec. 4, CIT Act.

Harmful tax competition: Decree of the Ministry of Finance of 16 May 2005.

APA: Article 20a–20q, Tax Ordinance Act.

#### Effective date of transfer pricing rules

Arm's length principle, 15 February 1992, application of methods, 1 October 1997, information requirement, 31 December 1997, documentation requirement, 27 July 2000, APA, 1 January 2006.

#### What is the relationship threshold for transfer pricing rules to apply between parties?

Ownership greater than 5 percent, share capital, are under common control.

#### What is the statute of limitations on assessment of transfer pricing adjustments?

Six years from tax year-end.

### Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?

Yes.

#### What types of transfer pricing information must be disclosed?

Information if an entity is obliged to prepare statutory transfer pricing documentation; information on

agreements concluded with related parties when the value exceeds 300,000 Euros (EUR) (total value of receivables or liabilities resulting from all agreements concluded with one related party within a fiscal year) or EUR5,000 if an agreement is concluded with a related party which has a permanent establishment in Poland; information on remuneration paid by foreign related parties to foreign individuals providing services (working) for the Polish subsidiary.

#### What are the consequences of failure to prepare or submit disclosures?

Persons responsible for the company's tax compliance may be held responsible under the penal-fiscal code for not submitting required tax information.

### Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

Yes, a transfer pricing study (understood as documentation to related party transactions) is required for transactions exceeding thresholds. There is no penalty for a mere failure to possess

the documentation, although there have been observed attempts to penalize persons responsible for the company's tax compliance under the penal-fiscal code for not submitting required tax information.

A taxpayer is required to provide the tax authorities with transfer pricing documentation, within 7 days of receiving the request (statutory documentation required under Article 9a of the Polish CIT Act – does not have to include benchmarking study demonstrating that the transfer price complies with the arm's length standard). Such transfer pricing documentation should be prepared for transactions concluded by a taxpayer with a related party which exceed, in the given tax year, the following thresholds:

- EUR30,000 for transactions involving intangibles and services
- EUR50,000 or 100,000 (if a transaction does not exceed 20 percent of a company's share capital) for transactions involving goods and tangibles.

Additionally, each transaction exceeding EUR20,000 should be documented if concluded with an entity operating in a country listed by the Ministry of Finance as a tax haven.

If the transfer pricing documentation is not presented to the tax authorities within 7 days following the request and the price is successfully challenged, the tax authorities may apply the penalty tax rate of 50 percent instead of a standard CIT rate of 19 percent to the amounts adjusted. Obviously penalty interest for late payment of the outstanding tax is due as well.

### Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?

Transfer pricing documentation strongly decreases the eagerness of the tax authorities to investigate related party transactions and eliminates the possibility of applying the 50 percent CIT rate to assessed income instead of the usual 19 percent rate.

As statutory transfer pricing documentation does not require the inclusion of a benchmarking analysis, the tax authorities should verify the arm's length nature of the transactions during the tax audit. It is therefore highly recommended to supplement the documentation with a study demonstrating that the pricing is compliant with the arm's length standard. It will force the authorities to prepare stronger arguments if they intend to challenge the pricing methodology accepted by the taxpayer.

Transfer pricing documentation and a benchmarking study help to mitigate risk of personal responsibility under the penal-fiscal code for decreasing a company's tax liability (it can become an issue if the tax authorities assess additional income to the company).

Transfer pricing documentation prevents the tax authorities from shifting the burden of proof to the taxpayer and makes challenging the established prices more difficult.

### To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

Transfer pricing documentation must be provided in Polish, within 7 days of the tax authorities' request, which is a very short period, especially with regard to transactions concluded a few years earlier. It is strongly recommended that such documentation is prepared in advance. At the moment of filing the contemporaneous CIT return, the taxpayer must submit information, regardless of whether the obligation to prepare transfer pricing documentation exists.

### When a transfer pricing study is prepared, should its content follow Chapter V of the OECD Guidelines?

Yes. However there are specific requirements to be met.

The mandatory transfer pricing documentation requires a functional analysis identifying.

- functions performed, risks borne, and assets employed in the given type of transaction
- determination of anticipated types of costs associated with the transaction
- description of the method adopted to calculate transaction price
- information regarding terms and form of payments for each transaction (e.g. currency of payments, due date of payments, manner of transferring money, periods in which the invoices are issued, etc.)
- data on value of the transaction

- determination of the strategy influencing the transfer price (this element becomes obligatory if it influences the value of the transaction)
- determination of other factors influencing the transfer price (this element becomes obligatory if it influences the value of the transaction)
- determination of the benefits expected due to services purchased (regarding the purchase of services or transfer of intangibles).

A benchmarking study or any other comparable economic analysis documenting the compliance of the transaction with the arm's length standard is highly recommended.

### Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No formal qualifications required to prepare transfer pricing documentation. However, normally done by licensed tax advisors. In the case of benchmarking analyses – access to databases (like Amadeus or Tegiel – a Polish database including information on local companies) is essential in order to prepare the study.

## Transfer pricing methods

### Are transfer pricing methods outlined in Chapter II of the OECD Guidelines acceptable?

Yes, with some exceptions (Berry ratio is not an advisable method).

### Is there a priority among the acceptable methods?

Yes. If application of the transaction-based methods by the tax authorities verifying the transaction is impossible, the profit-based methods can be applied.

### If there is no priority of methods, is there a "best method" rule?

Not applicable.

## Transfer pricing audit and penalties

### When the tax authority requests a taxpayer's transfer pricing documentation, how long does the taxpayer have to submit its documentation?

Seven days following request.

### If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?

No.

### If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes. If a taxpayer fails to submit such documentation or provides documentation which does not meet the legal requirements, and the tax authorities therefore assess an additional income, the assessed income will be taxed at the penal 50 percent tax rate (instead of standard rate – currently 19 percent).

### To what extent are transfer pricing penalties enforced?

Always.

