



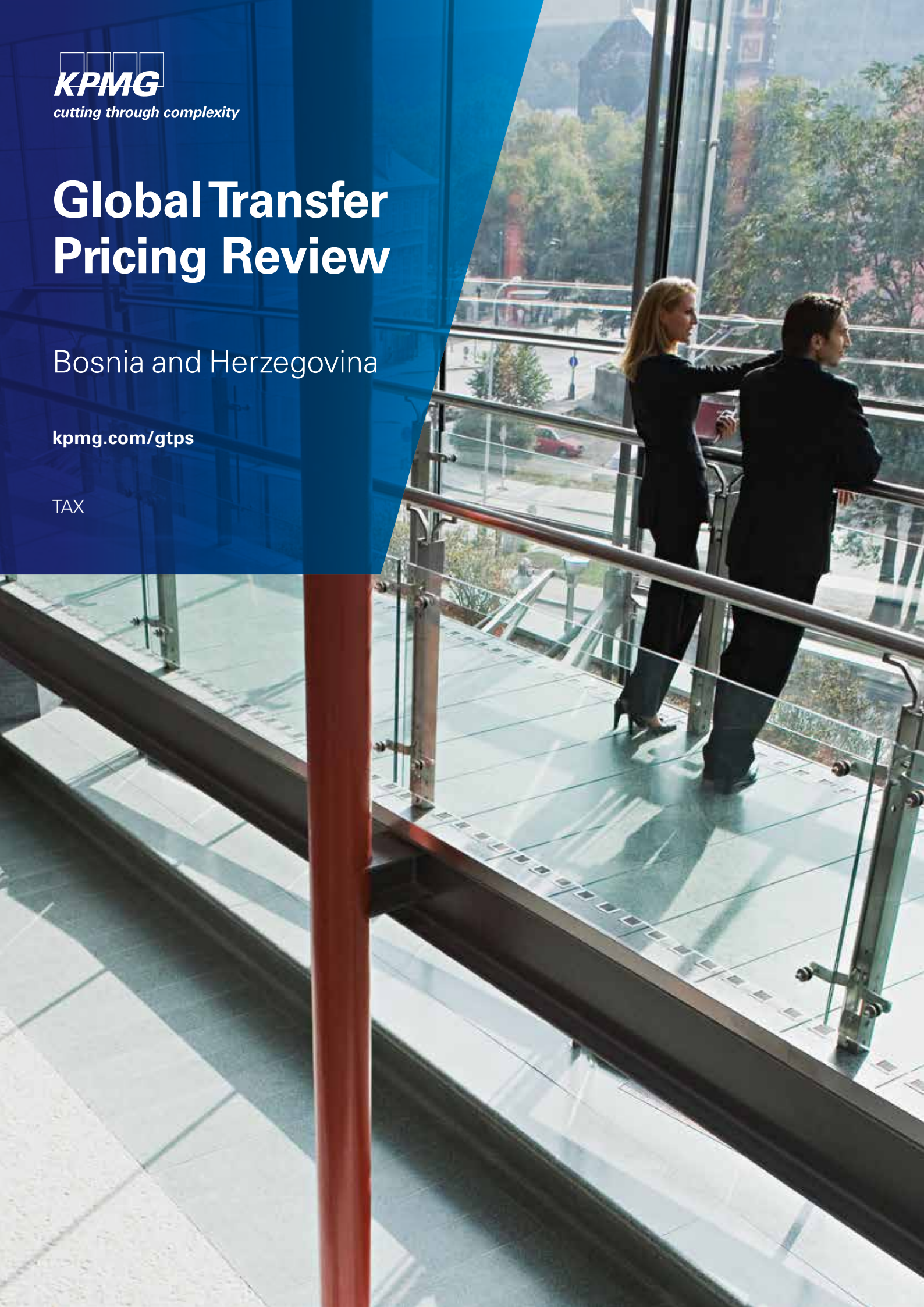
cutting through complexity

Global Transfer Pricing Review

Bosnia and Herzegovina

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TAX



Bosnia and Herzegovina



KPMG observation

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.

Companies doing business in BiH should be aware that different transfer pricing rules apply in the FBiH and in the RS. The main difference is the range of acceptable methods. Whereas only the Comparable Uncontrolled Price (CUP) Method and Cost Plus Method (CPLM) are acceptable in the FBiH, all of the Organisation for Economic Co-operation and Development (OECD) methods (CUP, CPLM, Resale Price Method, Profit Split Method, and Transactional Net Margin Method) are acceptable in the RS.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Required to be contemporaneous
Legal requirements		●
Protection from penalties	●	
Reduce risk of adjustment	●	
Shifts burden of proof	●	

Basic information

Tax authority name

In the FBiH, Federalno Ministarstvo finansija, Porezna uprava FBiH (Federal Ministry of Finance, Tax Authority of the FBiH) and in the RS, Ministarstvo finansija RS, Porezna uprava RS (Ministry of Finance of the RS, Tax Authority of the RS).

