



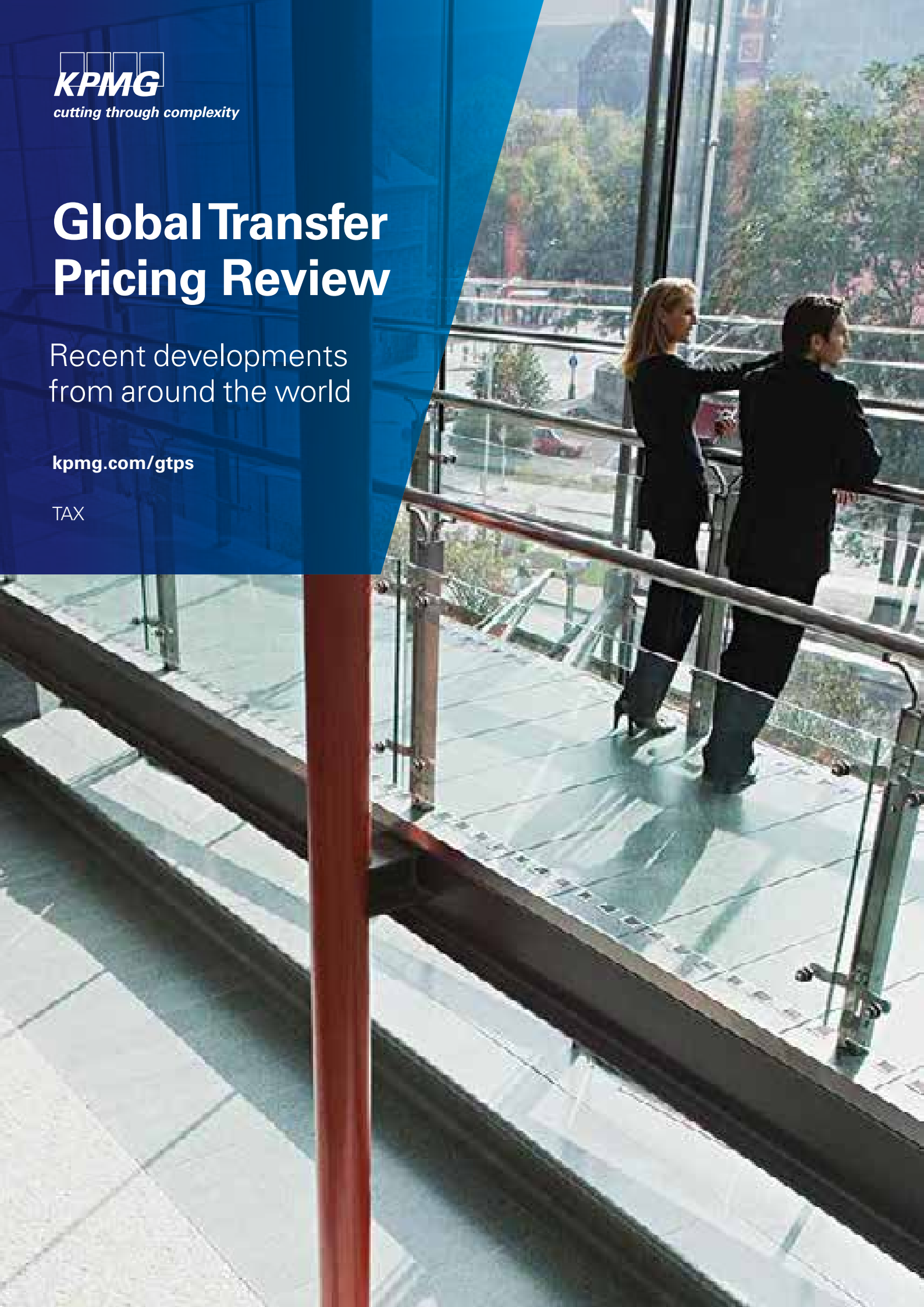
cutting through complexity

Global Transfer Pricing Review

Recent developments
from around the world

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TAX



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Introduction

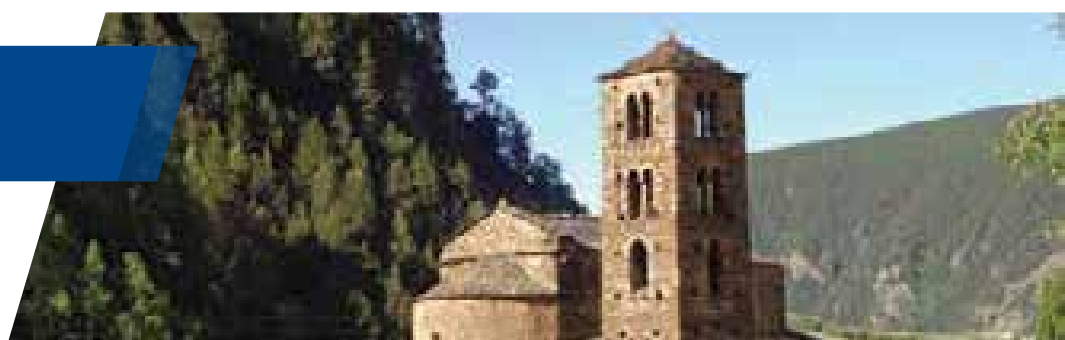
The Organisation for Economic Co-operation and Development (OECD) and its Base Erosion and Profit Shifting (BEPS) 15 Point Action Plan is a primary focus for tax authorities around the world and businesses with global operations. Transfer pricing is of utmost importance and central in not only the BEPS Action Plan, but many other changes in international tax rules.

This 2015 edition of KPMG International's Global Transfer Pricing Review provides a wealth of transfer pricing information from 86 countries, including: documentation requirements, deadlines, transfer pricing methods, penalties, special considerations, advance pricing arrangements, and competent authority matters.

Visit www.kpmg.com/gtps for additional transfer pricing news and updates.

Country Overviews

Andorra



KPMG observation

The corporate income tax and transfer pricing rules are applicable to Andorran taxpayers for fiscal years started on or after 1 January 2012. It is not yet clear how the Andorran tax authorities will address transfer pricing matters, interpret the new regulations or engage in tax audits. The transfer pricing regulations do not establish documentation requirements for Andorran taxpayers, although they refer to the arm's length principle as the standard to price controlled transactions.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Not applicable
Legal requirements	●
Protection from penalties	●
Reduce risk of adjustment	●
Shifts burden of proof	●

Basic information

Tax authority name

Tax Administration (Administració tributària).

Citation for transfer pricing rules

Legislation: Article 16 of the corporate income tax law (CITL) (Legislative Decree dated 29 April 2015 unifying Law 95/2010, dated 29 December 2010, and its amendments). Regulations developing CITL: Decree, dated 13 June 2012.

Effective date of transfer pricing rules

The transfer pricing rules are applicable to taxpayers on fiscal years started on or after 1 January 2012.

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

Generally, two entities are considered related parties when the same individuals or legal entities, directly

or indirectly, manage, hold an equity investment or otherwise control both entities.

The Andorran tax regulations specifically state that the following relationships trigger the consideration of related parties:

- an entity and its shareholders (for non-publicly traded entities, when they hold a participation of 15 percent or more; for publicly-traded entities, when the participation is equal or greater than three percent)
- an entity and its board members, as well as the relatives of the board members up to the third-degree
- an entity that holds an indirect participation equal to, or greater than, 25 percent of another entity
- two entities that are part of a group; and
- an entity and its permanent establishments.

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

Three years following the final date to file the tax return.

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)?

No. The corporate income tax return does not require the disclosure of controlled transactions, although a schedule requires the identification of the taxpayer's participation and/or ownership of other legal entities as of fiscal year-end.

What types of transfer pricing information must be disclosed?

Not applicable.

What are the consequences of failure to submit disclosures?

Not applicable.

Transfer pricing study overview

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

Not applicable.

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

Not applicable.

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 regulations refer to the OECD Guidelines regarding transfer pricing 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.

Not applicable.

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

The taxpayer may appeal against the proposed adjustment before the

Andorran courts. Dispute resolutions will depend on treaties to be signed in the future.

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

Penalties are only referred to in the General Tax Code and may range from 50 percent to 150 percent of the additional tax base that arises from the adjustment. The percentage of the penalty may be determined by the tax authorities considering the following circumstances of the taxpayer: good faith, economic capacity, prior infringements of tax regulations, obstruction to the tax audit process, spontaneous compliance by the taxpayer, the taxpayer's agreement to the proposed adjustment, relevance of the infringement and adjustment amount.

There is no specific reference on how penalties would be applied in the case of a transfer pricing adjustment and there is no experience. There are reasons to think that unless the adjustment is based on tax evasion, tax authorities might take the view that the adjustment does not levy penalties based on the nature of the transfer pricing adjustment.

To what extent are transfer pricing penalties enforced?

At this time, Andorran tax authorities have only just initiated limited audits of local taxpayers (as far as we know, the audits did not involve related party transactions).

What defenses are available with respect to penalties?

Transfer pricing documentation. Advance Pricing Agreements (APAs) are also available.

What trends are being observed currently?

The Andorran tax authority is in the process of developing its capacity and skill set to adapt to the new tax regime. The Andorran tax authorities have only started performing some limited scope audits, as the corporate income tax was only applicable to fiscal years starting on or after 1 January 2012.

Special considerations

Are secret comparables used by tax authorities?

No experience yet, but it is anticipated that secret comparables will not be used.

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

No experience.

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

No experience.

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 experience.

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

No experience.

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

No.

Are management fees subject to withholding?

Not applicable.

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

Not applicable.

Are royalties subject to withholding?

Not applicable.

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

Yes. Although there is no experience yet, the legislation does not prohibit year-end adjustments.

Other unique attributes?

The Andorran CITL includes special regimes applicable to Andorran entities that engage in certain cross-border, intercompany transactions:

- regime for entities engaged in the cross-border license of intangible assets and/or provision of cross-border, intercompany services
- regime for entities engaged in intercompany financing activities.

Both special regimes require prior approval from the tax authorities, and provide for an 80 percent reduction of the relevant tax base. In both instances, the approval from the tax authorities is required (we expect that this process will be similar to that of rulings in other jurisdictions) and thus, we anticipate that the transfer prices will need to be set at arm's length and tested under one of the OECD transfer pricing methods.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Minimal. The tax treaties signed so far refer to the exchange of information. Tax treaties with France and Spain are being negotiated.

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 experience.

May a taxpayer go to competent authority before paying tax?

No experience.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral.

Is there a filing fee for APAs?

Not applicable. The regulations do not explicitly mention an application fee. However, there is no experience to date with APAs in Andorra.

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. The Andorran tax administration is still in the process of developing its capacity. Hence, the lack of experience in negotiating APAs limits the effectiveness of potential APA submissions.

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Angola

KPMG observation

Tax reform in Angola continues to be ongoing. Presidential Decree no. 147/13 was published in the National Gazette in October 2013, introducing into the Angolan tax framework the Major Taxpayers Statute, which includes both the tax group relief regime and the transfer pricing regime. The new transfer pricing rules are applicable to all domestic and cross-border commercial and financial transactions established between the taxpayer and its related entities beginning or occurring on or after 1 January 2013.

Transfer pricing documentation is required in Angola for those taxpayers on the Major Taxpayers List, according to Order no. 599/14, published in the National Gazette on 24 March 2014. Additionally, all financial, oil and gas, diamond and telecommunication companies are subject to transfer pricing obligations in Angola. The transfer pricing documentation must be prepared and submitted to the National Directory of Taxes by the end of the sixth month after the fiscal year's closing date.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Not applicable	Applicable	Required to be contemporaneous	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

Autoridade Geral Tributária (AGT).

Citation for transfer pricing rules

Presidential Decree (Decreto Presidencial) no. 147/13 of 1 October 2013, Order no. 472/14 of 28 February 2014 and Order no. 599/14 of 24 March.

Effective date of transfer pricing rules

1 January 2013.

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

For Angolan transfer pricing purposes, there is a special relationship when one entity has the power to exercise, directly or indirectly, a significant influence in the management of the other, namely in the following situations:

- when the directors or management of a company, as well as their spouses, ascendants or descendants, hold directly or indirectly a participation not less to 10 percent of the capital, or the voting rights in the other entity

- when the majority of the members on the Board of Directors or management are the same persons or, being different persons, are related by marriage, non-marital partnership or direct kinship
- when the entities are bound by a subordination contract
- when the entities are in a relationship of domination or reciprocal participation relationships, as well as bound by subordination or parity group contracts or any equivalent effect under the Commercial Companies Law

- when commercial relations between two entities represent more than 80 percent of one of the entities' total volume of transactions; and
 - when one entity finances other in over 80 percent of its credit portfolio.
- In case of late submission/omission of the transfer pricing documentation the taxpayer is subject to a penalty between 200 US dollars (USD) and USD1,000
 - If the taxpayer refuses to deliver the transfer pricing file, a fine from USD1,500 to USD30,000 is applicable.

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

Generally, five years from the last day of the tax year-end.

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. Under the Angolan transfer pricing regime, the following taxpayers are subject to mandatory transfer pricing compliance obligations:

- taxpayers include in the Major Taxpayers List; and
- taxpayers developing activities in the following sectors: financial, oil and Gas, diamond and telecommunications.

Transfer pricing documentation should be submitted to AGT by the end of the six month after the fiscal year-end.

What types of transfer pricing information must be disclosed?

Transfer pricing study containing the following information:

- summary
- macroeconomic overview
- company activity and financial performance analysis
- functional analysis
- identification of related party transactions; and
- economic analyses of the related-party transactions.

What are the consequences of failure to submit disclosures?

No specific penalties have been published for transfer pricing infringements. However, the taxpayer will be subject to the administrative penalties established by General Regime for Tax Infringements, as follows:

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?

No. Although the Angolan transfer pricing regime requirements do not follow OECD Guidelines, the transfer pricing contents are similar to those of Chapter V OECD.

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.

No. The transfer pricing regime in Angola only foresees the possibility of application of the traditional transactional methods to determine the arm's length principle, namely, (i) comparable uncontrolled price method; (ii) resale price method, and (iii) cost-plus method.

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, 10 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.

Transfer pricing studies need to be submitted to the tax authorities by the end of the six month after the fiscal year-end for certain taxpayers. If any further related information is requested the taxpayer should submit until 10 working days.

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

General tax provisions: administrative and/or court procedures.

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

Transfer pricing adjustments that result in tax due is subject to a penalty up to 35 percent of the value due. Compensatory interest is accrued at a one percent monthly rate for late payment.

To what extent are transfer pricing penalties enforced?

With the recent introduction of the transfer pricing regime in Angola, transfer pricing audits and, consequently, an enforcement of transfer pricing penalties are expected to begin shortly.

What defenses are available with respect to penalties?

Documentation is the basis for penalty protection. A taxpayer is expected to capture all justification in the transfer pricing documentation in order to demonstrate the arm's length nature of prices agreed in special relationship.

What trends are being observed currently?

Since the transfer pricing regime in Angola is new, the National Directory of Taxes is investing significantly in the development of human and technical resources and skills to ensure enforcement of the new rules.

Moreover, the publication of the Major Taxpayers List is one of the indicators that the National Directory of Taxes wants to focus its efforts in specific groups of companies, namely those

included in financial, oil and gas, diamond and telecommunication sectors.

Special considerations

Are secret comparables used by tax authorities?

No evidence.

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

No. Comparable data of Angolan companies is not publicly available.

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

Orbis and/or Amadeus databases are expected to be licensed by local tax authorities.

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 experience yet.

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

Moderate. With the new transfer pricing regime it is expected to increase.

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

Yes, some. If AGT considers the management fees are in excess, discretionary adjustments can take place.

Management fees payments made abroad are subject to specific registration/disclosure next to the Central Bank/Governmental offices.

Are management fees subject to withholding?

Yes.

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

Yes. If AGT considers the royalty fees are in excess, discretionary adjustments can take place.

Royalty payments made abroad are subject to specific registration/disclosure next to the Central Bank/Governmental offices.

Are royalties subject to withholding?

Yes.

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

No.

Other unique attributes?

None.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

None.

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

Not applicable.

When may a taxpayer submit an adjustment to competent authority?

Not applicable.

May a taxpayer go to competent authority before paying tax?

Not applicable.

Advance pricing agreements

What APA options are available, if any?

None.

Is there a filing fee for APAs?

Not applicable. APAs are not foreseen in the law.

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.

KPMG in Angola

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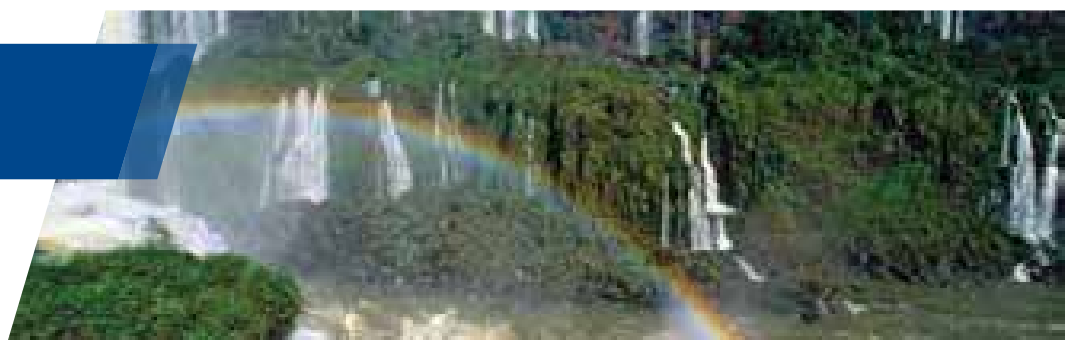
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Argentina



KPMG observation

When documenting transfer pricing in Argentina, careful consideration must be given to the tested party rule, since the local tax legislation – the Administración Federal de Ingresos Públicos (AFIP) General Resolution (RG 1122) – requires that the tested party always be the Argentinean entity.

In terms of audits and transfer pricing scrutiny, there is an increasing tendency for the AFIP to challenge transfer prices for taxpayers that present systematic losses beyond a specific fiscal year, mainly among resellers. There are no particular types of transactions under scrutiny and AFIP has initiated audits in different industries. The AFIP does pay special attention to the analysis criteria applied to the different fiscal years, mainly with respect to the use of multi-year periods for the tested party. They also require that financial information used in the analysis of comparables is checked against the relevant data sources. Lack of supporting information may cause the exclusion of the comparable from the analysis by the AFIP.

KPMG in Argentina believes the AFIP requirements vis-à-vis the transfer pricing annual returns have increased the burden of proof on the taxpayer. The information that must be included in the annual form (F969) is complementary to that required by the transfer pricing annual form (Form F743). Both annual forms are mandatory, the first includes a specific detail of the intercompany transactions and the second adds the transfer pricing methodology used in the analysis of the transactions.

Even though Argentina is not an Organisation for Economic Co-operation and Development (OECD) member, the local transfer pricing rules are based on the main concepts of OECD Guidelines. Nevertheless, to date there have been no specific comments from the Argentinean Tax Authorities with respect to the OECD's Base Erosion and Profit Shifting (BEPS) Action Plan.

Transfer pricing study snapshot

The purpose of a transfer pricing study

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

Basic information

Tax authority name

Administración Federal de Ingresos Públicos (AFIP).

Citation for transfer pricing rules

Income Taxes Act Articles 14–15 and supplementary regulations.

Effective date of transfer pricing rules

December 1998.

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

Based on voting power, share capital or other. The rules do not discriminate among different thresholds; rather they apply equally to all levels of ownership. Furthermore, and beyond the company capital interest, under the Local Income Tax Law, there are several other relationships to which the transfer pricing rules apply, such as functional or other kinds, whether contractual or otherwise, that influence the decision-making power to direct or define the activities of the operations. Also, transactions with countries or territories that are not included on the white list – i.e., jurisdictions considered to be tax havens – are subject to transfer pricing scrutiny.

The AFIP has provided the white list of cooperating jurisdictions.

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

Five years from 1 January of the year after the filing date. Law 26.476 states that for fiscal years 2003 to 2007 the statute of limitations is six years from 1 January of the year after the filing date.

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. Transfer pricing documentation is required to be submitted.

The transfer pricing study, the Certified Public Accountant (CPA) Certification, the transfer pricing return (Form F743) and a copy of the Statutory Financial Statement of the fiscal year under analysis must be filed with the fiscal authorities within 14 days of the eighth month subsequent to year-end.

General Resolution was published on 10 April 2013 introducing certain changes in the transfer pricing compliance rules, establishing the formalities and other requirements that must be complied with by those taxpayers subject to transfer pricing regulations. It is noted that this Resolution will be effective for filing obligations corresponding to fiscal years ended from 31 December 2012.

In this sense, taxpayer will prepare the transfer prices return – F. 4501 for filing the transfer pricing study and the CPA Certification, which shall bear three digital signatures (i) the taxpayer (ii) the CPA involved and (iii) the representative of the professional association where the CPA has been licensed.

Additionally, prior to fiscal year-end, taxpayers must file with the tax authorities a transfer pricing mid-term form (Form F742).

On 15 June 2011, the Argentine tax authorities published a new resolution that established the need to file an additional annual transfer pricing return containing data about transactions with related parties abroad (Form F969). The deadline for filing this form is 15 running days after the income tax return deadline. This is applicable for fiscal years ended from 31 December 2010 onwards.

In addition to the above obligations regarding transactions with related parties abroad, taxpayers must also disclose on an annual basis (Form F867) information involving the import from, and export to, unrelated parties abroad of tangible goods, with the exception of commodities, with non-related parties, provided that the amount exceeds one million Argentine pesos (ARS) during the fiscal year. In the case of the import from, and export to, unrelated parties abroad, of commodities, companies must file a mid-term form (Form F741) per each semester, taking account of the fiscal year-ended.

What types of transfer pricing information must be disclosed?

Business description/overview; functional analysis; risk analysis; description of controlled transactions; method selection; rejection of alternative methods; identification of comparables; economic analysis; identification of the foreign counterparty with whom the transactions had been conducted. Determination of the median and the interquartile range. Transcription of the statement of income of the comparable companies corresponding to the fiscal years necessary for the comparability analysis, with an indication of the sources of such information. Description of the corporate activity and the characteristics of the business carried out by the

comparable companies. Rejection matrix with criteria followed to reject companies as comparables and the conclusions obtained.

What are the consequences of failure to submit disclosures?

The taxpayer is subject to penalties imposed by the tax authorities in case of failure to file the transfer pricing report and the corresponding transfer pricing returns.

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 certain transactions. Even though Argentina is neither an OECD member nor do its regulations make explicit reference to the OECD Guidelines, the content of the transfer pricing study to be prepared for local purposes mostly includes those items mentioned in 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?

Yes.

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 local transfer pricing rules are based on the main concepts of OECD Guidelines. Additionally, the local transfer pricing regulations prescribe a specific method for export of commodities.

It is important to mention that the local transfer pricing rules require that, no matter what the circumstances, the tested party used in the analysis should always be the Argentinian entity.

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, 15 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.

Documentation to be provided in the course of a Tax Authority audit are normally expected to be responded to within 15 days of the request. Tax authorities might extend such timeframe for an additional 15 day period.

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

The taxpayer can appeal to different Justice Court instances. The order of appeal for an adjustment proposed by the tax authorities is as follows:

- first level: National Tax Court
- second level: National Court of Appeals
- third level: Supreme Court of Justice.

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

Compliance penalties: Taxpayer's failure to file the required returns and documentation in a timely way, is subject to a fine of ARS10,000 (approximately 1,250 US dollars (USD)), which increases to a fine of ARS20,000 (approximately USD2,500) for foreign-owned entities.

Material penalties: The transfer pricing tax adjustment is subject to a fine that ranges from one to four times the unpaid tax amount. To determine the fine within such range, the tax authorities will take into account the taxpayer's compliance with transfer pricing returns and documentation. In case of fraud the penalties will increase from two-to-ten times the unpaid tax amount.

To what extent are transfer pricing penalties enforced?

Often.

What defenses are available with respect to penalties?

The filing of transfer pricing documentation required by the tax authorities, as described in the Transfer Pricing Disclosure Overview.

What trends are being observed currently?

An increase in the activities of the AFIP in terms of transfer pricing scrutiny is being observed. There is a tendency by the AFIP toward increasing audits in all industries (as opposed to the initially-targeted industries like the automobile, pharmaceutical and agribusiness).

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. As a consequence of the absence of local comparables, the tax authorities have accepted the use of foreign comparables mainly from the American market. In this sense, it is important to have the support of the relevant documentation. Additionally, in some cases, European or Asian comparables might be used; however, the lack of supporting information about these comparables may cause their exclusion by the tax authorities.

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

No preferences in the use of databases are observed by the tax authorities.

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

Yes, always.

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

Not applicable.

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

Medium.

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

Yes, Three percent of sales or five percent of investment for technical services in absence of tax treaty and they must be paid.

Additionally, the Argentine entity must show that the management fees were carried out in order to obtain, maintain, and preserve profits assessed by Argentine tax. In addition, there should be sufficient proof that such expenses relate to the Argentine entity's operations. In this regard, the company should obtain a certificate supporting its expenses or a detailed report of the imputed amount providing a level of accuracy sufficient to determine the local expenses.

Are management fees subject to withholding?

Yes.

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

Yes, 20 percent of trademark royalties paid abroad are not deductible.

Are royalties subject to withholding?

Yes.

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

Yes. Under an evaluation of the transfer pricing policy the taxpayer could apply an adjustment. However, it should take into account the impact of the adjustment on other taxes, particularly those related to custom issues.

Other unique attributes?

An additional method included in the Local Income Tax Law establishes that in case of exports to related parties of commodities and, in general, any assets having a known quotation in transparent markets, involving an international broker who will not be the effective receiver of the goods, it shall be deemed as the best method for the purpose of determining the export's Argentine-source income, the highest of the good's quotation in the transparent market on the date of shipment or the price that would have been agreed with the international

broker. This methodology does not have to be followed provided the international broker complies with certain requirements.

Moreover, careful consideration must be given to the tested party rule since Argentinian Regulations (General Resolution (RG 1122)) requires that, no matter what the circumstances, the tested party should always be the Argentinian entity.

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?

Not applicable.

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 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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Australia



KPMG observation

The transfer pricing landscape in Australia continues to be one of evolution, if not revolution. Notwithstanding the recent introduction of new and far reaching transfer pricing laws based on self-assessing 'transfer pricing benefits' by reference to 'arm's length conditions' (Subdivision 815) and the concurrent introduction of new transfer pricing record keeping rules (Subdivision 284-E), the government has announced further legislative changes aimed at keeping Australia at the forefront of jurisdictions seeking to tackle erosion of their tax base and non-arm's length profit shifting.

The government has announced a series of measures that would, if enacted, apply to large businesses (i.e. multinational enterprises (MNEs) with global sales of more than 1 billion Australian dollars (AUD)):

- amendments to Australia's general anti-avoidance rules to apply where the structure put in place is such that a foreign resident connected with a low or no corporate tax jurisdiction avoids income being attributed to an Australian permanent establishment and taxed in Australia
- a doubling of penalties in relation to transfer pricing adjustments and the operation of the proposed anti-avoidance provision where a reasonably arguable position has not been established
- implementation of the Organisation for Economic Co-operation and Development's (OECD's) Country-by-Country reporting requirements; and
- implementation of the OECD's Master File/Local File approach for transfer pricing documentation.

Most of the above measures would apply for years of income commencing on or after 1 January 2016.

Australia continues to be a strong supporter of the OECD/G20 Base Erosion and Profit Shifting (BEPS) initiative and the BEPS project has clearly influenced the above legislative proposals.

Further, the Senate Economics References Committee 'Corporate Tax Avoidance' inquiry which began public hearings in April 2015 continues to grab headlines about the tax practices of foreign-based and Australian-based MNEs. The Committee has heard evidence from MNEs operating in a range of industries including information technology, mining, pharmaceutical and oil and gas. The committee was originally due to report by June 2015, however, its reporting date has been extended.

A range of tax transparency measures are designed to provide the Australian public with information about the amount of tax paid in Australia by large companies. Some of these are already on the statute books, and are expected to generate significant public interest. For example, under current law, the Commissioner is required to disclose annually the following information on a public website for companies with turnover greater than AUD100 million: accounting income, taxable income, and tax paid. The first information (relating to the 2013–14 income year) is expected to be released in the final quarter of 2015. The government has also begun working with businesses to develop a voluntary code on public disclosure of greater tax information by large corporates and has requested the Board of Taxation to lead the development of the new transparency code.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Not applicable	Required to be contemporaneous
Legal requirements		●	
Protection from penalties	●		●
Reduce risk of adjustment	●		
Shifts burden of proof		●	

Basic information

Tax authority name

Australian Taxation Office (ATO).

Citation for transfer pricing rules

Current rules

Subdivisions 815-B to D of the Income Tax Assessment Act 1997 (ITAA 1997).

Subdivision 815-B applies to cross-border dealings between separate legal entities that are not undertaken on an arm's length basis. Subdivision 815-C applies to cross-border dealings within a single legal entity (e.g. between an Australian permanent establishment (PE) of a non-resident entity and its overseas head office, between a foreign PE of an Australian resident entity and the Australian head office). Subdivision 815-D makes Subdivisions 815-B and 815-C applicable to trusts and partnerships.

Previous rules

Division 13 of Part III of the Income Tax Assessment Act 1936 (ITAA 1936).

Subdivision 815-A of the ITAA 1997.

Citation for transfer pricing record keeping rules

Subdivision 284-E of Schedule 1 to the Taxation Administration Act 1953 (Subdivision 284-E).

Effective date of transfer pricing rules

Current rules

Years of income commencing on or after 29 June 2013.

Previous rules

Division 13 applies to assessments in respect of the year of income in which 28 May 1981 occurred and for all subsequent years up to its date of repeal on 29 June 2013.

Subdivision 815-A applies to years of income commencing on or after 1 July 2004 and for all subsequent years up to years of income commencing before 29 June 2013.

Effective date of transfer pricing record keeping rules

Years of income commencing on or after 29 June 2013.

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

There is no relationship threshold. The relevant test is whether conditions operate between the entity and another entity in connection with their commercial or financial relations that differ from arm's length conditions (i.e. conditions that might be expected to operate between independent entities dealing wholly independently with one another in comparable circumstances).

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

Current rules

Within seven years of the notice of assessment for a particular year.

Previous rules

No time limit for amendment although cannot be applied prior to effective date.

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. An International Dealings Schedule (IDS) needs to be lodged with the income tax return where taxpayers

have international related party dealings of more than two million Australian dollars (AUD) per year or any cross-border intragroup dealings involving foreign branches of Australian entities or Australian branches of foreign entities (i.e. there is no minimum threshold for cross-border intra-group dealings). The IDS is used as a risk assessment tool by the ATO to better target its transfer pricing and other international tax compliance activities.

Under the ATO's Advance Pricing Agreement (APA) program, a taxpayer with an APA is required to prepare and submit an Annual Compliance Report to the ATO disclosing the covered transactions, according to the requirements of Practice Statement Law Administration PS LA 2015/4.

There is no formal requirement for taxpayers to provide their transfer pricing documentation to the ATO with the tax return.

What types of transfer pricing information must be disclosed?

The IDS requires detailed disclosures about international related party dealings including: description and amounts of related party transactions, disclosures related to transactions of special interest to the tax authority (e.g. business restructures), disclosures relating to arm's length transfer pricing methods used and whether transfer pricing documentation has been prepared in relation to the various related party transactions disclosed.

What are the consequences of failure to submit disclosures?

An administrative penalty may apply for failure to prepare or submit the IDS.

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. To satisfy Subdivision 284-E, the transfer pricing documentation must satisfy each of the matters set out in section 284–255 of the ITAA 1997. In broad terms, the matters to be covered include those that Chapter V of the OECD Guidelines recommends be covered, however, there are nevertheless a number of additional matters from both a technical and a process perspective that need to be covered. For example, from a technical perspective, the records must show whether the reconstruction provisions in section 815–130 apply (the reconstruction provisions apply where the form of the relations between the parties is different to the substance of those arrangements and where independent parties would have entered into different arrangements to those that were entered into). From a process perspective, records must be kept in English or be readily accessible and convertible into English and the records must be prepared prior to lodgment of the annual income tax return.

The ATO has set out its views on the documentation that taxpayers should keep to satisfy Subdivision 284-E in Taxation Ruling TR 2014/8.

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.

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, 28 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.

Historically, ATO practice has been to expect documentation to be supplied within 28 days of request, however, we have seen a number of examples recently where the ATO is requiring documentation to be supplied within a shorter time period.

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

Taxpayers have domestic tax law rights to object and appeal against amended assessments. Objections are dealt with by the ATO. Appeals may go to either the Administrative Appeals Tribunal or to the Federal Court.

With a view to reducing the number of cases that go to objection, the ATO has introduced an internal Independent Review process which involves review of the case by a reviewer who has had no prior involvement in the audit.

The ATO also uses Alternative Dispute Resolution (ADR) conducted by private ADR practitioners (including former Federal and High Court judges) in complex disputes involving large market taxpayers.

For tax treaty countries, taxpayers may invoke the Mutual Agreement Procedure (MAP) provisions in Australia's comprehensive Double Taxation Agreements (DTAs).

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

Yes. Penalties can be applied under both the scheme (transfer pricing) penalty provisions in Subdivision 284-C

of TAA 1953 and under the general penalty provisions in Subdivision 284-B of TAA 1953.

Scheme (transfer pricing) penalty provisions

The standard shortfall penalty rate is 25 percent of the tax avoided where the sole or dominant purpose was not to avoid tax and the taxpayer does not have a reasonably arguable position (RAP). Where the sole or dominant purpose was to avoid tax, the shortfall penalty amount is 50 percent of the tax avoided where the taxpayer does not have a RAP. Where the taxpayer meets the RAP standard, the shortfall penalty rate is 10 percent of the tax avoided where the sole or dominant purpose was not to avoid tax. Where the sole or dominant purpose was to avoid tax, the shortfall penalty amount is 25 percent of the tax avoided.

General penalty provisions

There are a number of penalties that can be applied under Subdivision 284-B. Of most relevance are those which apply where there is a shortfall amount. In this case, the penalty rate is 25 percent where a taxpayer has not taken reasonable care. Penalties can be remitted to nil where a taxpayer has a RAP. Where a taxpayer does not have a RAP, penalties can be increased to 50 percent due to recklessness on the part of the taxpayer as to the operation of a taxation law and to 75 percent due to intentional disregard on the part of the taxpayer of a taxation law.

The standard rates can be increased or decreased depending on a range of factors. The Commissioner also has the power to remit some or all of the penalties that would otherwise be imposed.

Interest

In addition a Shortfall Interest Charge (SIC) and General Interest Charge (GIC) may also be applied to tax and penalties. For a more detailed description of these charges and the circumstances under which they are levied visit <http://www.ato.gov.au>.

To what extent are transfer pricing penalties enforced?

Often.

What defenses are available with respect to penalties?

Maintaining documentation that satisfies the requirements in Subdivision 284-E; commercial realism analysis; cooperation with the ATO in providing the information requested; and, voluntary disclosure, preferably before the audit notification.

What trends are being observed currently?

In recent years, the ATO has been very active in scrutinizing taxpayers' transfer pricing practices with a view to protecting Australia's revenue base. The ATO has increased its transfer pricing capability through external recruitment and maintains an annual transfer pricing program of risk reviews and audits. In late 2013, the ATO commenced its International Structuring and Profit Shifting (ISAPS) program. This is in addition to its annual compliance activities which includes its existing transfer pricing review work and its Advance Pricing Agreement (APA) program. The areas covered by the ISAPS program are broader than just transfer pricing and include other corporate income tax areas such as permanent establishments, thin capitalization, controlled foreign companies (CFC), particularly focusing on offshore trading hubs and business restructuring.

From a transfer pricing perspective, transactions with respect to related party loans and guarantee arrangements, royalty arrangements, business restructuring, the transfer of intellectual property and the mining, pharmaceutical and motor vehicle industries continue to receive scrutiny by the ATO. Furthermore, periods of prolonged losses or low profitability continue to be a focus of the ATO (regardless of whether there are material related party transactions or not).

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. Although there is no formal requirement to use local comparables

in an Australian benchmarking study, the ATO generally prefers Australian comparable companies during review or audit. Where a regional set is used for Australian purposes, the ATO will focus on the Australian comparables and their relative position in the set. Where necessary, the ATO will conduct its own analysis to identify Australian comparable companies for benchmarking purposes.

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.

The ATO has not published detailed guidance on how benchmarking analyses should be undertaken for purposes of Subdivisions 815-B and 815-C (particularly when using the TNMM). Nevertheless, Subdivisions 815-B and 815-C require arm's length conditions to be determined so as best to achieve consistency with amongst other things the OECD Guidelines. It is therefore implicit that benchmarking analyses are undertaken in a way which best achieves consistency with the guidance on benchmarking analyses contained in the OECD Guidelines.

Historically, the ATO has had a general preference for benchmarking analyses to be based on multi-year analyses (ordinarily five years), to use publicly listed companies (rather than private companies) as comparables and for Australian comparables rather than foreign comparables.

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. Management fees will generally be deductible provided the quantum is consistent with the arm's

length principle and general income tax deductibility requirements are met.

Are management fees subject to withholding?

No.

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

Yes. Royalties will generally be deductible provided the quantum is consistent with the arm's length principle and general income tax deductibility requirements are met.

Are royalties subject to withholding?

Yes.

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

Yes.

For Australian subsidiaries of foreign-based multinational enterprises (MNEs)

Year-end adjustments are generally allowed where a written agreement exists between the parties which crystallizes the obligation on the part of one party to make a year-end adjustment to the other party, where a benchmarking study has been undertaken, and where the year-end adjustment is required in order to achieve arm's length conditions between the foreign parent and its Australian subsidiary. However, year-end adjustments have the potential to increase risk especially where there is an unclear transfer pricing policy, the adjustments are applied inconsistently or the characterization of the adjustment is unclear.

For foreign subsidiaries of Australian-based MNEs

The same as above, with the following additional requirement. A year-end adjustment made by an Australian parent to its foreign subsidiary may not be deductible to the Australian parent (i.e. the payment will be considered to be a capital payment) unless it is possible to identify assets or services which have a price and which are being re-priced TD 2014/4.

Other unique attributes?

The new transfer pricing rules are self-assessed

The new transfer pricing legislation is aligned with the more general policy intent of self-assessment. Consequently the new rules are self-executing and therefore place a higher burden on taxpayers, and particularly on public officers, who must form a view prior to the time of lodgment of the income tax return that cross-border related party transactions have been structured and priced on an arm's length basis for tax purposes, for which they may be held accountable.

Apply to independent parties as well as to related parties

As with Australia's previous transfer pricing rules, the new provisions capture non-arm's length dealings between both related and unrelated parties.

Include specific reconstruction provisions

The new transfer pricing rules contain a specific provision that enables transactions to be reconstructed for tax purposes (Section 815–130) in situations where there is (i) inconsistency between the form and substance of a particular arrangement; or (ii) situations where the arrangement is not one that would have been entered into by independent parties acting at arm's length. While section 815–130 was intended to be consistent with the reconstruction provisions described in paragraph 1.65 of the OECD's transfer pricing Guidelines, section 815–130 does not include an 'exceptional circumstances' requirement, and the ATO has confirmed that the potential application of the reconstruction provisions needs to be considered in all cases. The ATO intends to use the reconstruction provisions in section 815–130 to pursue its BEPS agenda and implement the ISAPS program.

