



*cutting through complexity*

# Global Transfer Pricing Review

Bangladesh

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TAX



# Bangladesh

## KPMG observation

Tax authorities around the world increasingly consider that international transactions provide scope for revenue leakage. As a result, National Board of Revenue (NBR) of Bangladesh introduced new regulation on transfer pricing in Bangladesh tax laws for the first time through Finance Act 2012 which has become effective from 1 July 2014.

Bangladesh transfer pricing regulation targets international transactions between two associated entities, either or both of whom are non-residents; hence transfer pricing regulation will mostly affect multinational companies or foreign companies having direct or indirect transactions with their subsidiaries, associates or other legal form of entities (e.g. branch office, agent, etc.) in Bangladesh.

Bangladesh transfer pricing regulation is broadly in line with OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2010 and Transfer Pricing Legislation – A Suggested Approach 2011 issued by OECD.

In addition to necessary documentation on international transactions, Bangladesh transfer pricing regulation requires companies/enterprises to submit a statement of international transactions in a prescribed manner, and also a report from Chartered Accountants on the statement of international transactions if the aggregate value of such transactions exceeds 30 million Bangladeshi taka (BDT) during any income year.

Given that transfer pricing regulation is very new to Bangladesh, it remains to be seen how the tax administration will implement this in practice.

## Transfer pricing study snapshot

### The purpose of a transfer pricing study

	Applicable	Submission to tax authority required	Thresholds apply/exist
Legal requirements	●	●	●
Protection from penalties	●	●	●
Reduce risk of adjustment	●	●	●
Shifts burden of proof	●	●	●

## Basic information

### Tax authority name

National Board of Revenue (NBR).

### Citation for transfer pricing rules

Chapter XIA, and sections 94 and 173 of Income Tax Ordinance (ITO), 1984.

Statutory Regulatory Order (SRO) 161/ Act/Income Tax/2014.

Rules 70 to 75A of Income Tax Rules, 1984.

Income Tax Paripatra 2014 (i.e. interpretation issued by NBR).

### Effective date of transfer pricing rules

Effective from 1 July 2014 (corresponding assessment year 2015-2016).

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

Bangladesh transfer pricing regulation incorporates a very wide definition of associated enterprises to include direct and indirect (e.g. through one or more intermediaries) participation in the management or control or capital as well as certain conditions wherein two enterprises are “deemed” to be associated enterprises. Enterprises under direct or indirect common control of any person(s)/enterprises are also deemed to be associated enterprises.

Certain conditions include:

- direct/indirect shareholding giving more than 25 percent of voting power, or for each of the enterprises, more than 25 percent voting power owned by the same person(s); or
- more than 50 percent of the board of directors/members of the governing board appointed by the other enterprise or more than 50 percent of the board of directors/members of the governing board of each of the enterprises appointed by the same person(s); or
- any executive director /executive governing member of one enterprise appointed by the other enterprise or any executive director/member of each of the enterprises appointed by the same person(s) or any common executive director/ member for each of the enterprises; or
- dependency relating to borrowings:
  - cumulative borrowings – more than 50 percent of the book value of total assets; or
  - cumulative guarantees – more than 10 percent of the book value of the total borrowings; or
  - practical ability to control the decision of the other enterprise by one enterprise; or
  - bonded relationship of mutual interest between two enterprises as may be prescribed by NBR.

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

No order of assessment regarding transfer pricing adjustment under

section 107C of the ITO 1984 shall be made after the expiry of three years from the end of assessment year in which the income was first assessable (except in cases involving fraud, etc.).

For example, if the accounting year ends on 31 December 2014, the first assessable assessment year would be 2015–2016. Hence no assessment of transfer pricing adjustment will be made after 30 June 2019.

## 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. Every person who has entered into an international transaction shall provide a statement of international transactions as per rule 75A (i.e. transfer pricing return) to the tax authority along with the return of income on annual basis.

Furthermore, a report from Chartered Accountants shall be submitted, as may be specified in the noticed issued by tax authority, if aggregate value of international transactions exceeds BDT30 million during an income year.

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

- The following information is to be disclosed in the transfer pricing return:
  - item wise total expense and total revenue of the international transactions
  - total value of international transactions
  - nature of the transactions
  - transfer Pricing Method (TPM) for determining arm’s length price; and
  - percentage of international transactions under each item compared to total value of international transactions for that category (e.g. revenue transactions, service related transactions, financial transactions, etc.).

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

- For failure to provide a statement of international transaction (transfer pricing return), a penalty not

exceeding two percent of value of each international transaction.

