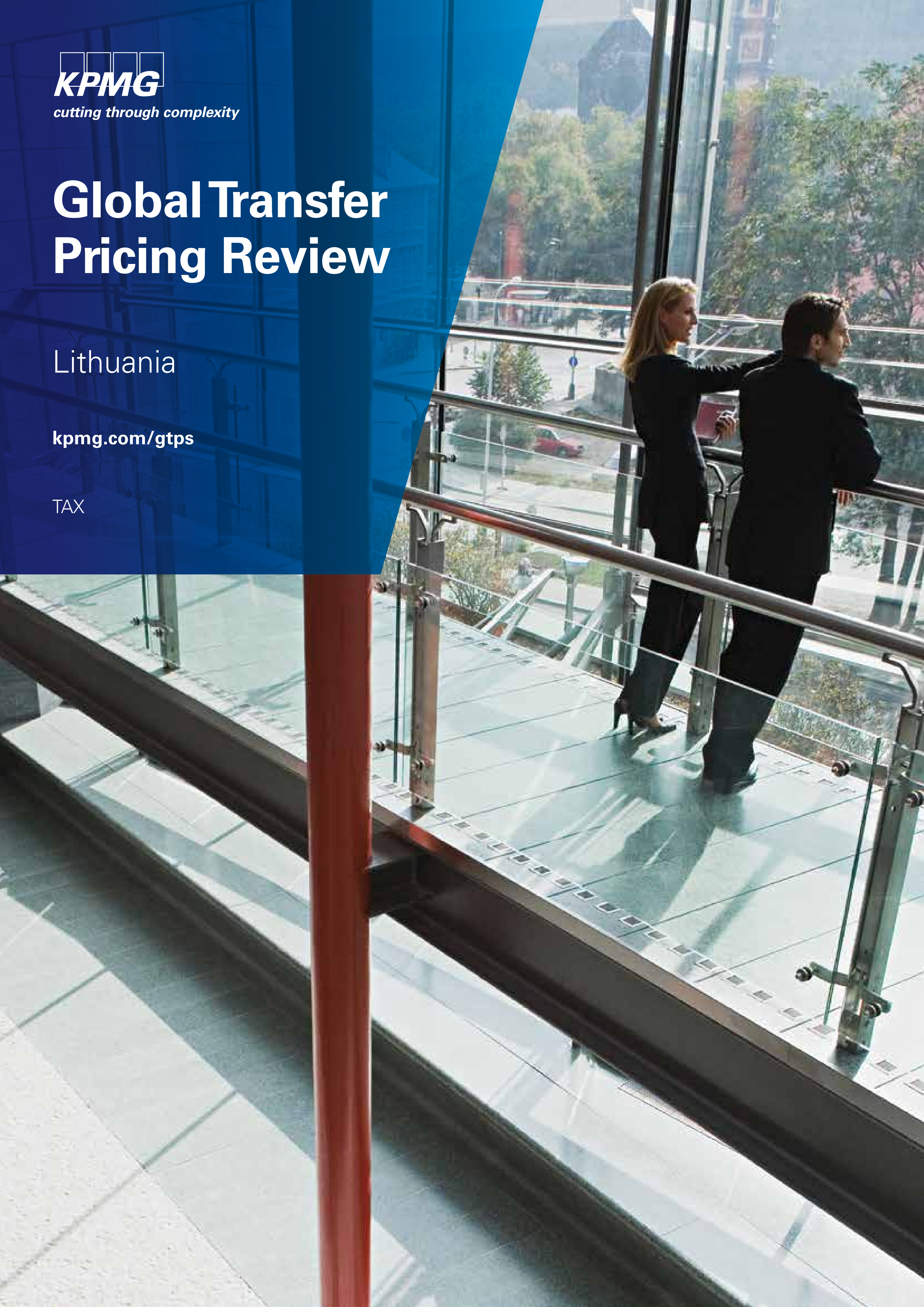

KPMG
cutting through complexity

Global Transfer Pricing Review

Lithuania

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TAX

Lithuania

KPMG observation

Transfer pricing rules were implemented in Lithuania in 2004. In general, they are a condensed form of the Organisation for Economic Co-operation and Development (OECD) Guidelines.

