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Global Transfer Pricing Review

Slovenia

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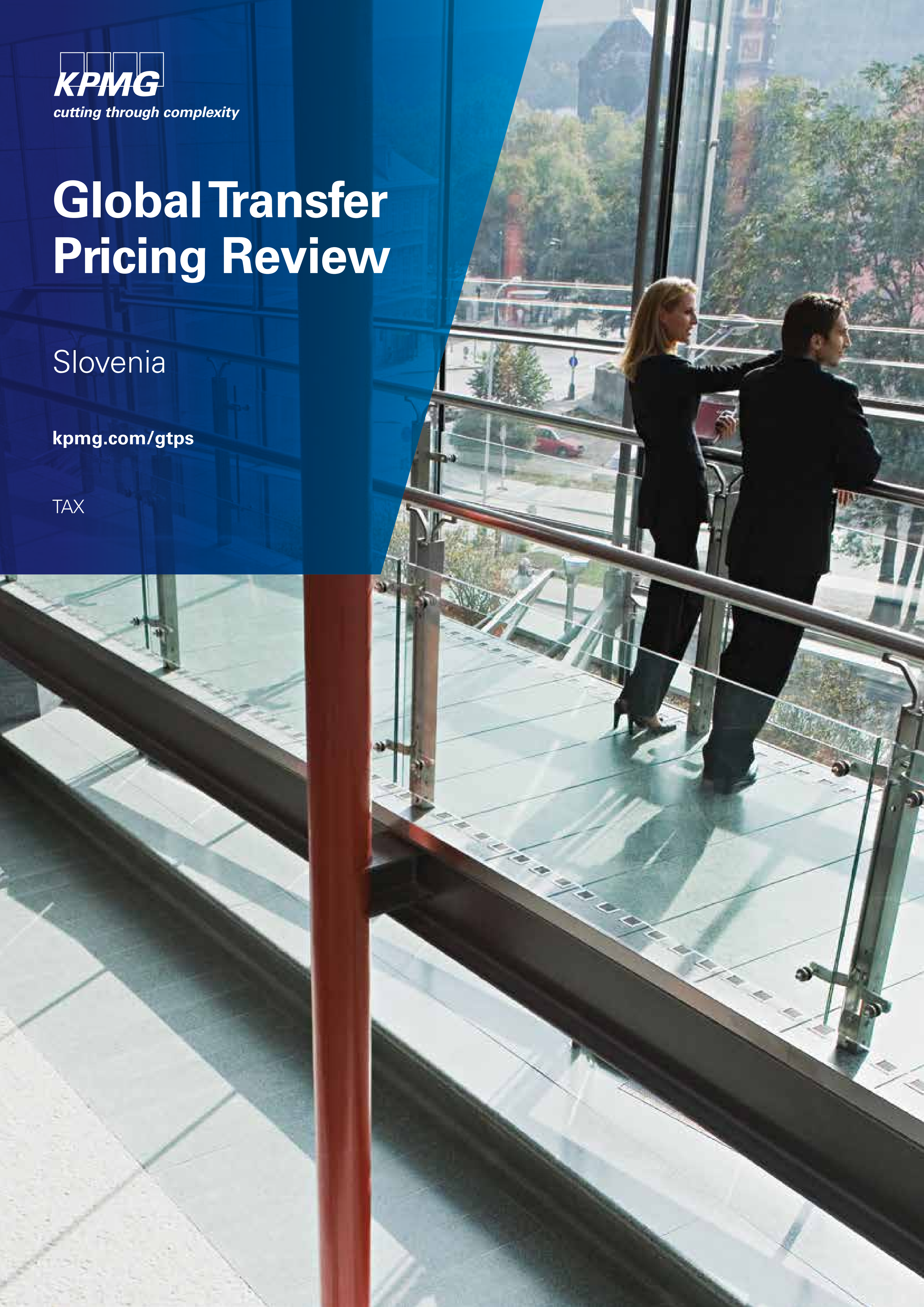
TAX



Slovenia

KPMG observation

There have been an increasing number of transfer pricing audits in Slovenia, especially of transactions with foreign related parties. Notably, in the transfer pricing audits, the tax authorities are paying special attention to cross-border business restructurings. Other important topics of the transfer pricing audits in Slovenia are the following: multiple year tax losses, thin capitalization, transfer of intangible property and intercompany services. In order to minimize the tax risks arising from transfer pricing, taxpayers are advised to have up to date transfer pricing documentation demonstrating that all transactions, including cross-border business restructurings, were carried out at arm's length.