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?

After an adjustment is proposed to the taxpayer. This will usually be in the form of a position paper.

May a taxpayer go to competent authority before paying tax?

Yes.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

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?

Yes.

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

No. Following a further review of its APA program, the ATO recently issued PS LA 2015/4 setting out its revised practice and procedures in dealing with requests from taxpayers to enter into an APA.

Amongst other things, PS LA 2015/4 formalizes use of the ATO's new 'triage' process in its APA program. Triage assists the ATO's new APA/MAP and Competent Authority Practice Management Unit (PMU) in determining whether an APA request can and should proceed further. Triage identifies whether there are material impediments to the ATO entering into an APA with the taxpayer by examining the information supplied by the taxpayer and the APA team.

PS LA 2015/4 states that the ATO is less likely to enter into an APA where one or more of the following indicators are present:

- where the arrangements that are the subject of the proposed APA appear to lack commerciality or be primarily tax driven; or
- collateral issues affect the ATO's ability to enter into the proposed APA (collateral issues include carried forward losses being available to a taxpayer and

the possible application of Australia's general anti-avoidance provision in relation to the cross-border dealings to be covered by the proposed APA).

Notwithstanding the change in approach in PS LA 2015/4, in practice, APAs are still able to be concluded with the ATO where documentation submitted to the ATO during the APA process shows that profit outcomes in Australia reflect the true economic contribution made by the Australian-based enterprise.

KPMG in Australia

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Austria



KPMG observation

On 28 October 2010, the Austrian Federal Ministry of Finance published the Austrian Transfer Pricing Guidelines (TPG). These Guidelines show the importance that the Austrian tax administration is placing on transfer pricing issues and seen in nearly every tax audit. The guidelines state that their purpose is to ensure the uniform application of the Organisation for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines. For Austrian taxpayers, it will be important to monitor how major amendments to the OECD Guidelines, reflecting the outcome of the Base Erosion and Profit Shifting (BEPS) initiative, will be considered by the Austrian Federal Ministry of Finance going forward.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Not applicable	Applicable	Required to be contemporaneous
Legal requirements		●	●
Protection from penalties	●		
Reduce risk of adjustment		●	●
Shifts burden of proof		●	●

Basic information

Tax authority name

Bundesministerium für Finanzen
(Federal Ministry of Finance).

Citation for transfer pricing rules

Austrian Transfer Pricing Guidelines (Austrian TPG) 2010 published as administrative guidelines (BMF-GZ 010221/2522-IV/4/2010, 28 October 2010).

OECD Guidelines adopted as administrative guidelines (translated into German; published in Fiscal register of the Austrian fiscal authority (AÖF Nos. 114/1996, 122/1997, 155/1998 and 171/2000).

Effective date of transfer pricing rules

Date of publication of each of the rules: 1 August 1996, 22 May 1997, 10 September 1998, and 28 October 2010.

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

Ownership of greater than 25 percent.

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

Generally, in practice a six year limitation from the tax year-end applies. This period is extended under certain circumstances.

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)?

No. There is no requirement to file transfer pricing disclosures with the

tax returns. The tax administration, however, is of the opinion that documentation must be prepared contemporaneously and be ready when the tax return is filed.

What types of transfer pricing information must be disclosed?

Please see transfer pricing study overview.

What are the consequences of failure to submit disclosures?

There is no specific penalty for failure to prepare transfer pricing disclosures. Please see discussion under transfer pricing study overview.

Transfer pricing study overview

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

Yes, English.

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. In addition, the Austrian TPG also declare that documentation prepared in accordance with the European Union (EU) Code of Conduct on transfer pricing documentation for associated enterprises in the EU (EU Masterfile concept) fulfils the documentation requirements in Austria. For management fees, the taxpayer must be able to provide a specific, detailed basis for all charges imposed by foreign group companies for services rendered (case law) and a detailed contract should be prepared and signed.

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

Yes.

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.

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, 14 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 authorities must give the taxpayer a "reasonable" time period

to respond to requests. As there is a publicly available opinion issued by the Ministry of Finance that documentation must be ready when filing the tax return, 14 days could be sufficient. In practice, we see longer time periods and justified prolongations are possible.

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

Taxpayers can dispute proposed adjustments according to Austrian appeals procedures, through Mutual Agreement Procedures (MAPs), and under the EU Arbitration Convention.

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

No. However, transfer pricing adjustments have a direct effect on the corporate income tax base and the actual tax burden levied. As with late payments of corporate tax, interest will be levied on any additional prior year's corporate income tax. The interest is levied for a period starting from October following the assessment year and lasting for a maximum of 48 months. The interest rate is two percent above the base interest rate.

To what extent are transfer pricing penalties enforced?

In cases of tax fraud and willful and abusive tax evasion according to Fiscal Penal Code.

What defenses are available with respect to penalties?

Penalties can be enforced in cases where there is found to be tax fraud and/or willful and abusive tax evasion. Appropriate documentation can also help the taxpayer to defend against proceedings according to the Fiscal Penal Code.

What trends are being observed currently?

As previously noted, transfer pricing is a focus area of the tax authorities. KPMG in Austria observes a variety of factors being taken into account in determining which taxpayers to audit and on what areas during the audits. This can include the existence or evidence of business restructurings, the profitability of the local taxpayer, the nature and volume of related party transactions, and findings from previous audits of the

taxpayer. A specific focus is currently on the automotive, consumer products, pharmaceutical and high-tech industries, as well as intra-group financing transactions in general (including guarantee fees).

In a 2012 court decision (30.07.2012, RV/2515-W/09), the court of first instance ruled on specific questions relating to the use of, and the minimum requirements for, benchmarking studies and the entitlement of the tax authorities for adjustments. The specific question ruled was whether adjustments of the tax authorities would be to the median, to the interquartile range or to the total range of the benchmarking study if the actual results achieved by the taxpayer fell out of the range deemed acceptable by the tax authorities during a tax audit. While the circumstances of the case were specific, we anticipate the Austrian tax authorities to seek to adjust to the median during future tax audits. This case also shows the importance of submitting high quality benchmarking studies both in terms of comparability criteria (qualitative search) and documentation.

Generally, we observed that the Austrian tax administration's willingness to start procedures according to the Fiscal Penal Code has increased.

Special considerations

Are secret comparables used by tax authorities?

Sometimes they are used in practice, but formally they are not allowed because the tax authorities are barred from publishing such data.

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

No, there is no such requirement due to the size of the Austrian market and missing publicly available data in the past, often no comparables are available – a fact that is recognized by the Austrian tax authorities.

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

The tax authority uses Orbis. Nevertheless, any publicly available database can be used.

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

Yes, always.

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

Multiple year average; independence thresholds for comparables; EU (enlarged) comparables; no average loss or losses in more than two years; no start-up entities.

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

Low. Customs and tax authorities communicate for VAT purposes. For transfer pricing, there is no interaction known at this time.

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

Yes. Management fees are deductible if a payee can prove benefits from the services and that the fee is at arm's length. It should be noted that a detailed management service contract and comprehensive documentation is required.

Are management fees subject to withholding?

No.

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

Yes. Royalties beyond the arm's length principle are regarded as hidden distribution, and hence non-deductible.

Please note that as from 2014, under certain circumstances arm's length royalties can also be found non-deductible, in particular if paid to a foreign recipient subject to a tax rate of less than 10 percent.

Are royalties subject to withholding?

Yes.

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

Yes, under certain circumstances. Generally, retroactive agreements are not accepted in tax law. Although neither Austrian tax law nor Austrian TPG specifically regulate year-end adjustments, there is a tendency for the Austrian tax authorities to only accept year-end adjustments if they are common practice amongst third parties. A clear written agreement concluded before the respective fiscal year starts is a prerequisite for acceptance.

Other unique attributes?

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?

Frequently.

When may a taxpayer submit an adjustment to competent authority?

Generally after (revised) assessment notes on tax audit findings are issued.

May a taxpayer go to competent authority before paying tax?

Yes.

Advance pricing agreements

What APA options are available, if any?

Unilateral.

Is there a filing fee for APAs?

Yes, for the formalized advance ruling procedure that became effective in January 2011. Depending on the taxpayers' sales, the filing fee is between 1,500 and 20,000 euros (EUR). For groups of companies that are required to file consolidated accounts, the fee of EUR20,000 always applies.

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?

No. In general, the APA program is considered successful. Due to the lack of publicly available data we have no indication that there is a geographic preference or reluctance. Practically, shortages in personnel at the Austrian tax administration can lead to an increase in the duration of such procedures.

KPMG in Austria

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Azerbaijan

KPMG observation

Transfer pricing rules were enacted in Azerbaijan with effect from 1 January 2001 (although there were some basic principles before). Since then they were amended slightly several times.

The rules mainly focus on the determination of prices on the sale of goods/services, and establish the arm's length principle as the guiding rule for pricing related party transactions. In practice, the Azerbaijan tax authorities mainly make adjustments to taxpayers' revenues, by challenging interest rates or the mark-up on goods/services.

Currently, the Azerbaijan tax authorities are in the process of developing new transfer pricing rules that are expected to leverage the Organisation for Economic Co-operation and Development (OECD) Guidelines.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Not applicable	Submission to tax authority required
Legal requirements	●	
Protection from penalties	●	
Reduce risk of adjustment		●
Shifts burden of proof	●	

Basic information

Tax authority name

The Ministry of Taxes of the Republic of Azerbaijan (MT).

Citation for transfer pricing rules

Articles 14 and 142.1 of the Tax Code.

Effective date of transfer pricing rules

1 January 2001.

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

These following conditions apply for when the tax authorities may apply transfer pricing tests and recalculate taxes

- barter transactions
- import/export operations
- transactions between related persons
- transactions in which the prices within 30 days deviate by more than 30 percent either way from the prices set by the taxpayer for similar or homogeneous goods/works/services; and
- an insured property of a person for the amount exceeding net book value of such property.

Persons are considered "related" in the following cases:

- if a person holds, directly or indirectly, 20 percent or more of the value or number of shares or voting rights in

the other entity, or in an entity that actually controls both entities

- if one individual is subordinate to the other with regard to official position
- if persons are under the direct or indirect control of a third person
- if persons have a direct or indirect control over a third person.

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

The tax authorities can audit three years preceding the year in which the decision to conduct tax audit was taken. However, in case of initiation of tax audit due to criminal investigation, the statute of limitation is increased to seven 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)?

No.

What types of transfer pricing information must be disclosed?

Not applicable.

What are the consequences of failure to submit disclosures?

Not applicable.

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?

No.

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.

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, five 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 taxpayer must provide the transfer pricing documentation to the tax authorities within five working days from the date of the tax authorities' request.

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

Upon completion of the audit, the tax authorities issue an act summarizing the audit results. The taxpayer is able to appeal this act. Then, the tax authorities take the decision on the tax audit. If the taxpayer does not agree with the decision, it may appeal to the higher tax authority, Appeal Committee or Azerbaijan court system.

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

- Financial sanction of 50 percent of underpaid taxes; and
- Interest of 0.1 percent per day (but not exceeding one year).

To what extent are transfer pricing penalties enforced?

Penalties are generally enforced in practice.

What defenses are available with respect to penalties?

Not applicable.

What trends are being observed currently?

Azerbaijan tax authorities have started to pay more attention to transfer pricing issues, specifically transactions between multinational companies, provision of work/services or recharges from related entities, etc. In addition, Azerbaijan tax authorities are monitoring BEPS Actions as well as in the process of developing more detailed transfer pricing rules based on OECD transfer pricing rules.

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?

No.

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

The tax authorities maintain their internal database and it is not available for taxpayers.

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.

The Tax Code states that comparables for the determination of MP are to be taken only from "official and open" information sources. The Tax Code does not define what sources are considered "official and open", but gives examples of such possible sources, databases of authorities in the specific market, information submitted by taxpayers to tax authorities, or, advertisements.

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

The tax authorities may obtain information from the customs authorities easily and vice versa.

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

Yes. Proper proof (such as primary accounting documents, various documentation proving provision of such services (such as reports, e-mails, correspondences, letters, notes of meetings, etc.)) of provision of management services shall be available. In addition, documents shall prove that an Azerbaijan taxpayer received the economic benefit from such services.

Are management fees subject to withholding?

Yes.

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

Yes. Proper proof (such as primary accounting documents, etc.) shall be available as well as there should be economic justification of the royalty payment.

Are royalties subject to withholding?

Yes.

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

Yes. If a company underestimated its tax base due to non-arm's length prices and confirm this during preparation of transfer pricing documentation, the company is required to make a self-adjustment in the tax return.

Other unique attributes?

None.

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.

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?

Yes.

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

Not applicable.

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.

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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.

KPMG in Bangladesh

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Belgium

KPMG observation

Multinational groups with subsidiaries or permanent establishments in Belgium should make sufficient efforts to support and document the arm's length nature of the pricing of their intra-group transactions. Being prepared for a transfer pricing audit with all intra-group transactions mapped and documented has become of key importance, as the Belgian special transfer pricing audit department has become increasingly aggressive in recent years. As an example of this, a new wave of approximately 300 transfer pricing audits was launched at the beginning of 2015 after the Belgian transfer pricing audit team doubled in size during 2013.

Transfer pricing documentation plays a critical role in tax planning in Belgium. When implementing structures that seek deductions for notional interest or patent income, for example, setting the correct transfer price is essential.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Not applicable	Applicable
Legal requirements	●	
Protection from penalties	●	
Reduce risk of adjustment		●
Shifts burden of proof		●

Basic information

Tax authority name

Federale Overheidsdienst Financiën;
Service Public Fédéral Finances (Belgian Tax Authorities).

Citation for transfer pricing rules

Domestic law provisions in relation to transfer pricing:

- Article 26 Belgian Income Tax Code (BITC)
- Article 49 BITC
- Article 54-56 BITC
- Article 79 BITC
- Article 185, Section 2 BITC
- Article 207 BITC

- Article 344, Section 2 BITC
- Circular of 28 June 1999 (Administrative Transfer Pricing Circular)
- Circular of 7 July 2000 and 25 May 2003 (Administrative Circular on the European Arbitration Convention)
- Circular of 14 November 2006 (Administrative Circular on Transfer Pricing Documentation and Transfer Pricing Audits) reporting obligation of certain material non-arm's length intra-group transactions in their annual accounts (Royal Decree dated 10 August 2009) reporting obligation for direct and indirect payments to tax havens (Article 307 BITC).

Effective date of transfer pricing rules

Effective July 2004. Reporting obligations in the annual accounts apply to financial years starting on or after 1 September 2008. New reporting obligations regarding certain payments to tax havens came into effect 1 January 2010.

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

Not specified in Belgian tax law. Article 26 of the BITC being one of the main transfer pricing articles refers to "a company which is situated directly or indirectly in any situation of mutual dependency". In order to assess whether entities are dependent, not only will legal criteria be

relevant, but factual elements such as common management and control are also likely to be considered.

The Royal Decree of 10 August 2009, which requires corporations to report non-arm's length transactions with related parties, makes reference to the International Accounting Standard 24 for the definition of related parties.

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

Three years from the year-end. In the case of fraud, seven years from the year-end, longer if a company is incurring losses (deferral to momentum losses being used).

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)?

No. Tax return disclosures on transfer pricing are not required. However, certain intra-group transactions must be reported in the company's annual accounts. These annual accounts must be included with the tax return. Furthermore certain payments to tax havens also must be reported in a specific document (form 275F) and enclosed with the tax return.

What types of transfer pricing information must be disclosed?

Certain material non-arm's length intra-group transactions and off-balance sheet arrangements must be disclosed in the annual accounts following the provisions of Royal Decree dated 10 August 2009. This reporting obligation applies to the following corporations those listed on a stock exchange whose shares are traded on a multilateral trading facility and those that meet more than one of the criteria to be considered a large group as defined in the Belgian Companies Code.

These corporations must report all non-arm's length transactions with related parties in the annual accounts and provide amounts, the nature of the relationship and all other information needed to ensure an accurate view of the financial position of the corporation. Transactions involving wholly owned subsidiaries are excluded from this reporting obligation. All direct and indirect payments to tax

havens must be reported in an appendix to the tax return, insofar as they amount to at least 100,000 euros (EUR) and are made to persons located in tax havens as defined in Royal Decree of 7 May 2010 and Administrative Circular of 30 November 2010.

What are the consequences of failure to submit disclosures?

Payments to tax havens which have not been reported or, if they have been reported, for which the taxpayer does not prove that they are made in the context of genuine and bona fide transactions and outside of artificial constructions, are non-deductible business expenses. Genuine and bona fide transactions are transactions that really satisfy an industrial, commercial or financial need and that normally find or must find compensation in the whole of the activity of the company. An artificial construction has no link with economic reality (development of a real activity) and is meant to evade the tax due in Belgium.

In the context of an investigation of the payments concerned, a transfer pricing investigation by the Belgian Tax Authorities is always possible and the general conditions for the deduction of expenses (mentioned in Article 49 and 54 BITC) remain applicable.

For payments to tax havens the simultaneous application of the tax on secret commissions (51,5 percent if paid to companies; 103 percent if paid to individuals) is also possible.

Transfer pricing study overview

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

Yes, English.

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.

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.

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.

When requested by the Belgian Tax Authorities, supporting information and documentation must be submitted within 30 days of the request. However, in justified cases an extension can be requested. The administrative circular of 14 November 2006 recognizes that 30 days is a short period for the request of transfer pricing information and that granting an extension may be appropriate.

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

Yes. Domestic procedures are available enabling the taxpayer to challenge the adjustment.

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

Yes. General tax penalties apply. Penalties range from 10 percent to 200 percent of the additional tax assessed.

To what extent are transfer pricing penalties enforced?

Frequently.

What defenses are available with respect to penalties?

In case sound arguments are available, domestic procedures exist to (try to) reduce or remit the fines.

What trends are being observed currently?

The tax officers of the special transfer pricing audit department (of which the numbers doubled in 2013) have been very active in their sphere of operations, and have manifested themselves very actively within their client base with the help of data mining tools. They use more or less standardized, lengthy requests for information, through which they solicit detailed input from the taxpayer on all sorts of intra-group transactions and on any other information (e.g. legal and operational structure, business trends, etc.) that may be relevant to assess whether the taxpayer respects the arm's length principle. A wide variety of industries (e.g. companies incurring long start-up losses, undergoing business restructurings, showing fluctuating key performance indicators, hosting intra-group financing or cash pooling arrangements) have in the meantime been selected for a thorough transfer pricing audit. Experience from these audits shows that it pays to be well prepared and to proactively map all intra-group transactions and support the arm's length nature of the transfer prices being applied. Also adherence to the provisions and conditions laid down in intra-group agreements should be monitored with great care. Indeed, by not complying with the provisions of their own agreements, taxpayers are quite often a sitting duck for the special transfer pricing audit department of the Belgian Tax Authorities.

There is still a clear focus on loss-making companies and groups in Belgium which have undergone a business restructuring. The deductibility of losses and restructuring costs are challenged if it appears that they are not supported by the function and risk profile of the taxpayer. Furthermore, the Belgian Tax Authorities are also focusing on the correct application of the transfer pricing policy in the operational transfer prices at business line, product group or product level.

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. The Belgian Tax Authorities accept the use of pan-European comparables.

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

Any comparables which pass the comparability test can be used. In practice, however, often Amadeus and Belfirst (a local database) are used.

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

Yes, always.

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

No other preferences besides a certain sensitivity for the presence or absence (rejection criteria) of Belgian comparables during transfer pricing audits.

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

Low.

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

Yes, in addition to being at arm's length, the management fees should relate to management services effectively rendered/received and related directly to the business, that enable the Belgian taxpayer to obtain or retain taxable income.

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, transfer pricing adjustments are generally permitted in practice, although there is little specific guidance on making these adjustments. Consideration should also be given to potential customs implications arising from these year-end adjustments.

Other unique attributes?

No.

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?

An application for a Mutual Agreement Procedure (MAP) should be filed within two or three years (or a shorter period depending on the relevant treaty provisions) as from the first notification of the proposed transfer pricing adjustment communicated to the taxpayer in writing. For cases of double taxation within the EU, relief may be obtained by calling upon the European Arbitration Convention.

May a taxpayer go to competent authority before paying tax?

Yes. As long as the MAP is pending usually suspension of tax collection is granted.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

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?

Yes.

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

No. Both the multi and bilateral ruling program (Service International Agreements of the Central Tax Authorities) and the unilateral ruling program (Service for Advanced Decisions in Tax Matters, or the Ruling Commission) of the Belgian Tax Authorities are very successful. APAs in Belgium are therefore seen as a very workable and suitable tool to obtain certainty for the taxpayer over a given period.

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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.

KPMG in Bosnia and Herzegovina

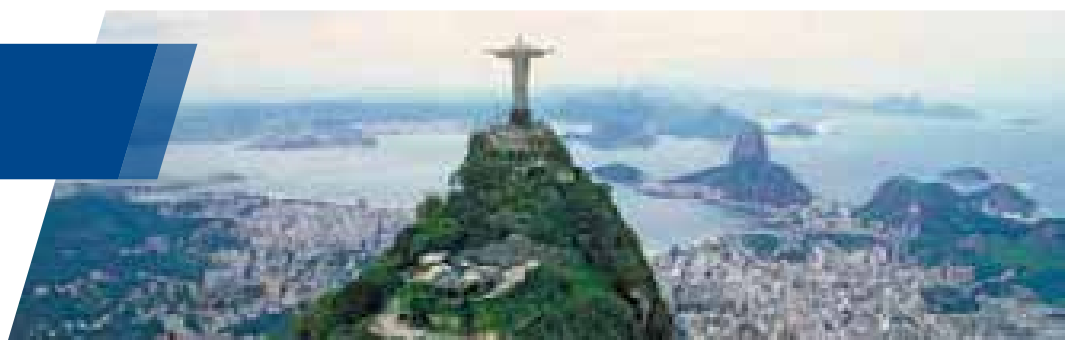
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Brazil



KPMG observation

As member of the G20, Brazil has been part of the discussions in the Base Erosion and Profit Shifting (BEPS) action plan. Even though no actions have been taken to incorporate BEPS into Brazilian legislation yet, adoption is expected eventually. Among the BEPS actions, the country-by-country (CbyC) report will likely be adopted first, as it will not require changes to the Brazilian transfer pricing rules.

Brazilian audits have recently been focusing on the biggest multinational industrial companies, although an increase in audits on services activities and commodities traders is expected for the following years.

Transfer pricing study snapshot

The purpose of a transfer pricing study

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

Basic information

Tax authority name

Receita Federal do Brasil.

Citation for transfer pricing rules

Law n. 12.715/12, Normative Instructions RFB 1.037/10, 1.312/12 and 1.322/12.

Effective date of transfer pricing rules

January 1997.

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

Companies are deemed to be related when they are under common control or one of them is located in a low- tax jurisdiction or privileged tax regime.

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

Five years from the tax return filing date.

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, taxpayers must provide intercompany transaction amounts and demonstrate the methodology applied for each imported/exported part number.

What types of transfer pricing information must be disclosed?

A summary of related party transactions and transfer pricing calculations must be disclosed in the annual tax return. This includes identification of the related parties, the amount involved per transaction (goods, services and rights), and if any, the methodologies used for testing and the adjustments made.

What are the consequences of failure to submit disclosures?

There are no specific penalties for not preparing or submitting transfer pricing information within the tax return. However, the submission of the complete tax return is mandatory and a penalty is applied for not presenting it.

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?

No.

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.

No. Although the ratios used are similar, (i.e. Comparable Uncontrolled Price (CUP) method, resale price, and cost plus) their application often deviates from the OECD Guidelines because some methods require the application of a fixed margin, as set out by 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, 20 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.

Within 20 days of request, after which an extension may be negotiated with the tax authority, depending on the complexity of documentation required.

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

Tax court and administrative disputes.

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

No specific penalties for not presenting the transfer pricing documentation. General tax penalty is applied on corporate tax due.

To what extent are transfer pricing penalties enforced?

Only when the adjustment made by tax authority triggers corporate tax.

What defenses are available with respect to penalties?

The following defenses are available:

- adjustment miscalculated by the tax authority; and
- misinterpretation of law or facts by the tax authority.

What trends are being observed currently?

Given the changes brought by Law 12,715, the tax authorities will be focusing the audits on commodities traders. Now, any import/export transactions of commodities with related parties must be compared with quotations of internationally recognized futures and commodities exchanges. Before the new regulation, commodities were subject to the general rules.

Special considerations

Are secret comparables used by tax authorities?

Yes, in a few cases.

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

No. Public comparables are not available in Brazil. Fixed margins/safe harbors are used; therefore comparables are not really relevant.

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?

Not applicable.

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

Not applicable.

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

Low.

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

Not applicable. Management fees should follow general deductibility and transfer pricing rules.

Are management fees subject to withholding?

Yes.

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

Yes. Royalties are subject of specific regulations, and its deductibility is basically an application of specific percentage over the revenue.

Are royalties subject to withholding?

Yes.

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

No. Year-end adjustments are not regulated. In some cases, debit/credit notes may be issued to adjust import/export prices. Impacts on indirect taxes and deductibility for corporate tax purposes should be analyzed on a case-by-case basis.

Other unique attributes?

The rules allow for some flexibility on the application of methods and in the ability to change the method used on a yearly basis. Safe harbors and materiality thresholds are available only for exporters.

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.

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.

KPMG in Brazil

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Bulgaria

KPMG observation

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

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

The Bulgarian tax authorities currently do not have access to the Amadeus database. 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; and
- assigning transfer pricing analysis of related party transactions to external valuation specialists. These valuers may not have access to Amadeus and their approach may be discretionary sometimes.

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

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Not applicable	Applicable
Legal requirements		●
Protection from penalties	●	
Reduce risk of adjustment		●
Shifts burden of proof		●

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 five percent withholding tax may be applied.

Taxpayers have the burden 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 an appropriate market price and adjust the taxable base to it.

In 2010 a transfer pricing manual (Manual) was published by the tax authorities, containing guidance on transfer pricing issues. The Manual is generally based on the 2009 Organisation for Economic Co-operation and Development (OECD) Guidelines and the European Union (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 Tax and Social Security Procedure Code (TSSPC) sets a threshold of direct ownership of five 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 five 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 2009 expires at the end of 2015.

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. Part of the FY 2014 tax return required information regarding related party transactions and transactions with low-tax jurisdiction entities to be

submitted. The FY 2015 return has not been published yet and it is not clear whether this disclosure and its form would be preserved.

What types of transfer pricing information must be disclosed?

Total value of revenue and costs from related party transactions and separately from transactions with low-tax jurisdiction entities.

Outstanding receivables and liabilities to related parties and to entities from low-tax jurisdictions.

Please consider this information was already changed for the FY 2014 tax return as compared to the FY2013. Thus, it may change for the purposes of the FY 2015 tax return again.

What are the consequences of failure to submit disclosures?

There is still ongoing debate regarding the mandatory nature of the disclosure included in the tax return. Thus, explicit penalties have not been introduced regarding failure to submit this disclosure. However, our experience shows that a conservative approach would usually involve submitting the disclosure.

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?

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 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

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

No. The hierarchy of TP methods is still applicable in Bulgaria.

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. 14 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.

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 three 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, what dispute resolution options are available?

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.

Recently, for the purpose of performing transfer pricing adjustments, the authorities have been assigning transfer pricing studies to valuation specialists from their “List of independent experts”. Although these experts may not have access to Amadeus and their transfer pricing experience may be sometimes limited, their studies may be used by the authorities and possibly accepted in the process of court appeals.

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, however, 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 the initial search from the Bulgarian market.

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

No. However, Amadeus is generally accepted.

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.

Not applicable.

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

Moderate, however, currently increasing.

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

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

Are management fees subject to withholding?

Yes.

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

Yes. Royalties may not be deductible if the licensing transaction is classified by the authorities as artificial and aimed at tax evasion. Arguments for this may be lack of actual benefit for the local entity from the transaction.

Are royalties subject to withholding?

Yes.

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

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

Other unique attributes?

None.

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 Mutual Agreement Procedures (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?

Not applicable.

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 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.

KPMG in Bulgaria

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Canada

KPMG observation

The Canada Revenue Agency continues to focus significant resources on transfer pricing audits, and is perceived as one of the most active tax authorities in transfer pricing.

Canada's first Supreme Court decision in a transfer pricing case was delivered during 2012, marking a significant milestone in the judicial interpretation of transfer pricing.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Not applicable	Applicable	Required to be contemporaneous	Thresholds apply/exist
Legal requirements	●			
Protection from penalties		●	●	●
Reduce risk of adjustment		●	●	
Shifts burden of proof		●	●	

Basic information

Tax authority name

Canada Revenue Agency (CRA).

Citation for transfer pricing rules

Section 247 of the Income Tax Act of Canada, RSC 1985, and Chapter 1 and 2 (Fifth Supplement), as amended.

Effective date of transfer pricing rules

In general, section 247 is applicable for taxation years beginning after 1997. However, the transfer pricing penalties (pursuant to subsection 247(3)) are applicable for taxation years beginning after 1998.

For taxation years prior to 1998, there were different transfer pricing provisions of the Income Tax Act that were applicable.

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

Ownership of more than 50 percent; however, parties may still be found to

be non-arm's length even where there is less than 50 percent ownership (de facto control or the absence of independent interests).

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

Generally, seven years (six years in specific cases) from the date of issuance of the notice of original assessment. The notice of original assessment is generally received three to six months after the filing of the tax return.

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. Provided that related party transactions are above a certain dollar threshold.

What types of transfer pricing information must be disclosed?

A form called the T106 must be completed. The T106 requires detailed information about transactions with non-arm's length non-resident entities, including types and quantum of transactions, transfer pricing methodologies used, whether there has been a change in methodology, whether the methodology is based on an Advance Pricing Agreement (APA) with another tax authority and whether contemporaneous documentation exists with respect to such transactions. A T106 form is required if the amount of the total reportable transactions for all the non-residents combined is more than one million Canadian dollars (CAD). Where a reporting person's total amount of transactions with a particular non-resident during the taxation year is below CAD25,000, certain information is not required.

What are the consequences of failure to submit disclosures?

A late filing penalty or multiple late filing penalties for more than one T106 form may be assessed if the T106 is filed after the due date. The penalty is equal to the greater of 100 Canadian dollars (CAD) and CAD25 per day, up to a maximum of 100 days.

A failure-to-file penalty may be assessed where the reporting persons knowingly fail to file T106 documentation. The minimum penalty is CAD500 per month, to a maximum of CAD12,000 for each failure to comply. The failure-to-file penalty is reduced by any late filing penalties assessed.

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?

No. While it uses the Organisation for Economic Co-operation and Development (OECD) Guidelines as the basis for the information required, section 247(4)(a) sets out six required elements:

1. the property or services to which the transaction relates
2. the terms and conditions of the transaction and their relationship, if any, to the terms and conditions of each other transaction entered into between the participants in the transaction
3. the identity of the participants in the transaction and their relationship to each other at the time the transaction was entered into
4. the functions performed, the property used or contributed and the risks assumed, in respect of the transaction, by the participants in the transaction
5. the data and methods considered and the analysis performed to determine the transfer prices or the allocations of profits or losses or contributions to costs, and the case may be, in respect of the transaction

6. the assumptions, strategies and policies, if any, that influenced the determination of the transfer prices or the allocations of profits or losses or contributions to costs, as the case may be, in respect of the transaction.

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.

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, 3 months.

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

See prior question.

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

Aside from requesting Competent Authority (CA) assistance, taxpayers can also file a notice of objection with the Appeals division of the CRA and, if necessary, can pursue an appeal before the Tax Court of Canada.

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

Yes. The legislation provides for the imposition of a penalty equal to 10 percent of the total transfer pricing adjustment, in certain cases. The penalty is intended to be compliance-related, focusing on the efforts that a taxpayer makes to determine and

use arm's length pricing. The penalty equals 10 percent of the net amount of adjustments made in a tax year, but only where the net adjustments exceed the lesser of 10 percent of the taxpayer's gross revenue for the year or CAD5 million. The net amount of the adjustment is based on:

- upward adjustments relating to transactions for which the taxpayer does not have adequate documentation; and
- downward adjustments relating to transactions for which the taxpayer has adequate documentation.

To what extent are transfer pricing penalties enforced?

Transfer pricing penalties are enforced aggressively.

What defenses are available with respect to penalties?

Penalties may be avoided where a taxpayer has made 'reasonable efforts' to comply with the dual obligation to determine and use arm's length prices pursuant to subsection 247(4) of the Income Tax Act and CRA's TPM-09 (reasonable efforts under section 247 of the Income Tax Act). To demonstrate that a reasonable effort has been made, complete and accurate documentation must be prepared and updated on an annual basis. Penalties may be reduced or eliminated based on subsequent competent authority settlements.

What trends are being observed currently?

Canada continues to be a jurisdiction where transfer pricing enforcement is a high priority. The probability of a transfer pricing audit and adjustment remain higher than in many other jurisdictions. In recent years, the CRA has started to apply a risk-based approach to evaluating and selecting taxpayers for transfer pricing audits. This approach is based on a number of factors including the type and amount of non arm's length transactions, prior audit history, continuing losses as well as the existence of restructuring transactions.

Special considerations

Are secret comparables used by tax authorities?

Yes, but very rarely.

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

Yes. Generally the CRA prefers the use of local comparables, but accepts the use of North American comparables.

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

Taxpayers are free to use a database of their choice. The CRA uses the Standard and Poor's Capital IQ database.

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.

Not applicable.

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

Low.

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

Yes. The CRA has issued guidance in its TPM 15 whereby it actually looks through a management fee charge to establish whether any underlying expense item is in fact deductible under the Canadian Income Tax Act.

Are management fees subject to withholding?

Yes.

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 may be made. Taxpayers are, however, encouraged to minimize or avoid year-end adjustments where possible, for example by

reviewing and true-up pricing on a periodic basis during the year.

To the extent that such adjustments are required, they may be made as follows:

- before the books are closed for the year, by making an adjustment in the books
- after the books are closed, but before the financial statements are finalized, by making an adjusting journal entry to the financial statements; and
- after the financial statements have been finalized, by making an adjustment on Schedule 1 of the corporate tax return.

To the extent that year-end adjustments relate to tangible products imported into Canada, such adjustments will have Customs implications.

Other unique attributes?

Generally, the CRA does not support the use of multi-year averaging. In an audit setting, results are evaluated on a year-by-year basis.

Use of the interquartile range is not supported by the CRA.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive. There are currently 92 treaties in force.

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

Almost always. Effective in more than 90 percent of cases.

When may a taxpayer submit an adjustment to competent authority?

Generally after receipt of a notice of reassessment from the CRA.

May a taxpayer go to competent authority before paying tax?

Yes. However, in most cases, the taxpayer will have to either post security or pay half the amount of the tax payable once a reassessment is issued.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

Is there a filing fee for APAs?

Yes, out-of-pocket expenses for the CRA in negotiating the APA.

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

Yes.

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

Yes. While currently experiencing resourcing constraints, Canada has a long established and generally well-functioning APA program. Increased early stage due diligence on proposed APAs by the CRA has created some delays. In total, since the inception of the APA program, there have only been four instances in which the CRA has been unable to conclude an agreement with a taxpayer and/or a foreign tax administration. The current average time to conclude a bilateral APA is approximately 48 months. The CRA will not negotiate APAs concerning business restructuring transactions.

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Chile



KPMG observation

The 2012 Chilean tax reform was enacted with the objective of aligning local rules with Organisation for Economic Co-operation and Development (OECD) Guidelines. Accordingly, the Chilean tax authority is closely following the OECD's Base Erosion and Profit Shifting (BEPS) action plan and, although no actions have been taken in Chile yet, actions are expected when BEPS concludes.

Aside from BEPS, it is very important to highlight that cross-border intercompany transaction-related expenses, incurred from 2015 onwards, and subject to withholding tax (WHT) according to article 59 of the Chilean Income Tax Law (royalties, interest, services, etc.), will only be deductible as an expense in the year in which the expense has been paid and the WHT has been declared and paid to the Treasury, provided that general requirements to be considered as an expense necessary to produce income are met.

While a transfer pricing study is not mandatory per se, taxpayers are required to keep all documentation deemed necessary to support the arm's length nature of intra-group transactions. It must be noted that in recent audit procedures, the information required by Chilean tax authorities has been similar to that commonly included within a transfer pricing study. Furthermore, taking into consideration deadlines applied in audit procedures, it has been observed that those taxpayers already possessing a transfer pricing study prior to the start of the audit tend to be able to better cope with its demands and obtain a favorable outcome.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Not applicable	Applicable	Required to be contemporaneous
Legal requirements	●		
Protection from penalties		●	●
Reduce risk of adjustment		●	●
Shifts burden of proof		●	●

Basic information

Tax authority name

Servicio de Impuestos Internos (Chilean Internal Revenue Service, or SII).

Citation for transfer pricing rules

Article 41 E of the Chilean Income Tax Law, contained in Decree Law No. 824 as amended.

Effective date of transfer pricing rules

1 January 1998 and 27 September 2012 for changes incorporated by the latest tax reform act.

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

Parties are related when there is participation (direct or indirect) from one

party in management, control, capital, profits or income of the other party. It is presumed parties are related when they enter into exclusive or joint action agreements, preferential treatment or the parties are economically or financially dependent. Also any kind of agency, branch or permanent establishment of any entity of the group is considered a related party with its

head office as well as with any other group member entity.

Similarly, it follows that when a party performs one or more transactions with a third party which, in turn, carries out, directly or indirectly, identical or similar transactions to those performed with the first party all the parties are considered related. Entities located in a jurisdiction listed as a tax haven are presumed related where there are transactions.

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

The applicable general rule for the statute of limitation is three years, starting from the latest date at which the tax should have been paid.

Regarding taxes for which returns must be filed, this period extends to six years, in the case when a return has not been presented, or in cases of tax fraud.

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 obligation to annually (in form and time) file a sworn statement is incorporated in Article 41 E of the Chilean Income Tax Law, where the taxpayer, subject to transfer pricing rules, must itemize the transactions conducted with its related parties.

What types of transfer pricing information must be disclosed?

On 31 January 2013, the SII released an official pronouncement specifying the filing instructions. The required information includes:

- the methods used for calculating prices, profitability rates or returns
- the features of such transactions (for example, amounts, type of transaction, currency used)
- related party information (for example, address and taxpayer identity number)
- general information on the corporate group

- information regarding financial transactions, intra-group services, royalties and commissions, among others
- information informing any business restructuring of the taxpayer's operation in Chile.

The deadline for filing this Transfer Pricing Affidavit is the last business day of June.

What are the consequences of failure to submit disclosures?

Fines for filing the sworn return in an untimely, incorrect or incomplete manner may range from 10 to 50 annual tax units UTA1 (one UTA is equivalent to approximately 980 US dollars (USD)).

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?

No. There is no specific requirement. However, it should at least include a functional analysis, industry analysis, company overview, and support for selection of method and a description of comparables, as well as a list of all supporting 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

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

Yes. It must be noted that the usage of additional (residual) methods is permitted only when none of the transactional or profit based methods are applicable. Where an alternative

method is used, the taxpayer has to justify its use.