Over the past few years, transfer pricing has been subject to higher scrutiny. The Lithuanian tax authorities are increasingly requesting companies to submit transfer pricing documentation for review.

The Lithuanian tax authorities have direct access to the Bureau van Dijk (BvD) Amadeus database, allowing them to analyze benchmarking studies and perform adjustments. Similarly, the tax authorities have gained access to a loan benchmarking database, which has resulted in an increase in scrutiny of intra-group financing transactions in the past year. The trends of the past few years — increased attention to management services, cost-sharing arrangements and royalty payments — continued in 2014 and is expected to be a trend in 2015 as well.

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

Valstybine mokesciu inspekcija (State Tax Inspectorate).

Citation for transfer pricing rules

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

Effective date of transfer pricing rules

22 April 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 five previous taxable years.

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. Disclosures related to transfer pricing (form FR0528 for declaring transactions with related parties) must be submitted to the tax authorities with the annual corporate income tax return.

What types of transfer pricing information must be disclosed?

An annual statement (form FR0528) should include the following information:

- identification details of a taxpayer and 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, and 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)
- income received/expenses incurred for each type of transaction; and
- accrued interest on loans and the amount of loans granted by related parties must be specified.

What are the consequences of failure to submit disclosures?

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

Transfer pricing study overview

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

Yes. Any language, but must be translated upon request.

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. There are some requirements which are applicable in practice. The tax authorities require transaction specific information or industry reviews and functions/risks. For example, an IT market review is required for group IT services even if the main line of company's business is industrial manufacturing. Functions and risks should also be specific to the transaction under analysis and not just the organization as a whole.

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. To be precise, Lithuanian rules follow the OECD Guidelines of 1995, therefore, the priority of methods is still enshrined in local law.

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?

Yes, 30 days.

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

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

If an adjustment is proposed by the tax authority, what dispute resolution options are available?

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 related to transfer pricing issues has been steadily increasing over the past few years. The number of tax disputes and transfer pricing adjustments has increased as well. Majority of the audits are targeted at larger companies with international operations. The transactions subject to scrutiny the most are intercompany finance, royalty payments, intra-group services (particularly management services) and cost sharing arrangements.

Special considerations

Are secret comparables used by tax authorities?

Yes, the tax authorities may 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?

Yes, unless the use of a broader set is sufficiently justified (e.g. lack of local comparables, international scope of operations, etc.).

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?

Yes, sometimes.

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

Only economic benchmarking criteria are accepted — i.e. lack of a company's website on a database is not an acceptable rejection criterion.

Authorities also prefer the use of multiple year data.

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

High.

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

Yes, some. The company's management must be able to provide sufficient evidence of the receipt of services, their actual need in the organization, and the economic benefit for the provision of management services.

Are management fees subject to withholding?

No.

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

No.

Are royalties subject to withholding?

Yes.

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

Yes. Year-end adjustments should preferably be reflected in the financial statements. It is, however, also possible to make the year-end adjustments in the tax return.

Adjustments may have both customs and VAT implications. Year-end adjustments must be substantiated.

Other unique attributes?

None.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Currently Lithuania has 53 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?

Generally, in the current year and for five previous taxable years.

May a taxpayer go to competent authority before paying tax?

Not permitted. The tax due would have to be paid on the due date even though the case has been referred to competent authority.

Advance pricing agreements

What APA options are available, if any?

Unilateral, 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.

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

Yes. APAs are only available for new transactions and the transfer pricing should be determined prior to approaching the authorities.

A very small number of APAs has been concluded so far so the tax authorities have little experience in the area.

KPMG in Lithuania

Biruté Petrauskaité
Tel: +370 (5) 2 102 613
Email: bpetrauskaite@kpmg.com

As email addresses and phone numbers change frequently, please email us at transferpricing@kpmg.com if you are unable to contact us via the information noted above.

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