- For failure to keep, maintain or provide information, documents or records as required by transfer pricing regulation, a penalty not exceeding one percent of the value of each international transaction.
- For failure to comply with the notice issued by the Deputy Commissioner of Taxes regarding transfer pricing information, documents and records, a penalty of not exceeding one percent of the value of each international transaction.
- For failure to furnish a report from Chartered Accountants, a penalty not exceeding BDT300,000.
- In the absence of appropriate, reliable and correct documentation and records on international transactions, the Deputy Commissioner of Taxes can determine arm’s length price of international transaction on the basis of information or documents or other evidence available to them.

## Transfer pricing study overview

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

Yes. Not specified in the transfer pricing regulations. However, English language is well accepted by the tax authority.

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

Bangladesh is not a member of OECD, so it is not mandatory to follow content of transfer pricing study as per Chapter V of the OECD Guidelines. However, the taxpayers can follow the OECD Guidelines to support principles found in the Bangladesh transfer pricing regulation. The Bangladesh transfer pricing regulation should be relied upon where there are differences from the OECD Guidelines.

United Nations Practical Manual on Transfer Pricing for Developing Countries issued in 2013 can also be followed.

**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. The following transfer pricing methods mentioned in Bangladesh transfer pricing regulation are in line with the OECD Guidelines:

- comparable uncontrolled price method
- resale price method
- cost plus method
- profit split method
- transactional net margin method (TNMM); and
- any other method, if defensible.

## 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 notice of transfer pricing tax audit (if initiated by the tax authority) shall specify the period within which the taxpayer will be required to furnish information as specified in the notice. In our experience, tax authority normally allows 30 days to submit documents as mentioned in the notice.

The transfer pricing documentation should be prepared on a contemporaneous basis, and should be maintained by the taxpayer for a period of eight years from the end of the relevant assessment year. Transfer pricing audit can be initiated by the tax authority within three years from the end of usual assessment year.

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

The taxpayer has the right to appeal against a transfer pricing adjustment to the following authorities:

- Commissioner of Taxes (Appeal)
- Tribunal
- High Court

There is now an additional option of trying to resolve the dispute called Alternative Dispute Resolution (ADR) to avoid the appeal going at any authorities mentioned above.

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

Under the general penalty regime, a transfer pricing adjustment may lead to a penalty based on a percentage of actual tax loss not exceeding 10 percent.

Furthermore, interest at 10 percent p.a. on additional tax arising from transfer pricing adjustments following tax audit, can be added to the tax demand.

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

The imposition of penalties is discretionary and depends upon the facts and circumstances of each individual case.

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

Transfer pricing documentation represents the first line of defense against transfer pricing audits and is crucial for mitigating transfer pricing risk.

Penalties may also be mitigated through cooperation with tax authorities.

**What trends are being observed currently?**

Not yet available since transfer pricing regulation has been made effective in Bangladesh from 1 July 2014.

## Special considerations

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

Unknown.

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

Unknown.

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

So far there are no legal requirements to use any particular database.

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

Not applicable.

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

No. Transfer pricing regulation has been made effective from 1 July 2014. Tax authority has not yet started transfer pricing audit or assessment. Hence, it is very difficult to comment whether tax authority will focus on the interquartile range in a TNMM analysis or they have any preferences in benchmarking.

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

Low level of interaction with customs authorities.

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

Yes. Head office expenses in the branch office in Bangladesh are permitted up to 10 percent of branch profit as per audited accounts subject to double taxation avoidance agreement.

### Are management fees subject to withholding?

Yes.

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

Yes. For both company and branch office, if management expenses fall under the broad definitions of royalty, technical services fee, technical assistance fee and technical know-how fee, such expenses are permitted up to eight percent of the profit as per audited accounts.

### Are royalties subject to withholding?

Yes.

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

Yes. Tax computation is an integral part of tax return. In the tax computation, profit before tax should mention as per audited accounts. If there is any upward transfer pricing adjustment, it can be adjusted in the tax computation and tax return without making relevant entry in the accounting records.

### Other unique attributes?

None.

## Tax treaty/double tax resolution

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

Bangladesh has a wide range of tax treaty network and has entered into comprehensive tax treaties with 32 countries. Bangladesh is also party to a series of treaties under negotiation.

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

Sometimes.

### 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?

Taxpayer can go to the Commissioner (Appeal) and ADR without paying the tax. For other authorities (e.g. tribunal and High Court) certain amount of tax is required to be paid first.

## 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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