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.

One month (or two if extended) from the date the taxpayer receives legal notice of commencement of a tax audit.

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

In the case of transfer pricing adjustments, taxpayers are entitled to submit a tax claim on the charges and to start the regular litigation procedure.

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

Yes. In the case of adjustment, a 35 percent penalty tax is applicable in lieu of income taxes on the adjustment, plus inflation adjustments, interest and a five percent penalty over the amount adjusted.

To what extent are transfer pricing penalties enforced?

The application of penalties has increased in recent years. Considering the growth in the number of transfer pricing audits and the recent tax reform, it is expected the application of penalties will intensify in future.

What defenses are available with respect to penalties?

During a transfer pricing audit, the tax authority requests relevant documents from the taxpayer, which the taxpayer has the obligation to provide. At this stage, it is highly recommended to

also present a transfer pricing study, as evidence to demonstrate the compliance with the arm's length principle of the intra-group transactions under review.

If a taxpayer does not agree with the determination of tax due, the taxpayer may ask the Chilean IRS to reconsider (via the administrative process) the determination. If a reconsideration request is presented and rejected, the taxpayer may interpose a claim before the Tax Court.

If no reconsideration or appeal is presented, the tax authority issues a payment order, which is the amount of outstanding taxes, inflation-linked adjustments, interest, and fines and issues an order to pay.

Taxpayers can exercise the right to appeal when they are in disagreement with the determinations of tax due and other administrative determinations made by the tax authority.

However, because the 35 percent penalty tax applies in lieu of income taxes on the transfer pricing adjustment, having a transfer pricing study, contemporaneous documentation or other mechanisms does not provide protection against the application of this penalty.

What trends are being observed currently?

The strategy followed by the tax authority in the audit process is to notify the four or five leading companies of an industry, to make a selection following a comparison among them for transfer pricing contingencies and then conduct a deeper review. It is important to note that many of the transfer pricing audits have been targeted at symbolic companies (with important global brands). Even when a transfer pricing study is not a formal requirement, the level and detail of information required by tax authorities in legal notifications is basically the content of a transfer pricing study, including information such as:

- description of the main business units of the company, specifying if these products are manufactured or just distributed by the company
- list of the principal suppliers and clients specifying for each supplier and client information such as name of the company, country of residence,

amount of all purchases or sales, currency used, type of products, incoterm used, credit days and if the company is a related or a third party

- corporate structure of the group to which the company belongs to, internal organization charts of the company, audited financial statements and all contracts with related parties
- segmented financial statements for multi-business entities
- sworn return for all transactions with related parties
- sworn return regarding the functions performed and risks assumed by the company in its operations
- detailed information on any form of intra-group financing arrangements or structures.

From 2013 onwards, the Chilean IRS is able to use an extensive database containing all of the relevant taxpayers' information as submitted automatically by the taxpayer through the online submission of transfer pricing returns.

Special considerations

Are secret comparables used by tax authorities?

Not officially, but secret comparables have been used in some transfer pricing audits.

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

To date there is insufficient evidence to determine whether there is any preference by the tax authority.

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

The tax authority has not issued an official position on this matter.

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.

There are no stated preferences.

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

Increasing. Many of the recent transfer pricing audits have been supported with information provided to the tax authority by the customs authority. Furthermore, new APA regulations support the simultaneous involvement of the Chilean IRS and the customs authorities in the case of APAs covering merchandise imports.

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

No. Management fees can be deducted if these comply with the general requirements of the Income Tax Law.

Are management fees subject to withholding?

Yes.

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

Yes. The payments made abroad for royalties are deductible as an expense necessary to produce income when related to the line of business up to a maximum of four percent of net income for sales or services of the line of business, during the respective year. This would apply, if the country of domicile of the beneficiary of the income, the income is taxed at the income tax rate equal to or greater than 30 percent.

Are royalties subject to withholding?

Yes.

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

Yes.

Other unique attributes?

None.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Chile has signed 25 tax treaties that are currently in effect and three signed treaties waiting for Congressional ratification.

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

No experience.

When may a taxpayer submit an adjustment to competent authority?

Taxpayers may, with the authorization of the tax authorities, both on the nature and the amount of the adjustment, correct the price, value or profitability of the transactions carried out with related parties, on the basis that transfer pricing adjustments have been made in the other country, with which Chile has entered into an agreement for the avoidance of double taxation that does not prohibit such adjustments. An application for rectification shall be filed, accompanied by all documents supporting the adjustments, including evidence the adjustment was made by the other country, within five years from the expiration of the statutory period in which the country should declare the transactions whose prices, values or profits are intended to be rectified.

May a taxpayer go to competent authority before paying tax?

Unclear.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

Is there a filing fee for APAs?

Not applicable. Tax authorities have stated that all the detailed procedures of the APA program will be released in subsequent regulations. These regulations should specify whether a filing fee will be required.

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

Yes.

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

Not applicable. So far, there is no evidence on how successful the APA program is. However, tax authorities are very optimistic regarding the success of the program.

KPMG in Chile

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China



KPMG observation

With nearly 30 years of history in enforcing transfer pricing compliance, China has been actively broadening and deepening its transfer pricing regime. Following the issuance of a set of revamped transfer pricing regulations (Circular 2) in 2009, the State Administration of Taxation (SAT) issued many transfer pricing related regulations and rules addressing issues such as contemporaneous documentation administration, intra-group services transactions, license royalty treatment and single function entities, amongst others. The SAT is expected to release an updated and expanded replacement of Circular 2 in the near future.

The Chinese authorities run an aggressive transfer pricing audit program, a maturing Advance Pricing Agreement (APA) program and have recently put more emphasis on the day-to-day administration, or ex-ante management of taxpayers' transfer pricing issues. The ex-ante focus has led to pre-audit informal assessments by tax authorities, for which the taxpayer can elect to make adjustments to its taxable income, which would be ineligible for any double tax relief.

While Chinese tax authorities leverage experiences of other countries, they are also focused on developing and putting forward their own positions on a number of key transfer pricing technical issues. Having actively participated in the United Nation's (UN) initiative on developing practical guidance for transfer pricing implementation, China formally pronounced its view on location specific advantages (LSAs), translating into lower costs and higher demand, arguing for additional taxable profit in China.

As a member of the G20 and an observer at the Organisation for Economic Co-operation and Development (OECD), China is actively involved in the Base Erosion and Profit Shifting (BEPS) Action Plan. For the year of 2014, a notable development in the macro economy, which could have a profound impact on China's taxation policy, is that the country's outbound direct investment (ODI) as confirmed by the Ministry of Commerce has, for the first time in history overtaken the foreign direct investment (FDI) into China, making China a net capital exporter. Accordingly, BEPS-related tax law changes (including changes to transfer pricing regulations) affecting both inbound and outbound investment are envisaged in the SAT's work program in the coming years.

As an example of this, in the area of transfer pricing, the BEPS country-by-country reporting requirement, in particular, is expected to result in further requirements on taxpayers beyond the currently required disclosures and the highly anticipated revised Circular 2 is expected to reflect such further requirements. Furthermore, the revisions to the OECD Guidelines with respect to a more broadly encompassing definition of intangibles, the recognition of LSAs and other market specific features as comparability factors, as well as the emphasis on actual key functions performed and actual bearing/control of risks in relation to the development and maintenance of intangibles, as opposed to the historical focus on mere legal ownership, are all welcome by the SAT and are likely to be reflected in the revised Circular 2 as well.

The Chinese tax authorities have long been known for their inclination to question the value add/benefit obtained by Chinese entities from intra-group services or licenses provided by overseas related parties. Such challenges in the past have often led to denying of corporate income tax deductions for outbound services/royalties payments made by Chinese entities in MNE groups. Leveraging off the BEPS Action Plan's emphasis on aligning taxation and

value creation, the SAT issued Directive 146 in July 2014, instructing local tax authorities to survey substantial payments of service fees and royalties made to overseas by Chinese entities between 2004 and 2013, with a view to launching extensive audits, placing particular focus on payments to low tax jurisdictions and on cases where foreign related parties conduct only limited, simple functions. This was followed by the issuance of Circular 16 in March 2015, which introduced additional requirements that need to be met before the Chinese tax authorities will allow income tax deductions for payments to overseas affiliates. In particular, Circular 16 puts great emphasis on the commercial substance of the overseas affiliate receiving the service fees and the beneficial nature of the services being rendered for the intra-group services transactions. For intra-group license transactions, this circular looks beyond legal ownership while focusing on all relevant parties' contribution to the economic value in connection with the subject intangibles.

With Chinese tax authorities becoming increasingly sophisticated in transfer pricing and their stepping up of enforcement efforts supported by a more comprehensive and refined regulations framework, taxpayers need to properly manage the balance between the needs for global consistency in transfer pricing policies and attention to the specific circumstances in China.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Required to be contemporaneous	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

The State Administration of Taxation (SAT) at the central level and various state tax and local tax bureaus under its administration.

Citation for transfer pricing rules

Corporate Income Tax Law (CIT Law) (2007), Implementation Rules for the CIT Law (2007), Circular Guoshuifa [2009] No. 2, Implementation Measures of Special Tax Adjustments (Provisional) (Circular 2) (2009).

Effective date of transfer pricing rules

On 1 January 2008, the comprehensive transfer pricing regulation, Circular 2, came into force. Prior to that there had been various transfer pricing rules since 1991 but none took a systematic approach.

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

Twenty-five percent, be it direct or indirect ownership, or control. This applies whether one party owns another or two parties are owned by a common party. The formula for calculating indirect shareholding percentage is worthy of note: if there is 25 percent or greater ownership in a higher tier subsidiary, it is counted as 100 percent when multiplying the shareholding percentage of each lower level of indirect shareholdings. Other criteria including loans, control of management, or other types of control can also be taken into account.

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

Ten years from the year in which the related party transaction occurs.

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. Disclosure of related party transactions must be submitted to the tax authority along with the annual corporate income tax return. The deadline to file the annual income tax return is 31 May.

What types of transfer pricing information must be disclosed?

The following information must be disclosed on nine prescribed forms:

- Description and amounts of related party and non-related party transactions broken down by type (purchases, sales, services, intangible assets, tangible assets) as well as by counterparty location (domestic

or overseas). For tangible assets and intangible assets, the information must be further broken down into several sub-categories.

- Information on financing received from related parties including time period, interest rate and expenses, and guarantor information such as guarantee fee and fee rate.
- A full list of all related parties as well as the address, taxpayer number, legal representative and type of related party relationship.
- Extensive information on outbound investment (outbound from China) including information on the invested enterprise, such as its profit level, income tax payable, effective tax rate and shareholders.
- Information on outbound payments to related and unrelated parties broken into 17 subcategories, along with information on taxation of these payments.

What are the consequences of failure to submit disclosures?

Penalties up to 10,000 Renminbi (RMB) and negative impact on reputation.

Transfer pricing study overview

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

No. The document can only be filed in Chinese.

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. In addition, China requires transfer pricing studies to contain certain additional information and completed forms. In particular, one form requires the segmentation of the taxpayer's income statement into four categories of transactions (i.e. related-party transactions vs. non-related party transactions, within China vs. transnational).

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.

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, 20 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 transfer pricing documentation study must be prepared within five months after the end of the calendar year and must be submitted within 20 days upon request by the tax authority in charge.

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

Apart from direct discussion/negotiation with the tax authorities, the taxpayers are, in principle, allowed the options of administrative appeal and litigation. However, such proceedings have strong procedural focus and are thus not likely viable in practice.

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

Although there are no penalties as such on transfer pricing adjustments, an interest surcharge may be imposed on tax underpayments if the taxpayer does not comply with documentation preparation and production requirements. Interest may be imposed on tax adjustments which relate to transaction taking place on or after 1 January 2008. This interest rate shall be equal to the People's Bank lending rate plus five percentage points. This interest is non-deductible for corporate income tax purposes. However, if the company complies with documentation

requirements, the five percent extra charge may be dropped.

To what extent are transfer pricing penalties enforced?

As noted, there are no penalties as such on transfer pricing adjustments. However, the punitive interest surcharge in the absence of a transfer pricing documentation is generally enforced.

What defenses are available with respect to penalties?

Not applicable.

What trends are being observed currently?

With a traditional focus on inbound multinational taxpayers, the Chinese tax authorities are expanding their work to include domestic enterprises and outbound investment. There is also a stronger focus on examining intra-group intangible assets transactions, equity transfer, thin capitalization and other 'new' transfer pricing issues. Automotive, pharmaceutical, electronics, real estate and distribution sector companies have received particular scrutiny. The tax authorities have also been conducting joint investigations on certain industries and across-region investigations on certain intra-group companies.

Special considerations

Are secret comparables used by tax authorities?

Yes. Use of secret comparables is specifically sanctioned by Circular 2, however, in most cases, Chinese authorities rely on public company data derived from commercial databases and other sources.

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

Preference for local comparables is observed but a broader geographic set is also acceptable, depending on the circumstances.

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

The Chinese transfer pricing regulations do not dictate the choice of database for benchmarking purposes. However,

KPMG in China's experience shows that the Chinese tax authorities have subscribed to a few databases such as Bureau van Dijk's Osiris database, and Standard and Poor's Research Insight database. Both databases are used by the Chinese tax authorities.

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.

Preference for local comparables is observed but a broader geographic set is also acceptable, depending on the circumstances.

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

Low.

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

Not applicable. The Chinese corporate income tax law does not permit the deduction of management fees. While not clearly defined in the law, the Chinese concept of management fees can generally be interpreted as remuneration for shareholder activities. In addition, Chinese tax authorities are likely to deny the deductibility of any charges that are literally labeled as management fees, even if the charges are not related to shareholder activities. There are special rules related to the deduction of fees by bank branches.

Are management fees subject to withholding?

No.

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

Yes. On intra-group license transactions, the most recently issued Circular 16 specifies that royalties paid by a Chinese entity to an overseas related party which may only have the legal ownership but has not contributed to the value created in connection with further developing, enhancing, and commercially exploiting the subject intangibles, cannot be deducted for corporate income tax purposes.

Are royalties subject to withholding?

Yes.

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

Yes. Taxpayers are allowed to adjust taxable income in China upward through a special declaration in the annual tax return, which may lead to the difference of numbers in the tax return and the book. However, the taxpayer would still not be permitted to remit the money into China.

Other unique attributes?

- Circular Caishui [2008] No. 121 focuses on the issue of thin capitalization. An enterprise can deduct its interest expense actually paid to its related parties up to the debt-to-equity ratio of 5:1 for financial institutions, and 2:1 for non-financial enterprises, unless the enterprise can provide relevant supporting documents to the tax authority to prove that the transactions are conducted at arm's length, or that the effective tax rate of the enterprise paying interest expenses to a domestic related party is not higher than that of the domestic related party.
- Circular Guoshuihan [2009] No. 363 provides that enterprises based in China with limited functions and risks should not bear market or "business" risks related to the financial crisis. As noted above, if such companies do generate losses, they must submit transfer pricing documentation to the tax authorities in charge.
- Voluntary transfer pricing adjustments are encouraged:
 - In August 2014, the SAT issued Notice 54, which formalizes the self transfer pricing adjustment program by providing detailed instructions in relation to the self adjustment practice with the SAT's monitoring and administration mechanism.
 - In particular, the SAT encourages taxpayers to make self adjustments, i.e., voluntarily make an upward adjustment to the amount of income tax paid if related party transactions were not carried out on arm's length

standard. Additionally, going forward, the additional five percent interest as stipulated in Circular 2 will not be charged on self adjustments, provided that the transfer pricing documentation is provided as prescribed by law; however, interest should still be paid as stipulated in Circular 2 for tax adjustments.

- To the taxpayers, performing a self-adjustment may lead to double taxation, which is not eligible for treaty relief. Yet such self adjustment does not provide the taxpayer with full protection from audit, since the China tax authorities still retain the right to conduct any transfer pricing audits, even with self adjustment.
- Other recent developments:
 - China played an important consultative role in determining the outcomes of the first set of BEPS deliverables, which are expected to reinforce the trend of recent years towards firmer enforcement of transfer pricing rules. Such intention is manifested in the issuance of Directive 146 and Circular 16, putting into effect the promised greater scrutiny of cross-border services/license transactions within an MNE group. Efforts have also been stepped up in the collection of taxpayer information, with a view to greater policing of outbound investments as well as engagement in international information exchange.
 - Taxpayers continue to await regulations on valuation of equities in the related party context, including a contemporaneous documentation requirement for indirect transfers. This potential regulatory development is consistent with the burgeoning number of tax disputes focusing on intra-group equity transfer.
 - Another continuing development is a focus on the transfer pricing arrangements of the so-called "High-New-Tech Enterprises" (HNTE). Taxpayer with HNTE status enjoys a reduced corporate income tax rate of 15 percent. There is an expectation on the part of the Chinese tax authorities that HNTEs should not pay significant

amount of royalties on licensed technologies and should earn a higher profit margin than the industry average.

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 experience.

When may a taxpayer submit an adjustment to competent authority?

After receiving a written tax assessment from the tax authority in charge that may cause or have caused double taxation of the same income in different treaty jurisdictions.

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?

Unilateral, bilateral, multilateral.

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?

Yes.

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

Yes. The SAT published its fifth APA annual report (2013) in December 2014 and will issue periodic disclosure on developments of the APA program. Based on the statistics in the APA annual report, more and more taxpayers in China are seeking tax certainty and thus pursuing an APA, specifically, a bilateral APA. In the future, the Chinese tax authorities will recruit and train a larger pool of tax officers with transfer pricing expertise to support the APA program, thereby alleviating the current bottleneck between application and conclusion.

KPMG in China

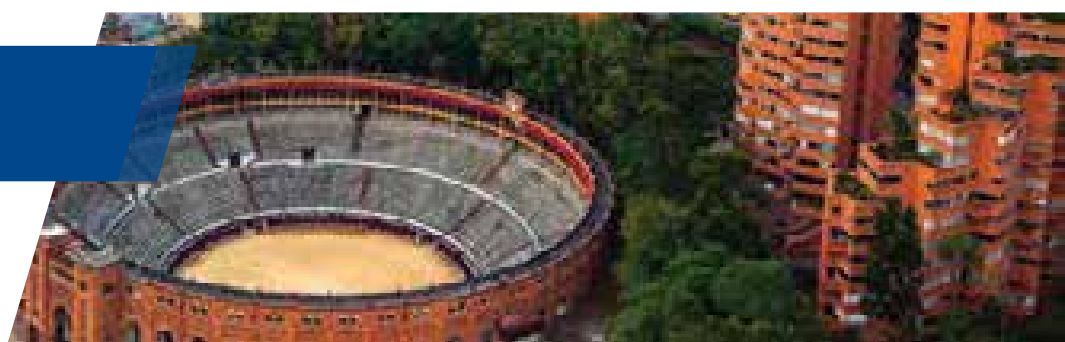
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Colombia



KPMG observation

In 2013, Colombia received an invitation from the Organisation for Economic Co-operation and Development (OECD) to become a member of the organization. Consequently, changes in both transfer pricing and tax legislation were carried out, taking into account the OECD Guidelines. The Base Erosion and Profit Shifting (BEPS) Action Plan has been mentioned by the Colombian government as a key tool to ensure that multinational entities are contributing their fair share of taxes with regard to the activities they carry out in Colombia.

The Colombian Tax Authorities continue to scrutinize multinational entities' transfer pricing and are closely reviewing the Informational Transfer Pricing Returns of taxpayers. They have assessed fines on those returns that have been filed incorrectly or contain inaccurate information. Additionally, they have changed the requirements for taxpayers that are obliged both to prepare and file transfer pricing documentation. The Tax Authorities have continued transfer pricing audits based on red flags detected in the informational return and the transfer pricing studies. It is expected that there will be more detailed audits and assessments going forward due to the experience gained by the Colombian Tax Authority.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Not applicable	Required to be contemporaneous	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

Dirección de Impuestos y Aduanas Nacionales, (DIAN – National Administration of Taxes and Customs).

Citation for transfer pricing rules

- Tax Code, Chapter XI, Sections 260–1 to 260–11
- Economic Sanctions, Tax Code Sections 260-11 and 647
- Decree 3030 of 2013
- tax havens, Decree 1966 of 2014; and

- deadlines, according to an annual decree, issued at the end of the respective taxable year.

Effective date of transfer pricing rules

1 January 2004.

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

- ownership of greater than 50 percent, based on voting power, share capital, and under common control

- even when an entity does not have a capital relationship, it is considered a related party when it is entitled to receive directly or indirectly more than 50 percent of the profits of a company
- when an operation takes place between two subordinates, which are owned directly or indirectly by more than 50 percent by the same individual or corporation or non-corporate entities; and
- when there are consortiums, temporary unions, account

participations, and one of the entities carries out a transaction with any of its related parties or any of the members of the group in favor or on behalf of the consortium, joint venture or venture accounts.

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

The statute of limitations for transfer pricing adjustments is in accordance with the statute of limitations of the income tax return.

In case of not filing the transfer pricing informative return and the supporting documentation, the tax administration has five years to challenge the taxpayer and to impose the relating penalties.

Moreover, Tax Code Article 260–5 and the Ruling Decree states that taxpayers which are obliged to prepare and file transfer pricing documentation have to keep the documentation within their records for a period of at least five years, together with all the supporting documentation that proves compliance with the transfer pricing rules in Colombia.

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 disclosure takes place through the informative TP return as well as the TP Documentation, both are submitted to the revenue authority annually, in a virtual way (through web).

What types of transfer pricing information must be disclosed?

Colombian taxpayers are required to file an annual Informational Transfer Pricing Return and/or supporting transfer pricing documentation which contain information related to their intra-group transactions including the amounts, related parties, type of transactions, methods used to evaluate the compliance with the arm's length principle, interquartile ranges, amongst other information.

What are the consequences of failure to submit disclosures?

The transfer pricing penalties are included within Section 260–11 of the Tax Code.

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?

No. The transfer pricing study content must follow the requirements of the Colombian Tax Code and the regulatory decree, i.e. executive summary, functional analysis per controlled transaction (general information of the company/activity and other specific information), industry analysis and economic analysis (the selection of method, description of comparables and conclusions, among others) and annex information. However, it is important to highlight that local transfer pricing regulation mirrors 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

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

Yes.

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, 15 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.

Taxpayers need to submit the documentation within dates established by the national government. However, if a request is issued by the tax authorities, taxpayers have 15 days to provide the required information.

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

The taxpayer can dispute the adjustment of the tax authorities under administrative appeal and regular tax litigation.

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

There are not any specific transfer pricing penalties other than those mentioned in Section 260–11 of the Tax Code (such as late filing, inaccuracy in the transfer pricing informative return and/or supporting documentation). Nevertheless, there are income tax penalties linked to a transfer pricing adjustment. Those penalties can be up to 160 percent of the underpayment in tax, plus additional penalties and interests.

To what extent are transfer pricing penalties enforced?

Always.

What defenses are available with respect to penalties?

Litigation and settlements.

What trends are being observed currently?

Tax authorities have begun to perform audits in a more substantive way. The main challenges to taxpayers relate to transfer pricing on expenses for technical assistance, technical services, intragroup services and royalties.

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. Tax authorities expect the taxpayer to provide sufficient information regarding identification and determination of comparable parties used, information sources, inquiry dates and indication of the rejection criteria of rejected comparable entities.

It is also important to present technical adjustment descriptions and, when needed, a generic description of the principal differences between Colombian accounting rules and the rules in those countries where the comparable parties are located.

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

Yes, always.

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

According to Colombian transfer pricing regulations, the analysis should be performed using data from the year under assessment for both the taxpayer and the comparable companies. If updated comparable data is not available, it is mandatory to state the specific date when the analyses were performed as well as the update of the databases. Furthermore, if it is necessary to consider several periods for the analysis, the analysis and explanations to justify the use of such information should be included in the report.

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

High. Customs and tax authorities are part of the same organization (DIAN). Therefore, the officials of DIAN oversee both audits.

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

Yes. Deductibility of management fees paid are subject to the limitation applicable to all expenses paid abroad and not subject to withholding tax. If such fees or expenses do not exceed 15 percent of the taxable income, they can be taken as a deduction.

Are management fees subject to withholding?

Yes.

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

Yes. These payments are subject to withholding tax, therefore without it, tax deduction is not allowed. In addition, in some specific cases if royalties are related to technology, the respective agreement should be registered within the tax authority to take the deduction.

Are royalties subject to withholding?

Yes.

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

Yes. The transfer pricing rules are silent upon this matter, therefore it is difficult to say whether they are permitted or not.

Other unique attributes?

When management fees do not contain a technical component or elements that might be considered as advisory, payments do not require the application of withholding tax, all other payments usually have a 10 percent withholding tax rate.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive. Currently there are treaties with Canada, Mexico, Chile, Spain, Switzerland and the member countries of the Andean Community (CAN).

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?

Yes.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

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?

Not applicable. As of 31 December, 2014, one APA had been signed.

KPMG in Colombia

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Costa Rica

KPMG observation

The Costa Rican transfer pricing regulations, enacted in September 2013, not only require Costa Rican taxpayers to carry out their intercompany transactions at arm's length following the Organisation for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines but also have established formal transfer pricing obligations to be completed annually. Taxpayers have been required to prepare transfer pricing studies since 2013. The transfer pricing information return will have to be completed starting with a taxpayer's fiscal 2015. Specific regulations regarding the filing of this return are yet to be enacted.

Even though general transfer pricing rules have been recently enacted, the Costa Rican Tax Authority has been able to adjust intercompany transactions if they were not in accordance with the arm's length principle since 2003. Moreover, some transfer adjustments assessed by the Tax Authority for prior years have been ratified by the Constitutional Court and by the Supreme Court of Justice.

In recent tax audits, the Tax Authority has requested the 2013 transfer pricing report of companies classified as large taxpayers.

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

Dirección General de Tributación (DGT).

Citation for transfer pricing rules

Decree 37898-H published on 13 September 2013.

Effective date of transfer pricing rules

New transfer pricing rules are effective since fiscal year 2013.

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

Parties will be deemed to be related if one of the following cases applies:

- when one person or company directs or controls the other, or holds, directly or indirectly, at least 25 percent of its capital stock or voting rights
- when five persons or fewer direct or control both related parties, or possess, directly or indirectly, a

participation of at least 25 percent in the capital stock or voting rights of both entities

- when entities are considered to be part of the same business group (unidad de negocio), if one of them is a member or participant of the other and is related to it in any of the following situations: (i) holding a majority of voting rights; (ii) having the power to appoint or remove members or through its legal representative to intervene in the

other entity; (iii) through agreements with another partner, having the majority of voting rights; (iv) having appointed the majority of the board members exclusively by their votes; or (v) a majority of the members of the governing body of the legal entity are ombudsmen, managers or board members of the related party or the other party dominated by it; or

- when two or more companies comprise a decision making bloc with regard to a third company, all them are considered to be a business group.

Also in the following situations:

- in a contract of collaboration or joint venture, when one of the participants holds, directly or indirectly, 25 percent of the results or profit under the contract
- a resident in Costa Rica and a distributor or exclusive agent of a foreign jurisdiction
- a distributor or exclusive agent, resident in Costa Rica, of a resident of a foreign jurisdiction
- a resident entity and its permanent establishment abroad; or
- a permanent establishment resident in Costa Rica and its foreign parent company, as well as another permanent establishment of the same company or a person associated with it.

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

The normal statute of limitations is four years. This term is extended to 10 years for those taxpayers who (1) have not filed their tax returns, (2) have not registered as taxpayers before the Tax Administration, or (3) have filed tax returns that have been deemed fraudulent. The statute of limitations starts counting from 1 January of the year following that in which the tax should have been paid.

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. Taxpayers categorized as large taxpayers or large territorial companies,

or that operate under the free trade zone incentive system, must file, on an annual basis, an informational return by the deadline and under the conditions to be established by the Tax Authority.

What types of transfer pricing information must be disclosed?

The information must include data related to the group and to the taxpayer, as well as information regarding the controlled transactions, their nature and amount, the methods applied, comparable data used and results.

What are the consequences of failure to submit disclosures?

Failure to prepare or submit disclosures may result in a penalty equivalent to two percent of the taxpayer's previous year's income. This penalty has a minimum of 10 base salaries (approximately 7,270 US dollars (USD)) and a cap of 100 base salaries (approximately USD72,700). Furthermore, the Tax Administration would be entitled to make its own determination of what the appropriate price for related party transactions should have been.

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.

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. There is also the possibility of applying other methods to analyze export and import transaction of goods

with international price quotations. Specific regulations regarding these other methods are still pending.

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, 10 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 taxpayer has 10 work days to submit the information the Tax Administration requests.

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

In principle dispute resolution options are available. However, it has been a very consistent practice of the government and of the State's Attorney's Office not to allow alternative dispute resolution options for matters regarding taxation.

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

One of the following penalties may be applied:

- 50 percent of the incremental tax that is determined (this is the base case, applicable for 'inaccuracy' upon filing a tax return)
- 100 percent of the incremental tax that is determined (this penalty applies when the adjustment derives from information that had been withheld from the Tax Administration)
- 150 percent of the incremental tax that is determined (this penalty applies when the taxpayer has incurred 'substantial' anomalies in its accounting records, used falsified supporting documentation or used intermediate persons or entities with the purpose of hiding its identity).

To what extent are transfer pricing penalties enforced?

The Tax Administration automatically applies these penalties every time there is a tax adjustment, and they never negotiate.

What defenses are available with respect to penalties?

Taxpayers need to demonstrate that they have been diligent. They need to convince the Tax Administration that they have analyzed the tax positions taken and that they are convinced that their position is in accordance with the law. The Tax Administration may disagree with the taxpayer in those cases and still make a tax adjustment, but that would allow the taxpayer to avoid a penalty. It is therefore very important to document the client's transfer prices. The use of an APA would also be a mechanism that would protect the taxpayers from harsh penalties.

What trends are being observed currently?

The Tax Administration has made a significant number of adjustments based on what they consider to be Comparable Uncontrolled Prices (CUPs). For example, they have made several adjustments to companies that have a local manufacturing facility that sells both to local independent distributors and to related parties in other countries. In such cases, the Tax Administration has applied the price used in the transactions with the third party distributors to the transactions with related parties, without making adjustments (e.g. for volume, functions or risks incurred).

Special considerations

Are secret comparables used by tax authorities?

The Tax Administration has said that they will not use secret comparables. They have not used secret comparables in the past.

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

No. There is very limited public local information.

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

There are no official requirements.

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

Yes, always.

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

Due to lack of publicly available local information, international companies are accepted as comparables.

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

They do not have a high level of interaction with customs authorities.

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

Yes. Several conditions must be met in order to avoid some limitations on the deductibility of management fees:

- the taxpayer needs to provide evidence that the services were actually rendered and be able to prove that they were necessary to generate taxable income
- the taxpayer needs to prove that the services were not duplicative of other functions carried out within Costa Rica. If no support can be provided, then the Tax Administration will consider them as non-deductible
- the taxpayer needs to have a contract in place and abide by the terms of the contract. Lack of a contract or a contract that does not correspond with the services actually provided or the parties actually involved may create tax risks; and
- any applicable withholding must be levied.

Even if the above conditions are met, there are limitations in the law as to the amount of fees that a taxpayer may deduct. Specifically, a cap equal to 10 percent of a taxpayer's gross sales.

Are management fees subject to withholding?

Yes.

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

Yes. Several conditions must be met in order to avoid some limitations on the deductibility of royalties:

- the taxpayer needs to provide evidence that the royalties paid were necessary to generate taxable income
- the taxpayer needs to have a contract in place and abide by the terms of the contract. Lack of a contract or a contract that does not correspond with the intangible that was licensed or other inaccuracies, or the parties actually involved may create tax risks; and
- any applicable withholding must be levied.

Even if the above conditions are met, there are limitations in the law as to the amount of royalties that a taxpayer may deduct. Specifically, a cap equal to 10 percent of a taxpayer's gross sales.

Are royalties subject to withholding?

Yes.

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

Yes. These adjustments must be explained in the book to tax reconciliation. Year-end adjustments may be captured in this reconciliation.

Other unique attributes?

None.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

There is only one double tax treaty currently in effect with Spain. Double tax treaties with Germany and Mexico have been signed, but have not yet been approved by the Legislative Assembly.

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

No experience.

When may a taxpayer submit an adjustment to competent authority?

Depends on the time frame allowed by the tax treaty. The only double tax treaty currently in effect is one with Spain, and it states a three year term from the first notice of the measure that may imply a taxation that is not in accordance with the provision of the treaty.

May a taxpayer go to competent authority before paying tax?

In principle yes, but there is no experience yet in Costa Rica regarding this matter.

Advance pricing agreements

What APA options are available, if any?

Unilateral.

Is there a filing fee for APAs?

Not applicable. The specific regulation is not yet published.

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. This program has not yet started.

KPMG in Costa Rica

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Croatia

KPMG observation

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 steep fall in profit, continuing losses and companies that are part of multinational groups.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable
Legal requirements	●
Protection from penalties	●
Reduce risk of adjustment	●
Shifts burden of proof	●

Basic information

Tax authority name

Ministarstvo Financija, 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.

The Institute for Public Finance, Ministry of Finance, issued in May 2014 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 Organisation for Economic Co-operation and Development (OECD) Guidelines by abolishing the provision that the comparable uncontrolled price (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 limitations is three years and commences after the end of the year in which any tax liabilities should have been assessed (e.g. for the 2014 year the statute of limitations expires at the end of 2018). Under certain conditions an absolute statute of limitations of six years may apply.

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)?

No. Not unless specifically requested by the CTA.

What types of transfer pricing information must be disclosed?

Not applicable.

What are the consequences of failure to submit disclosures?

Not applicable.

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 certain transactions. 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

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

Yes.

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.

Documentation should be made 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 on the basis of a tax assessment issued by the CTA. The taxpayer can appeal the tax assessment to an independent second degree body within the Ministry of Finance.

If the taxpayer receives a negative ruling from the independent second degree body, the taxpayer is required to pay the corporate profits tax assessed, penalty interest and any fixed penalties. The taxpayer 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 12 percent per annum.

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 and where any increase of taxable income can result in an additional CPT liability assess 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 large taxpayers to submit transfer pricing studies with their annual CPT returns for 2014 (which were due four months after the end of the financial year). This trend is likely to continue in the future.

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 some of 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 Orbis database.

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.

There is no requirement regarding other preferences in benchmarking but it is recommended to use independence thresholds for comparables companies in which one shareholder being a legal person/entity holds less than 25 percent of the share capital but the company can have a shareholder which holds more

than 25 percent of share capital under the condition that such shareholder is an individual.

Multiple year averages are recommended to use contrary to single year average.

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. Tax audits could attempt to scrutinize management fees if they are beyond the arm's length principle. Assuming documentary support exists and economic benefit can be proven, management fees are deductible.

Are management fees subject to withholding?

Yes.

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

Yes. Tax audits could attempt to scrutinize royalties if they are beyond the arm's length principle. Assuming documentary support exists and economic benefit can be proven, royalties are deductible.

Are royalties subject to withholding?

Yes.

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

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?

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?

Limited practical experience.

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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Czech Republic



KPMG observation

Transfer pricing in the Czech Republic has become a key issue in many tax audits, and transfer pricing is now a regular component of tax inspections, particularly for large companies and companies with investment incentives. In 2013, a Specialized Tax Authority (STA) was established for companies with turnover exceeding two billion Czech crowns (approximately 80 million US dollars (USD)) and financial institutions. Transfer pricing is a strong area of focus for the STA. In fact, on 18 February 2015, the STA announced special tax audit action to review transfer pricing setting and prevent Czech tax evasion. Companies are selected for inspection based on an analysis of information and data obtained by the STA.

Beginning for tax years commencing in 2014, taxpayers must file an appendix to the income tax return describing transactions with related parties. This appendix describes transaction types and magnitudes for each related party and is used by the Czech Tax Administration (CTA) to determine primary transfer pricing areas of focus. Failure to submit this appendix may result in a tax audit focused on transfer prices.

The CTA is closely following the OECD's Base Erosion and Profit Shifting (BEPS) initiative.

Transfer pricing documentation serves as a tool to put the burden of proof on the CTA. While currently not specifically required by tax legislation, providing documentation at the outset of a tax inspection may significantly limit scrutiny in this area.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Not applicable
Legal requirements		●
Protection from penalties		●
Reduce risk of adjustment	●	
Shifts burden of proof	●	

Basic information

Tax authority name

Specializovaný finanční úřad (Specialized Tax Authority) for companies with turnover higher than 2 billion Czech crowns (CZK) and financial institutions; Finanční úřad (Tax Authority) for other entities.

Citation for transfer pricing rules

Income Tax Act 23 (7), 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. No limit in the case

of entering into 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 three years from the due date for filing the corporate tax return for the respective taxable period. 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 submitted to the revenue authority on an annual basis (e.g. with the tax return)?

Yes. In limited scope – Form 5404/Ea is required to be filed for tax years commencing in 2014.

What types of transfer pricing information must be disclosed?

Form 5404/Ea summarizes a taxpayer's transactions with each related party (transaction type, magnitude, etc.). Separate forms must be filed in electronic format for each foreign related party that enters into transactions with the taxpayer. Companies granted investment incentives or reporting loss for the given period should report also transactions with domestic related parties.

What are the consequences of failure to submit disclosures?

Failure to submit Form 5404/Ea may result in a tax audit focused on transfer prices.

Transfer pricing study overview

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

Yes. The representatives of Czech Tax Authorities will likely require the documentation in Czech language, however English may be accepted in certain circumstances.

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. Additional information is usually required for received services, with a strong focus on the benefits test and proof that services were actually rendered. Detailed calculations are required for major transactions during tax audits.

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.

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 CTA regularly requires transfer pricing documentation to be provided during tax inspections, within 15-30 days upon request. This deadline can be extended upon the taxpayer's request, i.e. minimum time limit could therefore be 30 days. Documentation is typically requested in the Czech language, however, a time-limit is usually provided for translation.

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

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 one percent of the overstated tax loss is assessed when a transfer pricing adjustment is made by the CTA. Furthermore, interest for late payment of approximately 15 percent is assessed (Czech National Bank REPO rate + 14 percent). 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 the use of proper documentation or defense files. Self-correction through filing supplementary tax return avoids the basic penalty (20 percent of additional tax or one percent of reduced tax loss); interest for late payment is always due but taxpayer could ask for a partial waiver.

What trends are being observed currently?

The number of tax audits with a transfer pricing focus has increased considerably. The main areas of focus include subsidiaries of multinationals in a loss position, recipients of tax relief investment incentives, year-end transfer pricing adjustments, explanations of functional and risk profiles, intercompany services and their benefits to the taxpayer, financial transactions and interest rates. Investigating transfer pricing within a tax inspection is now the rule rather than the exception for multinationals.

Companies with investment incentives in form of a tax relief are subject to transfer pricing scrutiny. A self-correction through filing a supplementary tax return does not avoid the tax relief being challenged. However, potential penalties are reduced from

May 2015: instead of a full loss of provided incentives, only additional tax will now be assessed.

During tax audits, the Tax Authority focuses on the profitability of intra-group transactions and requires detailed calculations to be provided and linked to the company's statutory financials.

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?

Local comparables are not required, but can be used as support for regional analyses.