Transfer pricing study snapshot

The purpose of a transfer pricing study

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

Basic information

Tax authority name

Ministrstvo za finance, Financna uprava Republike Slovenije.

Citation for transfer pricing rules

Corporate Income Tax (CIT) Act, Tax Procedure Act, Rules on transfer prices and, 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 five 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.

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. Some information related to transactions with related parties must be submitted to the tax authorities on an annual basis together with the CIT return.

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; and
- 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. parent 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 if 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 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

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

No. However, in practice, tax authorities often accept master file in English language.

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, in general. However, transfer pricing documentation shall comprise of master file and country specific file according to the Domestic Tax Procedure Act, which generally follows Code of conduct on transfer pricing documentation for associated enterprises in the European Union (EUTPD).

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. Local Corporate Income Tax Act only defines five OECD recognized transfer pricing methods and does not allow "other methods", which are allowed to be applied in accordance with OECD transfer pricing guidance at paragraph 2.9.

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 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 completed yet (e.g. is not available in local language or is not at disposal in Slovenia), the tax authority grants 30-90 days for the conclusion or translation depending on the extent and the complexity of the data.

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

Internal: appeal to Ministry of Finance and appeal to Administrative Court.

International: Corresponding Adjustment and/or MAP according to the EU Arbitration Convention and MAP according to the bilateral Tax Treaties.

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. However, in practice the tax authority does not apply penalties for the transfer pricing adjustment, if the taxpayer submits relevant transfer pricing documentation and if it fully cooperates with the tax authority throughout the duration of the tax audit.

To what extent are transfer pricing penalties enforced?

Strictly, if transfer pricing documentation is not prepared appropriately and/or is not submitted to the tax authority.

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?

There is special transfer pricing department at the Slovenian tax administration, which consists of 15 to 20 transfer pricing tax auditors (internationally trained). They are mainly focused on cross-border transactions in tax audits if the taxpayer has been in a loss position for several years.

Recently, they have been conducting many tax audits in entities that were involved in business restructurings and in companies in the financial sector, with excessive debts (thin capitalization issues).

Tax auditors also conduct detailed checks and reviews on benchmark analyses prepared by the taxpayers and/or their advisors. They use full Orbis database and ktMine integrated.

Special considerations

Are secret comparables used by tax authorities?

Based on the information provided by the tax authority, secret comparables are used by the tax authorities only for the indicative nature and not to compute adjustments.

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

Yes. Local comparables are preferable if they exist.

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

The tax authority uses Amadeus, Orbis and ktMine databases (they are preferable), but also other databases are acceptable under the certain conditions.

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.

Yes. Depending on the nature of the case and availability of comparables. Normally benchmark together with TNMM is acceptable for the routine business activities without owning important intangibles. In addition, loss-making companies are not allowed to be in the final selection, sample for the manual selection must not exceed 100 potential comparables, strict independence criteria must be used, region EU28 is preferable, textual search is normally allowed only for the exclusion of potential comparables, use of multiple year financial data is normally required.

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?

No.

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. In general, yes. Year-end adjustments are permitted in the CIT return (artificial increase of the tax base due to transfer prices), however in case of a tax audit such kind of adjustments are usually subject to special attention.

Other unique attributes?

None.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

There are 54 treaties currently in force.

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

Slovenia competent authority has limited experience in mutual agreement procedures (MAP), especially they are not initiated if transfer pricing adjustment is made in Slovenia.

When may a taxpayer submit an adjustment to competent authority?

When tax authority announce that transfer pricing adjustment will be made.

May a taxpayer go to competent authority before paying tax?

Yes. However, this does not preserve a company of liability to pay tax when assessment decision is issued by the tax authority.

Advance pricing agreements

What APA options are available, if any?

None.

Is there a filing fee for APAs?

Not applicable so far. However, according to information available, Ministry of Finance is preparing new regulation on APAs.

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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