### What defenses are available with respect to penalties?

Documentation provides for penalty protection against 50 percent penalty tax rate for adjusted incomes. Country-specific documentation, including a benchmarking search with a local database, confirming the arm's length standard of the transactions will mitigate the risk of the prices being challenged.

### What trends are being observed currently?

The following trends are currently being observed:

- a shift to a significantly more flexible and business-friendly approach by the Ministry of Finance APA team to taxpayers and transactions subject to an APA

- transfer pricing audits conducted in cooperation with other countries' tax authorities (cooperation includes, for instance, exchange of information between the tax administrations)
- transfer pricing audits focusing on more complicated transactions than the ones that were examined in the past (for instance, sale of economic ownership of a trademark).

## Special considerations

### Are secret comparables used by tax authorities?

Secret comparables are not allowed. Nevertheless, in practice, cases of the tax authorities using secret comparables do occur.

### Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

Yes. The consequences of not having local comparables depend on the level of comparability between Poland and other markets. The worst-case scenario is challenging the whole search.

### Do tax authorities have requirements or preferences regarding databases for comparables?

Preference (but no obligation) to use the local database, as it provides more details on local comparables. The preferred databases are: Tegiel (Polish database), Amadeus, Monitor Polski "B" (registry court data).

### What level of interaction do tax authorities have with customs authorities?

High.

### Are management fees deductible?

Yes. Management fees may be tax deductible if all of the following conditions are met: the recipient of the management service can prove that services have been factually rendered; the expense is incurred for the purpose of earning revenue and does not arise from a simple shifting of expenses incurred on the group level

with no factual benefit to the recipient (stewardship expense); and the expense is not listed in Article 16 of the CIT Act, which describes non-tax-deductible expenses.

#### Are management fees subject to withholding?

Yes. Withholding tax regulations apply, unless the double taxation treaty is in force. Therefore, in practice, there is no withholding tax on management fees for countries with treaty protection.

#### Are year-end transfer pricing adjustments permitted?

Yes. Preferably, the adjustment should be reflected in the correction of the original transaction price, the financial statement and tax return. An adjustment triggers VAT and customs implications. No special tax declaration needs to be submitted.

#### Other unique attributes?

Polish regulations envisage personal responsibility for decreasing a company's tax liability (financial penalty, records in the criminal register, imprisonment). Polish tax authorities do exercise this rule and penalize company management.

### Other recent developments

Taxpayers are requested to disclose information on transactions not compliant with the arm's length standard in the financial statement's additional information. If there is no declaration, the auditors and tax authorities can request evidence to verify the arm's length nature of the related party transactions. Despite the lack of formal obligations, preparing comparable analyses and benchmarking studies on related party transactions is highly recommended.

Attempts to amend the current regulations and to include comparable analysis into the scope of required elements of the transfer pricing

documentation have been observed. So far the law has not been changed, but such amendment may be expected in the future.

### Tax treaty/double tax resolution

#### What is the extent of the double tax treaty network?

Extensive.

#### If extensive, is the competent authority effective in obtaining double tax relief?

Sometimes/only limited experience.

#### When may a taxpayer submit an adjustment to competent authority?

After acknowledgement of a double taxation.

#### May a taxpayer go to competent authority before paying tax?

Yes.

### Advance pricing arrangements

#### What APA options are available, if any?

Unilateral; bilateral; multilateral.

#### Is there a filing fee for APAs?

Yes. The filing fee is 1 percent of the value of a transaction with the following provisions: for unilateral agreements with domestic entities, no less than 5,000 Polish zloty (PLN) and no more than PLN50,000; for foreign entities no less than PLN20,000 and no more than PLN100,000; for bilateral or multilateral, no less than PLN50,000 and no more than PLN200,000. Renewal fees are half of the amount of the original filing fee.

#### Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

Statistics on the number of motions submitted and decisions issued (positive and negative) are presented on request only. There is no formal annual report or similar publication.

#### Please provide some information on how successful the APA program is and whether there are any known difficulties?

The Ministry of Finance is open to discussions about all types of transactions and already has some experience with the APA program. However taxpayers are still reluctant to use the APA route. We have noticed a clear change of attitude, becoming significantly more business-friendly.

### Language

#### In which language or languages can documentation be filed?

Polish only.

#### KPMG in Poland

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# Romania



## KPMG's Views on Transfer Pricing in Romania

The Romanian legislation on transfer pricing documentation follows the principles of the EU regulations on transfer pricing (e.g. the EU Code of Conduct on Transfer Pricing). Transfer pricing has become increasingly a hot topic for multinationals having a business presence in Romania, as the number of transfer pricing audits have increased significantly since 2008.

### Basic information

#### Tax authority name

Ministry of Public Finances; National Agency for Fiscal Administration (ANAF).

#### Citation for transfer pricing rules

- Article 7 of the Romanian Fiscal Code – defining “related parties”
- Article 11 (2) of the Romanian Fiscal Code and its application Norms – providing for the arm’s length principles and transfer pricing methods
- Article 42 and article 79 of the Romanian Fiscal Procedure Code approved by Government Ordinance no. 92/2003, as further amended and completed – requiring the preparation of a transfer pricing file
- Government Decision no. 529/2007, regarding the procedure of issuing the advance tax rulings and APAs
- Order of the President of National Agency for Fiscal Administration no. 222/2008, regarding the content of the transfer pricing documentation file, as well as the postponement of the control until the transfer pricing file is ready.

#### Effective date of transfer pricing rules

1 January 2004, the obligation to comply with transfer pricing principles was reinforced.

In May 2007, the procedure to be followed by taxpayers in order to obtain an APA ruling from the Romanian tax authorities was enforced.

In July 2007, the obligation to have transfer pricing documentation files available was enforced.

In February 2008, the obligation to have specific transfer pricing documentation available was enforced, thus creating a more stable regulatory environment for transfer pricing purposes.