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.

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

Yes, always.

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

The Tax Authority typically accept multiple year (three or five years) average results of the comparables. In case of transfer pricing audit where benchmark is missing the Tax Authority tend to use retrospectively gathered data from Amadeus just for the period under scrutiny.

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

Very close.

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

No. Taxpayers are often asked to document that the services were provided and consumed for the benefit of the taxpayer.

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. 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 first 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?

According to Decree D-10, an arm's length mark-up of three to seven percent should apply to low value 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 a supplementary 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. In normal situations there is a time limit of three years (if not prolonged due to the Tax Authority audit or supplementary tax return filing). MAP procedure could breach this statute period.

May a taxpayer go to competent authority before paying tax?

No formal rules exist except for Advance Pricing Agreements (APAs).

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

Is there a filing fee for APAs?

Yes. CZK10,000, approx. 350 euros (EUR)/USD400).

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. Unilateral APAs on the transfer pricing method/approach are available and are the most common type of APA. Issued APAs are valid for three years. The Unilateral APA process takes nine to 12 months. Bilateral (or multilateral) APAs are not common; there are currently less than 10 in place. The process typically takes two to three years and needs to be agreed on with the Tax Authority on a case by case basis.

KPMG in the Czech Republic

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Denmark



KPMG observation

The Danish Customs and Tax Administration (SKAT) and the Danish Parliament (Folketinget) continue to focus heavily on transfer pricing and perceived international corporate tax avoidance. This was most recently substantiated by the introduction of the first-ever general anti-avoidance rule (GAAR) into Danish tax law. Also, the Organisation for Economic Co-operation and Development's (OECD) Base Erosion and Profit Shifting (BEPS) Action Plan is of high interest to SKAT. In particular, the Danish government has openly expressed support for the BEPS project and will most likely be among the first to adopt the BEPS deliverables. This was reinforced by the fact that the BEPS project was specifically mentioned as part of SKAT's 2015 action plan.

Changes in relevant tax law

In April 2015, the Danish Parliament passed a bill introducing (i) a GAAR aimed at European Union tax directive abuse and double tax treaty abuse; (ii) new rules on taxation of foreign trusts; and (iii) limitations on the permanence of binding assessment notices provided by SKAT relating to the cross-border transfer of assets. The wording of the GAAR is intended to be direct translations and implementations of:

- the wording of the amendments made by the European Council on 27 January 2015 regarding the parent-subsidiary directive; and
- the wording of the GAAR proposed by the OECD regarding rules aimed at arrangements where one of the principal purposes is to obtain treaty benefits.

In 2012, the Danish Parliament passed a transfer pricing bill focusing on strengthening the measures against zero tax companies. The bill introduced new and more stringent regulations for companies engaging in controlled transactions, and Danish taxpayers are now starting to see the effects of this bill. The most important change in relation to transfer pricing is the tightening of the rules on specific transfer pricing fines and the introduction of the possibility for SKAT to require independent auditors' opinions on transfer pricing.

Another consequence of the bill is that Danish taxpayers' corporate tax payments for 2011 and onwards are made public. The possibility of offsetting losses has also been limited. This means that the first million Euro (EUR) in losses can always be offset against positive taxable income, but the remaining losses can only reduce the remaining income by a maximum of 60 percent. Losses can still be carried forward indefinitely.

BEPS impact

SKAT has been following the developments of the BEPS project closely and is expected to continue its focus on the future developments of the BEPS project. More specifically, the developments resulting from the BEPS project are expected to find their way into the existing transfer pricing guidelines issued by SKAT.

KPMG in Denmark has already seen cases in which SKAT has referred directly to BEPS discussion drafts as part of their reasoning/argumentation (e.g. by referring to the revised discussion draft on transfer pricing aspects of intangible assets in connection with SKAT's transfer pricing audits regarding intangible assets).

How to react

Danish taxpayers are urged (i) to be as aware of OECD work in progress/focus areas as SKAT, (ii) to identify significant risk areas and initiate any remediation as required on the basis of the current actions of tax authorities, including SKAT, and the future impact of OECD work (the BEPS project, etc.). It is expected that, going forward, SKAT will focus on companies' ability to explain their transfer pricing processes, communicate how transfer pricing risks are identified and the controls applied to mitigate such transfer pricing risks.

Other observations

There is a continued trend towards SKAT being aggressive and detail-oriented in its audit of whether the content of the transfer pricing documentation fulfills the comprehensive qualitative transfer pricing documentation requirements set out in the Danish Executive Order. In recent years, this trend has led to many cases in which SKAT has claimed that the transfer pricing documentation prepared by the taxpayer did not fulfil the specific Danish transfer pricing requirements. This has resulted in SKAT issuing estimated and discretionary assessments, which then has resulted in a shift in the burden of proof. Along with this, SKAT has introduced deemed transactions in certain transfer pricing audits in order to reach an appropriate result in the eyes of SKAT.

As a consequence thereof, the preparation of localized transfer pricing documentation is highly recommended. Such documentation should:

- represent all relevant facts relating to the taxpayer; and
- serve as a viable cornerstone of any potential transfer pricing audit.

Therefore, the preparation of transfer pricing documentation should not be seen merely as a matter of compliance.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Thresholds apply/exist
Legal requirements	●	●
Protection from penalties	●	
Reduce risk of adjustment	●	
Shifts burden of proof	●	

Basic information

Tax authority name

The Danish Customs and Tax Administration (SKAT).

Citation for transfer pricing rules

- Danish Tax Assessment Act (ligningsloven), section 2
- Danish Tax Control Act (skattekontrolloven), sections 3 B, 14(4), 17(3) and 17(4)
- Danish Corporation Tax Act (selskabsskatteloven), section 11
- Danish Executive Order no. 42 of 24 January 2006 (BEK nr. 42 af 24.01.06)
- Guidelines on Transfer Pricing Documentation, updated on 30 January 2015 (Den juridiske vejledning 2015-1; Selskabs-, fonds- og foreningsbeskatning; C.D.11 Transfer pricing). The guidelines are available for download on SKAT's website, but only in Danish; and
- Guidelines on the valuation of business enterprises and ownership interests in business enterprises, including the valuation of goodwill and other intangible rights as issued by SKAT, 2009 (Transfer pricing; Kontrollerede transaktioner, værdiansættelse). The guidelines are available for download on SKAT's website, but only in Danish.

Effective date of transfer pricing rules

June 1998.

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

A company or an individual must own (directly or indirectly) more than 50 percent of the share capital or control more than 50 percent of the votes or have an agreement regarding controlling interest in another company (common control).

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

SKAT must give notice of transfer pricing adjustments to the taxpayer by 1 May in the sixth year after the end of the income year subject to adjustment. This means that income adjustments for the financial year 2014 can be made until 1 May 2020.

SKAT must give notice of the final income adjustment to the taxpayer by 1 August in the sixth year after the end of the income year subject to adjustment.

In case of a corresponding adjustment (income adjustment made by a foreign tax authority), SKAT is not bound by any statute of limitation. However, no later than six months after receipt of the first notice of any such corresponding adjustment, the taxpayer must request a re-opening, if relevant, of the tax assessment for the relevant 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. In accordance with section 3B of the Danish Tax Control Act (skattekontrolloven), taxpayers engaging in controlled transactions must provide information on their controlled transactions as an integrated part of their corporate income tax return if the total controlled transactions exceed 5 million Denmark krone (DKK).

This information is provided in Form no. 05.021 (Danish version) or Form no. 05.022 (English version) which are available for download on SKAT's

website. The form is now an integrated part of the electronic corporate income tax return filing system/process.

What types of transfer pricing information must be disclosed?

The taxpayer's main business activity, the exact number of entities (including permanent establishments) that participate in the taxpayer's controlled transactions, their location and joint taxation status. As from the income year 2014, the actual amounts per transaction type (including nil transactions), as opposed to certain volume/scope intervals, must be disclosed. The amounts may be rounded according to certain specifications.

What are the consequences of failure to submit disclosures?

Penalties will be imposed. SKAT may impose a penalty in case of misrepresentation in connection with the obligation to provide documentation, i.e. in relation to the appendices to the tax return (special forms) and high-level information given regarding the transfer prices declared on the tax return. The penalty is issued in proportion to the higher of either:

- the turnover of the company (weighted as 0.5 percent of the turnover up to DKK500 million (approximately 67 million euros (EUR)), 0.1 percent of the remaining turnover up to DKK1 billion (approximately EUR135 million) and 0.05 percent of the turnover exceeding DKK1 billion; or
- the number of employees in the company. The penalty amounts to DKK250,000 (approximately EUR35,000) if the company has less than 50 employees and increases by DKK250,000 for every additional 50 employees. If the company has more than 500 employees, the penalty will be DKK2 million (approximately EUR270,000).

Transfer pricing study overview

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

Yes. Danish, English, Swedish or Norwegian.

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 certain transactions. Yes, with some exceptions. The Danish transfer pricing legislation sets out very specific minimum requirements for a transfer pricing study, which should be addressed in order to comply with the documentation requirements. In general, these requirements go further than what is specified in the OECD Guidelines.

SKAT normally emphasizes that the contents of the descriptions and analyses are of great importance, meaning that the substance should be adequately presented.

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.

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, 60 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 taxpayer must submit its documentation no later than 60 days after receipt of a request to that effect.

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

Yes, the taxpayer can file a complaint with the Danish National Tax Tribunal. The complaint must be filed no later than three months after the date of the adjustment.

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

SKAT can impose penalties relating to documentation if the transfer pricing documentation requirements are not fulfilled, whether intentionally or due to gross negligence.

It is not a condition for imposing penalties that an income adjustment is made. The penalty is fixed at DKK250,000 (approximately EUR35,000) per financial year per entity if the submitted transfer pricing documentation is inadequately prepared preventing SKAT from using it as a basis for assessing whether prices and conditions have been set on arm's length terms.

Penalties can also be imposed if supplementary material, a benchmark analysis or an auditor's statement is not submitted at SKAT's request. The penalty can be reduced by 50 percent if the required materials are subsequently prepared. On top of this, SKAT can also impose penalties relating to adjustments. Such penalties are calculated as an amount corresponding to up to 10 percent of an income increase. If the applied transfer prices are considered to constitute tax evasion, the penalty can be significantly higher.

To what extent are transfer pricing penalties enforced?

SKAT enforces the transfer pricing penalties more frequently. SKAT can apply the penalty regime starting with the income year 2009.

What defenses are available with respect to penalties?

The penalty of DKK250,000 (approximately EUR35,000) for not preparing the transfer pricing documentation in the first place can be reduced if the documentation is subsequently submitted. Penalties can

be appealed to the Danish National Tax Tribunal and after that to the ordinary courts where the taxpayer has the opportunity to challenge the imposed penalty before it becomes final.

What trends are being observed currently?

SKAT has significantly increased the number of field tax auditors specializing in transfer pricing audits. Since 15 August 2011, the field tax auditors have been authorized to make income adjustments. Prior to this, all transfer pricing adjustments were subject to approval by SKAT's Central Transfer Pricing Office, and as a result, the income adjustments made by SKAT are observed to be less coherent. As stated above, there is a continued trend towards SKAT being aggressive and detail-oriented in its audit of whether the content of the transfer pricing documentation fulfils the comprehensive qualitative transfer pricing documentation requirements.

In transfer pricing audits, companies are requested to submit a copy of their transfer pricing documentation to SKAT. Typically, after the submission and once SKAT has read the company's transfer pricing documentation, a meeting is held with the field tax auditor. It is, therefore, important that the transfer pricing documentation can operate on a stand-alone basis with respect to the facts and conditions, and that the documentation fulfils the statutory documentation requirements. SKAT continues to focus on loss-making companies and business restructurings, in particular the outbound transfer of intangible assets. Financial transactions are also increasingly subject to scrutiny. Furthermore, BEPS has had and is expected to continue to have a major impact on SKAT's approach to transfer pricing in general and transfer pricing audits involving BEPS related issues in particular.

In addition to the increase in the total number of transfer pricing audits, the number of transfer pricing audits that actually result in proposed income adjustments remain at a historically high level in Denmark. In 2014, SKAT completed 76 transfer pricing audits resulting in proposed transfer pricing adjustments of DKK20 billion, compared to 77 audits resulting in proposed adjustments of DKK17.4 billion in 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?

Yes, there is a preference, but not a requirement, for local comparables in a benchmarking set. However, European comparables are often produced, and accepted, by SKAT if only a limited number of local comparables are available.

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

SKAT has no database requirements. However, the most commonly used databases include Amadeus, Orbis and RoyaltyStat. For financial transactions, SKAT uses Moody's RiskCalc, Bloomberg and Thompson Reuters LPC LoanConnector.

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

Yes, always.

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

Not applicable.

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

Low, but the level is expected to increase going forward.

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

Yes, some. For a company to be allowed to deduct management fees, (i) the fees must qualify as operating costs, i.e. the costs must relate to the company acquiring, securing and maintaining taxable income, see section 6 of the Danish State Tax Act (statsskatteloven); (ii) no shareholder costs may be included in the management fees; (iii) the services rendered must provide an actual and documented benefit to the

recipient; and (iv) the company must have taxable income.

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, provided that the transfer pricing adjustments are in accordance with the arm's length principle and supported by written agreements. Adjustments must be presented in the transfer pricing documentation as well as the tax return.

Other unique attributes?

No.

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?

After the taxpayer has been notified of the proposed adjustment. The taxpayer must submit an adjustment to SKAT no later than six months after notification.

May a taxpayer go to competent authority before paying tax?

Permitted.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

Is there a filing fee for APAs?

Yes. Currently, there is no filing fee for bilateral and multilateral APAs. There is a filing fee of DKK400 (approximately EUR50) for a binding advance assessment notice/unilateral APA.

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

Yes.

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

No. SKAT has quite substantial experience in negotiating APAs and has concluded several APAs as sufficient resources have been provided. For example, in 2011, Denmark was the first European country to enter into a bilateral APA with China.

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Dominican Republic



KPMG observation

Taxation in the Dominican Republic is governed by Law No. 11–92, which is commonly known as the Dominican Tax Code (“DTC”). The Dominican transfer pricing legislation is mainly set forth in Article 281 of the DTC. The DTC was amended extensively by Law 253–12 which, among other things, strengthened the collection powers of the State.

Following the enactment and approval of Law 253–12, Article 281 of the DTC requires that all companies, regardless of their corporative structure, provide information to the tax authorities on their commercial or financial intercompany operations, to the extent these operations involve: (i) an associated resident; or (ii) individuals or entities incorporated or located in Special Fiscal Regimes. Unless specifically excluded or exempt, every transaction concluded between associated parties should be subject to a transfer pricing analysis.

Even though the transfer pricing legislation is relatively new in the Dominican Republic, these rules are based on international guidelines. The Dominican tax authorities sought advice from different tax authorities in the region and the legislation includes some additional issues that are common in practice but not previously addressed by the transfer pricing legislation in other countries, including, but not limited to:

- the use of multiple years of financial information of the tested party
- the use of adjustments for accounts receivable, accounts payable, inventory, and property, plant, and equipment (PP&E); and
- the definition of a related party includes the use of an exclusive agent, distributor, or dealer for the sale of goods, services, or rights, where the contracts for such arrangement contain ‘preferential’ terms.

Based on informal conversations with the Dominican tax authorities, and as evidenced from the requests of transfer pricing information returns (referred to “DIOR”), the tax authorities will aggressively continue to look at transfer pricing as a source of tax revenue. Accordingly, companies must be ready to defend their transfer prices and file their DIOR.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Not applicable
Legal requirements	●	
Protection from penalties		●
Reduce risk of adjustment		●
Shifts burden of proof		●

Basic information

Tax authority name

Dirección General de Impuestos Internos (DGII).

Citation for transfer pricing rules

- Taxation in the Dominican Republic is governed by Law No. 11–92 commonly known as the Dominican Tax Code (“DTC”), its amendments and regulations.
- Article 281 of DTC -Validity of Legal Acts Between Associated Taxpayers.
- General Standard 04–2011 – Transfer Pricing Rules Applicable to Transactions Between Related Parties (the rules).
- Law No. 253–12 concerning the strengthening of the collection ability and revenue capacity of the State for the Fiscal and Development Sustainability (hereinafter the Tax Reform), introduced significant changes to the scope and application of Article 281 of the DTC with reference to “Related Party Transactions.”

Effective date of transfer pricing rules

Transfer pricing documentation requirements started for fiscal years ended on 31 March 2011. It is important to note that in the Dominican Republic, taxable years may end only on any of the following dates:

- 31 March
- 30 June
- 30 September; and
- 31 December.

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

For the taxable years ended between 31 March 2011 and 30 September 2012, the transfer pricing documentation requirements were only applicable to local companies where their foreign capital was greater than 50 percent of their total share capital and conducted related party transactions with:

- foreign related parties; and
- individuals, companies or corporations domiciled in low tax

jurisdictions or tax havens or related parties benefiting from the Free Trade Zone Regime.

As a result of the Tax Reform effective 10 November 2012, taxpayers must document the arm’s length nature of their intercompany transactions, regardless of the ownership structure of the organization. Taxpayers must document any commercial or financial operations with:

- a related party
- individuals or legal entities domiciled, incorporated or based in countries or territories with preferential, nil or low tax regime or tax havens, regardless of its composition as related parties.

Therefore, every transaction made between related parties is subject to a transfer pricing analysis.

Parties are deemed to be related:

- when one directly or indirectly participates in the management, control or capital of the other. (For management: when one party occupies a position of senior management in both companies. For control or capital: having an interest of at least 50 percent of the capital or voting control)
- when one of the parties is a resident in the country has permanent establishments abroad
- when a permanent establishment in the country has its headquarters abroad
- when one of the parties enjoys exclusive agent, distributor or dealer status for the sale of goods, services or rights
- when one of the parties agrees to contractual terms with ‘preferred’ conditions
- when one of the parties assumes responsibility for any loss or expense of the other
- when one of the parties receives or transfers 50 percent or more of its production to another company; and
- when a company or business is a decision unit, or when a company is a ‘partner’ of another company.

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

Three years from the filing date of the tax return, if the taxpayer filed the return, or five years if no tax return was filed.

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. All companies must submit the Informative Return for Transactions with Related Parties (DIOR). This informative return must be filed annually electronically, no later than 60 days after the deadline for filing the corporate income tax return.

The deadline for filing the Corporate Income Tax return is 120 days after the fiscal closing date.

What types of transfer pricing information must be disclosed?

Examples of transfer pricing information that must be disclosed includes but is not limited to:

- related parties with which the transactions were performed
- type of transaction
- amount of the transaction
- documentation supporting the transaction, as well as the methodology used to support the arm’s length nature of the transaction; and
- number of the invoice or document that contains the transaction with related parties.

What are the consequences of failure to submit disclosures?

If a taxpayer does not file the DIOR, or provide the Dominican Tax authorities with a transfer pricing study when requested, then a fine of 85,000 Dominican Republic Pesos (DOP) to DOP154,740 is applicable (approximately from 2,000 US dollars (USD) to USD4,000).

Other penalties may apply, such as generated interest and late penalties, for the income generated under

intercompany transactions not complying with the arm's length principle.

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. However, a transaction-by-transaction analysis must be conducted.

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.

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.

The law does not indicate a time frame.

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

Yes, taxpayers can submit the resolution to an administrative area within the DGII, in order to object to the

procedures. Also, taxpayers may appeal to tax court.

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

Yes. However, since the transfer pricing regulations are new in the Dominican Republic, there is no practical experience on how the authorities will act or interpret its application.

However, general tax penalties, interest and surcharges will apply (interest 1.73 percent monthly and surcharges 10 percent the first month, then four percent on each subsequent month) on the adjustment.

To what extent are transfer pricing penalties enforced?

No experience to date, since legislation only came into force in June 2011.

What defenses are available with respect to penalties?

Same as for tax adjustments, for example, documentation, negotiations.

What trends are being observed currently?

No experience to date, since legislation only came into force in June 2011.

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 experience to date, since legislation only came into force in June 2011.

However, due to the limited number of local comparables DGII has indicated foreign comparables will be accepted.

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

No experience to date, since legislation only came into force in June 2011.

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

Yes, always.

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

No experience or knowledge.

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

High level, but not seen for transfer pricing, since the legislation came into force in June 2011.

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

No. There are no limitations.

Are management fees subject to withholding?

Yes.

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

No. There are no limitations.

Are royalties subject to withholding?

Yes.

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

Yes, the tax return amounts are based on the DTC while the book numbers are generally based on accounting principles, which may differ.

Other unique attributes?

None.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Minimal, only with Canada and Spain.

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

No experience to date.

When may a taxpayer submit an adjustment to competent authority?

No experience to date.

May a taxpayer go to competent authority before paying tax?

No experience to date.

Advance pricing agreements

What APA options are available, if any?

Unilateral.

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?

Not applicable. No current information due to the fact the transfer pricing regulations have been recently established.

KPMG in Dominican Republic

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Ecuador

KPMG observation

On 27 May 2015, the Ecuadorian Tax Authority published the resolution No. NAC-DGERCGC15-00000455 on transfer pricing, which establishes new content requirements for taxpayers' transfer pricing studies.

The following is a summary of the main changes:

- A study should no longer consider arrangements with an independent party that accounts for over 50 percent of total purchases and sales. In addition, domestic related parties do not need to be considered, provided that they meet certain conditions.
- The transfer pricing filing requirements and associated thresholds for a taxpayer are:
 - OPR Annex, if operations with related parties exceed 3 million US dollars (USD)
 - Transfer Pricing Report, if operations with related parties exceed USD15 million.
- In relation to a taxpayer's economic analysis, only the current tax year should be considered for identifying comparable companies.
- For tax year 2015 only, the filing date for transfer pricing disclosures (OPR Annex and Transfer Pricing Report) is in September. Thereafter, the filing date will be in June.

Transfer pricing study snapshot

The purpose of a transfer pricing study

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

Basic information

Tax authority name

Servicio de Rentas Internas (SRI).

Citation for transfer pricing rules

Resolution of the SRI No. NAC-DGERCGC15-00000455 of 27 May 2015.

Effective date of transfer pricing rules

1 January 2005.

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

The following, among others, are considered related parties:

- the head office and its subsidiaries, affiliates or permanent establishments
- the branches, subsidiaries or permanent establishment among them
- the parties in which the same natural person or society, participate

indistinctly, directly or indirectly in the management, administration, control or capital of such parties

- the parties in which the decisions are made by governing entities consisting of mostly the same members
- the parties in which the same member group, partner or stockholder, participate indistinctly, directly or indirectly in the administration, management, control or capital of these

- members of governing bodies of the companies in respect of the same, as long as it is established among them that those relations are non-inherent to their position
- the administrators and commissioners of the society in respect of the same, as long as it is established among them that relations are non-inherent to its position
- a society in respect of the spouse and relatives until the fourth degree of blood relation, or second degree of affinity of the executives, administrators, or commissioners of the society
- a natural person or society, and trusts in which they have rights
- when a natural person or society is a direct or indirect holder of 25 percent or more of the social capital or equity capital in another society
- the societies in which the same partners, stockholders or their spouses/husbands or their relatives until the fourth degree of blood relation or second degree of affinity participate directly or indirectly in at least 25 percent of the social capital, or own funds or have commercial transaction, provide services or are in a dependent relationship
- when a natural person or a company is a direct or indirect holder of 25 percent or more from the common stock or own funding in two or more companies
- when a natural person or a society, whether domiciled or not in Ecuador, performs 50 percent or more of its sales or purchases of goods, services or another type of operations, with a natural person or society, whether domiciled or not in the country.

The tax authority may presume there is a relationship between the parties when their transactions do not follow the arm's length principle. Related parties are also considered to include those parties carrying on transactions with companies located in low-tax jurisdictions or tax havens.

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

The SRI can determine transfer pricing adjustments up to three years from the return date.

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. Taxpayers who have cross-border or domestic transactions with related parties, for an accumulated amount exceeding USD3 million during the fiscal year under analysis, must prepare and submit to the tax administration a Transfer Pricing annex. If the accumulated amount exceeds USD15 million during the fiscal year under analysis, the taxpayer must instead prepare and submit both a transfer pricing annex and transfer pricing report.

What types of transfer pricing information must be disclosed?

The following information must be disclosed:

- taxpayers must include in their annual income tax return the total amount of transactions performed with related parties abroad differentiated between tax haven and other regimes disaggregated as follows: assets, liabilities, income, and expenses
- in addition, the amount of transactions with local (under certain conditions) and foreign related parties must be included in the compliance tax report that is submitted to the tax authorities
- transfer pricing report
- transfer pricing annex.

What are the consequences of failure to submit disclosures?

If the taxpayer does not submit either a transfer pricing annex or a transfer pricing report, the Internal Tax Regulations state that a penalty of USD15,000 will be assessed.

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.

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, with some exceptions. In import and export transactions involving products traded on transparent markets, stock markets or the like, there is a presumption that prices on such markets would be used in comparable uncontrolled price (CUP) analysis, except where it could be shown they are not appropriate. This also applies to imports and exports transactions involving brokers.

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, 60 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.

Normal practice is to expect documentation within two months upon request.

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

Yes, a taxpayer may challenge the adjustment in the respective fiscal court.

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

Yes, but the calculation for assessment is not known.

To what extent are transfer pricing penalties enforced?

Penalties are frequently enforced to the extent that there is no submission, or incorrect or missing.

What defenses are available with respect to penalties?

The only defense available is to have proper documentation of the transactions performed.

What trends are being observed currently?

Since the transfer pricing regime came into force, the tax authority has primarily focused on controlled transactions of international business groups.

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?

No, due to the lack of local information.

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

No, the tax administration uses Compustat North America and global databases but it is not required in practice because other databases can also be used.

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.

The Tax Authority can challenge the methodology used in each operation.

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

High, since customs provide information to the SRI when it is required by this organization.

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

Yes. Provided the fees are used to obtain, maintain, and improve income of an Ecuadorian source. Additionally, and with the purpose of ensuring the expense deductibility, the SRI demands the

existence of the economic substance and clear confirmation that the service was provided.

Are management fees subject to withholding?

Yes.

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

Yes. An analysis for royalties should be made through the CUP method which is based on a contract. The SRI challenges the rate for assessing the operation.

Are royalties subject to withholding?

Yes.

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

No.

Other unique attributes?

Safe harbor – taxpayers that carry out operations with related parties will be exempt from the application of the transfer pricing regulations provided that:

- the tax incurred is greater than three percent of total taxable income
- they do not carry out operations with residents in tax havens or preferential tax regimes
- they do not maintain an agreement with the State for exploration or exploitation of non-renewable resources.

Additionally, regulations allow the tax authority to use secret comparables for the establishment of the arm's length principle. The tax authority could use all of its information, as well as from third parties, as set forth in the tax code and the LRTI.

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?

This depends on the timeframe allowed by the tax treaty.

May a taxpayer go to competent authority before paying tax?

No.

Advance pricing agreements

What APA options are available, if any?

Unilateral.

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?

No.

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

Not applicable. Local regulations allows taxpayer to negotiate an APA with the tax authorities, nevertheless the tax authority haven't provided any guidelines to the taxpayer for their practical application. Due to the lack of guidelines, taxpayers haven't relied on APAs.

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Egypt

KPMG observation

Transfer pricing is now one of the most important topics for the Egyptian Tax Authority. The Tax Authority issued the first of three planned parts of transfer pricing guidelines on 29 November 2010. The first part mainly discussed the basis of the arm's length principle, the transfer pricing methods and the importance of documentation. This first part is generally consistent with the Organization for Economic Co-operation and Development (OECD) Guidelines. There has been no announcement from the Tax Authority regarding the date of issuing the remaining two parts of the guidelines. The Tax Authority has now established a unit for audit and inspect the related parties' transactions and the fairness of their transactions' pricing.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Not applicable	Required to be contemporaneous
Legal requirements		●	
Protection from penalties		●	●
Reduce risk of adjustment	●		
Shifts burden of proof	●		

Basic information

Tax authority name

Egyptian Tax Authority.

Citation for transfer pricing rules

Tax law, the executive regulations, and OECD module if the methods mentioned in the Executive regulations are not applicable.

Effective date of transfer pricing rules

2005

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

- ownership of greater than 50 percent, based on voting power or share capital
- partnerships, the joint partners, and silent partners therein

- any two or more companies in which a third person possesses at least 50 percent of the number or value of the shares or voting rights in them.

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

Five years from the filing date of the corporate tax return (which is four months after the financial year-end).

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. It is a statutory requirement to mention the transfer pricing method the

company has used for transactions with related parties in the annual tax return.

What types of transfer pricing information must be disclosed?

The name of the related party, nature of the transactions, amount of transactions and the transfer pricing method used.

What are the consequences of failure to submit disclosures?

The tax return will be considered incomplete and the Tax Authority may refuse to accept it.

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?

Not applicable. However, the first part of the Egyptian guidelines (the only part issued to date) is consistent with the OECD Guidelines and therefore it is suggested that Chapter V is 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.

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, 45 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.

There is no time frame stipulated in the law. However according to the practice documentation should be submitted during the tax audit period.

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

Yes. If a taxpayer disagrees with the adjustment proposed by the Tax Authority, the taxpayer may appeal to the Internal Committee. If not solved at the Internal Committee level, then the taxpayer may appeal to the High Committee. A formal court action may be taken if not solved at the level of the High Committee.

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

There are no special penalties for transfer pricing adjustments. However, if the transfer pricing adjustment has affected the taxable profits, then normal penalties and delay fines are imposed.

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?

Not applicable.

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. However, there is no Egyptian-specific database available.

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

At this point of time, there is no public database in Egypt that can be used for benchmarking. Therefore, there is no clear view on tax authority preferences.

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.

Unknown.

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

Unknown.

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

Yes, such expenses should be only for branches from their headquarters and within 10 percent of the branch taxable profits.

Are management fees subject to withholding?

Yes.

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

Yes. Royalty is subject to withholding tax, however if the royalty has exceeded the arms' length then it may not be accepted as a legitimate tax expense for the corporate tax purposes.

Are royalties subject to withholding?

Yes.

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

Yes. The common practice is that transfer pricing adjustments are made at the year-end within the annual income tax return required to be filed by the taxpayer.

Other unique attributes?

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?

Should be.

When may a taxpayer submit an adjustment to competent authority?

During the five years after the adjustment year, limited by the Tax Authority inspection.

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?

Unilateral.

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?

Not applicable. The Tax Authority has not yet issued any APAs, and it is unclear when the first will be issued.

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El Salvador

KPMG observation

Transfer pricing rules were introduced into the Tax Code in El Salvador in 2010. The rules require Salvadorian taxpayers to document the arm's length nature of intra-group transactions conducted with domestic and foreign related parties, or with companies resident in low tax jurisdictions. The regulations require taxpayers to produce transfer pricing documentation.

Failure to comply with the arm's length principle enables the Salvadorian tax authority to make adjustments and apply penalties.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Not applicable
Legal requirements	●	
Protection from penalties		●
Reduce risk of adjustment	●	
Shifts burden of proof	●	

Basic information

Tax authority name

Ministerio de Hacienda de El Salvador – Dirección General de Impuestos Internos.

Citation for transfer pricing rules

- Art. 62-A of the Tax Code – Determination of prices
- Art. 124-A and Art. 147 e) of the Tax Code – Transfer Pricing Documentation Requirements
- Art. 135 f) of the Tax Code – Obligations of the Certified Public Accountant (CPA)
- Art. 199-A of the Tax Code – Tax authority power to determine

adjustment if the transactions are not conducted in accordance with the arm's length principle

- Art. 199-B of the Tax Code – Definition of arm's length principle
- Art. 199-C of the Tax Code – Definition of Related Party
- Art. 199-D of the Tax Code – Comparability Analysis and Adjustments; and
- Orientation Guide DG-001/2012.

Effective date of transfer pricing rules

- 1 January 2010
- Reform Art. 62-A of the Tax Code in July 2014 – Use Guides of OECD.

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

Related parties are defined as follows:

- when one person or company directs or controls the other, or holds, direct or indirectly, at least 25 percent of its capital stock or voting rights
- when five or fewer persons direct or control both persons, or possess, direct or indirectly, at least 25 percent of participation in the capital stock or voting rights of both persons
- when companies belong to the same unit or business group decision. Specifically, two companies are part of the same unit or business group

decision if one of them is a member or participant of the other and it is related to it in any of the following situations:

- holds a majority of voting rights
- has the power to appoint or remove the majority of the members of the board of directors
- can dispose, under agreements with other partners of the majority of the voting rights
- has appointed only with its votes the majority of the members of the board of directors; and
- most members of the board of directors of the acquired company are members or managers of the board of directors of the other company.
- when two companies are part of each unit or business group decision in a third company, all companies will be integrated into a decision unit or business group
- it is also considered that a person possess participation in the capital stock or voting rights, when the ownership direct or indirect belongs to the spouse or person
- connected by relationship in direct or collateral, by consanguinity to the fourth degree or by affinity to the second degree
- in a union of persons, company event or business cooperation contract or joint venture agreement, when any of the contractors or partners participates directly or indirectly in more than 25 percent of the profit of the contract activities resulting from the association
- a person resident in the country and an exclusive distributor or agency thereof residing abroad
- a distributor or exclusive agent domiciled in the country of an entity domiciled abroad
- a person domiciled in the country and its supplier abroad, when the resident in the country make purchases, and the volume thereof represents more

than 50 percent a person domiciled in the country and its permanent establishment abroad

- a permanent establishment located in the country and its parent company located abroad, another permanent establishment of the same or a person associated with it; and
- taxpayers must also document the arm's length nature of the transactions carried out with entities domiciled, incorporated, or located in countries, states or territories with preferential tax regimes, low or no taxation jurisdictions, or tax havens. Entities in preferential tax regimes, low or no taxation jurisdictions, or tax havens are those that meet any of the following requirements:
 - entities that are not taxed abroad, those who compute income tax on income or net income or taxable, less than 80 percent of income tax that would be caused in El Salvador
 - those classified by the Organisation for Economic Co-operation and Development (OECD) and the Financial Action Task Force.

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

Three years from filing date of the tax return but transfer pricing documentation must be maintained for 10 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. Taxpayers are required to provide specific information in the transfer pricing studies to be prepared by taxpayers resident in El Salvador documenting the arm's length nature of the domestic and cross-border intra-group transactions. In addition, taxpayers must file the transfer pricing information return.

What types of transfer pricing information must be disclosed?

The transfer pricing information return requires disclosing the following information.

Taxpayer's information:

- identification number
- legal name; and
- fiscal year (start and end date of the fiscal year).

Detail of the controlled transactions:

- legal name of the related parties
- tax identification number of the related party
- specification if the company is domiciled or not in El Salvador
- code of the country of residence of the related party
- relationship code (reason why the taxpayer in El Salvador and the related party are considered to be related parties and why the intra-group transaction is being documented)
- code of the transaction
- amount of the transaction in US dollars (USD)
- specification if the determination of the market value took into account the following comparability criteria: characteristics of the transactions, functional analysis, assets and risks, contractual terms, micro and macro-economic situation, and business strategies specifications if the transfer pricing adjustments included: payment term, freight and insurance; and
- transfer pricing method used.

What are the consequences of failure to submit disclosures?

If the taxpayers in El Salvador fail to comply with the requirement of preparing the transfer pricing study, tax authorities will conduct appropriate analysis to determine the arm's length nature of the intra-group transactions and apply the appropriate adjustments.

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.

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.

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, 5 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.

In practice, the taxpayer has five business days but can request a 20-day extension.

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

Yes, taxpayers can submit the resolution to an administrative area within the Ministry of Finance, in order to object to the procedures. In addition, taxpayers may appeal to tax 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.

To what extent are transfer pricing penalties enforced?

Penalties are enforced in full by the Commissioner General and where a court process is preferred; the sanctions imposed by the court would subsist.

What defenses are available with respect to penalties?

No experience yet.

What trends are being observed currently?

The transfer pricing rules are fairly recent and therefore there are no specific information about the target of audits. However, according to the law, the tax authority may estimate the taxable income if the prices or amounts of compensation do not comply with market value in accordance with the established methodology.

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.

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

Yes, always.

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

Not applicable.

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

Low.

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

Yes. Taxpayers must support the fact that intra-group services have been rendered before a deduction is taken. That is, taxpayers must demonstrate that the services:

- were actually rendered
- provided a benefit to the taxpayer and
- were not duplicative services.

If no support can be provided, then the tax authority will consider them non-deductible.

Are management fees subject to withholding?

Yes.

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

Yes. Taxpayers must support the fact that royalties have been rendered before a deduction is taken. That is, taxpayers must demonstrate that the royalties:

- were actually rendered
- provided a benefit to the taxpayer; and
- have appropriated documentation.

If no support can be provided, then the tax authority will consider them non-deductible.

Are royalties subject to withholding?

Yes.

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

Yes. However, it is important that the year-end adjustments are accounted for before the end of the fiscal year to make sure tax and accounting figures are consistent. It is advisable to conduct periodic reviews in order to avoid significant year-end adjustments.

Customs issues must also be taken into account.

Other unique attributes?

None.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Minimal, only with Spain.

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

Not applicable.

When may a taxpayer submit an adjustment to competent authority?

Not applicable.

May a taxpayer go to competent authority before paying tax?

Not applicable.

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.

KPMG in El Salvador

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Estonia



KPMG observation

The Estonian tax authorities have paid more and more attention to transfer pricing issues in recent years. For example, intra-group financing transactions, especially loans granted/deposits made by Estonian taxpayers, have been under public discussions and now face challenges by the tax authorities as mechanisms for hidden profit distribution. In light of this, in Estonia, being prepared for a transfer pricing audit with proper transfer pricing documentation is of key importance to avoid tax liabilities.

The Estonian Tax and Customs Board is closely following the OECD's BEPS developments. The BEPS initiative is expected to begin to have an effect on the Estonian regulatory regime in 2016.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Not applicable	Thresholds apply/exist
Legal requirements	●		●
Protection from penalties		●	
Reduce risk of adjustment	●		
Shifts burden of proof	●		

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. Organisation for Economic Co-operation and Development (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?

According to the Estonian Income Tax Act, persons are considered to be associated if they have common economic interests or if one person has dominant influence over the other. The official translation of the legislations defines associated persons as:

- spouses, cohabiters, direct blood or collateral relatives
- companies belonging to one group
- legal person and natural person who owns at least 10 percent of the share

capital, total number of votes or rights to the profits of the legal person

- one person, together with other persons with whom the person is associated, owns more than 50 percent of the share capital, total number of votes or rights to the profits of a legal person
- legal persons where more than 50 percent of the share capital, total number of votes or rights to the profits belong to one and the same person or associated persons
- persons who own more than 25 percent of the share capital, total number of votes or rights to the profits of one and the same legal person
- legal persons where all members of the management boards or the bodies

substituting for the management boards are the same persons

- employers and their employees, employee's spouses, cohabiters or direct blood relatives
- a person is a member of the management or controlling body of a legal person, or the spouse or a direct blood relative of a member of the management or controlling body.

Where 'legal person' is broadly defined as a company, 'natural person' is an individual, and 'person' can be either a legal or natural person.

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 five years. In Estonia, tax returns are submitted on a monthly basis.

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)?

No.

What types of transfer pricing information must be disclosed?

Not applicable.