Citation for transfer pricing rules

Articles 45 to 48 of the FBiH Corporate Profit Tax Law (CPT Law) and Article 9 of the RS CPT Law. Arm's length principle applies.

Effective date of transfer pricing rules

In the FBiH, 1 January 2008 and in the RS, 1 January 2007.

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

The definition of 'related parties' is very broad and includes, inter alia, a physical or legal entity which has significant influence or control on business decisions or holds more 10 percent of share capital. It is considered that significant influence or control on business decisions exists where a physical or legal person owns more than half of shares or is the single largest shareholder in a company. A mutually large amount of turnover between parties and a technological dependence also constitutes a significant influence. Applies to transactions between residents and non-residents.

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

In the FBiH, statute of limitations is five years and it commences from the end of the year in which the tax return should have been submitted (e.g. for the tax year 2014, for which the tax return is filed at 30 March 2015, the statute of limitations expires at 31 December 2020).

In the RS, statute of limitation is five 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 tax year 2015, for which the tax return is filed at 31 March 2015, the statute of limitations expires at 31 December 2020).

Transfer pricing disclosure overview

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

Yes. The FBiH and the RS CPT Law requires a taxpayer to disclose on the annual tax return the difference between market and transfer prices which are not at arm's length, and the tax base should be adjusted accordingly. 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 above.

What are the consequences of failure to submit disclosures?

Failure to prepare and submit disclosure may result in the FBiH and the RS Tax Authority challenging transactions between related parties.

Transfer pricing study overview

Can documentation be filed in a language other than the local language? If yes, which ones?

No.

When a transfer pricing study is prepared, should its content follow Chapter V of the Organisation for Economic Co-operation and Development (OECD) Guidelines?

Yes, for all transactions. 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

Does your country follow the transfer pricing methods outlined in Chapter II of the OECD Guidelines? If exceptions apply, please describe.

Yes. In accordance with the FBiH CPT Law, the only transfer pricing methods acceptable are the CUP and CPM while the RS CPT Law prescribes all five methods.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? And if so, how many days?

No.

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? Please explain.

There are no provisions that require preparation of transfer pricing documentation (other than information prescribed 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, what dispute resolution options are available?

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 initiate administrative dispute proceedings before the Cantonal Court. Should the Cantonal Court issue a negative ruling, an appeal before the Supreme Court of the FBiH is available, if certain conditions are met. Please note that in general, an appeal

does not postpone the execution of the results of the tax audit.

An adjustment is proposed following a tax audit or the basis of a tax assessment issued by the RS Tax Authority. The taxpayer can appeal against the tax assessment to the RS Ministry of Finance. In the case of a negative ruling by the RS Ministry of Finance the taxpayer can initiate administrative dispute proceedings before the appropriate District Court. Should the District Court issue a negative ruling, an appeal before the Supreme Court of the RS is available. Please note that in general, an appeal does not postpone the execution of the results of the tax audit.

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 (the FBiH) and 0.03 percent (the RS) per day of default in payment.

To what extent are transfer pricing penalties enforced?

To a medium extent.

What defenses are available with respect to penalties?

Timely prepared transfer pricing documentation.

What trends are being observed currently?

Tax Authorities have only started scrutinizing transfer prices recently.

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.

Does the tax authority generally focus on the interquartile range in a TNMM analysis?

No.

Does the tax authority have other preferences in benchmarking? If so, please describe.

No.

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

Low to moderate.

Are there limitations on deductibility of management fees beyond the arm's length principle?

Yes. Assuming documentary support exists and economic benefit can be proven. Transfer pricing documentation should also be available to support the level of charges.

Are management fees subject to withholding?

Yes.

Are there limitations on the deductibility of royalties beyond the arm's length principle?

Yes. Assuming documentary support exists and economic benefit can be proven. Transfer pricing documentation should also be available to support the level of charges.

Are royalties subject to withholding?

Yes.

Are taxpayers allowed to file tax return numbers that differ from book numbers?

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

Other unique attributes?

No.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

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?

Yes.

When may a taxpayer submit an adjustment to competent authority?

No formal rules exist in this area.

May a taxpayer go to competent authority before paying tax?

No formal rules exist in this area.

Advance pricing agreements

What APA options are available, if any?

None.

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.

Are there any difficulties or limitations on the availability or effectiveness of APAs?

Not applicable.

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