Although the obligation to document domestic intra-group transactions for Romanian transfer pricing purposes was clearly stated in the Fiscal Code as of May-June 2010, there is still a risk that the previous text of the relevant provision of the Fiscal Code could be interpreted in a way that such documentation obligation was also applicable in the past.

#### What is the relationship threshold for transfer pricing rules to apply between parties?

Direct or indirect ownership of a minimum of 25 percent of the participation titles or voting rights or effective control.

#### What is the statute of limitations on assessment of transfer pricing adjustments?

Five years from filing date.

Also, a tax audit can be performed for tax liabilities arising in the last 10 years in case of a fiscal evasion.

### Transfer pricing disclosure overview

#### Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?

No specific transfer pricing disclosure is required in the annual corporate tax return. A summary of transactions carried out with related parties must be disclosed when preparing the financial statements, but there is no disclosure requirement on the tax return.

### What types of transfer pricing information must be disclosed?

Not applicable.

### What are the consequences of failure to prepare or submit disclosures?

Not applicable.

## Transfer pricing study overview

### Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

Yes, for all transactions.

The content of the transfer pricing documentation file is required by Order of the President of National Agency for Fiscal Administration no. 222/2008, regarding the content of the transfer pricing documentation file.

Failure to comply with the transfer pricing documentation requirements is punished with a fine that currently amounts between 12,000 and 14,000 Romanian leu (RON) (approximately 3,000 to 3,500 Euros (EUR)).

If the transfer pricing documentation file is incomplete, the tax authorities may establish by their own means the arm's length prices and adjust the taxable profit of the taxpayer accordingly.

### Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?

If the taxpayer does not submit the transfer pricing documentation file to the authorities within the provided term, or if the file is incomplete, the tax authorities may then establish by their own means the arm's length prices and adjust the taxable profit of the taxpayer accordingly for the audited period (16 percent tax will apply to the additional

taxable profit). Interest and late payment penalties may also apply to the additional corporate tax due.

Performing a transfer pricing study offers taxpayers the possibility to observe the market level for similar comparable companies and thus to correct its prices if any advantages are noted.

### To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

The transfer pricing documentation file must be drafted and submitted to the tax authorities upon their written request. If the taxpayer does not have the transfer pricing documentation file available at the moment when the tax authorities request it, a period of up to 3 months can be granted by the tax authorities and an extension may be requested for a period equal to the one initially established.

### When a transfer pricing study is prepared, should its content follow Chapter V of the OECD Guidelines?

Yes.

### Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

## Transfer pricing methods

### Are transfer pricing methods outlined in Chapter II of the OECD Guidelines acceptable?

Yes.

### Is there a priority among the acceptable methods?

According to the local legislation, CUP is the first method to be considered. However, in practice, the trend is to recognize the appropriateness of the profit-based methods.

### If there is no priority of methods, is there a "best method" rule?

No.

## Transfer pricing audit and penalties

### When the tax authority requests a taxpayer's transfer pricing documentation, how long does the taxpayer have to submit its documentation?

Based on the local legislation, the transfer pricing documentation file needs to be submitted to the tax authorities upon their written request. From the date of the official request, the taxpayer has 3 months to submit its documentation, with the possibility of an extension equal to the period.

### If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?

Yes.

### If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Beginning October 2010, the late payment interest is 0.04 percent per day, while another late payment penalty (5 percent or 15 percent of the unpaid taxes depending on the period of outstanding debts – between 30 and 90 days or over 90 days) may also be added to such upward adjustments.

### To what extent are transfer pricing penalties enforced?

Always.

### What defenses are available with respect to penalties?

Comprehensive and proper transfer pricing documentation.

### What trends are being observed currently?

Currently, the strategy of the Romanian tax authorities is to focus on loss-making companies and on companies operating in certain economic sectors (such as the oil and gas sector, which has come under a lot of scrutiny in the last year).

## Special considerations

### Are secret comparables used by tax authorities?

As a matter of principle, Romanian tax authorities use public information and databases. Additional information may be found via exchange of information with other states.

### Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

Yes. For Romanian transfer pricing purposes, in order to determine the arm's length character of prices charged between a Romanian entity and its related parties, a local market benchmark study has to be carried out first. It is only in the case of insufficiently available information regarding local comparables that Romanian tax authorities will accept a pan-European search. Nevertheless, the search for comparables on the local market has to be documented and justified as "not possible". In practice, we noticed that the Romanian tax authorities are asking for Romanian comparables, and other benchmarks (on the EU market or on extended markets) are usually rejected by the Romanian tax authorities.

### Do tax authorities have requirements or preferences regarding databases for comparables?

No. However, the Amadeus database is most commonly accepted by the Romanian tax authorities.

### What level of interaction do tax authorities have with customs authorities?

The exchange of information with the customs authorities on transfer pricing adjustments is increasing. Customs base adjustments are also made in accordance with the General Agreement for Trade and Tariffs (GATT).

### Are management fees deductible?

General corporate conditions must be cumulatively met: the service is actually rendered; the taxpayer can provide supporting documents attesting that the service was provided (that is, written agreement, timesheets, reports, etc.); and the service is rendered for the benefit of the taxpayer's business.

In the absence of such supporting documents, tax inspectors may deny the deductibility of these service fees. Management services are often scrutinized by tax inspectors trying to question their deductibility.

Also, management fees should be priced at the market-price level.

### Are management fees subject to withholding?

Yes, if there is no protection of a double tax treaty. According to Romanian legislation, a 16 percent withholding tax applies on payments made to foreign service suppliers, and there is only an override if the relevant treaty has a business profits article and the fees are within that article. Starting 1 February 2013, a 50 percent withholding tax is applied for income derived rendering services in or outside Romania, including management services, if this income is paid in a state with which Romania has not concluded a treaty for the exchange of information. Note that the Romanian authorities often

seek to classify certain fees as royalties and therefore exclude them from the business profits article.

### Are year-end transfer pricing adjustments permitted?

Yes. There is nothing in the Romanian legislation to prohibit year-end adjustments, which may be subject to other tax consequences depending on the nature of the underlying transaction.