What are the consequences of failure to submit disclosures?

Not applicable.

Transfer pricing study overview

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

Yes. Not specified. Studies in English are generally accepted; however, Estonian language is highly preferred and translation into Estonian may be required.

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.

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. Not applicable.

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

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

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 3,200 euros (EUR) 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 audits covering transfer pricing issues is increasing. Recently, the tax authorities have put more focus on the finance transactions between the taxpayer and its related parties. Special focus is on loans granted/deposits made by the Estonian taxpayer to its related party.

Transfer pricing documentation in the local language is highly preferred by the tax authorities.

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.

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.

Not applicable.

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

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

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, if related to business.

Are royalties subject to withholding?

Yes.

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

Yes. Tax return numbers may be in different period than book entries (tax returns are filed monthly in Estonia).

Other unique attributes?

None.

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 56 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 three 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 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.

KPMG in Estonia

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Fiji



KPMG observation

It has been three years since the official introduction of Fiji's Transfer Pricing Regulations and Guidelines in 2012. Apart from the traditional related party transactional audits involving sales and purchases of goods and services, Fiji Revenue & Customs Authority (FRCA) has plans to also look into areas covering royalty and trademark payments as well as intra-group financing arrangements. Transactions involving other intangibles are also covered under the Guidelines.

As also outlined in the Fiji Transfer Pricing Regulations and Guidelines, the FRCA endorses the positions outlined in the Organisation for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, and proposes to follow the OECD Guidelines in administering Fiji's transfer pricing rules. Consequently, the Fiji Guidelines are supplemental to the OECD Guidelines. The OECD Guidelines should be referred to if more detail is required in relation to issues referred to herein (e.g. concept of tested party), or not included in the Fiji Guidelines at this stage (e.g. cost contribution arrangements and business restructuring). In this regard, FRCA has also indicated that they will issue additional Guidelines as the need arises.

KPMG in Fiji observes that over the past few years, payment of significant amounts of intra-group charges has become a very contentious area in a number of multinational company audits, and many taxpayers have had to defend their positions. Sometimes such defense is hampered by a lack of documentation or evidence to support the arm's length nature of the changes.

Transfer pricing study snapshot

The purpose of a transfer pricing study

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

Basic information

Tax authority name

Fiji Revenue & Customs Authority (FRCA).

Citation for transfer pricing rules

The arm's length principle is set out under Section 34 of the Fijian Income

Tax Act 1974 (the Act) which requires taxpayers to determine and apply the arm's length price for their transactions with an associated person.

Income Tax (Transfer Pricing) Regulations 2012 (Transfer Pricing Rules 2012) was gazetted under Vol 13 No.8 of January 2012. The scope

of Transfer Pricing Regulations 2012 applies to the acquisition and supply of goods (including tangible and intangible goods), services between associated persons and intra-group financing. Both local and cross-border transactions are covered under Transfer Pricing Regulations 2012.

Effective date of transfer pricing rules

The Transfer Pricing Regulations became effective from 1 January 2012. Prior to this date, transfer pricing adjustments were made based on the general anti-avoidance provision.

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

There is no specific threshold being outlined in the Transfer Pricing Regulations or Guidelines. However, the arm's length principle is fundamental to transfer pricing and requires that transactions between associated parties are to be conducted at arm's length. As previously stated, this means that the transaction should have the substantive financial characteristics of a transaction between independent parties where each aims to get optimum benefit from the transaction.

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

The statute of limitation is six years upon the expiration of a particular year of assessment, except in cases of fraud, willful default, or negligence. Fiji is currently in year of assessment 2012. For example, in year of assessment 2012, an assessment can be issued as far back as year of assessment 2006.

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)?

No.

What types of transfer pricing information must be disclosed?

Not applicable.

What are the consequences of failure to submit disclosures?

Not applicable.

Transfer pricing study overview

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

No, must be in English.

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. The Transfer Pricing Guidelines in 2012, specify that the following should be included: organizational structure, group financial report, nature of the business/ industry and market conditions, controlled transactions, pricing policies, assumption, strategies and information regarding factors that influenced the setting of pricing policies, comparability, functional and risk analysis, selection and application of the transfer pricing method.

It is to be noted that in Fiji, there is a statutory requirement for the taxpayer to "record, in writing, sufficient information and analysis to verify that its controlled transactions are consistent with the arm's length principle".

It is also noted that the documentation must be contemporaneous and must be in place prior to the due date for filing the relevant tax return.

From a practical perspective, this means the taxpayer must prepare and maintain such documentation as is reasonable in the circumstances. Therefore it is being emphasized that it is up to local management of the Fiji tax office to determine documentation requirements in view of the nature of the relevant transactions.

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.

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, 21 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.

At this stage, the time frame requirement is not clear. However, in most situations, the normal demand situations, documentation should be made available to FRCA within 21–30 days from the date of request.

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

The dispute resolution option available to taxpayers, apart from the competent authority process, is to appeal through the judicial system. In Fiji, the first level of appeal is generally to the Tax Tribunal.

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

Where an adjustment is sustained, the Commissioner may assess penalties for omission of income. Penalty rates range from 20 percent to 75 percent calculated on the tax shortfall. The rate of 75 percent applies where the income is knowingly or recklessly omitted, and in any other case the 20 percent applies. In addition, penalties for late filing (20 percent) and/or late payment (25 percent) may also apply depending on the circumstances.

To what extent are transfer pricing penalties enforced?

Based on limited known transfer pricing cases to date, it appears that penalties are generally enforced, unless the taxpayer makes a voluntary disclosure of tax shortfall before the commencement of any tax audits.

What defenses are available with respect to penalties?

The availability of a local contemporaneous transfer pricing documentation will assist taxpayers to appeal for a lower penalty rate. In addition, if the taxpayer has acted in good faith and extended full cooperation during the tax audit, FRCA will also take these factors into account.

What trends are being observed currently?

Transfer pricing audits started in 2012 and it is expected to intensify and will continue to intensify in future. In addition to the usual focus on transactions involving sales and purchases of goods, the Fijian tax authorities are also increasing their scrutiny on payments for intra-group services as well as looking into intra-group financing arrangements and payments in relation to intangible properties.

In most cases, common audit triggers include companies declaring consistent losses, fluctuating profitability or those making very low profits. Companies with significant amounts of related party transactions, especially payments for intra-group services and companies that underwent supply chain or business restructuring, are also likely to be selected for a tax audit.

Special considerations

Are secret comparables used by tax authorities?

Yes. Based on other international industry information available to FRCA.

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

Yes. It is a preference of the Fijian tax authority to use local companies as comparables. Only in cases where no local comparable could be identified is the use of foreign comparable companies in a benchmarking analysis an option.

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

At the present, there are no good quality commercial databases for local companies.

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.

This is unknown at this time.

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

Presently low. However, after the merger of the two departments in 1998, there has been a vast improvement in enforcement measures enhanced through the implementation of integrated operations with other relevant agencies. It is expected that there will be an increase in the level of interaction between the two divisions in future.

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

Yes, some. Deductions beyond the arm's length principle may be denied.

Provided that the following criteria have been met it is less likely for a deduction to be denied:

- a service has been provided
- the charge should meet the arm's length standard.

The key focus is a realistic allocation, not accounting perfection and FRCA is looking for a fair charge for the services provided and a reasonable effort into establishing a basis for future calculations.

Are management fees subject to withholding?

Yes.

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

Yes. Deductions beyond the arm's length principle may be denied.

Are royalties subject to withholding?

Yes.

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

No. Book numbers form the basis for tax returns and year-end adjustments are permitted to ensure that the arm's length principle is upheld. These must be disclosed to allow reconciliation between book numbers and tax return numbers.

Other unique attributes?

None.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Limited. Fiji has signed double tax treaties with nine 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?

From an international practice perspective, taxpayers may initiate a mutual agreement procedure if there is a risk of double taxation and there is a treaty agreement with the foreign counterparty. In most cases, this is after being issued the Notice of Additional Assessment. However, in Fiji's situation, this will need to be clarified with the local tax authority.

May a taxpayer go to competent authority before paying tax?

KPMG in Fiji expects so, but needs further clarification from FRCA.

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.

KPMG in Fiji

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Finland

KPMG observation

The Finnish tax authority continues to pay attention to transfer pricing matters and audit activity has remained high. From the beginning of 2015, the formerly temporary transfer pricing project has been established as a permanent body of the Large Taxpayers' Office. In addition, the Finnish tax authority has announced plans to develop its auditing of taxpayers' transfer pricing into a more real time and proactive process.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Thresholds apply/exits
Legal requirements	●	●
Protection from penalties	●	
Reduce risk of adjustment	●	
Shifts burden of proof	●	

Basic information

Tax authority name

Konserniverokeskus (KOVE, Large Taxpayers' Office).

Citation for transfer pricing rules

Sections 14 a-c, 31, and 32 of the Taxation Procedure Act.

Effective date of transfer pricing rules

The arm's length principle was implemented in 1965. The transfer pricing documentation requirements came into force on 1 January 2007.

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

A company controls another company if it has:

- direct or indirect ownership of more than 50 percent of the share capital

- direct or indirect ownership of more than 50 percent of the voting power
- direct or indirect right to choose over half of the members of the board or members of other corresponding body; and
- other control.

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

Five years from tax year-end.

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. Transfer pricing explanation form to be submitted together with the corporate income tax return.

What types of transfer pricing information must be disclosed?

All companies must disclose whether they are obliged to prepare transfer pricing documentation. Entities that are required to prepare transfer pricing documentation under Section 14a of the Taxation Procedure Act are required to file a specific tax form detailing the main functions of the entity, profitability of the entity and the group it belongs to, and its related party transaction volumes during the tax year by transaction type.

What are the consequences of failure to submit disclosures?

Small penalty fees are possible. The tax form is mainly for information collection and tax audit target selection purposes.

Transfer pricing study overview

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

Yes. Finnish, Swedish, English.

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, with some exceptions. The documentation requirements are based on the Organisation for Economic and Co-operation Development (OECD) Guidelines but the Finnish tax authorities have published more detailed instructions on the different parts of transfer pricing documentations. If the transactions per counterparty amount to less than 500,000 euros (EUR) during the tax year, functional analysis and comparables analysis are not required.

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.

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, 60 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 transfer pricing documentation must be submitted within 60 days of the request. If any further clarification

is needed, it has to be given within 90 days. Despite of the time limits, the tax authorities allow six months after end of fiscal year to respond to any requests to provide transfer pricing documentation.

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

National appeal process to the Adjustment Assessment Board with subsequent possibilities to appeal to Administrative Court and Supreme Administrative Court. MAP process based on Double Tax Treaty or Arbitration process based on EU Arbitration Convention.

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

Yes, a maximum penalty of EUR25,000 per negligence may be imposed on a company failing to show complete transfer pricing documentation. In addition, a tax increase (maximum 30 percent of adjusted income) is possible, according to the regulations on general tax penalties. Additionally, a penalty interest will be collected for the taxes due.

To what extent are transfer pricing penalties enforced?

More commonly than in the past. The penalties relating to the submission and quality of transfer pricing documentation have not been used regularly but this is expected to increase. The general tax penalty on adjusted income has been imposed in almost all cases, usually in the range of five to ten percent of the adjusted income. However, the Supreme Administrative Court held in a decision published in February 2014 that if the taxpayer can show that it has acted in good faith and sought to comply with the arm's length principle with reasonable care, it is not as a rule considered to have met the gross negligence standard as stipulated in the tax assessment procedure act. This means that no tax penalty or only minor (up to EUR800) penalties could be imposed in reassessments per tax year.

What defenses are available with respect to penalties?

Documentation, reasonable cause.

What trends are being observed currently?

The focus is on business restructurings, intangibles and intra-group financing. However, other transfer pricing issues also surface in audits. The audits are focused on all industries.

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, European comparables are typically accepted.

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

There are no such requirements.

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

Yes, always.

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

The Tax Authorities follow the OECD Transfer Pricing Guidelines in this respect.

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

Low.

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. Year-end adjustments are possible, provided that they result in arm's length pricing. Upward adjustments can be made in the corporate income tax return, downward adjustments are allowed only if they have been made in the financial statements.

Other unique attributes?

The interest limitation regulations are effective from 1 January 2014 onwards. Net interest expenses paid to affiliate companies are deductible up to 25 percent of the taxpayer's EBITDA (business profits before interest, depreciations and group contributions received, deducted with group contributions granted).

Limitations are not applied if the total sum of net interest expenses does not exceed EUR500,000. Both the external and intra-group net interest expenses are taken into consideration in calculating the threshold, but the limitations do not affect deductibility of interest expenses paid to entities other than affiliated companies. If the equity ratio of Finnish group companies are higher or equal to the equivalent ratio of the entire group, the intra-group net interest expenses are deductible without limitations.

Non-deductible interest payments are carried forward and can be deducted in the following fiscal years without time limits, taking into account the same annual tax EBITDA limitations as in the tax year of interest expenses

incurred. Applicability of the limitations does not require a purpose of tax avoidance. The intra-group loans should always meet the requirements of arm's length principle for the interests to be deductible.

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?

After an adjustment is proposed to the taxpayer.

May a taxpayer go to competent authority before paying tax?

Yes.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

Is there a filing fee for APAs?

Yes. No fees for APAs. For advance rulings ("unilateral APA") the fee is determined based on the complexity of the case and actual time needed to conclude the advance ruling, ranging from EUR1,480 to EUR2,200.

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?

Not applicable. The Finnish tax authorities are in favor of APAs and it is recommended especially for intra-group transactions with high values. However, there are only few concluded APAs.

There is currently no specific APA legislation in place. However, the APAs are possible based on the MAP paragraph of the Double Tax Treaties.

KPMG in Finland

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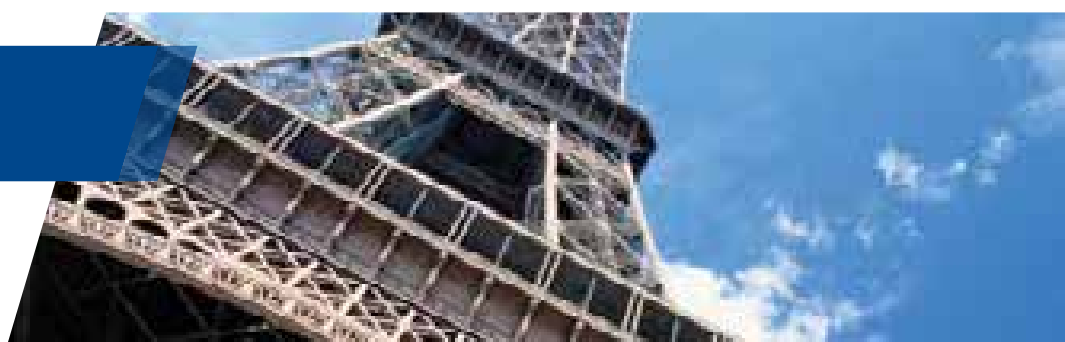
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France



KPMG observation

In 2010, the French government introduced documentation requirements which are now contained in tax administrative doctrine. While the full ramifications of this legislative change remain to be seen as part of tax audits, multinational enterprises operating in France have certainly taken note and geared up in putting together transfer pricing documentation packages addressing specific French issues.

The French government is striving to implement regulations in line with the Organisation for Economic Co-operation and Development's (OECD) Base Erosion and Profit Shifting (BEPS) initiative. In this respect, transparency has been strengthened by the obligation to include, in transfer pricing documentation reports, rulings awarded to related parties by foreign tax authorities, even without direct link to transfer prices. In addition, penalties were also strengthened in the case of absent or incomplete transfer pricing documentation reports. Collection of transfer pricing data has also been reinforced in 2014 by the introduction of a compulsory annual submission of an abridged transfer pricing form. A limitation of base erosion has also been implemented via a limit on interest deduction.

In addition to the various transparency measures, a regularization procedure was also implemented, allowing the French Tax Authorities ("FTA") to exempt withholding tax for "deemed dividends" (in relation to transfer pricing adjustments or payments made to recipients located in "tax haven"), under specific conditions (notably that the audited company accepts the reassessments and penalties). Over the next months, it is highly expected that the French transfer pricing legislation will be amended to reflect the BEPS recommendations (including different levels of documentation).

Finally, the FTA are giving increased attention to, and making increased allegations of, permanent establishments (PEs). These PE cases have given rise to a number of search and seizures, gaining some of the public attention also present in other European countries in respect of similar issues. New legislation should reinforce existing investigative powers against multinational enterprises keeping records on servers located outside of France.

Transfer pricing study snapshot

The purpose of a transfer pricing study

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

Basic information

Tax authority name

Direction des Vérifications Nationales et Internationales (DVNI) (National and International Audit Department) for companies with a turnover higher than 152.4 million euros (EUR) (higher than EUR76.2 million for service providers), subsidiaries of such companies, and headquarters.

Directions Interrégionales de Contrôle Fiscal (DIRCOFI) (Interregional Tax Audits Department) for companies with a turnover ranging from EUR1.5 million to EUR152.4 million (up to EUR76.2 million for service providers).

Directions des Services Fiscaux (DSF) (Departmental Tax Services Departments) for small companies with turnover lower than EUR1.5 million.

Citation for transfer pricing rules

CGI (Code general des impôts or French General Tax Code), Articles 57, New Article 223 quinquies B, 238A and 238-OA, 1735 ter; LPF (Livre des Procédures Fiscales or French Manual of Tax Procedures), Articles L 13 AA, L 13 AB, L 13 B, L 188A, L 80 B 7° (APA).

Effective date of transfer pricing rules

- transfer pricing regulation, 1933 (CGI Article 57)
- reversal of the burden of proof in certain audit situations, April 1996 (LPF Article L13 B)
- transfer pricing documentation requirement, 2010 (LPF Article L 13 AA and L 13 B with tax administrative doctrine (Bofip BOI-BIC-BASE-80-10-20) and penalties (CGI Article 1735 ter)
- transfer pricing annual disclosure requirement, 2013 (CGI Article 223 quinquies B).

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

Ownership of more than 50 percent considered for companies to be under common control. De facto control can also be applicable.

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

Three years, based on calendar year end. Three years also when the FTA uses the international administrative assistance procedure (LPF Article L 188A). When the FTA demonstrates the existence of tax fraud, it can also extend the statute of limitations from three to a maximum of five years (LPF Article L 187). In the case of tax loss carry forwards, the statute of limitation is extended under certain limits and conditions (in relation to the use of losses).

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. For large taxpayers (falling under the scope of CGI Article L 13AA) whose tax return filing deadline falls after 8 December 2013 (CGI Article 223 quinquies B), an abridged transfer pricing documentation must be submitted to the relevant tax office of the taxpayer within six months following the corporate income tax return filing deadline (in practice this is within nine months following the end of the fiscal year or 10 months for enterprises with fiscal years ending on 31 December).

What types of transfer pricing information must be disclosed?

The annual transfer pricing information return consists of a specific form (No 2257-SD) to be filed by the taxpayer in the French language. It includes both general information on the group of associated enterprises (general description of the activity, list of intangibles assets owned by any group entity and used by the French taxpayer, a description of the group's transfer pricing policy and changes that occurred during the last fiscal year) and specific information on the French taxpayer (description of the activity, presentation of intra-group transactions including the nature and the amount when the aggregate amount per transaction type exceeds EUR100,000, a presentation of the transfer pricing policy per

transaction type and changes that occurred during the last fiscal year).

What are the consequences of failure to submit disclosures?

At the moment, there is no specific penalty. As such, the general EUR150 fine shall apply (CGI, Article 1729 B), plus a EUR15 penalty per inaccuracy or omission (with a minimum fine of EUR60 and a maximum up to EUR10,000).

Transfer pricing study overview

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

Yes, English.

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. The transfer pricing study should include information on the group of which the French taxpayer is a part (including but not limited to, general business overview, general description of the legal and operational group structure, general description of the functions performed and risks assumed by group entities that transact with the audited company, list of the main intangible assets owned and/or used by the French entity, a general description of the group's transfer pricing policy) and information on the French company itself (activities, functional analysis, intra-group transactions, list of cost sharing, Rulings or Advance Pricing Agreements (APAs), selection of transfer pricing methods and description of comparables), as well as rulings awarded to related parties by foreign tax authorities for transfer pricing documentation covering financial years ending as from 1 January 2014 (CGI, Article L13 AA).

French entities that enter into transactions with related companies located in 'non-cooperative' states or territories will need to provide additional information (balance sheet and profit and loss account of those related parties, CGI, Article L13 AB).

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.

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.

Normal FTA practice is to expect receipt of the documentation within 30 days of a request. When the FTA apply the L 13 B procedure, the documentation should be provided within two months, although a one month extension may be granted upon request.

However, as previously mentioned, companies that fall within the remit of Article L 13 AA (LPF) have 30 days to comply with a (written) request from the FTA to provide transfer pricing documentation, with possible additional 30 days delay upon specific request to FTA. Article L 13 AA (LPF) applies for financial years starting on or after 1 January 2010.

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

Mutual Agreement Procedures may be implemented provided that the adjustments are in relation to transactions entered into between the French taxpayer and a related entity established in a country which has a

double tax treaty with France. European Arbitration Convention provisions are also applicable (under the rules of this Convention).

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

There are two types of penalties potentially applicable: general, and transfer pricing-specific penalties.

General Penalties: General tax penalties apply only in limited cases, and are assessed at a rate of 40 percent of the tax avoided in case of bad faith behavior (where the purpose was to pay no or less tax), or 80 percent of the tax avoided in case of acts of fraud can be payable, in addition to interest on late payments. Transfer Pricing-Specific Penalties: In the case of absent or incomplete transfer pricing documentation report for entities falling within the ambit of LPF Article L 13AA (or for the other entities in case of absence or incomplete responses on transfer pricing matters), the minimum penalty is EUR10,000 but can reach the higher of the following amount: (i) 0.5 percent of the amount of related transactions covered by the documentation which was not submitted or considered as complete by FTA after the issue of the formal notice requiring for these documents (or responses), and (ii) 5 percent of the transfer pricing reassessment. This penalty system is applicable to all tax audits whose audit notice is sent as from 1 January 2015.

To what extent are transfer pricing penalties enforced?

The new penalty system is likely to increase the penalties effectively applied in cases of insufficient transfer pricing documentation, making it all the more important for taxpayers to carefully prepare transfer pricing support.

What defenses are available with respect to penalties?

The exact amount of the penalty (i.e. 0.5 percent or five percent, as described above) depends on the level of insufficiencies in a taxpayer's documentation. Although it has been judged that tax penalties cannot be, in general, revisited by the tax courts, the

fact that the penalties for insufficient documentation may vary could open possibilities to have the degree of insufficiencies, and hence of penalties, being revisited by French tax courts.

What trends are being observed currently?

Recent audits have focused on transfers of intangibles resulting from group reorganizations, financial services (namely guarantee fees) and unidentified embedded transactions in complex services agreements.

There also seems to be a trend whereby transfer pricing reassessments are alternatively associated with permanent establishment reassessments of activities such as e-commerce, where the activities are not physically performed on French territory but utilize a client base situated there. The obligation to include rulings awarded to related parties by foreign tax authorities, even without direct link to transfer pricing, illustrates the strengthening of the FTA's investigative powers.

The transfer pricing documentation penalties connected to the transfer pricing documentation are likely to increase due to the new provisions mentioned previously.

The new regularization procedure allowing the FTA to exempt 'deemed dividends' from the 30 percent withholding tax and treat any associated profits as 'illegally transferred' under the transfer pricing regulations may result in significant decreases in cost of tax audits focused on transfer pricing issues. However, the criteria required to obtain the benefit of this procedure are strict (notably, acceptance of the reassessments and penalties proposed by the tax authorities and repatriation of the funds "illegally transferred").

Special considerations

Are secret comparables used by tax authorities?

Yes, but only in specific situations and very rarely. Tax auditors use their knowledge of other cases they have audited and may refer to industry standards. However, such secret comparables cannot be used in the context of court cases.

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

Yes. FTA inspectors generally prefer French comparables, where available, because of the consistency of the generally accepted accounting principles (GAAP) used.

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

No specific requirements have been officially requested. However, the FTA does make use of the French Diane database.

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.

Tax authorities prefer French comparables but can accept regional ones such as pan European benchmarks.

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

Low, but there is a trend toward increasing their interaction.

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

No. Management fees paid by a French company are deductible for corporate tax purposes provided they meet the following tax deductibility conditions:

- the French entity must actually benefit directly from the services rendered (ensuring there is no duplicate services or to the extent); and
- the amount charged (costs and relevant markup, if appropriate) to the French company should be consistent with the services rendered and should not be excessive.

Are management fees subject to withholding?

No.

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

No. Royalties paid by a French company are deductible for corporate tax purposes provided they remunerate an intangible asset effectively used and to the extent the remuneration is arm's length. Specific provisions related to royalties paid for patents and related rights state that the French taxpayer shall only deduct the royalties to the extent (i) the use of the right is actual and cannot be deemed as an artificial operation with the aim to avoid the French tax legislation, and (ii) the use of the right creates over the licensing period an added value.

Are royalties subject to withholding?

Yes.

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

No. Taxpayers must file tax return numbers that are consistent with the book numbers. Specific computerized accounting regulations strengthened the power of the FTA in case of tax audit to check the numbers booked by the taxpayers. Taxpayers need to maintain a mandatory "file of accounting entries" (in accordance with technical characteristics provided by law).

Other unique attributes?

Not applicable.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive. France has concluded approximately 120 double tax treaties. A mandatory arbitration clause has been introduced in the US – French double tax treaty and with all EU member states except Denmark.

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

The 2006–2013 OECD statistics in respect of France's mutual agreement procedure (covering approximately the 2000 to 2013 period) indicate that very few cases result in double taxation.

When may a taxpayer submit an adjustment to competent authority?

It depends on the double tax treaty involved, but usually within three years after an adjustment leading to double taxation is proposed by a tax authority.

May a taxpayer go to competent authority before paying tax?

Permitted. Nonetheless, automatic postponement of tax collection does not apply anymore to mutual agreement procedures introduced as from 1 January 2014 (LPF art 277).

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

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?

No. The APA program is successful in France (at least 50 agreements were granted since the creation of this program). On average, the FTA is reporting that it processes approximately 20 APAs per year.

FIDAL in France*

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Georgia



KPMG observation

The Tax Code of Georgia (TCG), effective from 1 January 2011, contains a specific chapter on transfer pricing with rules based on the OECD arm's length principle and OECD methods. The TCG states that the guidance on the application of transfer pricing rules is to be issued by the Minister of Finance of Georgia. Therefore the TCG rules in respect of transfer pricing were not enforced in practice till the issuance of the above mentioned guidance.

On 18 December 2013, the Minister of Finance of Georgia signed Decree 423 "on the Approval of the Instructions on International Transfer Pricing" (the Decree). The Instruction clarifies transfer pricing principles set forth in the Tax Code, including:

- definition of terms
- interpretation of the practical control concept
- transactions with off-shore jurisdictions
- comparability factors and comparability adjustments
- information sources to be used
- selection and application of transfer pricing methods
- selection of the tested party
- market range calculation
- transfer pricing documentation requirements; and
- advance pricing arrangements.

As a result of the guidance in the Instruction, transfer pricing became a hot topic in Georgia and number of companies are already hiring advisors to help them in preparing transfer pricing documentation.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Not applicable
Legal requirements		●
Protection from penalties	●	
Reduce risk of adjustment	●	
Shifts burden of proof	●	

Basic information

Tax authority name

Revenue Service.

Citation for transfer pricing rules

Tax Code of Georgia, Chapter XVII:

- Article 126 – Meaning of the concepts for the purposes of this Chapter
- Article 127 – General principles of transfer pricing
- Article 128 – Transfer pricing methods
- Article 129 – Special provisions of transfer pricing
- Article 129–1 – Advance Pricing Agreement
- Decree N423 of Minister of Finance - Instructions on International Transfer Pricing.

Effective date of transfer pricing rules

Tax Code of Georgia effective from 1 January 2011 contains a specific chapter on transfer pricing.

Decree N423 of Minister of finance (Instructions on International Transfer Pricing) is effective from December 18, 2013.

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

Two persons shall be deemed related if:

- a person participates directly or indirectly in the management, control or capital of another person
- the same persons participate directly or indirectly in the management, control or capital of both persons.

A person participates directly or indirectly in the management, control or capital of another enterprise if such person:

- holds directly or indirectly more than 50 percent of such enterprise
- exercises practical control over business decisions of an enterprise, including:
 - person holds or controls directly or indirectly a majority of voting stocks/shares
 - person can control directly or indirectly the composition of the board of directors

- person is entitled to (directly or indirectly) 50 percent or more of the profits of the enterprise
- the value of loans received by an enterprise from or under guarantee of the person is more than 50 percent of the enterprise's total assets
- a relative of a person directly or indirectly holds more than 50 percent of an enterprise or directly or indirectly manages the enterprise
- control is otherwise evidenced by facts and circumstances.

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

No specific statute of limitations is established for transfer pricing adjustments, therefore the general provisions of the Tax Code of Georgia would be applied, according to which the statute of limitations is three years. However, according to the transitional provisions of the Tax Code of Georgia, the statute of limitations within the period from 1 January 2015 to 1 January 2016 is five years and within the period from 1 January 2016 to 1 January 2017 is four 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. In the annual corporate income tax return the taxpayer should indicate whether it carried out any transactions with related parties or the persons registered in the so-called offshore countries.

Note that the instruction defines transfer pricing documentation as one prepared before submitting the tax return.

However, taking into account that a) no further clarification is provided to which tax return refers the Instruction b) no specific tax return is to be submitted for transfer pricing, it appears that the rules indicated in preceding paragraph should be applied.

What types of transfer pricing information must be disclosed?

In the annual corporate income tax return the taxpayer should indicate

whether it carried out any transactions with related parties or the persons registered in the so-called offshore countries.

What are the consequences of failure to submit disclosures?

No specific penalties are defined for not submitting disclosure, however a general penalty of 100 Georgian lari (GEL) may be imposed for failure to do so.

Transfer pricing study overview

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

Yes. The documentation can be prepared in English, however tax authorities may require Georgian translation to be arranged by taxpayer.

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. Transfer pricing documentation should contain:

- an overview of the Georgian enterprise's business operations, including an analysis of the economic factors that affect the pricing of its products and services
- a description of the Georgian enterprise's corporate organizational structure covering all parties potentially relevant to the controlled transactions being analyzed
- a description of the transaction being analyzed, including an analysis of the comparability factors and details of the group's transfer pricing policy (where relevant)
- a description of the transfer pricing method selected and an explanation of why this method was selected
- a comparability analysis, including: a description of the comparable uncontrolled transactions that were utilized, explanation of the basis for the rejection of any potential internal comparable uncontrolled transaction (where applicable), details of the external comparables search process (where applicable), the assessment of comparability of the controlled transactions and the comparable uncontrolled transactions

(with reference to the comparability factors specified in Article 5 of these Instructions), and, a description of any comparability adjustments that were made

- an explanation of any economic analysis and projections relied on in developing the transfer pricing methodology
- details of any Advance Pricing Agreements or advance decisions relevant to the controlled transactions
- a conclusion as to compliance with the market principle, and where relevant, any adjustments made by the Georgian enterprise to its transfer prices/taxable income for the relevant years in order to ensure compliance with the market principle; and
- any other information that may have a material impact on the determination of the Georgian enterprise's compliance with the market principle with respect to the controlled transactions.

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.

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.

Taxpayer should present transfer pricing documentation to the tax authorities

within 30 calendar days after their written request.

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

A tax dispute may be resolved within the system of the Ministry for Finance of Georgia and in 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 respect of transfer pricing. The standard penalties for under reporting of tax will apply. Penalty in the amount of 50 percent of under reported tax and late payment interests of 0.06 percent per each overdue day may be applied. It should be noted that late payment interest is decreased to 0.05 percent starting from 1 July 2015.

To what extent are transfer pricing penalties enforced?

Transfer pricing requirements are relatively new in Georgia and the attitude of Georgian tax authorities is not yet known.

What defenses are available with respect to penalties?

Comprehensive and proper transfer pricing documentation.

What trends are being observed currently?

Not yet known.

Special considerations

Are secret comparables used by tax authorities?

No. Tax authorities are not allowed to use secret comparables.

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

Due to the difficulties associated with obtaining information on comparable uncontrolled transactions in Georgia, the use of foreign comparables is acceptable, provided that the standard of comparability is met. When foreign comparables are relied upon, geographic differences, as well as other differences in comparability factors, must be analyzed and, where

appropriate, comparability adjustments may need to be made.

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.

Generally, taxpayers are expected to conduct economic analysis using the benchmarks relevant to the financial year in which controlled transactions occurred; except:

- a. if information relating to the financial year in which the controlled transaction took place is not available at the time of assessing the comparability of a comparable uncontrolled transaction with a controlled transaction, then information from the preceding year may be used provided the standard of comparability is satisfied
- b. if information relating to a period, not being more than four years prior to the financial year in which the controlled transaction took place, reveals facts which could have an influence on the determination of the comparability of the transactions being compared (for example, evidence of impact of product, industry or economic cycles).

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

Customs authorities are part of the Revenue Service.

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

No.

Are management fees subject to withholding?

Yes.

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. No specific restriction exists in this area.

Other unique attributes?

Controlled transactions include transactions between a Georgian enterprise and a resident of a so-called offshore country, regardless of whether they are related persons. The list of countries that are considered offshore countries was specified by the government in Resolution 132 of 30 May 2013.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive (nearly 50 effective double tax treaties).

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

Frequently.

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?

Unilateral, bilateral, multilateral.

Is there a filing fee for APAs?

No. No specific fee is determined for APA yet. Also there is no practice of issuance of APA so far.

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. There is no practice of issuance of APA so far. Unilateral APA can be concluded by the Georgian taxpayers for the transactions going forward if the value of such transactions is expected to exceed GEL50 million and the maximum period covered by an APA is three years.

KPMG in Georgia

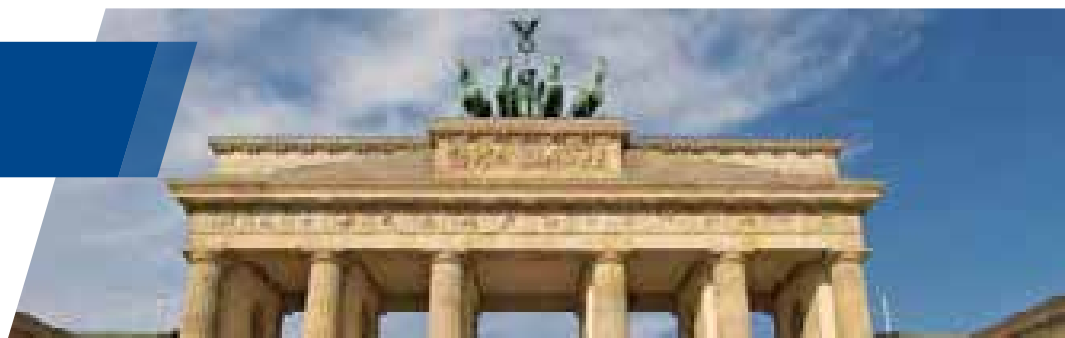
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Germany



KPMG observation

Transfer pricing still is one of the highest priority issues for German tax authorities and is receiving increased attention and discussion during German tax audits. In KPMG's experience, German tax auditors often put forward a case of insufficient or incomplete transfer pricing documentation in order to shift the burden of proof to taxpayers and try to achieve significant transfer pricing adjustments by way of an estimate. Other preferred audit targets currently include outbound licensing of brand names and trademarks as well as debt pricing and cash pools.

The Organisation for Economic Co-operation and Development (OECD) authorized approach, stipulated in the new Article 7 of the OECD Model Tax Convention and its commentary was incorporated into German tax law in 2013. These fundamental changes with regard to transfer pricing for permanent establishments were supplemented by additional decree in 2014.

As of 2008, the German tax authorities are allowed to aggressively audit business restructuring cases.

The Base Erosion and Profit Shifting (BEPS) initiative fits into the German tradition of developing measures against profit shifting. Germany has strongly advocated the adoption of the BEPS Action Plan and played a decisive role in the shaping of the actions and supports all of the 15 actions envisaged by the OECD. The German Federal Ministry of Finance is focusing on four key items: digital economy, hybrid mismatch arrangements, prevention of treaty abuse and harmful tax competition.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable
Legal requirements	●
Protection from penalties	●
Reduce risk of adjustment	●
Shifts burden of proof	●

Basic information

Tax authority name

Federal Ministry of Finance
(Bundesministerium der Finanzen – BMF);
Federal Tax Office (Bundeszentralamt für
Steuern – BZSt).

Citation for transfer pricing rules

German Foreign Transactions Tax Act
(Außensteuergesetz – AStG) Section 1,
General Tax Code (Abgabenordnung –
AO) Section 90 Para. 3 and Section 162
Para. 3 and 4, Corporate Income Tax
Act (Körperschaftsteuergesetz – KStG)
Section 8 Para. 3.

Effective date of transfer pricing rules

The legal basis for the determination of intra-group transfer prices has recently changed in Germany since the revision of Section 1 of the Foreign Transactions Tax Act in 2013. The 2013 Tax Act introduces changes which

clarify the rules for cross-border profit allocation that apply to various legal structuring options such as corporation, partnership, and permanent establishments. Documentation requirements were introduced in 2003 and penalties in 2004.

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

The taxpayer holds direct or indirect ownership of 25 or more percent in the related party, or has direct or collateral possibility to exert a dominating influence to the related party; a third party holds a share of 25 percent or more in the taxpayer and the related party or exerts indirectly or collaterally a dominating influence.

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

In general, four years from tax filing year-end, but the respective tax rules and provisions are much more comprehensive.

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)?

No. Disclosures related to transfer pricing are not required to be submitted to the revenue authority on an annual basis, e.g. with filing a corporate income tax return. The transfer pricing documentation for so-called extraordinary transactions has to be prepared within six months after the business year-end in which the respective transaction took place. However, it is strongly recommended to prepare contemporaneous transfer pricing documentation.

In general, the transfer pricing documentation for all types of intragroup transactions has to be provided to the revenue authority upon request, typically for the purposes of a tax audit.

What types of transfer pricing information must be disclosed?

No specific disclosure is not required. If management identifies incorrect transfer pricing after filing the tax return, this needs to be indicated and corrected without delay.

What are the consequences of failure to submit disclosures?

Not applicable.

Transfer pricing study overview

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

Yes. Any living language, in practice usually English.

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. The manner, content and extent of documentation in a German transfer pricing study is determined by the "Decree-Law in the spirit of Sec. 90(3) of the General Tax Code (GTC)"; 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

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

Yes.

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.

Taxpayers need to provide documentation within 60 days upon request in a tax audit; for extraordinary

transactions the deadline is 30 days upon request in a tax audit.

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

In principle, the taxpayer can choose to litigate, a strategy rarely chosen because of the lack of economic experience at German tax courts leading to unforeseeable results. The taxpayer can also choose to submit an application for a mutual agreement procedure under Article 25 of the OECD Model Tax Convention at the Federal Tax Office. There is also the possibility of using the complaints system or the European Union (EU) arbitration procedure.

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

Yes. Section 162, Paragraph 4, General Tax Code provides that in the absence of materially complete documentation the higher of either 5,000 euros (EUR) or a fraction of five percent to 10 percent of the transfer pricing adjustment made has to be assessed. Therefore, a penalty cannot be removed if no documentation exists, but the exact amount of the penalty is subject to the tax authorities' discretion which may depend on the taxpayer's degree of compliance or the nature of the transfer pricing adjustments. The same applies for penalties sanctioning late filing (maximum surcharge of EUR1 million, with a minimum of EUR100 for each day after the 30/60 days time limit is exceeded) and the tax administration's ability to use the full arm's length range to the detriment of the taxpayer in case no useful documentation exists.

To what extent are transfer pricing penalties enforced?

Always.

What defenses are available with respect to penalties?

With regard to cross-border transfer pricing issues, preparation of comprehensive transfer pricing documentation is required to avoid penalties and surcharges. However, if penalties are assessed they can occasionally be negotiated with local tax authorities to a lower level.

What trends are being observed currently?

German tax auditors often assume a case of insufficient or incomplete transfer pricing documentation in order to make significant transfer pricing adjustments to the taxable income by way of an estimate. Particular attention is currently being paid to the outbound transfer of functions and risks, cash pooling, outbound brand licensing and to permanent establishments.

Special considerations

Are secret comparables used by tax authorities?

Yes, occasionally, but they have lesser evidence value in court.

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

No, there is no legal requirement to have local comparables. However, German tax authorities prefer local comparables in benchmarking studies. Benchmarking studies that have no local comparables are sometimes challenged with regard to comparability.

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

There are no legal requirements to use any particular database. It is most common to use the Amadeus database for pan-European comparables searches, which is published by Bureau van Dijk. The German tax authorities have licensed this database and are using it. The tax authorities require that the information from databases is verified through internet research, i.e. to determine the comparability of a certain company; it is insufficient to rely only on the information which is provided by the database. The Dafne database with German comparables and the Orbis database for non-European comparables searches might also be used.

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

Yes, always.

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

It is not unusual that a German tax auditor would dispute the reliability of the external data available for application of the TNMM. In such cases they may resort to other third party (often internal) or reject the documentation as insufficient and try to make an adjustment based on an estimate.

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

Low interaction with customs authorities. The customs service occasionally requests transfer pricing documentation.

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

Yes, some. In general, management fees are deductible assuming the services were rendered to the benefit of the service recipient and the pricing was arm's length (benefit test). However, general domestic deductibility limitations may apply, e.g. in respect of stock option costs, entertainment costs or remuneration of supervisory boards.

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. Tax returns need to reflect taxable profits based on arm's length pricing.

If the taxpayer's statutory book numbers do not reflect arm's length prices – in particular if the German profits were below an arm's length level – the taxpayer is required to make the appropriate adjustments for tax purposes. In practice, a deviation of statutory book numbers from tax return numbers is likely to lead to greater scrutiny by the tax auditor.

Other unique attributes?

None.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

There is an extensive double tax treaty network. As of 1 January 2015, about 100 double tax treaties with other countries were in place.

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

In most cases.

When may a taxpayer submit an adjustment to competent authority?

Once double taxation becomes imminent which is usually considered to take place at the point in time the tax audit report is issued by the auditor.

May a taxpayer go to competent authority before paying tax?

Yes.

Advance pricing agreements

What APA options are available, if any?

Bilateral, multilateral.

Is there a filing fee for APAs?

Yes. An application fee of EUR20,000 and a fee of EUR15,000 for a renewal of an APA. Moreover, in case of a change in the application, a fee of EUR10,000 is applicable. When the transaction volume covered by an APA is less than EUR5 million for the transfer of goods

and less than EUR500,000 for other cases, the aforementioned fees are reduced to EUR10,000, EUR7,500, and EUR5,000.

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.

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

No. The German tax authority actively welcomes and supports APAs for transfer pricing purposes. Multinational companies actively use the APA program in their transfer pricing policies.

KPMG in Germany

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Ghana



KPMG observation

Since the inception of transfer pricing regulations in Ghana in 2012 (L.I. 2188), the Ghana Revenue Authority (GRA) has become aggressive in undertaking both desk and field transfer pricing audits.

As of January 2015, over 250 reviews (mainly desk audits) have been undertaken by the GRA. This is expected to increase with emphasis on more on-site audits by the Transfer Pricing Unit set up within the GRA.

This development is expected to increase the awareness of transfer pricing compliance among Ghanaian taxpayers.

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

Ghana Revenue Authority (GRA).

Citation for transfer pricing rules

- Internal Revenue Act, 2000 (Act 592).
- Transfer Pricing Regulations, 2012 (L.I. 2188).

Effective date of transfer pricing rules

The principal act, Internal Revenue Act, 2000 (Act 592), became effective from 2000. This act had a general transfer pricing rule which was very broad. However, the transfer regulations became effective from 2012.

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

The threshold relations between persons:

- persons who are in controlled relationships
- a permanent establishment (a branch) and its head office
- a permanent establishment and other related branches of the permanent establishment; and
- persons, who are in employer-employee relationships.

It should be noted that, a controlled relationship means a relationship between one person and another person by the terms of which the relations is able to influence the transfer price set in a transaction. These relationships may include associates, trust, partnerships, subsidiary, and, closed corporations.

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

There is no statute of limitations to the transfer pricing regime of Ghana.

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 Annual Return on Transfer Pricing Transaction (the Return), is the return disclosure form that taxpayers are required to file annually with the GRA.

It should be noted the taxpayer's transfer pricing study is only submitted to the GRA only upon request from the Commissioner-General of the GRA.

What types of transfer pricing information must be disclosed?

Listed are the key information that would be disclosed on the Annual Transfer Pricing Return:

- corporate information – company's name, address, tax identification number, address, key contact person
- particulars of related parties with which the taxpayer has conducted any form of transaction or dealing within the year
- related party transactions, including the amounts
- transfer pricing method selected.

What are the consequences of failure to submit disclosures?

Failure to file the Return may result in a GHS4 per day penalty.

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. The following is required:

- information of related parties and nature of relationship
- description of the related party transactions
- financial analysis

- comparability
- selection of the most appropriate transfer pricing method
- economic analysis.

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

Yes.

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.

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.

The Commissioner-General of the GRA stipulates the time frame within which taxpayers are required to submit documentation.

Taxpayers are not required to submit their transfer pricing study reports or contemporaneous reports on an annual basis. They are provided to the GRA only upon request.

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

- objection to the adjustment through the use of the GRA's internal administrative process
- objection through the law courts
- objection through a prescribed arbitration per a tax treaty agreement.

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

Yes and below are the possible tax penalties:

- 10 percent of the underreported income if the amount has been outstanding for less than three months
- 20 percent of the underreported income if the amount has been outstanding for more than three months.

To what extent are transfer pricing penalties enforced?

Transfer pricing audits and penalties are strictly enforced.

What defenses are available with respect to penalties?

The only defense is compliance with the transfer pricing laws.

What trends are being observed currently?

There has been a considerable increase in the number of transfer pricing audits and this is expected to result in tax penalties.

Special considerations

Are secret comparables used by tax authorities?

We are not aware of the use of secret comparables by the Ghana tax authorities.

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 Ghana Revenue Authority (GRA) does not have any requirements or preference for any database for comparables. It should be noted that, the Transfer Pricing Regulations in Ghana is silent on this subject.

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

Yes, always.

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

None.

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

There is a fair interaction between tax authorities with the customs authorities.

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

No.

Are management fees subject to withholding?

Yes.

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

No. It should be noted that, there could be agreed percentages or amounts that royalties can be charged. However, the GRA may only allow the tax deduction of expenses after compliance with the arm's length principle.

Are royalties subject to withholding?

Yes.

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

No. The number per the Return has to match the number in the audited financial statements. However, since

the Return is concerned with the amounts accrued exclusively during the year, the amounts per the audited financial statements which are based on amounts outstanding as of year-end may differ from what has been accrued during the year.

In relation to year-end adjustments, the Regulation is silent on this. However, in times of any year-end adjustments, there is the possibility of customs/VAT adjustments.

Other unique attributes?

None.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Currently, Ghana has eight DTA's with the listed countries:

- South Africa
- United Kingdom
- Germany
- France
- Italy
- Swiss Confederation
- Belgium
- Netherlands.

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

Yes.

When may a taxpayer submit an adjustment to competent authority?

Yes.

May a taxpayer go to competent authority before paying tax?

Yes.

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?

No.

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

Not applicable.

KPMG in Ghana

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Greece



KPMG observation

Enterprises must comply with different acts of legislation in relation to their transfer pricing obligations depending on the financial year under review. For tax years commencing 1 January 2014, the new transfer pricing provisions apply on the basis of the New Income Tax Code (Law 4172/2013) and the New Code of Tax Procedures (Law 4174/2013). The new transfer pricing provisions extend the scope of transactions that must be documented and the definition of associated enterprises.

Law 4174/2013 requires entities having the legal form of a corporation to obtain an Annual Tax Certificate. In the process of issuing these Annual Tax Certificates, certified auditors review a taxpayer's transfer pricing documentation. Those taxpayers that do not comply will be issued an Annual Tax Certificate "with a reservation," regarding the auditors' inability to express an opinion on the arm's length nature of a taxpayer's transactions, and which in turn could result in the Greek tax authorities initiating a tax audit.

Transfer pricing study snapshot

The purpose of a transfer pricing study

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

Basic information

Tax authority name

Transfer pricing audits are carried out by the tax authorities. For large enterprises the competent authority is the Tax Office of Large Incorporations. Furthermore, entities having the legal form of Anonymos Eteria (AE), Eteria Periorismenis Efthynis (EPE) and branches of foreign entities, which satisfy specific criteria will have their transfer pricing documentation audited by certified auditors for the issuance of the Annual Tax Certificate.

Citation for transfer pricing rules

- for tax years 2008-2012 article 26 of Law 3728/2008 of the Ministry of Development
- for tax years 2010-2013 Articles 39, 39A, 39B and 39C of Income Tax Law 2238/1994 as in force in each respective year
- for tax years commencing 1 January 2014 onwards, Articles 50 and 51 of Law 4172/2013 and Articles 21, 22 and 56 of Law 4174/2013.

Effective date of transfer pricing rules

For tax years commencing 1 January 2014, the transfer pricing documentation file must be prepared and the relevant summary information sheet concerning intra-group transactions must be electronically submitted to the Ministry of Finance within four months from the end of the company's year-end.

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

According to Law 4172/2013, the threshold relationship for transfer pricing rules to apply for associated persons is direct or indirect substantial control in the management or capital. The participation threshold in the capital is set at a percentage of 33 and above. It also includes cases where there is decisive influence or where there is a capability to exercise decisive influence. Specific cases are also described in the relevant legislation.

Greek companies must maintain a transfer pricing documentation file for their intra-group transactions with one or more associated enterprises which exceed the amount of either:

- 100,000 euros (EUR) in total, if the gross revenues of the company in question for the respective tax year does not exceed the amount of EUR5 million; or
- EUR200,000 in total if the gross revenue of the company in question for the respective tax year exceeds the amount of EUR5 million.

Law 4174/2013 as currently in force does not stipulate a minimum amount for the transactions that must be documented if the above thresholds are met, therefore if above thresholds are met all intercompany transactions must be documented.

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

Five years from tax year-end. The five year period commences at the end of the year in which the annual corporate income tax return was filed with respect to the previous accounting year. Under certain conditions, the statute can be extended to 20 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. A transfer pricing study (transfer pricing documentation file) must be prepared and provided by the companies

to their certified auditors before the issuance of the Annual Tax Certificate (not all companies have an obligation to obtain a tax certificate) and in any case within four months from the end of their financial year. The transfer pricing documentation file is accompanied by a summary information sheet. This summary information sheet must be electronically submitted to the General Secretariat of Information Systems of the Ministry of Finance within four months of the end of the company's financial year. Even in the cases where a Tax Certificate has been issued a sample of at least nine percent of the companies under audit by certified auditors will be selected to be further audited by the tax authorities based on criteria set by the Ministry of Finance. If no Tax Certificate obligation exists the documentation file must be submitted to the competent tax authority in case of a tax audit within 30 days of request.

What types of transfer pricing information must be disclosed?

The summary information sheet must contain information regarding the functional identity of the company, i.e. the group it belongs to, the functions it performs and the risks it assumes, as well as a list of the intra-group transactions that require documentation which have taken place within the respective financial year. It must also include the transfer pricing method followed to test each intercompany transaction, whether APAs exist and also whether a transfer pricing study is in place.

The transfer pricing documentation file consists of the "basic documentation file" and the "Greek documentation file". The exact information that must be included in the transfer pricing documentation file as well as the summary information sheet is determined in Circular (i.e. POL 1097/2014 as amended by POL 1144/2014) which has been issued by the Ministry of Finance).

In general the basic documentation file is common for all group entities and contains typical information for all the associated companies and the branches of the group. The Greek documentation file, which accompanies the basic documentation file, contains additional

information regarding the Greek entities of the group, the permanent establishments of the foreign entity in Greece or the permanent establishments of the Greek entity abroad.

What are the consequences of failure to submit disclosures?

Where the summary information sheet and/or the transfer pricing documentation file are not submitted to the competent audit authority, a one-off penalty at the rate of one percent of the company's recorded gross revenues (including any adjustments of profits) is imposed. The penalty imposed should not be less than EUR10,000 and should not exceed EUR100,000. Moreover, the one-off penalty at the rate of one percent of the company's recorded gross revenues is imposed in the case of submission of an inaccurate/incomplete summary information sheet.

Transfer pricing study overview

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

Yes. The basic file may be maintained in English with the obligation to be translated in Greek if requested by the tax authority within 30 days from the relevant request. The Greek Documentation File must be maintained in Greek.

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

No. According to the transfer pricing provisions, the tax authority's audit will take into consideration the OECD Guidelines. It is further specifically stipulated that a transfer pricing documentation file consists of the "basic documentation file" and the "Greek documentation file". The exact information which must be included is stipulated in the respective Ministerial Circular (POL 1097/2014 as amended by POL 1144/2014).

Generally the information covered is the information of Chapter V of the OECD Guidelines but also includes some additional information i.e. specific

information for business restructurings, APAs, court decisions and cost contribution agreements, copies of contracts, specific information on the contractual arrangements and additional information for transactions with entities in countries with which Greece has no administrative cooperation for tax purposes (there is a list of such countries).

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 transfer pricing methods to be used are determined by virtue of Ministerial Circular POL 1097/2014 as amended by POL 1144/2014 issued by the Ministry of Finance on 18 July 2013. These are the transfer pricing methods outlined in Chapter II of the OECD Guidelines.

Ministerial Circular POL 1097/2014 as amended by POL 1144/2014 stipulates that there is a priority of the traditional transfer pricing methods (e.g. Comparable Uncontrolled Price (CUP) method, resale price method and cost plus method) over the transactional transfer pricing methods (transactional net margin method and profit split method). In cases where there is insufficient or no data for the use of the traditional transfer pricing methods, taxpayers may use the transactional transfer pricing methods provided that justification for their selection is included in the transfer pricing documentation file.

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 documentation file must be submitted to the competent tax authority in case of a tax audit within 30 days of request. However, please note that apart from the obligation towards the competent tax authority, the transfer pricing file is required to be completed within four months from the closing date of the company's financial year. Failure to submit the documentation file is subject to a one-off penalty at the rate of one percent of the company's recorded gross revenues including any adjustment of profits. The penalty imposed should not be less than EUR10,000 and should not exceed the amount of EUR100,000.

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

Upon the issuance of a tax assessment note the taxpayer may file a request for re-examination at the Department of Internal Re-Examinations of the General Secretariat of Public Revenues. The taxpayer has a right of appeal against the administrative decision before the administrative courts. There is also the option to use the Mutual Agreement Procedure and the Arbitration Convention.

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

Law 4172/2013 does not include any special provisions in this respect. Therefore the general tax provisions will apply whereby an adjustment in profits will be subject to the relevant penalties applying to an inaccurate tax return. In case of an inaccurate tax return the penalty will amount to 10 percent of the additional tax not reported, if the tax amount is equal to or higher than five percent but less than 20 percent of the correct tax due, 30 percent of additional tax not reported, if the tax is higher than 20 percent of the correct tax due, 100 percent of the additional tax not reported, if the tax is higher than 50 percent of the correct tax due and provided that the inaccurate reporting of information was intentional. Also

interest is calculated in the amount of tax due from the expiration of the initial filing deadline up to the date the actual payment of tax takes place.

To what extent are transfer pricing penalties enforced?

Ministry of Finance transfer pricing audits which are now being finalized have commenced to impose penalties.

What defenses are available with respect to penalties?

It is imperative to have the stipulated transfer pricing file in place in order to avoid penalties. If documentation evidences that transactions are not arm's length, then specific justification must be provided e.g. extraordinary events. No court precedents exist yet accepting such justifications.

What trends are being observed currently?

The Ministry of Finance audits mainly focus on intra-group transactions within multinational groups, on transactions involving intangibles and related royalty issues, on loss making companies and companies having a substantial volume of international transactions.

In addition to the above, Law 4172/2013 introduced the application of the arm's length principle to business restructurings either local or cross-border. More specifically business restructurings consisting of a transfer of operations, assets, risks and/or business opportunities between related parties as well as any transfer or granting of a right to use goodwill or intangible assets effected in the context of such business restructurings must be performed at a price that is in compliance with the arm's length principle.

Special considerations

Are secret comparables used by tax authorities?

Although there is no precedence in this respect in practice tax authorities may use secret comparables. This remains to be determined.

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

No. In practice pan European benchmarking studies are used.

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, always.

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

The benchmarking studies used must cover the most recent three year period and the initial benchmarking study may be updated for the next two years. Shareholder's ownership threshold must be less than 33 percent. This step must apply for both corporate and individuals shareholders. In addition, subsidiary ownership threshold must be less than 33 percent.

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. Beyond the arm's length principle the general tax requirements will also need to be satisfied, i.e. (i) fees/ expenses should be paid for the benefit of the company or should relate to the company's usual transactions, (ii) expenses should correspond to a genuine transaction and the value of the transaction should not be lower/higher than the market value according to the data available to the tax authorities and (iii) should be posted in the accounting books of the company and should be evidenced by relevant documentation (i.e. invoices etc.).

Are management fees subject to withholding?

No.

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

Yes. Beyond the arm's length principle the general tax requirements will also need to be satisfied, i.e. (i) fees/ expenses should be paid for the benefit of the company or should relate to

the company's usual transactions, (ii) expenses should correspond to a genuine transaction and the value of the transaction should not be lower/higher than the market value according to the data available to the tax authorities and (iii) should be posted in the accounting books of the company and should be evidenced by relevant documentation (i.e. invoices etc.).

Are royalties subject to withholding?

Yes.

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

No. Normally tax returns must not differ from book numbers however, in practice there can be year-end transfer pricing adjustments if they are sufficiently stipulated in writing (e.g. agreements, transfer pricing documentation). They are usually highly scrutinized.

Other unique attributes?

The benchmarking studies used for testing the year under review must cover the most recent three year period of comparable companies. The initial benchmarking study may be updated for the next two years.

No safe harbors exist.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive. There are currently 56 Double Tax Treaties between Greece and other tax authorities.

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

There is extensive use of the Double Tax Treaties however Greece has limited experience with Mutual Agreement Procedures (MAP).

When may a taxpayer submit an adjustment to competent authority?

Taxpayers may submit a supplementary income tax return with an adjustment any time before a tax audit of the year in question. Any procedures under a tax treaty must take place within a three year period. However, please note that the right to initiate procedures before

the competent administrative bodies is within a 30 day period.

May a taxpayer go to competent authority before paying tax?

There are no formal rules.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

Is there a filing fee for APAs?

Yes. The applicable fees (payable by the applicant) throughout the APA procedure are determined by Ministerial Circular POL. 1284/2013, as follows:

- fee of EUR1,000 at the time of the submission of the Preliminary Consultation Application
- fee of EUR5,000 at the time of the submission of the APA application, or of the APA revision application
- fee of EUR10,000 in the case of a request for collaboration with the foreign tax authority in each state.

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?

No. There are no precedents on APAs yet. A number of APA applications have been submitted to the Ministry of Finance.

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Guatemala

KPMG observation

Transfer pricing documentation requirements were established in Guatemala in 2012. However, the first year that taxpayers in Guatemala have to comply with transfer pricing documentation requirements is 2015. The Guatemalan Tax Authority is increasingly requesting information from taxpayers in order to understand their intra-group transactions.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable
Legal requirements	●
Protection from penalties	●
Reduce risk of adjustment	●
Shifts burden of proof	●

Basic information

Tax authority name

Superintendencia de Administración Tributaria.

Citation for transfer pricing rules

Decree No.10-2012 published in the Central America Official gazette (amendment by Decree No.19-2013).

Effective date of transfer pricing rules

1 January 2015.

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

Two entities can be considered related parties when one of them is a resident of Guatemala and the other is resident in a foreign tax jurisdiction, if one of the following cases applies:

- when one of them directs or controls the other, or holds, directly or

indirectly, at least 25 percent of its capital stock or voting rights, whether a domestic or foreign entity

- when five or fewer people direct or control both related parties, or possess directly or indirectly at least 25 percent of participation in the capital stock or voting rights of both entities
- legal entities resident in Guatemala or abroad belonging to the same corporate group are considered to be part of the same business group if one of them is a member or participant of the other and is related to it in any of the following situations:
 - holds a majority of voting rights
 - has the power to appoint or remove members or through its legal representative to intervene decisively in the other entity
 - may have, under agreements with other partners, most of the voting rights

- has appointed exclusively by their votes to the majority of the members of the board
- a majority of the members of the governing body of the legal entity are ombudsmen, managers or members of the board of the related party or other one dominated by it.

When two companies comprise a decision group with respect to a third company, all these companies are considered a business group. It is also considered that an individual has a stake in the capital stock or voting rights when the owner of the share or shares, directly or indirectly is the spouse or person connected by relationship, by blood relation to the fourth degree or affinity to the second degree. The term person refers to individuals, corporations and other organizations with or without legal personality.

Also considered related parties are the following:

- a resident of Guatemala and a distributor or exclusive agent of a foreign territory
- a distributor or exclusive agent resident in Guatemala of an entity resident abroad and the latter
- a resident of Guatemala and abroad its permanent establishments
- a permanent establishment located in Guatemala and its foreign parent company, another permanent establishment of the same company or a person associated with it.

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

Four years from filing date of the tax return.

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 transfer pricing information return must be completed. Taxpayers should, however, be able to support the arm's length nature of the intra-group transactions at the moment of filing the income tax return. The transfer pricing documentation must include the information that the taxpayer used to determine the arm's length nature of the intra-group transactions. This documentation will need to be prepared on an annual basis.

What types of transfer pricing information must be disclosed?

Along with the Income Tax return, an appendix that summarizes the main information must be attached, but the form is not available.

What are the consequences of failure to submit disclosures?

Not applicable.

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.

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. However, the following methodologies will need to be considered (or rejected) before applying methods outlined in Chapter II:

- market value in transferring goods or services abroad: the price established by other entities (unrelated with the tested party) that sell the same products or render the same services from Guatemala to the same country abroad
- import market price: the price established for the same goods and services between third parties within the country in which the product or service is going to be acquired plus the freight charges if it is the case.

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, 20 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 taxpayer has 20 days.

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

Yes. Taxpayers can submit the resolution to an administrative area within the tax authorities in order to object to the procedures. Also, taxpayers may appeal to the tax 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.

To what extent are transfer pricing penalties enforced?

Not yet known.

What defenses are available with respect to penalties?

None.

What trends are being observed currently?

The transfer pricing requirements are very recent in Guatemala. The first legislation was published in 2012 and applicable in 2015. Therefore, as of yet there have been no transfer pricing audits.

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?

Based on experience in Guatemala, North American comparable companies are used for benchmarking purposes.

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

Not yet known.

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.

Not applicable.

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. However, taxpayers must support the fact that intra-group services have been rendered before a deduction is taken. That is, the taxpayer must demonstrate that the services (1) were actually rendered, (2) provided a benefit to the taxpayer and (3) were not duplicative services. If no support can be provided, then the tax authority will consider them non-deductible.

Are management fees subject to withholding?

Yes.

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

Yes. Taxpayers must support the fact that intra-group services have been rendered before a deduction is taken. That is, the taxpayer must demonstrate that the services (1) were actually rendered, (2) provided a benefit to the taxpayer and (3) were not duplicative services. If no support can be provided, then the tax authority will consider them non-deductible.

Are royalties subject to withholding?

Yes.

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

Yes. However, it is important that the year-end adjustments are accounted for before the end of the fiscal year to make sure tax and accounting figures are consistent. It is advisable to conduct periodic reviews in order to avoid significant year-end adjustments. Customs issues must also be taken into account.

Other unique attributes?

Mutual agreement procedures (MAPs) are not available.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Not applicable.

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

Not applicable.

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?

Bilateral, multilateral.

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.

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

Not applicable.

KPMG in Guatemala

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Honduras



KPMG observation

The Honduran Transfer Pricing Law became effective on January 2014; however, regulations regarding the correct application of the Law have not been issued yet. The date for the issuance of the regulations is unknown.

Transfer pricing study snapshot

The purpose of a transfer pricing study

Submission to tax authority required

Legal requirements	●
Protection from penalties	●
Reduce risk of adjustment	●
Shifts burden of proof	●

Basic information

Tax authority name

Dirección Ejecutiva de Ingresos (DEI).

Citation for transfer pricing rules

Decreto Ley No. 232-2011.

Effective date of transfer pricing rules

1 January 2014.

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

Two or more entities are related parties when:

- a person or entity participates directly or indirectly in the management, control or capital of both legal entities
- a person or a company participates in the management, control or capital of another entity, both entities or the person and the entity are related parties

- entities comprise a decision unit. An entity is considered to be a member of another and if they are in any of the following situations:

- hold a majority of voting rights. If the member has the power to appoint or remove the majority of the members of board of directors
- could have, under agreements with other partners, most of the voting rights; and
- has appointed only with its votes most of the members of the board of directors.

- they participate in direct or indirect commercial and financial transactions (not yet defined by the tax authorities)
- a person resident in the country has permanent establishments abroad
- a company has the same directors or managers as a related company
- when the relationship between potentially related parties is considered in terms of the social capital or control of voting rights,

such participation must be more than 50 percent; and

- when a company or business is a decision unit, or when a company is a 'partner' of another company.

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

Five years from filing date of the income tax return, and ten years in cases of tax fraud determined by the DEI.

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 DEI shall demand the Annual Transfer Pricing Affidavit, however such affidavit is not available for taxpayers yet. According to Law on 30 April 2015, taxpayers was supposed to have transfer pricing studies, however, Tax Authority has announced an extension of three

months starting from the issue of the Transfer Pricing Regulation, however the date for the issuance of the regulation is unknown.

What types of transfer pricing information must be disclosed?

Transfer Pricing Law only indicates that taxpayers must submit to the DEI the tax return, the information and sufficient analysis to assess its operations with related parties, this obligation shall be without prejudice to any additional information that will be required at the request of DEI. The DEI have not provided specific detail about the information that should be included in the transfer pricing disclosures/ documentation study.

What are the consequences of failure to submit disclosures?

The taxpayer not providing or providing false or grossly incomplete or inaccurate data information or documentation required by Tax Authority, is punishable by a fine of 10,000 US dollars (USD) payable in its equivalent in Lempiras.

Transfer pricing study overview

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

Spanish.

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

Not applicable. This is not detailed in the Honduran Transfer Pricing Law.

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. However, for the case of export transactions of goods with an international quote, before applying

OECD transfer pricing methods, the following methodology will need to be considered or rejected.

Applicable method for the exports of goods with international quote: In the case of exports of goods with international quote in transparent markets, the exporter subject to income tax will have the choice to apply the comparable uncontrolled price (CUP) method using third parties information, regarding the prices agreed with third parties as the market value of those goods in similar conditions.

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.

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

According the Honduran Tax Code, taxpayers must have with immediately availability all tax documentation when the Tax Authorities request it.

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

Appeal.

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

Yes. In accordance with Honduran Transfer Pricing Law, violations are:

- failure to provide or providing false or grossly incomplete or inaccurate data information or documentation required by Tax Authority
- declare any taxable year a lower tax base which would have been payable due to a different valuation agreed to have agreed independent parties in comparable
- circumstances, unless there is documentation to support the statement; and

- any other breach of the provisions contained in the Honduran Transfer Pricing Law.

The offense described in number one shall be punished by a fine of USD10,000 payable in its equivalent in Lempiras; the offense described in number two shall be punished by a fine of 15 percent of the amount of the adjustment made by the Tax Authority. If any of those behaviors are accompanied by that typified in number one, the previous penalty for both offenses will rise to the greater of 30 percent or USD20,000 payable in its equivalent in Lempiras, the offense described in number three shall be punished by a fine of USD5,000 payable in its equivalent in Lempiras.

To what extent are transfer pricing penalties enforced?

The TP Law is in force, but it have not been applied yet because the issuance of a regulation is pending. Therefore no penalty has been applied yet.

What defenses are available with respect to penalties?

Occasionally. Congress approves tax breaks that reduce the impact of the penalties if the taxpayer decides to avail them while making the penalty payments.

What trends are being observed currently?

Tax Authority has not applied the Honduran Transfer Pricing Law yet.

Special considerations

Are secret comparables used by tax authorities?

Tax Authority has not applied the Honduran Transfer Pricing Law yet.

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

Tax Authority has not applied the Honduran Transfer Pricing Law yet.

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

Tax Authority has not applied the Honduran Transfer Pricing Law yet.

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.

Tax Authority has not applied the Honduran Transfer Pricing Law yet.

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

Tax and customs in Honduras are under the same management.

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

Yes. However, taxpayers must support the fact that intra-group services have been rendered before a deduction is taken. That is, taxpayer must demonstrate that the services:

- were actually rendered
- provided a benefit to the taxpayer; and
- were not duplicative services.

If no support can be provided, then the tax authority will consider them non-deductible.

Are management fees subject to withholding?

Yes.

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

No. Not specified in TP Honduran Law.

Are royalties subject to withholding?

Not applicable.

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

Not applicable. Tax Authority has not applied the Honduran Transfer Pricing Law yet.

Other unique attributes?

Not applicable.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

None.

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

Not applicable.

When may a taxpayer submit an adjustment to competent authority?

In case of adjustments to financial and commercial operations between related parties, that have been practiced in another State and that result in a greater income that the derived of the operation as a whole, the Dirección Ejecutiva de Ingresos prior to the request of the resident taxpayer in its territory, shall examine the origin of the adjustment and determine that double taxation has been produced, shall admit the adjustments for the amount of the tax received as well as the accessory elements of the tax debt.

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?

Bilateral.

Is there a filing fee for APAs?

No. According to Honduran Transfer Pricing Law, the Dirección Ejecutiva de Ingresos can enter into APAs with resident and non-resident income taxpayers.

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?

Not applicable. Tax Authority has not applied the Honduran Transfer Pricing Law yet.

KPMG in Honduras

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Hong Kong



KPMG observation

The Hong Kong Inland Revenue Department (IRD) released comprehensive transfer pricing guidelines in December 2009 with potential retroactive effect. The guidelines were released in the form of Departmental Interpretation and Practice Notes No. 46 (DIPN 46) and they indicate the IRD's interpretation and practices regarding transfer pricing methodologies and related issues.

DIPN 46 is generally consistent with the Organisation for Economic Co-operation and Development (OECD) Guidelines and with international transfer pricing practices. DIPN 46 states that the IRD will apply the arm's length principle and follows the preference of traditional transaction methods over the profit-based methods instead of the most appropriate method approach outlined in the revised OECD Guidelines in 2010. In practice, profit based methods are commonly applied.

The IRD released DIPN No.48 Advance Pricing Arrangement in March 2012 establishing the procedure for enterprises seeking an Advance Pricing Agreement (APA) in Hong Kong. APAs are generally available on bilateral or multilateral basis with counterparty jurisdictions with which Hong Kong has a Double Tax Agreement (DTA), although unilateral APAs are possible in certain limited circumstances. As of 30 April 2015, Hong Kong has concluded two bilateral APAs, one with the Netherlands and one with Japan.

Following the recommendation of the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes, Hong Kong introduced a Bill that allows Hong Kong to enter into standalone Tax Information Exchange Agreements (TIEAs) and enhances the existing exchange of information (EoI) under a DTA. The Bill was passed by Legislative Council in July 2013. The enactment of the Bill demonstrates Hong Kong's commitment to implementing internationally agreed standards. Going forward, the tax information to be exchanged under a DTA/TIEA will have much coverage and the Commissioner will have wider powers to collect and disclose tax information. In September 2014, Hong Kong indicated to the OECD its support for implementing the new standard on Automatic Exchange of Information (AEoI), with a view to commencing the first information exchanges by the end of 2018, on the basis that necessary legislation is in place by 2017.

With respect to the OECD's Base Erosion and Profit Shifting (BEPS) Action Plan, the IRD has no immediate plans to change the current laws or practices, but has indicated in a press release in November 2013 that they will closely monitor the international development in this respect, including OECD discussions, with a view to assess the need for any corresponding measures. The IRD will embark on studies and engage local stakeholders for appropriate follow-up actions in due course.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Not applicable
Legal requirements		●
Protection from penalties	●	
Reduce risk of adjustment	●	
Shifts burden of proof		●

Basic information

Tax authority name

Hong Kong Inland Revenue Department (IRD).

Citation for transfer pricing rules

- DIPN 46 refers to relevant articles of double taxation treaties signed by Hong Kong when applicable, and to sections 14, 16(1), 17(1) (b), 17(1) (c), 20 and 61A of the Inland Revenue Ordinance (IRO) in other circumstances.
- DIPN 45, which was also released during 2009, provides guidance with regard to relief from double taxation arising from transfer pricing adjustments in the context of DTAs.
- DIPN 47, sets out the current practice on exchange of information upon requests received from treaty partners. DIPN 48 establishes the procedure for enterprises seeking an APA in Hong Kong.

Effective date of transfer pricing rules

There is no specific date, but provisions of DIPN 46 may apply retroactively to all open tax years. APA applications will be considered as of April 2012 onwards and the IRD has indicated that rollbacks may be considered in some cases.

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

No numeric threshold. Association is established via common management control or shareholding.

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

The IRD is empowered to raise additional assessment(s) for a year of assessment at any time within six years after the end of that year of assessment if it considers that the taxpayer has been under-assessed, or has not been properly assessed for that year.

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. Taxpayers are required to disclose certain information on related party transactions in the annual tax return.

What types of transfer pricing information must be disclosed?

Transaction amounts and jurisdiction(s) of related parties with which transactions have been conducted.

What are the consequences of failure to submit disclosures?

In case of a failure to prepare or submit the tax return where the taxpayer does not have a "reasonable excuse" for the offence, the maximum penalty that can be imposed is 10,000 Hong Kong dollars (HKD) plus three times the amount of tax undercharged.

Transfer pricing study overview

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

Yes. English, Chinese.

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. Broadly, yes. DIPN 46 refers to the OECD Guidelines for the type of information which would be useful to be included in a 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.

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.

Generally within 30 days of request, subject to extension.

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

Available dispute resolution options include: objections to the Commissioner, appeals to the Board of Review, and appeals to the courts. DIPN 6 provides an overview of the objection channels and appeal procedures.

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

Yes. General tax penalties apply. The extent of these penalties depends on the degree of the offence. Where the taxpayer does not have a "reasonable excuse" for the offence, the maximum penalty that can be imposed is HKD10,000 plus three times the amount of undercharged tax.

To what extent are transfer pricing penalties enforced?

Penalties are less common in practice.

What defenses are available with respect to penalties?

Preparation of transfer pricing documentation. Generally, in the absence of fraud or tax evasion the penalties may not be enforced.

What trends are being observed currently?

There are increasing audit cases which involve transfer pricing issues and the tax authority is continuously seeking to develop its transfer pricing resources and skills. The IRD has recently launched a large number of tax audits of asset managers in Hong Kong and it is highly likely that the IRD will look to target other prevailing industry sectors.

Continued tax scrutiny was foreshadowed in Hong Kong's 2015-2016 fiscal budget, where the Hong Kong government has specifically singled out the IRD to "step up its efforts in combating cross-border tax evasion in accordance with the latest global standard" to preserve the territory's revenue base. IRD would continue to focus audit activities on high risk areas including significant transactions with related parties in low/no tax jurisdictions, poor results not consistent with industry norms, sustained losses or fluctuating profits and losses with growing businesses, etc.

Hong Kong is also actively expanding its double tax treaty network which expands potential for an increased number of corresponding adjustments, APA negotiations and Mutual Agreement Procedures (MAPs).

Special considerations

Are secret comparables used by tax authorities?

Generally 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.

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.

No. Approaches consistent with the OECD Guidelines are generally acceptable by the IRD.

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

Low.

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

Yes. Subject to the general requirement that the expense must be incurred in earning profits chargeable to tax.

Are management fees subject to withholding?

No.

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

Yes. Subject to the general requirement that the expense must be incurred in earning profits chargeable to tax.

Are royalties subject to withholding?

Yes.

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

Yes. Generally yes. In Hong Kong there is no specific law addressing subsequent transfer pricing adjustments. However, in order to be reflected in the tax return for the year in which the adjustment relates, it should be included in the audited financial statements for that year and be supported by the relevant documentation.

Other unique attributes?

None.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Minimal but developing.

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

No experience yet due to relatively limited (but expanding) treaty network.

When may a taxpayer submit an adjustment to competent authority?

Subject to applicable DTA, generally only after the first notification of actions giving rise to taxation not in accordance with the DTA has been issued by the DTA state.

May a taxpayer go to competent authority before paying tax?

Currently there are no formal rules in this respect.

Advance pricing agreements

What APA options are available, if any?

Bilateral, multilateral.

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 applicable on a bi- or multilateral basis with counterparty jurisdictions with which Hong Kong has a DTA due to resource constraints, at least at the initial stage of the program. A unilateral APA may be available in cases when the DTA partner(s) do not wish to participate in developing an APA, agreement stalls with the DTA partner(s) when negotiating a bilateral or multilateral APA and in cases when a non DTA state is prepared to agree a unilateral APA regarding transactions that are integrally linked to the controlled transactions covered by a bilateral or multilateral APA. The IRD has also set a threshold for an application of HKD80 million for each year covered in the APA if the controlled transactions involve sale and purchase of goods, a threshold of HKD40 million per annum if the application relates to services and a threshold of HKD20 million if the application relates to intangible property. The threshold may be waived on a case by case basis following review by the Commissioner.

KPMG in Hong Kong

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Hungary



KPMG observation

The Hungarian tax authorities are paying special attention to transfer pricing issues. Previously, the mere existence of transfer pricing documentation was sufficient, but recent experience shows that tax audits are moving towards more in-depth analysis of transactions (questioning qualitative screening, testing comparables, challenging particularly benchmarking studies, examining or excluding loss making comparables in the benchmarking set and functional analysis). In addition, the Hungarian tax authorities are focusing on a comprehensive review of documentation (including contracts, back-up calculations that support the arm's length pricing of transactions and deductibility of costs) and challenging loss-making entities.