### Other unique attributes?

If a transfer pricing documentation file does not include all the sections required by the legislation, there is a risk that the file may be considered as incomplete, which gives the right to the tax authorities to make adjustments.

Transfer pricing adjustments may be made by the tax authorities based on three independent transactions (qualifying as similar with the one that is being analyzed). The simple average will be used.

In practice, the Romanian tax authorities do not accept loss-making companies to be included in benchmark studies.

## Other recent developments

Although the obligation to document domestic intra-group transactions for Romanian transfer pricing purposes was clearly stated in the Fiscal Code as of May-June 2010, there is still a risk that the previous text of the relevant provision of the Fiscal Code could be interpreted in a way that the documentation obligation was also applicable in prior periods.

## Tax treaty/double tax resolution

### What is the extent of the double tax treaty network?

Extensive.

**If extensive, is the competent authority effective in obtaining double tax relief?**

Frequently.

**When may a taxpayer submit an adjustment to competent authority?**

No specific provision.

**May a taxpayer go to competent authority before paying tax?**

No formal rules.

## **Advance pricing arrangements**

**What APA options are available, if any?**

In line with the provisions of the Fiscal Procedure Code, taxpayers who carry out transactions with related parties may address the tax authorities in order to obtain an APA regarding the conditions and methods of determining the transfer pricing within a given period of time. The APA can be either unilateral (concluded with the Romanian tax authorities) or bilateral (involving at least two or more tax authorities).

**Is there a filing fee for APAs?**

The tariff which would be charged for releasing the APA is EUR10,000 up to EUR20,000 (in the case of large

taxpayers, as well as in the case of other categories of taxpayers of which the consolidated value of transactions exceeds EUR4 million). The tariff for amendments of an already-released APA is EUR6,000 up to EUR15,000 (in the case of large taxpayers, as well as in the case of other categories of taxpayers of which the consolidated value of transactions exceeds EUR4 million). It is payable in RON at the National Bank of Romania's foreign exchange rate, valid at the date of payment.

**Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?**

No.

**Please provide some information on how successful the APA program is and whether there are any known difficulties?**

The APA program is developing slowly. So far, from unofficial sources, only one APA has been concluded between the Romanian tax authorities and a taxpayer.

## **Language**

**In which language or languages can documentation be filed?**

Romanian only.

### **KPMG in Romania**

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# Serbia



## KPMG's Views on Transfer Pricing in Serbia

Transfer pricing rules have been present for more than a decade in Serbian corporate income tax (CIT) legislation, but specific and detailed regulations on the application of these rules have never been published by the Ministry of Finance. However, it is our recommendation that due diligence should be taken with respect to the transfer pricing rules stipulated in the CIT Law (even though they are not applied in practice) since the tax authorities may change their current practice even retroactively. In addition, new transfer pricing rules introduced as of 2013 further increase the transfer pricing risk.

### Basic information

#### Tax authority name

Tax Administration of Serbia.

#### Citation for transfer pricing rules

Articles 59, 60, 61 and 61a of the CIT Law.

#### Effective date of transfer pricing rules

Rules have been present since 1 July 2001, while the latest amendments came into force on 1 January 2013. Our comments relate to the latest amendments and rules in force from 1 January 2013.

#### What is the relationship threshold for transfer pricing rules to apply between parties?

An entity is deemed a related party if it has the possibility of control or considerable influence on the business decisions made.

Ownership of at least 25 percent of the shares in the capital is considered as the possibility of control.

Possessing at least 25 percent of the voting rights is considered as having an influence on business decisions.

These tests are applied to both direct and indirect ownership.

Furthermore, companies are deemed to be related if the same persons directly or indirectly participate in the management, ownership or control of both companies in the manner described above.

Members of the immediate family of shareholders who own at least 25 percent of shares or hold at least 25 percent of voting rights are also deemed as related parties.

In addition, any company which is a resident of a jurisdiction with a preferential tax system is deemed to be a related party regardless of the percentage of direct or indirect ownership or voting rights in a Serbian company.

A jurisdiction with a preferential tax system exists if the relevant regulations allow for a significant reduction in income and dividend taxation when compared to Serbian regulations. A territory also qualifies as a jurisdiction with a preferential tax system if its regulations do not allow or impede obtaining information on ownership or other data relevant for resolving taxation issues.

The Ministry of Finance is expected to publish a list of jurisdictions with a preferential tax system during 2013.

#### What is the statute of limitations on assessment of transfer pricing adjustments?

The right of the Tax Administration to assess a tax liability is limited to 5 years from the day when the period of limitation commenced. The period commences as of 1 January of the year following the year when the tax liability became due. The absolute period of limitation is 10 years.

There is no special statute of limitations on assessment of transfer pricing adjustments.

### Transfer pricing disclosure overview

#### Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?

Yes, a taxpayer is obliged to prepare and submit documentation presenting related party transactions at both transfer and arm's length prices along with their annual tax return.

### What types of transfer pricing information must be disclosed?

Income and expenses generated from related party transactions during the year must be separately disclosed in the CIT return.

### What are the consequences of failure to prepare or submit disclosures?

Failure to separately disclose the value of related party transactions in accordance with the arm's length principle carries penalty exposure from 100 thousand to 2 million Serbian dinar (RSD).

## Transfer pricing study overview

### Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

Yes, for all transactions.

### Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?

Preparing and maintaining a transfer pricing study shifts the burden of proof from the taxpayer to the tax authorities and provides shelter from adjustments made based on incorrect comparables. In addition, timely preparation may provide added protection from short supplementary deadlines for submitting and amending the documentation which range from 30 to 90 days.

### To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

Documentation should be contemporaneous. However, it can also be submitted within 30 to 90 days of request.

### When a transfer pricing study is prepared, should its content follow Chapter V of the OECD Guidelines?

Yes. Additional guidance regarding the content of the transfer pricing study is expected during 2013.

### Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

## Transfer pricing methods

### Are transfer pricing methods outlined in Chapter II of the OECD Guidelines acceptable?

Yes. Please note that interest rates can also be assessed using an interest rate prescribed as arm's length by the Ministry of Finance.

### Is there a priority among the acceptable methods?

No.

### If there is no priority of methods, is there a "best method" rule?

Yes, new transfer pricing regulations prescribe the use of the most appropriate method.

## Transfer pricing audit and penalties

### When the tax authority requests a taxpayer's transfer pricing documentation, how long does the taxpayer have to submit its documentation?

The documentation should be available on request. However, an additional 30 to 90 day deadline can be provided for submitting and amending the documentation.

### If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?

Adjustments assessed by the tax authorities must be applied and then the taxpayer has an option to appeal to the second instance degree procedure with the tax authorities, or finally to the Administrative Court.

### If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes. Penalties may range from RSD100 thousand to RSD2 million for non-disclosing of transfer prices at arm's length in the tax balance. In addition, there is a potential penalty depending on the additional tax liability assessed by the tax authorities. This penalty varies from 1 percent to 25 percent of the assessed additional tax liability but not less than RSD100 thousand.

### To what extent are transfer pricing penalties enforced?

Rarely, although a significant shift is expected in this respect during 2013.

### What defenses are available with respect to penalties?

Preparing documentation should mitigate the risk of penalties. Other defense strategies may include negotiation and reasonable cause but such strategies are less likely to have the desired positive effects.

### What trends are being observed currently?

Outcomes from audits are revealing that the tax authorities prefer the CUP method, but apply that method in a very simplified way.

There are also strong indications that the tax authorities will place firm focus on transfer pricing during tax audits starting from 2013.

## Special considerations

**Are secret comparables used by tax authorities?**

No.

**Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?**

No, although use of local comparables may be viewed as an advantage.

**Do tax authorities have requirements or preferences regarding databases for comparables?**

No.

**What level of interaction do tax authorities have with customs authorities?**

The level of interaction between tax and customs authorities with regards to VAT is high. However, it is not possible to estimate the level of interaction between these authorities regarding transfer pricing.

**Are management fees deductible?**

Generally, yes. Please note that non-documented costs are non-deductible as well as costs that are not incurred for business purposes.

**Are management fees subject to withholding?**

Management fees would be subject to withholding tax only if provided from a jurisdiction with a preferential tax system (discussed in more detail above).

The Ministry of Finance is expected to publish a list of jurisdictions with a preferential tax system during 2013.

**Are year-end transfer pricing adjustments permitted?**

No.

**Other unique attributes?**

Not applicable.

## Other recent developments

As stated, detailed regulations regarding transfer pricing have been adopted and enter into force from 1 January 2013. The regulations introduce requirements with respect to preparing transfer pricing documentation and introduce the application and reliance on the OECD Guidelines. As a result, a significant increase in activity is expected from the tax authorities regarding transfer pricing.

## Tax treaty/double tax resolution

**What is the extent of the double tax treaty network?**

Minimal.

**If extensive, is the competent authority effective in obtaining double tax relief?**

No experience.

**When may a taxpayer submit an adjustment to competent authority?**

No formal rules.

**May a taxpayer go to competent authority before paying tax?**

No formal rules.

## Advance pricing arrangements

**What APA options are available, if any?**

No APAs or advance rulings of any kind.

**Is there a filing fee for APAs?**

Not applicable.

**Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?**

Not applicable.

**Please provide some information on how successful the APA program is and whether there are any known difficulties?**

Not applicable.

## Language

**In which language or languages can documentation be filed?**

Serbian.

### KPMG in Serbia

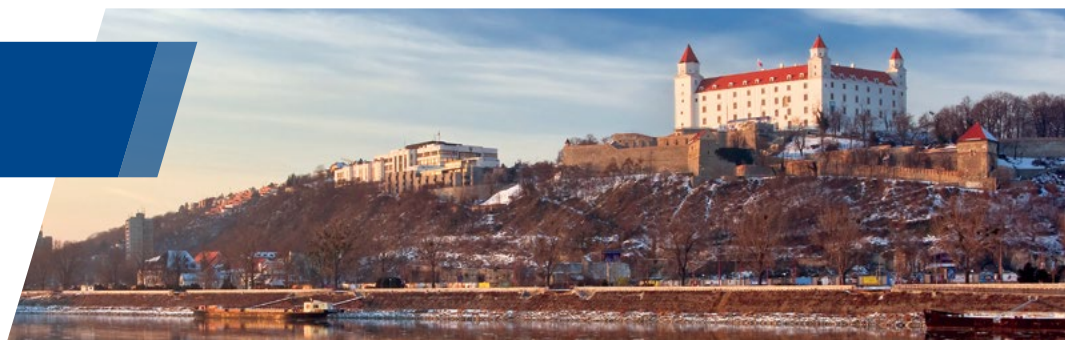
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# Slovakia



## KPMG's Views on Transfer Pricing in Slovakia

After the introduction of mandatory transfer pricing documentation (for taxable periods starting from 2009), transfer pricing became one of the top priorities for the Slovak tax authorities. The tax authorities started to focus on transfer pricing audits and inspect transfer pricing arrangements in more detail than ever before. The tax authorities have placed a greater focus on transfer prices for transactions with foreign related parties than the prices used for domestic transactions, since in principle transfer pricing only applies to transactions with foreign related parties in Slovakia. The tax authorities have built specialized transfer pricing teams and it is expected that the number of transfer pricing audits to be carried out on corporate taxpayers is again going to increase.

### Basic information

#### Tax authority name

Daňový úrad (tax authorities).

#### Citation for transfer pricing rules

Article 2 Letter n through r, Article 17 (5) through (7), and Article 18 of the Act No. 595/2003 Coll. on the Income Tax as amended.