In line with Organisation for Economic Co-operation and Development's (OECD) Base Erosion and Profit Shifting (BEPS) initiative, tax avoidance and harmful tax structures will likely be met with challenges by the Hungarian tax authorities.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Not applicable
Legal requirements	●	
Protection from penalties		●
Reduce risk of adjustment	●	
Shifts burden of proof	●	

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 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; and
- Section 18 (9) determines a new rule regarding the rules of the application of the interquartile range.

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 Advance Pricing Agreement (APA); and
- Section 178.17 definition of the related parties.

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 transactional net margin method (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 was published in 2013
- as of 21 June 2013 a new modification of the MF Decree 22/2009 was released. The purpose of the Decree was to decrease the administrative burden on taxpayers — which was the aim of the previous change as well — and also to clarify some vague provisions of the former regulation
- effective from 1 January 2015, certain sections of 22/2009 MF Decree changed. The regulation introduced special rules in connection with the application of the interquartile range
- 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. Due to recent changes, in certain cases overlap in managing directors could also trigger related party status.

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 submitted to the revenue authority on an annual basis (e.g. with the tax return)?

Yes. A company should declare in the tax return that the transfer pricing documentation has been prepared in line with the European documentation standards (EU Master file concept).

What types of transfer pricing information must be disclosed?

A company should declare in the tax return that the transfer pricing documentation has been prepared in line with the European documentation standards (EU Master file concept).

What are the consequences of failure to 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

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

Yes. English, German and French.

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

Yes, for all transactions. 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

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

Yes.

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, three 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.

Normal practice is to expect documentation within three days of request (documentation should be prepared together with the CIT return, therefore it is assumed that documentation is already prepared).

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

After unsuccessful exhaustion of administrative procedures, a company is entitled to bring the matter before the competent court or in certain cases might initiate a supervisory procedure at the head of Tax Authorities and Ministry of National Economy.

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.) and financial transactions.

Special considerations

Are secret comparables used by tax authorities?

Generally no.

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

Yes. The tax authorities prefer local comparables (or at least regional ones). Where existing local comparables are left out of the benchmarking set, the tax authorities 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 authorities. The preferred database is Amadeus, published by BvD, but not required (online version is not appropriate).

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

Yes, always.

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

The tax authority prefers the benchmarking study to be prepared according to the Hungarian legislation (appropriate independence criteria, region). Furthermore, the tax authority is very keen on comparables with negative profitability.

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

Yes, some. There are limitations if it cannot be supported that the management fees incurred are in the interest of the company.

Are management fees subject to withholding?

No.

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

Yes. There are limitations if it cannot be supported that the royalties incurred are in the interest of the company.

Are royalties subject to withholding?

No.

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

Yes. Year-end adjustments are permitted, but they should be sufficiently justified by the taxpayer as to economic necessity (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 authorities do 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 generally accepted accounting principles (GAAP), i.e. no special treatments are required.

Other unique attributes?

Effective from 1 January 2012, no documentation is required if the transactional value is below 50 million Hungarian forint (HUF) (approximately 170,000 euros (EUR)).

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. This rule was further modified as of 21 June 2013.

According to the new rules on simplified documentation applicable for these services, if the service provider applies a margin between 3 and 10 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 10 percent or the pricing method of cost-plus 3 and 10 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 HUF 150 million (EUR 526,000), five percent of the seller's net sales revenue and 10 percent of the operation costs of the purchaser in the tax year.

According to the latest modification, the Hungarian legislation incorporated the application of the interquartile range. The 22/2009 Decree introduced special rules when the interquartile range must be used, and when it is appropriate to apply the full range.

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.

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?

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 agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

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); and
- for multilateral procedures the fee payable is HUF5 million (approximately EUR17,500) to HUF10 million (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.

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

No. 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 authorities. 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 authorities).

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Iceland

KPMG observation

The law that enacted the Icelandic transfer pricing rules was passed in 2013 and came into effect 1 January 2014.

On 23 December 2014, Regulation No. 1180/2014 on documentation and transfer pricing in transactions between related parties was issued by the Ministry of Finance. The Regulation became effective on 1 January 2015.

Under the Regulation, Icelandic legal entities or permanent establishments that 1) have transactions with related entities or permanent establishments and 2) have assets or turnover in excess of one billion ISK are subject to the transfer pricing documentation rules.

As the transfer pricing rules only became applicable on 1 January 2014, it is difficult to predict what Iceland's approach to Base Erosion and Profit Shifting (BEPS) will be.

However, it is likely that a similar approach as the other Nordic countries will be taken.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Thresholds apply/exist
Legal requirements		●
Protection from penalties	●	
Reduce risk of adjustment	●	
Shifts burden of proof	●	

Basic information

Tax authority name

Directorate of Internal Revenue (Ríkisskattstjóri).

Citation for transfer pricing rules

Paragraphs 3-6 of Article 57 of the Icelandic Income Tax Act No 90/2003. Regulation No. 1180/2014.

Effective date of transfer pricing rules

1 January 2014.

The Regulation became effective on 1 January 2015.

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

Direct or indirect ownership of more than 50 percent.

According to the law:

- legal entities that are part of a group according to Article 2 of Act 3/2006 on Annual Accounts or are under the direct or indirect ownership of control of two or more companies within the same group; or
- there is a majority ownership over a legal entity jointly by group companies either directly or indirectly; or

- legal entities that are directly or indirectly in majority ownership or controller by individuals that are related by family, i.e. married, siblings, etc. The same applies to individuals that are connected through business relations and investments.

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

The statute of limitation is six years from the tax year-end.

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. There is a special form to be submitted with the tax return.

The form has not been completed by the tax authorities but it is expected that it should be filed with the 2016 tax return (income year 2015).

What types of transfer pricing information must be disclosed?

Not applicable as the form has not been completed by the tax authorities.

What are the consequences of failure to submit disclosures?

If affected taxpayers do not submit the form, the tax filings could be deemed incomplete. Providing insufficient or wrongful information can lead to penalty taxes being imposed on adjusted transfer pricing amounts in tax audits.

Transfer pricing study overview

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

English.

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. In certain situations a more detailed information should be provided.

According to the regulations the transfer pricing documentation requirements should include among other the following information.

- Information about the group, individual legal entities and operations:
 - brief historical overview of the group and individual legal entities
 - general description of ownership and legal form of legal entities and the tax domicile of the entities
 - description of the operations of individual legal entities and their role within the group. A general

description and organizational chart where there is a formal management system.

- Information on key markets, main competitors and competitive products of the group:
 - description of any restructuring during the fiscal year
 - financial information
 - the documentation shall include financial statements of the three preceding years for all related entities which the entity subject to the documentation in Iceland has transactions with. If the financial statements are not accessible or if they don't contain information on earnings before depreciation, interest or earnings before valuation changes and taxes that information must be specifically provided
 - if the entity subject to documentation has suffered a loss the reasons for the loss must be described.
- Information about the nature and scope of transactions:
 - description of the nature and extent of intercompany transactions
 - information on commercial terms
 - information on how the pricing decisions were made, what method according to the OECD Guidelines was used for the pricing. Whether the pricing was based on guidance from independent experts or other available methods. Furthermore the transactions should be described with reference to the OECD Guidelines comparability factors
 - recurrent transactions should be especially described.
- Service between related entities:
 - in relation to cost allocation of services, it shall be sufficiently documented that the entity subject to the documentation did in fact receive the services
 - in relation to R&D cost allocation sufficient information on the terms of allocation shall be available.
- Information on intangible assets:
 - the entity subject to documentation shall describe any

intangible asset within the group that has an effect on intercompany transactions

- information on likely resale price and net present value of expected future earning of the intangible asset shall also be presented.
- Transfer pricing methods:
 - the documentation shall contain a description of the transfer pricing method used and why it was chosen.
- Information on comparability analysis:
 - the documentation shall include a comparability analysis where appropriate
 - the analysis shall be made with reference to the OECD Guidelines comparability factors.
- Information on contracts:
 - all contracts that have an effect on the pricing of intercompany transactions shall be included
 - all Advance Pricing Agreements (APAs) and other agreements in relation to setting transfer prices shall be included in the 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

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

Yes.

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, 45 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 taxpayer has 45 days to submit its documentation.

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

The taxpayer can bring the case to the tax state internal revenue board and/or the courts.

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

Yes. General tax penalties only: up to 25 percent increase on the tax base adjusted.

To what extent are transfer pricing penalties enforced?

Not yet known as the rules just took effect 1 January 2014.

What defenses are available with respect to penalties?

Taxpayers are obliged to disclose sufficient and correct information about their transfer pricing. The defense would thus generally be to argue that the taxpayer has complied with these requirements with reasonable cause. Other defense is negotiation with tax authorities.

What trends are being observed currently?

Not applicable.

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?

Unofficially they have said that pan-European comparables should be accepted and are preferable.

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

Not applicable. Amadeus will most likely be used.

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.

Not applicable.

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

Medium.

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. There is no practice regarding this available to date.

Other unique attributes?

Not applicable.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Medium. Treaties with about 40 countries.

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 exist in this area.

May a taxpayer go to competent authority before paying tax?

Permitted. Meetings with the Directorate of Internal Revenue. However, taxes become payable upon the tax office's decision being made, so generally taxes have to be paid prior to going to the competent authority.

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. There are no APAs available in Iceland.

KPMG in Iceland

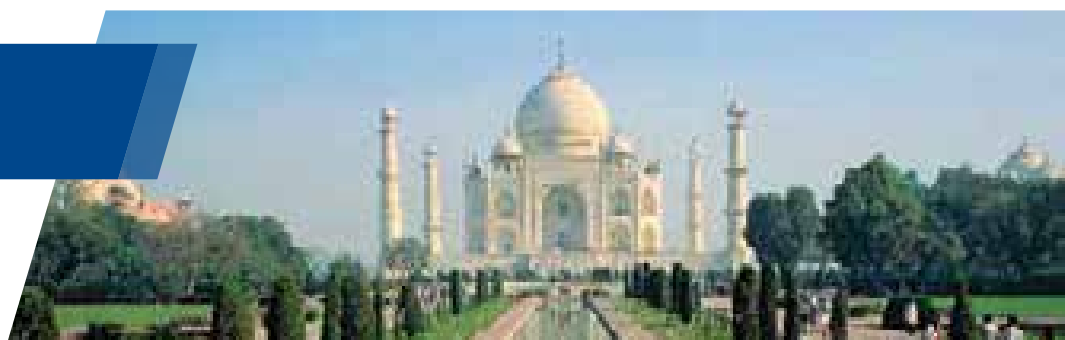
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India



KPMG observation

The Indian Transfer Pricing Regulations were introduced in 2001 and are largely in line with the Organisation for Economic Co-operation and Development (OECD) Guidelines.

Since their introduction in 2001, the Indian Transfer Pricing Regulations have come of age — both in terms of quality of audits as well as the revenue generated for the Indian government. Further, over the past few years, there has been significant guidance from Income Tax Tribunals and higher Appellate Authorities on various fundamental transfer pricing issues across industries.

The Indian Transfer Pricing Regulations extend to international as well as domestic transactions between associated enterprises. The Regulations have been developing over the years and now also aim to cover: debts arising during course of business; business reorganizations or restructuring (included irrespective of whether the same has an impact on current year's profits, income, losses or assets); and intangible properties including marketing intangibles, human assets or technology related intangibles, etc. The introduction of the Advance Pricing Agreement (APA) program in 2012 has been followed by the introduction of APA rollback regulations in 2015. All taxpayers who have filed for APAs to date will also be eligible to file for rollback of their APAs up to a maximum period of four prior years, subject to certain conditions. Even those taxpayers who have signed APAs with the government will also be eligible for APA rollbacks. However, it is important to note that before availing of a rollback of APA terms, the taxpayers and the Revenue authorities need to withdraw any pending litigation.

OECD-BEPS initiative

India has been actively involved in various action points of the OECD's Base Erosion and Profit Shifting (BEPS) Action Plan, and is engaging closely with other G20 member countries in respect of the BEPS initiative. India is also part of the BEPS Bureau, which is coordinating and guiding the work being done in all areas, and will seek to implement the guidelines issued by OECD from time to time under the BEPS initiative.

Indian transfer pricing authorities have already been adopting the OECD's approach on BEPS in relation to intangible-related returns and concurs that such returns should reside with the entity which makes strategic decisions around creation of the intangibles, and not with the entity which has mere ownership of title and funding capacity. India therefore believes that by adopting the "significant people functions" approach in determining the economic owner of intangibles, the disconnect between profit and economic activity will be significantly resolved.

In respect of the OECD's guidance on transfer pricing documentation and Country-by-Country (CbyC) reporting, the Indian Revenue authorities are of the view that the proposed three tier structure (i.e. master file, local file, and CbyC report) would assist in making proper risk assessments and identifying cases where transfer pricing audits are required.

Transfer pricing study snapshot

The purpose of a transfer pricing study

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

Basic information

Tax authority name

Central Board of Direct Taxes (CBDT).

Citation for transfer pricing rules

Sections 92 to 92F of Income-tax Act, 1961 (Act); Rules 10A to 10TF of Income-tax Rules, 1962, which now includes new Rule 10MA introducing the provisions for rollback of APAs.

Effective date of transfer pricing rules

1 April 2001.

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

The transfer pricing provisions incorporate a very wide definition of associated enterprises to include direct and indirect participation in the management, control or capital as well as certain conditions wherein two enterprises are “deemed” to be associated enterprises.

Significant conditions include:

- direct/indirect shareholding giving rise to 26 percent or more of voting power
- 90 percent or more purchase of raw materials/sale of manufactured goods by an enterprise from/to the other enterprise at prices and conditions influenced by the latter
- authority to appoint more than 50 percent of the board of directors or one or more of the executive directors
- dependency in relation to intellectual property rights (know-how, patents,

trademarks, copyrights, trademarks, licenses, franchises, etc.) owned by either party

- dependency relating to borrowings — i.e. advancing of loans amounting to not less than 51 percent of total assets or provision of guarantee amounting to not less than 10 percent of the total borrowings, etc.

In respect of deeming provisions, the regulations are now extended to transactions between an enterprise and an independent person where there is a prior arrangement between the independent person and associated enterprise, irrespective of whether such independent person is a non-resident or resident. Therefore, even transactions between two resident and independent enterprises may be covered under Transfer Pricing regulations if there is a prior arrangement between one independent enterprise and associated enterprise of the other independent enterprise.

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

The time limit for completion of a transfer pricing audit is typically 34 months from the end of the assessment year (the year immediately following the tax year). The tax year in India is the financial year (FY) i.e. 1 April – 31 March. Further, the time limit for completion of the regular tax audit (scrutiny by the Assessing Officer) is 36 months from the end of the assessment year.

However, even after the 36 months have passed, if the tax authority has reason to believe that at least 100,000 Indian rupees (INR) of taxable income has escaped assessment for any assessment year, they may reopen the assessment for those particular years, provided they issue the required notice for reopening the assessment within six years from the end of the relevant assessment year.

Further, in all cases where it is found that an international transaction has not been reported (either by non-filing or non-inclusion in the Accountant’s Report) it is considered as avoidance of income and could be reopened under the provisions of the Act.

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. Filing of the Accountant’s Report in Form No. 3CEB certifying the arm’s length nature of the international transactions and specified domestic transactions with Associated Enterprises is required to be prepared by the taxpayer and submitted to the revenue authorities. The report has to be obtained from a Chartered Accountant and submitted to the revenue authorities by the statutory due date (presently 30 November after the end of the relevant FY).

However, Transfer Pricing Study report or documentation (including the Functional analysis and Economic analysis) that supports the Accountant Report, has to be shared with the Revenue authorities, only when and if the taxpayers case is selected for detailed audit by the Revenue authorities.

What types of transfer pricing information must be disclosed?

As previously stated, the Accountant's Report is required to certify that appropriate documentation has been maintained by the taxpayer and the information disclosed is true and correct.

The following information is generally disclosed:

- name, address, permanent account number and status of the taxpayer
- name, nature of relationship and other details (as prescribed) of the Associated Enterprise with whom the taxpayer has entered into international transactions/ domestic transactions during the year
- description of international transactions entered into, including quantity, value, paid/payable, received/receivable and the method used to test arm's length criteria.

However, as mentioned above the Transfer Pricing Study has to be prepared by the statutory due date (30 November) but shared only on request.

What are the consequences of failure to submit disclosures?

The Indian Transfer Pricing Regulations have penal provisions for failure to prepare or submit disclosures:

- failure to maintain prescribed information/documents: two percent of value of international transactions / domestic transaction
- failure to file Accountant's report by deadline: INR100,000 (approximately 1,667 US dollars (USD))
- failure to report any international transaction/domestic transactions which is required to be reported: two percent of the value of international transaction/domestic transaction
- providing incorrect information or documents: penalty of two percent of the value of international transaction/ domestic transaction

- failure to furnish information or documents during the audit: two percent of the value of international transaction/domestic transaction.

Transfer pricing study overview

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

Yes, English.

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

No. India is not a member of the OECD thus does not follow the OECD Guidelines. However, there are similarities in the Indian transfer pricing Regulations and Chapter V of the regulations with respect to preparation of a transfer pricing study. The taxpayers and the Indian tax authorities have resorted to the OECD Guidelines to support principles found in the Indian Transfer Pricing Regulations and where guidance is not available. The Indian Transfer Pricing Regulations are relied upon where there are differences from the OECD Guidelines. Also a recent High Court ruling specifies, that India is not a member of the OECD, and hence these Guidelines have only persuasive status; and do not have any legal sanction.

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.

No. The transfer pricing methods in the Indian Transfer Pricing Regulations are to be followed when preparing the transfer pricing study.

The methods prescribed in the Indian Transfer Pricing Regulations are similar to those outlined in Chapter II of the OECD Guidelines. However, the Indian Transfer Pricing Regulations permits the

Central Board of Direct Taxes (CBDT) to prescribe any other method. And under this provision CBDT inserted "Other Method" in addition to the above five prescribed methods in the Transfer Pricing rules via a Notification applicable from FY 2011-12.

The "Other Method" is described as "any method which takes into account the price which has been charged or paid, or would have been charged or paid, for the same or similar uncontrolled transaction, with or between non-associated enterprises, under similar circumstances, considering all the relevant facts"

Proper documentation specifying the rejection reasons for non-application of the above five prescribed methods and the appropriateness of the "Other Method" based on the facts and circumstances of the case would have to be maintained by the taxpayer.

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.

Generally, the notice of an audit by the revenue authorities specifies the period within which the taxpayer is required to provide the required documentation.

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

There is an appellate mechanism if the taxpayer contests an adjustment proposed by the revenue authorities. It includes several stages:

- Appellate Commissioner (complemented by Dispute Resolution Panel)
- Jurisdictional Appellate Tribunals
- Jurisdictional High Courts
- National Supreme Court.

It can take three to eight years for a taxpayer to obtain a conclusive decision by the Indian judiciary.

The assessment/appellate procedure in India are generally rules-based and the authorities typically will not negotiate a settlement.

Use of mutual agreement procedure (MAP) under the tax treaties can be invoked as an alternative dispute resolution mechanism. India has entered into various double taxation treaties to avoid tax disputes whether jurisdictional conflicts or matters of interpretation.

In matters pertaining to potential double taxation or taxation not in accordance with a double tax convention, the option available before or after exhaustion of any domestic administrative appeals process is either to apply for MAP under the relevant tax treaty; or litigate the matter through the courts.

The Advance Pricing Agreements (APA) mechanism was introduced in July 2012, and provides the taxpayers with an alternate mechanism for resolution of potential transfer pricing disputes. The response to the Indian APA program has been very positive so far and a few APAs are expected to be signed in 2015.

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

The Indian Transfer Pricing Regulations have prescribed the following penalty provisions summarized below:

- in case of a post-inquiry adjustment, there is deemed to be a concealment of income — 100-300 percent of tax on the adjusted amount
- failure to maintain documents — two percent of the value of transaction
- failure to furnish documents — two percent of the value of transaction
- maintaining or furnishing incorrect information or documents — two percent of the value of transaction
- failure to furnish accountant's report — INR100,000 (USD1667)
- failure to report a transaction in accountant's report — two percent of the value of transaction.

To what extent are transfer pricing penalties enforced?

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

What defenses are available with respect to penalties?

Please refer to the information provided previously. In addition, the intent of the taxpayer is also given due consideration, i.e. whether the intent is mala fide or whether the taxpayer had made bona fide attempts to comply with the prescribed regulations. Establishing bona fide intent can provide some defense for the taxpayer.

What trends are being observed currently?

After the new government took charge, there have been lot of policy changes and positive outcomes to long debated transfer pricing litigation issues like the share valuation and the marketing intangibles controversies. In case of the share valuation issue the government has decided to accept the High Court's ruling and not to challenge it before the Supreme Court though there was an avenue to do so. Further in case of marketing intangibles issue, though the same will be covered under the ambit of Transfer Pricing Regulations, the High Court has delved deep into the fundamentals of transfer pricing and economics and has placed substantial reliance on detailed international guidance in the OECD and the ATO guidelines, by approving that there may not be a separate remuneration for marketing intangibles if such compensation is already provided by way of lower import prices or reduced payment of royalties.

Indian Revenue authorities continue to determine the arm's length value of the intra-group services as "Nil" alleging that such charges are simply a means of profit repatriation and leads to erosion of India's tax base.

Further in case of captive R&D service providers, while earlier the focus of revenue audits had largely been on the level of mark-ups, recently the Indian Revenue authorities have classified in some cases these services as 'high

value' and have sought to apply the Profit Split Method ('PSM') for performing a transfer pricing adjustment. The basis of the adjustment assumed that the R&D center performed non-routine functions and contributed to the creation of unique intellectual property which in-turn got transferred to the foreign affiliates without appropriate compensation.

To illustrate, in the most recently completed round of transfer pricing audits concluded, in January 2015 the Indian transfer pricing authorities have made adjustments to the tune of INR470 billion, i.e. approximately USD7.8 billion.

It is important to note that from the next assessment cycle beginning from March 2016 pertaining to FY 2012 - FY 2013, even the domestic transactions will be audited by the revenue authorities. It is expected that newer disputes may arise as a result.

Special considerations

Are secret comparables used by tax authorities?

Yes, although the Transfer Pricing Regulations contain no guidance on the use of secret comparables. Practically, the Indian revenue authorities have been using secret comparables in the course of transfer pricing audits. There are judicial rulings which have held that secret comparables (which are not available to the taxpayer at the time of setting its transfer prices) should not be used in the course of transfer pricing audits against the taxpayer.

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

Yes. In transfer pricing audits conducted, the Indian revenue authorities have consistently shown a marked preference for selecting Indian comparables and accordingly, in accepting the corresponding economic analysis. The tax authorities prefer local comparables in the benchmarking set and often reject foreign comparables on the basis of geographical differences or cite lack of data availability as reasons.

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

The tax authorities generally use two Indian databases, being Prowess and CapitalinePlus. In practice these two databases are also widely used by the taxpayers.

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.

The concept of Arithmetic Mean is used where more than one arm's length price was determined, till FY ended on 31 March 2014. The Finance Minister, in his budget speech of 10 July 2014, announced that the concept of price range for determination of ALP, will be introduced in the income tax rules, to align the Indian transfer pricing regulations with international leading practices. The existing concept of arithmetic mean would continue to apply where the number of available comparables are inadequate. Accordingly, the tolerance band which was available to the taxpayers shall not be available to the taxpayers for the transactions undertaken from 1 April 2014. The provisions in this regard, for the actual implementation of range concept are awaited, as the deadline for filing the return of income for FY 2014 - FY2015 shall be 30 November, 2015.

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

There is a lack of consistency between customs valuation procedures and Transfer Pricing Regulations under tax laws. The departments work at divergent purposes in relation to the same transactions. Suitable methods for valuation of imported goods should be established which are acceptable to both customs law and the transfer pricing regulations. To this end, the Indian revenue authorities set up a Joint Working Group, comprising transfer pricing and customs officers. Considering the lack of synchronization, this initiative was undertaken by the

revenue authorities in order to bring greater harmonization, coordination and communication between the two departments as regards valuation of imported goods.

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

No, management fees are deductible. However, a commercial expediency test and a benefits test are rigorously applied by tax authorities with respect to payment of management fees.

Are management fees subject to withholding?

Yes.

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

No. Royalties paid are deductible. However, a commercial expediency test and a benefits test are rigorously applied by tax authorities with respect to payment of royalty.

Are royalties subject to withholding?

Yes.

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

Yes, but only upward adjustments to income are permitted. In the course of conducting the benchmarking analysis (forming part of the preparation of the transfer pricing documentation of the taxpayer), where the taxpayer believes that the value of the international transaction reported in the financial statements is different from the arm's length price, the taxpayer may only make an upward adjustment for the additional amount of income to be offered to tax in the corporate tax return, to the extent of the difference between the actual transaction price and the arm's length price determined. The adjustment would also be required to be carried out prior to filing the Transfer Pricing Accountant's Report in Form No.3CEB. However, downward adjustments are not permitted.

Other unique attributes?

Arithmetic Mean:

The concept of Arithmetic Mean was used where more than one arm's length price was determined, till FY ended on 31 March 2014. The Finance Minister, in his budget speech of 10 July 2014, announced that the concept of price range for determination of ALP, will be introduced in the income tax rules, to align the Indian transfer pricing regulations with international leading practices. However, the existing concept of arithmetic mean would continue to apply where the number of available comparables are inadequate. Accordingly, the tolerance band which was available to the taxpayers shall not be available to the taxpayers for the transactions undertaken from 1 April 2014. The provisions in this regard, for the actual implementation of range concept are awaited, as the deadline for filing the return of income for FY 2014 - FY2015 shall be 30 November, 2015.

Multiple-year data:

The Indian Revenue authorities do not generally permit use of multiple-year data. The data pertaining to the relevant FY has to be benchmarked against comparable data of the same FY. The use of multiple year is permitted only in the event, if the previous year's data reveals facts, which could have an influence on the determination of transfer prices in relation to the transactions being compared. The onus is on the taxpayer to show such inference. However, there is no option to use the previous year's data for the tested party.

In this regard, the Finance Minister in his budget speech of 10 July 2014, proposed to amend regulations to allow the use of multiple year data for comparability analysis. However, the provisions for actual implementation are still awaited.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

India has an extensive tax treaty network and has entered into comprehensive tax treaties with 92 countries (as on 31 December 2014). India is also party to a series of treaties under negotiation.

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

Sometimes. India's general experience with MAPs is quite recent. Most MAP cases that the Indian Competent Authority has dealt with have been with the US, Japan and a few countries in Europe.

In practice, MAP as a mechanism for dispute resolution in regards to transfer pricing has not been found to be very successful until recently in India. The reason is that even after the consultation process has commenced, the process lasts for a long time and its outcome is uncertain. However, recently after the visit of the US President to India, the MAP cases between India and US, primarily in the IT/ITeS industry have been taken on fast track and are expected to be resolved soon.

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?

Yes, however before invoking MAP procedures, in some cases a bank guarantee generally needs to be submitted for the tax demand in question. This has been the procedure to date in MAP cases involving the US and UK. However, based on a recent Memorandum of Understanding signed between India and UK, the tax collection from the taxpayers of both the countries, will be suspended till the resolution of the pending MAP requests.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

Is there a filing fee for APAs?

Yes. The schedule of fees payable at the time of making the application is as follows:

- transaction value not exceeding INR1000 million — fee amount INR1 million

- transaction value not exceeding INR2000 million — fee amount INR1.5 million
- transaction value exceeding INR2000 million — fee amount INR2 million.

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. In the first three years of APAs, 386 formal APA applications were filed with the Indian Government. Multinational corporations dealing in diverse industries such as pharmaceuticals, consumer electronics, media, cement, telecom, etc. have filed applications. Several rounds of discussions are already in process and the experience has been satisfactory so far. International transfer pricing experts have welcomed the collaborative approach of the Indian APA team. Based on the latest available information, a total of nine APAs have been signed by the CBDT with the taxpayer's of which eight are unilateral and one bilateral APA with Japan.

The option of APAs can be explored in case of complex and high value transactions or where the company is already undergoing transfer pricing audit scrutiny and hence would be selected for audits again or where the company needs financial certainty with regard to future tax implications. APAs would reduce the need for documentation and costs associated with audit and appeals over APA term and facilitate transfer pricing planning. Double taxation can be avoided in case of bilateral/multilateral APAs.

KPMG in India

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Indonesia

KPMG observation

Indonesian transfer pricing has seen a flurry of activity since 2009 with the introduction of a number of transfer pricing-related regulations and a concurrent drive by the Indonesian Tax Office (ITO) to enforce them.

It is increasingly important for Indonesian taxpayers to ensure that they keep abreast of the developments to allow for both offensive and defensive strategies to avoid potentially significant adjustments and the prospect of difficult and costly dispute resolution. Experience shows that robust documentation and a sound understanding of transfer pricing policies can mitigate the impact of what may be seen as an aggressive approach by the ITO against even the most straightforward related party arrangements.

In many cases, documentation which may be seen as compliant in other jurisdictions is not accepted by the ITO and can increase the compliance burden on a taxpayer. As the ITO moves into new phases of development in transfer pricing application, KPMG in Indonesia expects to see an increase in trained resources and an accompanying increase in sophistication in approach and scope.

Mutual agreement procedures (MAPs) and Advance Pricing Agreements (APAs) are now possible in practice. The ITO has publicly stated that it will implement the Base Erosion and Profit Shifting (BEPS) recommendations, but there are no details on how and when.

Transfer pricing study snapshot

The purpose of a transfer pricing study

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

Basic information

Tax authority name

Directorate General of Taxation/
Indonesian Tax Office (ITO).

Citation for transfer pricing rules

Article 18 of the Income Tax Law.
Regulation PER43/2010 as amended by
PER32/2011.

Effective date of transfer pricing rules

Effective date of transfer pricing rules is 1984, enabling tax authority to adjust related party transactions. 2009 marks the introduction of current regulations.

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

Ownership of 25 percent, under common control, and family relationship.

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

Five years from tax year-end filing date, phased in by 2013 from previous 10 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. The taxpayer has to declare whether transfer pricing documentation covering 15 specific items is available.

What types of transfer pricing information must be disclosed?

Details of transactions with related parties including amounts, pricing methodologies and reasons.

What are the consequences of failure to submit disclosures?

It is likely that lack of disclosure will lead to increased attention by the ITO with the ultimate outcome being the need to submit documentation.

Transfer pricing study overview

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

Yes, English.

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. The Indonesian transfer pricing regulations are largely in line with 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

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

Yes.

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.

According to the Tax Procedures Law, within 30 days of request. In practice certain questionnaires are issued and the taxpayer is given seven days to complete them. However, practical experience has shown that in many cases these deadlines are flexible.

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

The taxpayer is able to object to a transfer pricing assessment and further appeal an unfavorable decision in the same way as with any tax assessment. The taxpayer can also file for a Mutual Agreement Procedure.

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

Yes. General tax penalties only: two percent per month on late payment of resulting tax, 50 percent surcharge if an objection to an assessment is lost. Surcharge increases to 100 percent if the amount is appealed and the appeal is lost.

To what extent are transfer pricing penalties enforced?

Always.

What defenses are available with respect to penalties?

Penalties will be imposed on late payment of taxes following an adjustment. The defenses against penalties are therefore the same as those against adjustments — robust documentation and a good working knowledge of how it relates to the taxpayer's situation.

What trends are being observed currently?

The ITO still focuses on services and licensing transactions and more often than not denies deductibility. For other transactions, it is moving away from applying the comparable uncontrolled price (CUP) method and starting to question economic/benchmarking analyses or performing its own benchmarking analyses.

Special considerations

Are secret comparables used by tax authorities?

Yes. However, these should not be admissible to Tax Court.

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

Yes, but there is a recognition that choices are limited and in practice Pan-Asian sets may be accepted.

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

The ITO uses Osiris and Oriana but has publicly stated that any database may be used. In practice they also perform internet searches in an attempt to apply CUPs.

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

Yes, always.

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

According to the regulations, multiple-year averages should be applied. In practice the ITO also uses single-year analyses.

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

None. There has been some discussion, but no action.

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

No, they should be properly documented with a focus on the benefit for the taxpayer.

Are management fees subject to withholding?

Yes.

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, as there are no regulations forbidding their application. In practice, downward adjustments will most certainly be questioned.

Other unique attributes?

Focus on evidence of price-setting mechanism even where benchmarking tests show prices are at arm's length. Denial of certain related party transactions at tax audit stage and deferring decision to Tax Court. Adjustments assessed without full analysis or sound basis.

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?

To date, no MAPs have been concluded although several negotiations are being conducted.

When may a taxpayer submit an adjustment to competent authority?

As soon as the dispute exists.

May a taxpayer go to competent authority before paying tax?

Yes. Taxpayers may object to assessments and this defers the payment date, subject to sanctions on any losses at objection or later appeal. In the meantime, the issue may be raised 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?

Not applicable.

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

Not applicable. No APAs have been concluded to date. However, negotiations are taking place.

KPMG in Indonesia

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Ireland



KPMG observation

Transfer pricing legislation was introduced as part of the 2010 Finance Act, effective for accounting periods on or after 1 January 2011 and applicable to trading transactions (not to non-trading activities taxed at a 25% rate). Transactions entered into prior to 1 July 2010 are grandfathered, unless the terms and conditions under which they are conducted do change.

The Irish transfer pricing rules generally follow the OECD Guidelines. The Irish transfer pricing regime applies to both cross-border and domestic transactions.

In November 2012, the Irish Revenue announced Transfer Pricing Compliance Reviews (TPCRs) as the primary process to monitor compliance with the transfer pricing regime. Transfer pricing audits may be conducted if a TPCR is not conducted in a satisfactory manner.

Some of the structures established by multinational companies with residency in Ireland may be regarded as primary targets of the OECD's Base Erosion and Profit Shifting (BEPS) initiative. The Irish government has repeatedly declared that it perceives the transfer pricing regulations in Ireland as fully compliant with the OECD Guidelines and that they will remain so.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Not applicable
Legal requirements	●	
Protection from penalties		●
Reduce risk of adjustment	●	
Shifts burden of proof	●	

Basic information

Tax authority name

Office of the Revenue Commissioners.

Citation for transfer pricing rules

Part 35A, Section 835, Taxes Consolidation Act 1997.

Effective date of transfer pricing rules

1 January 2011.

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

The transfer pricing rules will apply if (1) one of the parties participates in the management, control, or capital of the other party, or (2) if both parties fall under the management, control or capital of another party.

A party will have control over another party if it is able to control the affairs of the other party in such a way that they are conducted in accordance with the wishes of the controlling party by virtue of shareholding, voting power or articles of association.

There is no fixed participation quota or shareholding stated in the regulations.

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

There are no specific limitations for transfer pricing, but the general rule is four years from the year-end, in which tax return is filed.

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)?

No.

What types of transfer pricing information must be disclosed?

Not applicable.

What are the consequences of failure to submit disclosures?

Not applicable.

Transfer pricing study overview

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

Yes, English, Irish.

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. While there are no specific requirements set down in the legislation, the OECD Guidelines should be followed when preparing a transfer pricing study. The Irish tax authorities have stated that the form and manner that the documentation takes will be dictated by the facts and circumstances of the transactions and that the costs involved in preparing the documentation should be commensurate with the risk involved. Additionally, if documentation exists in another territory which supports the Irish arrangement, this will also be sufficient from an Irish transfer pricing perspective as long as the documentation is in English.

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.

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, 28 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.

Documentation should be prepared on a timely basis, but no specific time deadline is outlined. Normal practice in a tax audit is to expect documentation within 28 days of request. If a company is selected for a TPCR, the timeline for submission is three months.

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

Yes. The standard tax appeal procedures are available.

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

Yes. No specific transfer pricing penalties are included within the legislation, so the standard interest and general tax penalty provisions will apply. Under general tax penalties provision, interest arises on underpaid tax at a daily rate of 0.0219 percent (equivalent to 7.99 percent per annum). The Irish

tax authorities charge penalties for three categories of negligence on the part of the taxpayer. The categories are insufficient care (20 percent of tax underpaid), careless behavior (40 percent) and deliberate behavior (100 percent). These standard penalties can be reduced by co-operation and by disclosure of the taxpayer.

To what extent are transfer pricing penalties enforced?

It remains to be seen how the Irish tax authorities will enforce penalties to transfer pricing transactions. It is expected that penalties will be levied in the same manner as general tax penalties.

What defenses are available with respect to penalties?

Sufficient transfer pricing documentation.

What trends are being observed currently?

TPCR have started during 2013. Irish Revenue is in the process of increasing its resources both in terms of staffing transfer pricing experts and utilizing transfer pricing specific databases.

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.

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.

None.

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

Low.

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

Yes. The general deductibility rules for costs and expenses applies to all expenses to ensure they were incurred "wholly and exclusively" for the purpose of the Irish trading activity.

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?

No.

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

Yes. The arm's length standard of any adjustments should be explained in the transfer pricing documentation prepared.

Other unique attributes?

None.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

The Irish double tax treaty network is 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?

There is no specific timing or form for making a Competent Authority request. The tax treaty between Ireland and the counterparty jurisdiction may require a claim for double tax resolution to be made within a specified time period.

There is no specific document requirement either.

May a taxpayer go to competent authority before paying tax?

No.

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. The Irish tax authorities have been willing to enter into bilateral APA negotiations once a case has been successfully accepted into the APA program of the other jurisdiction. It remains to be seen whether Ireland will formalize its APA procedures.

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Israel

KPMG observation

The Israeli transfer pricing regulations require companies to list all international transactions on the corporate tax return (Form 1385) and to declare that the transactions were conducted according to “market conditions”.

As a member of the Organisation for Economic Co-operation and Development (OECD), Israel will be affected by the planned changes relating to transfer pricing as a result of the OECD’s Base Erosion and Profit Shifting (BEPS) Action Plan. The potential effects and implications will be clearer as the specifics of the initiative take form and move closer to implementation.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Not applicable
Legal requirements	●	
Protection from penalties		●
Reduce risk of adjustment	●	
Shifts burden of proof	●	

Basic information

Tax authority name

Israel Tax Authority.

Citation for transfer pricing rules

Israel Tax Ordinance Section 85A and Israel Tax Regulations (Market Conditions Determination), 2006.

Effective date of transfer pricing rules

29 November 2006.

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

In general, any special relationship (controlled directly or indirectly by the same interest). Specifically (but not limited to): ownership or control of 50 percent or more.

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

Three years from end of year of tax return submission. May be extended in special cases.

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 Market Conditions Survey should be prepared and a special declaration form should be submitted with the corporate tax return (form 1385).

What types of transfer pricing information must be disclosed?

Ongoing or one-time transaction, description of intra-group transaction, details and location of foreign related party to the transaction, and total transaction price. The form must be signed under the declaration that the transaction was conducted under “market conditions” as described in Section 85A and the transfer pricing regulations.

What are the consequences of failure to submit disclosures?

Statute of limitations begins following full submission. Burden of proof falls on taxpayer.

Transfer pricing study overview

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

Yes, English and Hebrew.

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.

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 Comparable Uncontrolled Price is preferable to all other methods. The transaction-based methods (cost plus or resale price) have priority over the transactional net margin method.

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, 60 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.

Within 60 days of request.

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

Appeals, courts, and treaties.

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

No specific transfer pricing penalties, however, general tax penalties applies.

To what extent are transfer pricing penalties enforced?

Not applicable.

What defenses are available with respect to penalties?