Guidelines of the Ministry of Finance of the Slovak Republic No. MF/8288/2009-72 on details regarding the content for keeping documentation for the transfer pricing method applied by a taxpayer according to the Article 18 (1) of the Act No. 595/2003 Coll. on the Income Tax as amended.

#### Effective date of transfer pricing rules

General transfer pricing rules have been applicable since the introduction of the first post-communist income tax legislation in the 1990s. An important

amendment laying down the obligation to maintain transfer pricing documentation became effective on 1 January 2009.

#### What is the relationship threshold for transfer pricing rules to apply between parties?

More than 25 percent direct or indirect share of voting rights or registered capital, or personal relation (statutory bodies) or business relation solely for the purpose of decreasing tax base/ increasing tax loss.

#### What is the statute of limitations on assessment of transfer pricing adjustments?

Five years from the calendar year-end of the filing date. Seven years if the taxpayer carries forward tax losses according to income tax legislation effective from 1 January 2010. Maximum statute of limitations is 10 years. Ten years always applies if international tax treaties are involved.

### Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?

Corporate taxpayers are required to disclose in their annual tax return certain information regarding transactions with related parties.

#### What types of transfer pricing information must be disclosed?

Terms of the following transactions concluded with foreign-based related parties have to be reported in the annual tax return of a corporate entity (all values stated in Euros (EUR)):

- interest resulting from provision of loans or credits
- granting license rights
- provision of services
- transfer of tangible, intangible and financial assets

- transfer of inventory.

However, it is not required to disclose any details regarding individual transactions in the annual tax return.

### What are the consequences of failure to prepare or submit disclosures?

The tax return is not complete and the tax authorities may ask for the completion of the respective information in the tax return after the tax return was filed.

## Transfer pricing study overview

### Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

Yes, for all transactions. The Ministry of Finance of the Slovak Republic issued guidelines which specify details regarding the content and the rules for preparing and maintaining documentation of the transfer pricing method applied by the taxpayer to transactions with its foreign-based related parties.

According to the guidelines, entities which are obliged to prepare financial statements under IFRS according to Slovak Accounting Act (IFRS reporters) are required to keep full scope transfer pricing documentation for the respective tax period. It must include a master file and a country file including a transfer pricing study, i.e. internal and external comparables on transactions conducted between independent parties, a comparability analysis, functional analysis, etc.

Other taxpayers not meeting the set criteria for IFRS reporting have to prepare “simplified transfer pricing documentation” that shows compliance with the arm’s length principle in transactions with foreign-based related parties.

The documentation must support the fulfillment of arm’s length principles in significant controlled transactions performed by the taxpayer.

Entities which do not perform transactions with foreign related parties are currently not required to maintain transfer pricing documentation.

If the transfer pricing documentation was not provided to the tax authorities based on their request within the set deadline of 60 days, the taxpayer could be penalized up to EUR3,000, also repeatedly.

### Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?

Preparation of a transfer pricing study, including benchmarking, is recommended even for taxpayers who are not obliged to maintain one (i.e. for those entities which do not maintain accounting records under IFRS). If the tax authorities were to challenge the prices applied in related party transactions, the taxpayer would be required to support compliance with the arm’s length principle. Existence of a transfer pricing study may help shift the burden of proof to the tax authorities.

### To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

For relevant taxpayers the deadline for submitting transfer pricing documentation is within 60 days of the tax authorities’ request.

### When a transfer pricing study is prepared, should its content follow Chapter V of the OECD Guidelines?

No. The content of the full scope transfer pricing documentation prepared by IFRS reporters should correspond with the requirements of the EU Code of Conduct on Transfer Pricing Documentation, i.e. it must include a master file for the group of related parties and country specific documentation for the taxpayer. However, requirements of EU Code of Conduct on Transfer Pricing Documentation are similar to those outlined in OECD Guidelines.

Simplified transfer pricing documentation must contain the following major elements:

- list of transactions with related parties, and their nature
- description of major transactions, their volume or percentage from the overall volume of transactions
- information on the volume of incomplete/in-process transactions
- information on prices of completed transactions between the taxpayer and the related parties.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

## Transfer pricing methods

Are transfer pricing methods outlined in Chapter II of the OECD Guidelines acceptable?

Yes.

Is there a priority among the acceptable methods?

Yes. First transactional methods (CUP, resale, and cost plus), then other methods.

If there is no priority of methods, is there a “best method” rule?

Not applicable.

## Transfer pricing audit and penalties

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

According to Article 18 (6) of the Slovak Income Tax Act, transfer pricing documentation must be made available to the tax authorities within 60 days of request.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?

Most tax treaties which Slovakia has with other OECD countries contain MAPs if the adjustment assessed by the tax authorities results, or is likely to result, in double taxation.

Furthermore, the EU Arbitration Convention lays down mechanisms on how disputes between the authorities of the involved countries should be resolved.

The respective proceedings are rather lengthy and administratively cumbersome procedures with results being difficult to anticipate.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

If a tax difference detrimental to the State budget is assessed as a result of non-compliance with the arm’s length principle, a penalty in the amount of three times the base interest rate of the European Central Bank will be assessed; however, not less than 10 percent from the misstated tax would be levied.

To what extent are transfer pricing penalties enforced?

Always, if a misstatement of tax is identified.

What defenses are available with respect to penalties?

No defenses if the documentation is not provided to the tax authorities within statutory limits. Penalties can be reduced only in extraordinary circumstances stipulated by the tax law.

In the case of penalties arising from additional tax assessments resulting from a tax audit, ordinary and extraordinary legal remedies are available for the taxpayer, including appeal, review beyond appellate proceedings, and renewal of proceedings. An action may be filed by the taxpayer with the court against the decision on tax assessment (confirmed by the appellate tax authorities) against which no ordinary legal remedy is allowed.

What trends are being observed currently?

The tax authorities are more frequently focusing on transfer pricing audits of all types of businesses, and exit taxation issues are starting to be discussed in Slovakia.

The tax authorities are more and more familiar with transfer pricing issues and the inspections are more efficient and sophisticated (e.g. tax authorities are preparing their own benchmark studies). Tax inspections could be carried out by specialized teams with trained and skilled people, who can help the tax authorities in any region. It is recommended to prepare extended transfer pricing documentation (not just content specified for simplified documentation) as tax authorities may additionally require supporting information/documents upon a potential inspection.

## Special considerations

Are secret comparables used by tax authorities?

Under certain circumstances the tax authorities are allowed to determine tax according to aids at their disposal or procured without cooperation with the taxpayer. This may potentially involve comparables derived from the files of other taxpayers which are not publicly available. However, based on other law provisions, the tax authorities are required to clearly demonstrate what aids have been used to assess the specific tax difference.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

No.

### Do tax authorities have requirements or preferences regarding databases for comparables?

The tax authorities in Slovakia use the Amadeus database.

### What level of interaction do tax authorities have with customs authorities?

Regarding corporate income tax, the interaction of the tax authorities with the customs authorities is low. However, the responsibilities of both authorities can lead to a higher level of interaction in the area of VAT.

### Are management fees deductible?

In general, yes, but subject to documentation requirements and justification of how the management services serve to generate, assure or maintain taxable income of the Slovak company.

### Are management fees subject to withholding?

In general no, but if these also comprise intellectual property transfer (know-how) and this is not separately disclosed on invoice, then they could be subject to withholding tax. A 'security tax' is withheld in some circumstances, if the entity to which fees are paid has a permanent establishment in Slovakia and is a tax resident outside the EU.

### Are year-end transfer pricing adjustments permitted?

Yes, although the Slovak transfer pricing legislation does not specifically address a term year-end adjustment. In practice year-end transfer pricing adjustments (reflected in the same taxable period as

related transactions) in both directions are used. In general, it is expected that a year-end adjustment is described/ anticipated in relevant agreements covering intra-group transactions and specific formulae/calculations are in place.

### Other unique attributes?

Not applicable.

## Other recent developments

The Slovak central tax authorities have built a transfer pricing department and therefore more focus by the tax authorities on transfer pricing is expected in the near future.

## Tax treaty/double tax resolution

### What is the extent of the double tax treaty network?

Extensive. The current double tax treaty network includes 64 tax treaties. New tax treaties are being negotiated.

### If extensive, is the competent authority effective in obtaining double tax relief?

Almost always.

### When may a taxpayer submit an adjustment to competent authority?

No formal rules. However, at the latest within four to 10 years after the respective taxable period.

### May a taxpayer go to competent authority before paying tax?

Yes.

## Advance pricing arrangements

### What APA options are available, if any?

Unilateral.

### Is there a filing fee for APAs?

No/immateral.

### Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

No.

### Please provide some information on how successful the APA program is and whether there are any known difficulties?

It is not common in Slovakia to ask for an APA.

## Language

### In which language or languages can documentation be filed?

Documentation should be filed with the Slovak tax authorities in the Slovak language, but upon request of the taxpayer the tax authorities may allow the submission of the documentation in another language.

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# Slovenia



## KPMG's Views on Transfer Pricing in Slovenia

There are many transfer pricing audits, especially in transactions with foreign related parties. It can be also noted that in the transfer pricing audits the tax authorities pay special attention to cross-border business restructurings (in the light of Chapter IX of OECD Guidelines). In order to minimize the tax risks arising from transfer pricing, it is recommended to have available up to date transfer pricing documentation proving that all transactions, including cross-border business restructurings, were carried out at arm's length.

### Basic information

#### Tax authority name

Ministrstvo za finance, Davčna uprava Republike Slovenije.

#### Citation for transfer pricing rules

Corporate Income Tax (CIT) Act, Tax Procedure Act, Rules on transfer prices, Rules with the respect to recognized interest rate among related parties.

#### Effective date of transfer pricing rules

1 January 2007.

#### What is the relationship threshold for transfer pricing rules to apply between parties?

Direct or indirect ownership of greater than 25 percent. However, two companies can also be considered related parties if one company is controlled due to some agreement concluded between these companies or in case transactions between two companies differ from conditions that would be agreed between unrelated parties in same or similar circumstances (i.e. based on economic or some other control).

#### What is the statute of limitations on assessment of transfer pricing adjustments?

Transfer pricing adjustments (if any) are assessed in the CIT return. CIT returns are based on taxpayers' self-assessment. The right to assess tax shall fall under the statute of limitation,

being 5 years from the day when the tax should have been announced, calculated, withheld or assessed. The period of limitation on the right to assess tax shall be interrupted by any official act by the tax authorities for the purpose of assessing tax, and in respect of which the taxable person has been informed. The tax liability absolutely ceases after 10 years from when the period of limitation first started to run.

### Transfer pricing disclosure overview

#### Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?

Enclosures to the CIT return related to transactions with related parties (i.e. report on the amounts of sale transactions, purchase transactions and loan transactions) have to be submitted to the tax authorities on an annual basis together with the CIT return.

Transfer pricing documentation has to be prepared on an annual basis.

#### What types of transfer pricing information must be disclosed?

In the enclosures to the CIT returns the following information must be disclosed:

- cumulative yearly amounts of receivables and liabilities (exceeding 50,000 Euros (EUR)) realized with each related party, the type of

connection with each related party, tax numbers of related parties.

- the total amount of loans exceeding EUR50,000 granted to or received from each related party on a yearly basis. In addition, the enclosures shall disclose names of related parties, with whom the Slovenian entity had transactions, the type of connection between related parties (e.g. mother company, sister company, etc.), tax numbers of related parties and information relating to whether the company has made any adjustments of the tax base due to transfer pricing.

The adjustment of the tax base due to transfer prices is needed in case the transactions between related parties do not correspond to the arm's length principle. However, the adjustment between two related resident companies is not required, unless one of the companies involved in the transaction has an accumulated tax loss from previous years, is exempt from CIT or is entitled to use a lower CIT rate.

#### What are the consequences of failure to prepare or submit disclosures?

Tax penalties may apply in the range between EUR1,200 and EUR30,000 (depending on the size of the company) for the company and between EUR600 and EUR4,000 for the responsible person of the company.

## Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

Yes, for all transactions.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?

The benefits are as follows:

- penalty protection
- mitigate risk of tax authority making adjustments.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

The transfer pricing study has to be prepared at the latest by the time the CIT return is submitted (within 3 months after the end of the tax year). The transfer pricing study must be submitted immediately to the tax authorities upon their request. If this is not possible, it must be submitted within 30-90 days (the deadline for submission is set by the tax authorities).

When a transfer pricing study is prepared, should its content follow Chapter V of the OECD Guidelines?

No. According to tax law, transfer pricing documentation shall comprise of a Masterfile and Country Specific File, containing the information which generally follows Chapter V of the OECD Guidelines.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

## Transfer pricing methods

Are transfer pricing methods outlined in Chapter II of the OECD Guidelines acceptable?

Yes.

Is there a priority among the acceptable methods?

The arm's length price has to be proven by using the most appropriate transfer pricing method. If the arm's length price can be proven with the same reliability using traditional transaction methods and profit based methods, transaction methods have priority over profit based methods and internal comparables have priority over external comparables. Comparable uncontrolled price method has priority over other methods.

If there is no priority of methods, is there a "best method" rule?

No.

## Transfer pricing audit and penalties

When the tax authority requests a taxpayer's transfer pricing documentation, how long does the taxpayer have to submit its documentation?

The tax authority may request transfer pricing documentation in the case of a tax audit. The taxpayer has to submit it immediately, but if the transfer pricing documentation is not prepared, the tax authority give the taxpayer 30-90 days for the preparation depending on the extent and the complexity of the data.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?

In general yes (Ministry of Finance and Administrative court).

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes. In case the tax base is lower than it should have been, penalties for understated tax liabilities range between 30-45 percent (depending if micro/small or medium/large company) of understated tax liability, but not more than EUR150,000 (for micro/small companies) or EUR300,000 (for medium/large companies) and from EUR700 to EUR5,000 (also depending if micro/small or medium/large company) for the company's responsible person.

To what extent are transfer pricing penalties enforced?

Increasingly.

What defenses are available with respect to penalties?

Prepared transfer pricing documentation containing all the data required by the Slovenian Tax Procedure Act.

What trends are being observed currently?

Tax audits are often triggered in cases when the taxpayer makes a self announcement.

The tax inspectors are mainly focused on cross-border transactions in tax audits.

Recently, there have been many tax audits in companies that were involved in business restructurings.

## Special considerations

Are secret comparables used by tax authorities?

KPMG in Slovenia has not yet seen that secret comparables have been used.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

No.

### Do tax authorities have requirements or preferences regarding databases for comparables?

The tax authority uses the Amadeus database for searching for comparables, but also other databases are accepted.

### What level of interaction do tax authorities have with customs authorities?

High.

### Are management fees deductible?

Yes, under the condition that appropriate agreements are in place and that a taxpayer can prove that services were actually needed and rendered.

### Are management fees subject to withholding?

No.

### Are year-end transfer pricing adjustments permitted?

Yes, year-end adjustments are permitted either in the CIT return (artificial increase of the tax base due to transfer prices) or in the financial statements (credit note, debit note). Credit or debit notes have potential VAT and customs implications. For incorrect reporting/calculation of taxes due to transfer prices, penalties may apply according to VAT and customs legislation.

There should be no penalties arising from transfer prices if transactions between related parties are at arm's length.

### Other unique attributes?

No.

## Other recent developments

In January 2012 a change in the transfer pricing rules occurred. There are some changes with respect to priority amongst transfer pricing methods and there are also amendments regarding tangible assets and other minor issues.

## Tax treaty/double tax resolution

### What is the extent of the double tax treaty network?

Extensive.

### If extensive, is the competent authority effective in obtaining double tax relief?

No experience in transfer pricing field. Slovenia competent authority has limited experience in MAP, and it is too early to tell how successful they are in such resolutions.

### When may a taxpayer submit an adjustment to competent authority?

Prior to the commencement of the tax audit (self announcement procedure).

### May a taxpayer go to competent authority before paying tax?

Not applicable for transfer pricing.

## Advance pricing arrangements

### What APA options are available, if any?

No APAs or binding rulings of any kind.

### Is there a filing fee for APAs?

Not applicable.

### Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

Not applicable.

### Please provide some information on how successful the APA program is and whether there are any known difficulties?

Not applicable.

## Language

### In which language or languages can documentation be filed?

In general, the documentation needs to be in Slovene language. However, it could also be prepared in a foreign language but translated upon the tax authority's request, within the deadline set by the tax authority (no earlier than in 60 days).

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# Glossary of Terms

<b>APA</b> –	Advance Pricing Arrangement	<b>MAP</b> –	Mutual Agreement Procedure
<b>BvD</b> –	Bureau van Dijk	<b>OECD</b> –	Organization for Economic Co-operation and Development
<b>CIT</b> –	Corporate Income Tax	<b>OECD Guidelines</b> –	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (22 July 2010)
<b>CPLM</b>	Cost Plus Method	<b>RPM</b>	Resale Price Method
<b>CUP</b> –	Comparable Uncontrolled Price	<b>TNMM</b> –	Transactional Net Margin Method
<b>EU</b> –	European Union	<b>VAT</b> –	Value Added Tax
<b>EU JTPF</b> –	EU Joint Transfer Pricing Forum		
<b>EUR</b> –	Euro		
<b>IFRS</b> –	International Financial Reporting Standards		

# Find out more

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For more information on KPMG's Global Transfer Pricing Services (GTPS) practice and access to thought leadership, please visit: [www.kpmg.com/gtps](http://www.kpmg.com/gtps)

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