Documentation or negotiation.

What trends are being observed currently?

Restructuring and intellectual property (IP) migration are under scrutiny from the Israeli Tax Authority.

The Tax Authority takes the position that stock options must be included in the cost base. It should be noted that in many circumstances, stock options are not deductible expenses for tax purposes.

In addition, the Tax Authority has taken an aggressive approach and is assessing secondary adjustments in cases where a transfer pricing adjustment is made.

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. In the case of an Israeli tested party, the authorities generally expect US or European comparables.

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

No specific requirements (in practice, Israeli tax authorities use Osiris and Amadeus databases).

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

Yes, always.

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.

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

No. Management fees conducted at arm's length are deductible.

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, but we recommend seeking professional advice before doing so.

Other unique attributes?

Not applicable.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive, approximately 40 countries.

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 domestic rules, depends on treaties.

May a taxpayer go to competent authority before paying tax?

No formal domestic rules, depends on treaties.

Advance pricing agreements

What APA options are available, if any?

Unilateral.

Is there a filing fee for APAs?

No. At this stage, there are no filing fees.

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. The APA procedure is lengthy.

KPMG in Israel

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Italy

KPMG observation

At this stage, there are no official observations from the Italian Tax Authorities on the Base Erosion and Profit Shifting (BEPS) initiative. Most of the comments from Italian tax and legal firms on the discussion drafts issued by the Organisation for Economic and Co-operation Development (OECD) emphasize the need to find a balanced approach between new requests for information deriving from the country-by-country report and the additional administrative burden on the taxpayer. In this regard, it is suggested that more certain and objective criterion are introduced to evaluate the materiality of intra-group transactions to be included in the new documentation requirements. In addition, some advice entrusting judgment on the adequacy of transfer pricing documentation to an independent arbitrator.

With regard to the UN Practical Transfer Pricing Manual for Developing Countries, it is observed that the report is consistent with the OECD Guidelines and offers adequate operational details on transfer pricing methods and comparability analyses. Therefore, it is deemed to represent a good opportunity to help developing countries in defining their transfer pricing policies. However, also in this regard, no public comments from Italian tax authorities are currently available.

Transfer pricing continues to be an area of focus in Italy. The number of multinationals under scrutiny for transfer prices persists on a steady increasing trend, following instructions by the Italian tax authorities on tax inspection activities and the introduction of transfer pricing documentation rules. The presence of transfer pricing documentation for Italian companies that are part of multinational groups, although not mandatory, is now considered as an ordinary requirement in practice during tax audits.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Not applicable
Legal requirements		●
Protection from penalties	●	
Reduce risk of adjustment	●	
Shifts burden of proof	●	

Basic information

Tax authority name

Ministero dell'Economia e delle Finanze (Italian Ministry of Economy and Finance).

Citation for transfer pricing rules

Basic transfer pricing rules are contained in Article 110 (7) of the Italian Income Tax Code (Presidential Decree of 22 December 1986, no. 917 and subsequent amendments).

The penalty protection regime for taxpayer preparing transfer pricing documentation is contained in Article 1, paragraph 2-ter of Legislative Decree of 18 December 1997, no. 471, introduced by Article 26 of Law Decree no. 78 of

31 May 2010, converted into Law no. 122 of 30 July 2010. Documentation rules are contained in the decision of the Commissioner of Italian Revenue Agency dated 29 September 2010. Clarifications on transfer pricing documentation rules were provided with circular letter no. 58/E, dated 15 December 2010.

Advance Pricing Agreement (APA) regulations are contained in Article 8 of the Law Decree no. 269/2003 converted with modifications into Law no. 326/2003 and in the related regulations issued on 24 July 2004.

Mutual Agreement Procedure (MAP) guidelines were provided by circular letter no. 21/E, dated 5 June 2012.

Effective date of transfer pricing rules

1 January 1988.

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

Ownership of greater than 50 percent, based on voting power, share capital, and parties that are under common control.

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

Four years from filing date of the relevant tax return. The exact term is 31 December of the fourth year subsequent to the one in which the tax return is filed. In the event of a violation implying criminal sanctions as provided for by the tax criminal law (legislative decree no. 74 dated 10 March 2000), the terms for an assessment of the tax periods during which the crime was committed are doubled.

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. From FY 2010, taxpayers may choose to, but they are not obliged to, communicate the existence of the transfer pricing documentation every year in the tax return. Therefore, the preparation, as well as the disclosure, of transfer pricing documentation is not mandatory.

What types of transfer pricing information must be disclosed?

Information to disclose in the tax return include the existence of intra-group relationships and the amount of costs and revenues relating to intra-group transactions. A description and amount of intra-group transactions must also be indicated in the annual financial statements.

What are the consequences of failure to submit disclosures?

The failure in submitting disclosure of the existence of intra-group relationships and the amount of costs and revenues relating to intra-group transactions is subject to the ordinary tax penalties applying for formal inaccuracies (ranging from EUR251.73 to EUR1,006.91 pursuant to the provisions of Article 8 of Legislative Decree no. 471 of 18 December 1997.

However, an incorrect or missing disclosure of the existence of intra-group relationships could be considered an obstacle to the assessment activity performed by the Italian tax authorities and therefore may cause an increase in the penalties ordinarily applying in case of tax adjustments (ranging from 100 to 200 percent of additional taxes due).

The disclosure of existence of transfer pricing documentation is one of the conditions required to prevent application of the ordinary tax penalties that would apply in the case of transfer pricing adjustments. Therefore, a failure to prepare or submit disclosures would mean that penalties are applied to taxpayers.

Transfer pricing study overview

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

Yes. The documentation has to be filed in Italian. The only exception is for the Masterfile prepared by an EU holding company and submitted by an Italian sub-holding company, which can be drafted in English.

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. Nevertheless, in order to obtain penalty protection, the documentation must be prepared in accordance with the provisions of the above mentioned Article 26 that outlines a rigid formal structure and detailed information on the content of the transfer pricing documentation. The structure of the documentation makes also reference to the guidance provided by the European Union (EU) Code of Conduct on Transfer Pricing Documentation. Consequently, the documentation must follow the EU definition of "master file/country specific documentation" concept, depending on the qualification of the company (i.e. holding, sub-holding or subsidiary).

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.

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, 10 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 documentation must be submitted in a timely manner, i.e. within 10 days from request. Supplementary

information must be provided within seven days of request or in a longer time period depending on the complexity of the transaction, to the extent that such period is consistent with the time of the audit. According to Italian law, tax audits must be finalized in a maximum of 30 working days, which can be extended by additional 30 days.

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

Yes. The taxpayer may choose from a range of different dispute resolution options.

Agreement on the “note of inspection” (adesione al pvc), which implies accepting in full all the adjustments proposed subsequently to a tax inspection and paying the relevant taxes, penalties and interest due within 30 days. Under this procedure, penalties are reduced to one-sixth of the amount of taxes due.

So-called “voluntary assessment procedure” (accertamento con adesione), which implies a negotiation with the tax authorities, in order to reduce the amount of the adjustment and consequent additional taxes, penalties and interest. Under this procedure, the amount of penalties is reduced to one-third of the final amount of taxes resulting from the agreement. This procedure interrupts the terms for litigation and — if an agreement is reached — no further litigation is possible.

“Judicial conciliation” (conciliazione giudiziale), which consists of reaching an agreement with the tax authorities during the litigation phase but before the first hearing of the tax court. In this case, a reduction of penalties is granted up to 40 percent of the amount of taxes resulting from the agreement.

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

Yes. If the taxpayer does not qualify for the penalty protection regime, general tax penalties apply in an amount ranging from 100 to 200 percent of the additional taxes resulting from the transfer pricing adjustments.

To what extent are transfer pricing penalties enforced?

If the taxpayer does not qualify for the penalty protection regime, penalties are always applied in case additional taxes arise from transfer pricing adjustments.

What defenses are available with respect to penalties?

“Appropriate” documentation, as detailed previously. In cases where no documentation is prepared, or it is not be considered as “appropriate” to qualify for penalty protection, penalties can be reduced under the above described dispute resolution options (i.e. agreement on the note of inspection, voluntary assessment procedure, judicial conciliation).

In the case of tax losses in the current year or carried forward, they can offset the amount of the transfer pricing adjustment and, consequently, reduce the amount of taxes due and resultant penalties (however this only applies in respect to IRES (corporate income tax) and not for IRAP (local tax) purposes).

What trends are being observed currently?

The attention of tax authorities on intra-group transactions during tax audits continues to remain very high and the number of audits (i.e. inspections and assessments) on intra-group transactions within multinational groups has risen. Transfer pricing audits are usually performed every two to three years (particularly on large companies), and carried out by more skilled officials and/or specifically dedicated departments of the tax authorities. Sometimes the Italian tax authorities tend to adopt an aggressive approach, by requiring further documentation (in addition to that the company makes available at the beginning of a tax audit) with a very challenging deadline, exerting considerable pressure on personnel involved in the tax inspection.

Furthermore, the measure of the penalties due upon transfer pricing adjustments resulting in additional taxes is sometimes higher than the minimum (100 percent), ranging around 120-150 percent of the additional tax assessed. In addition, there are sometimes challenges on transfer pricing documentations by the Italian tax authorities, related to a tendency aiming

at trying to dispute the application of the penalty protection regime.

Additionally, with regard to the type of intra-group transactions analyzed during tax audits, there is a growing interest on intangibles and related royalty issues by the Italian tax authorities and financial transactions. In recent years the Italian tax authorities have focused more on “relocation abroad” (esterovestizione) and “permanent establishments” issues, including attribution of profits and free capital to permanent establishments.

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. In principle, the presence of local comparables in a benchmarking set is preferred, although it is recognized that the choice between local comparables and broader sets depends on the comparability of economic circumstances, including characteristics of the market of reference for the transaction under analysis.

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

No. The database should be selected depending on whether the benchmarking study is performed in order to identify local comparables (Aida) or international comparables (Amadeus/Orbis).

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

Yes, always.

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

When performing a TNMM analysis, the Italian tax authorities tend to focus on the interquartile values of the arm’s length range, as they are considered to be the most representative indicators of the potential comparable companies included in the final set resulting from the analysis.

In case of transfer pricing adjustments, i.e. when the tested party's margin does not fall within the interquartile range, the Italian tax authorities generally adjust the tested party's margin to the median of the range.

Additional preference is made towards Italian comparables for an Italian tested party. More specifically, when a Pan-European comparable search does not have a sufficient number of Italian comparables in the final set, the Italian tax authorities may reject it as acceptable for an Italian tested party and perform their own search, using the local Italian database.

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

Low. The interaction appears to be very low in practice, although in principle it has been expressly admitted that in some cases the tax authorities may take into consideration the value defined for customs purposes in order to appraise the transfer prices.

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

Yes. The deduction of management fees, in addition to compliance to transfer pricing rules, is subject to certain domestic rules requiring compliance to the so-called "inherence" requisite. Accordingly, apart from respect of the arm's length principle, deduction of management fees requires the demonstration of the actual provision of services and of the potential benefit for the recipient, to be provided by means of appropriate documentation, supplementary to transfer pricing documentation.

Are management fees subject to withholding?

No.

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

Yes. In compliance with the so-called "inherence" principle, royalties paid for patents, trademarks, know-how and similar rights are deductible to the extent that they are strictly connected to the taxpayer's ordinary business and that they are determined in accordance with the arm's length principle.

The taxpayer should produce adequate supporting documentation in order to substantiate the situation, i.e. the respect of the "inherence" principle and that the intangible property received is capable to bring benefits to the company.

In addition, the transfer pricing studies supporting the determination of the royalty rate applied should be reviewed in the light of the pre-determined indicators provided by the Italian Ministry of Economy and Finance in 1980 and, in general, should be compliant with the Italian best practices.

Are royalties subject to withholding?

Yes.

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

Yes. In principle year-end transfer pricing adjustments or true-ups are permitted. However, in managing such adjustments close attention should be paid as they are deeply scrutinized by the Italian tax authorities. Therefore, it would be preferable to support year-end adjustments with detailed documentation and by means of a specific provision in the relative agreements.

In addition, downward year-end adjustments must be recorded in the accounts to be tax deductible, whereas only upward adjustments can be made to taxable income in the tax return when they have not been recorded in the accounts. However, in this latter case, in order to support the reliability of the accounts, under local generally accepted accounting principles (GAAP), it is considered appropriate to make a specific note in the financial statements. VAT and customs implications need to be appropriately addressed and also Intrastat reporting fulfilments. Specific penalties may apply for failure to such accomplishments.

Other unique attributes?

The analysis on the arm's length nature of the intra-group transactions should be performed on a yearly basis and not on multiple year data. However, for benchmarking purposes, reference is made to comparable data of the last three years preceding the year under examination.

Some indications about arm's length royalty rates were provided by the Italian Ministry of Economy and Finance in 1980, which are still used as reference during tax audits and, in some cases, also by tax courts. However, their widespread application is under discussion and more complex analyses are now carried out by tax authorities on intangibles.

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. It is generally effective within the EU under the EU Arbitration Convention. Outside the EU, competent authority procedures cannot be considered as effective. However, there are some signs of improvement.

When may a taxpayer submit an adjustment to competent authority?

The procedure is regulated in accordance with the applicable tax treaties (if any) either by referring to the corresponding adjustment provided by Article 9 (2) of the OECD Model Tax Convention or to the mutual procedure provided by Article 25 of the OECD Model Tax Convention. In addition, for adjustments between EU countries, the Arbitration Convention would apply.

May a taxpayer go to competent authority before paying tax?

Yes, if a competent authority procedure is started following a tax assessment, under the MAP suspension of payment of additional taxes due may be obtained.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

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?

No. The number of APAs under discussion in Italy has largely increased and the timing for the conclusion of an APA has significantly been reduced, according to the latest statistics (from 18-20 months, to 15 months on average, in the last three years).

KPMG in Italy

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Japan

KPMG observation

Transfer pricing is, and has been, a key focus of the Japanese tax authorities.

The 2011 Tax Reform, in particular, was noteworthy for taxpayers, as it was comprehensive and tried to follow the 2010 Organisation for Economic Co-operation and Development (OECD) Guidelines. It introduced several important concepts, such as the most appropriate method rule, arm's length range, secret comparables, and clarified use of profit split methods.

The 2012 Tax Reform did not include major changes in transfer pricing areas, although it had some important changes in tax investigation procedures in general that have had quite an impact on transfer pricing examinations.

The tax code has not been drastically changed in terms of transfer pricing since 2013, however, KPMG in Japan expects that the tax code will be changed and ratified around March 2016 according to reflect the OECD Base Erosion and Profit Shifting (BEPS) initiative.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Not applicable	Submission to tax authority required
Legal requirements			●
Protection from penalties		●	
Reduce risk of adjustment	●		
Shifts burden of proof		●	

Basic information

Tax authority name

Kokuzei-cho; National Tax Agency (NTA).

Citation for transfer pricing rules

Special Taxation Measures Law, Article 66-4 and Enforcement Cabinet Order of Special Taxation Measures Law, Article 39-12.

Effective date of transfer pricing rules

1 April 1986, in general.

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

Ownership of 50 percent or greater.

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

Six years after the fiscal year-end in principle but details are complicated.

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 relating to companies' related party transactions are required to be submitted with the tax return.

What types of transfer pricing information must be disclosed?

One must disclose the nature of the transaction and name of the counterparties, the selected transfer pricing methods, the amounts of the transactions, and whether any transactions are subject to an Advance Pricing Agreement (APA). This information is required on specific forms within the tax return.

What are the consequences of failure to submit disclosures?

Nothing specifically mentioned in the regulations.

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, with some exceptions. Specific documents required are listed under Special Taxation Measures Law (STML) Enforcement Regulations Order, Article 22–10, but major elements include company overview, description on intra-group transactions, functional and risk analysis, industry analysis, selection of method, description of comparables, and, economic analysis.

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, with some exceptions. Use of the so-called 'other method', even in cases where there is no other choice, has no clear authority in the Japanese regulations.

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.

No specific rule, but documentation has to be submitted on a timely manner after the request, possibly within 30 days or so.

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

Domestic administrative protest procedures available to the taxpayer include a request for reinvestigation followed by a request for reconsideration and appeal at district court level.

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

Yes, general tax penalties for underpayment only, 10 to 15 percent of incremental amount of tax assessed.

To what extent are transfer pricing penalties enforced?

There is no transfer pricing specific penalty, if the taxpayer received a transfer pricing assessment, penalties are imposed in the same manner with general corporate tax audit.

What defenses are available with respect to penalties?

Not applicable.

What trends are being observed currently?

More and more audits are focused on intangible and intra-group service transactions as well as transactions within Asia. The number of cases has steadily increased and the amount of assessment per case may be decreasing.

Special considerations

Are secret comparables used by tax authorities?

In very limited cases. If used, they have reduced evidence value in court.

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

Yes. It is usually not acceptable to omit Japanese comparables where the Japanese entity is the tested party.

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

They have access to ORBIS, Compustat and others, but they have no special preferences.

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

Yes, always.

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

Not applicable.

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

Very Low.

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

No, if they are arm's length.

Are management fees subject to withholding?

No.

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

No, it is deductible as long as the royalty is arm's length.

Are royalties subject to withholding?

Yes.

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

Yes, but it should be carefully executed. It has to be pre-agreed and clearly show a change of transfer prices (not transfer of profit).

Other unique attributes?

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?

Frequently.

When may a taxpayer submit an adjustment to competent authority?

Where double taxation occurs, or the possibility of occurrence of double taxation is very high. In practice, an adjustment to competent authority is submitted after an assessment is issued.

May a taxpayer go to competent authority before paying tax?

Taxpayers can request a grace period under certain conditions.

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?

Yes.

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

No. Very successful.

KPMG in Japan

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Kenya

KPMG observation

Although the introduction of transfer pricing rules in Kenya is fairly recent, the Kenya Revenue Authority (KRA) has since started to conduct transfer pricing audits. The KRA currently chairs the Africa Tax Administrators Forum Transfer Pricing roundtable and assists other African tax authorities in performing transfer pricing audits. The KRA has so far issued assessments (deficiency notices) of up to USD50 million to taxpayers and it is expected that this focus on transfer pricing will continue since all ongoing tax audits must incorporate a report of findings on taxpayer transfer pricing activities.

As a recent trend, KPMG in Kenya notes that there has been increased cooperation between Kenya and other competent authorities around the world for both information sharing and settling transfer pricing disputes through mutual agreement procedures (MAPs).

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable
Legal requirements	●
Protection from penalties	●
Reduce risk of adjustment	●
Shifts burden of proof	●

Basic information

Tax authority name

Kenya Revenue Authority (KRA).

Citation for transfer pricing rules

Legal Notice no. 67 of 2006 and Section 18 (3) of the Income Tax Act (ITA).

Effective date of transfer pricing rules

1 July 2006.

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

An enterprise will be deemed to be related to another:

- if one of the enterprises participates directly or indirectly in the management, control or capital of the other enterprise or a third; person participates directly or indirectly in the management, control or capital of both enterprises; or

- where an individual who participates in the management, control or capital of the business of one, is associated by marriage, consanguinity or affinity to an individual who participates in the management, control or capital of the other.

The transfer pricing rules apply to cross-border transactions and to transactions undertaken between a permanent establishment and its head office or other related branches.

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

Seven years from the year to which the income relates.

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. Although the ITA does not require taxpayers to include copies of transfer pricing documentation when submitting the annual tax return, the KRA has introduced an online tax return platform where taxpayers should disclose details of the related party transactions.

What types of transfer pricing information must be disclosed?

The disclosure required while filing the tax return is the related party, the transaction value and description of the transaction.

What are the consequences of failure to submit disclosures?

The consequences of not providing the related party disclosures details entails filing an erroneous return and it is a trigger for an audit.

Transfer pricing study overview

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

It should be in English.

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. Transfer pricing documentation should be reviewed annually to ensure that it remains relevant in view of changes in the business environment. According to the transfer pricing rules (paragraph 10), the Commissioner can request documentation at any time, and thus documentation must be readily available.

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. However, the Commissioner may prescribe other methods where in his opinion, the Chapter II methods (which are similar to those in the transfer pricing rules) do not yield an arm's length price.

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 KRA may require a taxpayer to furnish documentation within a specified time, usually no less than 30 days.

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

An aggrieved taxpayer has recourse through an appeal procedure system established under the ITA. The order of appeal for an adjustment proposed by the tax authorities is as follows:

- first level: Local Committee
- second level: High Court of Kenya
- third level: Court of Appeal; and
- fourth level: Supreme Court of Kenya.

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

A sustained adjustment results in unpaid corporation tax. Any assessment raised

is arrived at based on the impact of the existing transfer pricing policy on taxable profits and consequently on corporation tax. Therefore, in arriving at the tax payable on the revised taxable profit, the KRA applies the corporation tax rates of 30 percent on residents and 37.5 percent on non-residents.

Under the ITA, penalties accrue on unpaid taxes at the rate of 20 percent. Additionally, the principal tax outstanding attracts interest at two percent per month over the period it remains unpaid. However, because of the in duplum rule, the interest is capped to a maximum of the principal tax assessed on adjustment.

To what extent are transfer pricing penalties enforced?

Transfer pricing penalties are enforceable to the full extent of the Income Tax Act. The Commissioner may recover the taxes due from the person assessed e.g. through attaching bank balances and registering liens over fixed assets.

What defenses are available with respect to penalties?

Documentation forms the basis for penalty protection. A taxpayer is expected to capture all justification in the transfer pricing documentation for demonstrating the arm's length nature of prices charged on intra-group transactions.

What trends are being observed currently?

The tax authority is vigilant on training its staff on transfer pricing to ensure enforcement of the transfer pricing rules. For example, transfer pricing audit teams are specializing based on the different aspects of a documentation report. Thus the KRA audit team will have an expert on functional analysis, asset analysis, risk analysis, economic analysis etc. Additionally, the tax authority has subscribed to Orbis as a benchmarking tool. This tool has over 65 million companies in its database and is more advanced than the benchmarking tools currently in use by most tax advisors.

The KRA is conducting more audits on multinational corporations and levying tax penalties on transfer pricing adjustments on sale of goods and services, financial transactions, shared services, etc.

Special considerations

Are secret comparables used by tax authorities?

No secret comparables are used by the revenue authorities.

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

Yes. KRA has expressed a preference for local comparables, especially where comparable uncontrolled prices are readily available and have intimated the possibility of making country risk adjustments where comparables from different geographical locations such as Europe are used.

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

No. The KRA does not have requirements or preferences regarding databases to be used for comparables. However the larger the database to be used, the more optimal the transfer pricing benchmarking results. As stated earlier, KRA is at an advantage as it uses a more comprehensive database (Orbis). This may result in differing benchmarking results as compared to other databases, consequently resulting in tax exposures to the particular companies involved.

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.

Preference is given to the CUP method if it is available.

The KRA advocates for the use of the median and are not comfortable with accepting that the arm's length price lies within the interquartile range.

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

In Kenya, all domestic taxes are administered under the Commissioner of Domestic Taxes of the KRA, even though Customs is headed by a Commissioner. These domestic taxes include: customs and excise duties, VAT, and, corporation tax among others. As such, the level of interaction among these tax administration departments is relatively high.

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

Yes, some. Management's fees paid by a branch to the head office are not deductible expenses in arriving at the taxable profits. They are also not subject to withholding tax. Management fees beyond the arm's length price, will not be allowable deductions when arriving at the taxable income for corporation tax.

Are management fees subject to withholding?

Yes.

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

Yes. Where the royalty payments exceed the arm's length price, the excess royalty payments will not be allowable deductions when arriving at the taxable income for corporation tax.

Are royalties subject to withholding?

Yes.

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

Yes, but it should be carefully executed. It has to be pre-agreed and clearly show a change of transfer prices (not transfer of profit).

Other unique attributes?

Before the issuance of the specific transfer pricing legislation, the KRA had engaged a Kenyan multinational in the High Court with regard to transfer pricing issues. The KRA has also proposed to amend the annual tax return to include a section on transfer pricing disclosures.

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?

Sometimes.

When may a taxpayer submit an adjustment to competent authority?

In the event that the tax adjustment will affect both countries, it may involve transfer of profits and therefore impact on the tax paid with respect to the respective years.

May a taxpayer go to competent authority before paying tax?

Yes, we have previous experience with competent authority in UK (HMRC).

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.

KPMG in Kenya

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Latvia



KPMG observation

Latvian legislation requires a written transfer pricing study if a taxpayer's annual net turnover exceeds 1.43 million euros (EUR) and intra-group transactions undertaken exceed EUR14,300.

Latvian transfer pricing regulations generally follow the Organisation for Economic Co-operation and Development (OECD) approach.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Required to be contemporaneous	Not applicable	Thresholds apply/exist
Legal requirements	●			●
Protection from penalties			●	
Reduce risk of adjustment	●	●		
Shifts burden of proof	●	●		

Basic information

Tax authority name

Valsts ienemumu dienests.

Citation for transfer pricing rules

General transfer pricing requirements to carry out related party transactions at arm's length prices are set out in the Latvian Law on Corporate Income Tax.

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.

The Cabinet of Ministers regulation No. 556 as of 1 July 2006 provides the methods to be used when determining arm's length prices. The tax legislation in Latvia allows the use of Organisation for Economic Co-operation and

Development (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 (TNMM) and profit split. 1 January 2013 for transfer pricing documentation requirements and Advance Pricing Agreements (APAs).

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

Any transaction between foreign related companies (20 percent ownership and above) or Latvian companies belonging to the same group of companies (at least 90 percent ownership or voting rights) must be carried out on an arm's length basis, i.e. market value.

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 five years for transactions with foreign related parties and three years for local related party transactions — starting from the corporate income tax payment date.

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. An entity is required to disclose related party transactions to the tax authority in 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; and
- the amount for which taxable income is increased (the amount of transfer pricing adjustment), if any.

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

What are the consequences of failure to submit disclosures?

A penalty can be applied for late filing of a tax return varying from EUR70 — EUR700. If no return is filed, the maximum penalty can be applied EUR700.

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.

Latvia is not a member of the OECD, thus the OECD Guidelines are not applicable. However, Latvian legislation is based on the OECD Guidelines, and the court practice shows that the taxpayer and tax authorities should take into consideration the provisions 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

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

Yes. All five methods are acceptable.

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.

A month, if the taxpayer is required to prepare full transfer pricing documentation.

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

The only option available is appealing the audit decision to General Director and then to the court.

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 the tax infringement is not considered as a repeated tax infringement and the taxpayer has complied with the statutory due dates for submitting tax declarations and tax payments, as well as has been cooperative with the tax administration.

To what extent are transfer pricing penalties enforced?

Always.

What defenses are available with respect to penalties?

No penalties are assessed in a loss position, where no additional tax is assessed. Furthermore, the taxpayer can enter into an agreement with the tax authorities whereby the taxpayer agrees

with the assessment and as a result part of the late payment fees and penalties are cancelled.

What trends are being observed currently?

The tax authority's interest in transfer pricing has increased and as a result 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 use that as an argument to challenge 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.

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

Yes, always.

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

The tax authority's approach is not officially documented and published. KPMG is aware that the tax authorities have their reservations with respect to three-year averages, especially where the tested party's price or profitability levels fall into interquartile range of average profitability, but not within the range of a particular year.

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

High. The audit is combined and as such, customs and transfer pricing audit specialists work side by side in the audit team.

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

No, provided the benefit can be demonstrated.

Are management fees subject to withholding?

Yes.

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

No.

Are royalties subject to withholding?

No.

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

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

Furthermore, the taxpayer is in certain cases even required to make period (e.g. year-end) adjustment for ongoing related party transactions if actual payments over the year are not arm's length.

If the transfer pricing adjustment is made in the tax return and one of the parties is engaged in VAT exempt transactions, VAT adjustments for the transactions might be required.

Other unique attributes?

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?

KPMG in Latvia has no experience with double tax relief being requested for transfer pricing adjustments under the double tax treaty.

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?

Yes.

Advance pricing agreements

What APA options are available, if any?

Unilateral.

Is there a filing fee for APAs?

Yes. The fee per APA is EUR7,114.

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?

Not applicable. APAs were introduced only few years ago, thus there is no established practice or trend yet.

KPMG in Latvia

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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

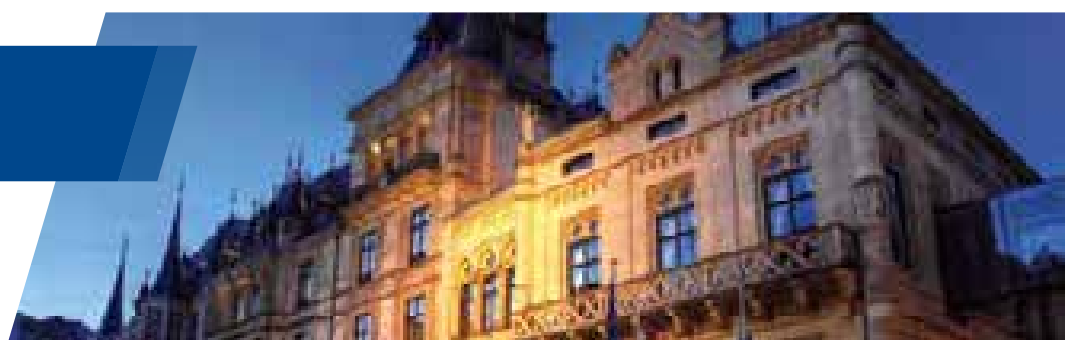
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Luxembourg



KPMG observation

Effective 1 January 2015, Article 56 of the Luxembourg Income Tax Law makes explicit reference to the (arm's length) conditions agreed between independent businesses as a standard for evaluating the conditions agreed between related parties for all transactions. The Article does not make a distinction between cross-border and domestic intra-group transactions. Hence all intra-group transactions' prices should be supported by transfer pricing documentation. Currently, the law is very general and taxpayers in Luxembourg is waiting for some circulars in the near future for more guidance.

In addition, and also effective 1 January 2015, §171 of the General Tax Law — which states that upon of request of the Luxembourg tax authorities a taxpayer has to prove the accuracy of their tax return — now explicitly encompasses transactions between associated enterprises.

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

Ministère des Finances.

Citation for transfer pricing rules

Luxembourg Income Tax Code; General Tax Law, Article 56, Article 97 (1), Article 164; paragraph 5 and 6 StAG. Circular LIR 164/2 of 28.01.11. Circular LIR 164/2 bis of 08.04.11.

Effective date of transfer pricing rules

28 January 2011 for intra-group financing activities only and 1 January 2015 for every intra-group transaction.

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

Transactions between related parties, whether directly or indirectly, which do not comply with the arm's length principle (Article 56 LIR) and such transactions with direct or indirect

shareholders or persons close to them (Article 164 LIR).

Threshold as defined by Article 9(1) of the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention for associated enterprises.

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

Five years from the issuance of the tax assessment by the tax authorities (10 years in the case of fraud).

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)?

No. However, it is recommended to enclose proper transfer pricing documentation to the corporate tax return for every significant intra-group transaction.

What types of transfer pricing information must be disclosed?

Disclosures related to transactions of special interest to the tax authority or related to specific computations/tax treatment must be made in the corporate tax return in order to evidence that the pricing and/or tax treatment previously agreed is respected. These disclosures are not listed per se in any specific regulation and are mainly based on the Luxembourg administrative practice. In any case, where an Advance Pricing Agreement (APA) has been submitted to the tax authorities, a transfer pricing study must be enclosed.

In addition, as from 1 January 2015, a new subparagraph under §171 of the General Tax Law, which states that upon request of the Luxembourg tax authorities the taxpayer has to prove the correctness of his tax return, makes it clear that this obligation also applies to transaction between associated enterprises.

What are the consequences of failure to submit disclosures?

Where no APA has been concluded and/or where no transfer pricing documentation has been enclosed, the burden of proof lies in the hands of the taxpayer. In this context, the Luxembourg tax authorities may consider readjusting the remuneration of the company, potentially leading to an increase of the taxable basis and, thus, of the overall tax charge of the company.

In particular, intra-group financing activities are subject to a risk of exchange of information with the country of residence of the borrower and hence a potential non-application of the benefit of the double tax treaties with resultant withholding tax issues.

Transfer pricing study overview

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

Yes. The documentation can be filed in English, German and French.

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. The Luxembourg tax authorities apply the 2010 version of the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations. When the revised Chapter V (i.e. encompassing the BEPS work) will come into force, in principle, the Luxembourg tax authorities should apply it.

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.

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, 28 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.

Normal Administrative Tax Office (ATO) practice is to expect documentation within 28 days of request.

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

No specific transfer pricing rules. General law applies.

The dispute resolution process regarding transfer pricing is part of the general tax law of Luxembourg. In this context, if a taxpayer does not agree with the tax adjustment proposed by the Luxembourg tax authorities, he can first make a claim which must be filed with the Director of the Tax Administration within three months from the receipt of the tax notice. The tax authorities have 6 months to reply. In case of negative answer (or deemed negative answer after 6 month), the taxpayer may appeal for reversal (main application against the decision of the Director of the Tax Administration) before the Administrative Court within a maximum period of 3 months, through a lawyer or an accountant. If no response is received within 6 months, the taxpayer may appeal to the Administrative Tribunal, without any time limit to comply in this case. Finally, the appeal of the decision of the Administrative Tribunal (if any) must be filed with the Administrative Court within 40 days of notification of the judgment.

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

Yes. General tax penalties only, 25 percent of the tax avoided for transfer pricing adjustments and 50 percent of the tax avoided where the primary purpose was to pay minimal or no tax.

To what extent are transfer pricing penalties enforced?

Rarely.

What defenses are available with respect to penalties?

Transfer pricing documentation.

What trends are being observed currently?

More and more transfer pricing documentation requests.

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.

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.

No.

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

None.

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

No. The Luxembourg tax authorities may make a tax adjustment of the management fees if they consider they are beyond the arm's length principle.

Are management fees subject to withholding?

No.

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

No. The Luxembourg tax authorities may make a tax adjustment of the management fees if they consider they are beyond the arm's length principle.

Are royalties subject to withholding?

No.

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

Yes, (upward and downward) adjustments in the corporate tax returns in order to restate market conditions that would not have been commercially respected.

Other unique attributes?

Not applicable.

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?

After an adjustment is proposed to the taxpayer.

May a taxpayer go to competent authority before paying tax?

Permitted.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

Is there a filing fee for APAs?

Yes, applicable from 1 January 2015. The filing fee ranges between 3,000 euros (EUR) to EUR10,000 and is payable by the taxpayer to the Luxembourg tax authorities.

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

Yes.

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

No. Until 1 January 2015, the APAs could be filed with the tax authorities without constraint. However, since this date, the filing fee is hampering many taxpayers to proceed with an APA.

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Malawi

KPMG observation

Malawi introduced transfer pricing legislation in 1964. Section 127A to the Taxation Act as amended in July 2015 is aimed at enforcing the arm's length principle in cross-border transactions carried out between connected persons.

Although transfer pricing legislation has existed since 1964 in the Taxation Act, specific and detailed regulations on the application of these rules have never been published by the Malawi Revenue Authority (MRA). However, in setting or supporting intercompany prices for multinational entities, taxpayers should consider the transfer pricing rules stipulated in the Taxation Act since the Commissioner General is empowered to assess taxpayers up to six years back.

The Commissioner General of the MRA will re-examine and make adjustments to transactions involving related parties involved in cross border businesses which produce no profit or a loss due to transfer pricing and will determine the profits derived from such businesses as if the prices of the two related parties were at arm's length.

Transfer pricing study snapshot

The purpose of a transfer pricing study

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

Basic information

Tax authority name

Malawi Revenue Authority (MRA).

Citation for transfer pricing rules

Section 146 of the Taxation Act.

Effective date of transfer pricing rules

The effective date of Transfer Pricing Rules is 2009.

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

These regulations shall apply to:

- transactions between associated enterprises within a multinational company where one company is located in Malawi and is subject to Malawi tax, and the other is located outside Malawi; and
- transactions between a permanent establishment and its head office or other related branches within

Malawi, in which case the permanent establishment shall be treated as a distinct and separate enterprise from its head office and related branches.

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

Where there is no fraud proven, the time limit is up to six years back and, if there is fraud proven by MRA, there is no time limit.

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 shall be prepared and are required to be submitted to the MRA. This is done at inception and whenever there are changes to the disclosures. The documentation is on how the company will handle transfer pricing issues in relation to the arm's length principle.

What types of transfer pricing information must be disclosed?

Information that relates to how the company transacts so that the arm's length principle is adhered to at all times.

What are the consequences of failure to submit disclosures?

The Tax Authority (MRA) determines the appropriate consequences on a case-by-case basis based on intercompany transactions that have occurred.

Transfer pricing study overview

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

Yes, English.

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. Malawi is a member to OECD as such the contents of the study follow the same trend.

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

Yes.

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.

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, 21 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.

Under normal circumstances MRA gives 21 days or you may apply for an extension within which to submit the documentation.

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

Taxpayer can submit for an objection to MRA (on facts), submit a formal appeal to the Commissioner General (facts and on point of law), appeal to the Special Arbitrator, appeal to the High Court, and, appeal to the Supreme Court of Appeal (the highest court of the land).

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

Penalties are punitive and when assessed the rates can be more than 100 percent depending on the gravity of the case. However, currently interest is charged at the prevailing bank rate plus 5 percent per annum on the tax due at the time.

To what extent are transfer pricing penalties enforced?

Transfer pricing penalties are enforced immediately by the Commissioner General.

What defenses are available with respect to penalties?

Where proper documentation is already placed and due to some reasons to be deemed as valid by Commissioner General, the documentation was not submitted, negotiations can be done.

What trends are being observed currently?

The tax authority is focusing on all industries irrespective of where the entities are incorporated.

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?

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.

None.

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

It is under one umbrella called the MRA.

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

Yes, we are aware that MRA has rejected management fees where it was more than five percent of total turnover.

Are management fees subject to withholding?

Yes.

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?

No.

Other unique attributes?

Not applicable.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Malawi has valid tax treaties with six countries.

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

Yes.

When may a taxpayer submit an adjustment to competent authority?

Up to six years back.

May a taxpayer go to competent authority before paying tax?

It is negotiable but it is a requirement to pay tax first and object/or appeal later.

Advance pricing agreements

What APA options are available, if any?

None.

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.

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

Not applicable.

KPMG in Malawi

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Malaysia

KPMG observation

The Malaysian tax authority has been very active in monitoring taxpayer's compliance with the applicable transfer pricing regulations. In addition to the introduction in 2014 of a new field in tax returns (Form C) which requires taxpayers to declare whether transfer pricing documentation has been prepared, the Malaysian Inland Revenue Board (MIRB) is now handing out "Transfer Pricing Awareness Survey" forms (TPAS) to selected taxpayers. The objective of the TPAS is to gauge the transfer pricing awareness of the selected taxpayer's local management.

Whilst the taxpayer may not need to have sound transfer pricing knowledge in completing the TPAS, local management needs to exercise due care when completing it. This is to avoid the MIRB misinterpreting the responses provided by local management, which may then impact the manner in which a transfer pricing audit is subsequently conducted.

The MIRB, in January 2015, published an article with the title "Base Erosion and Profit Shifting (BEPS) — A Malaysian Perspective." The MIRB is highly aware of the BEPS action plan and BEPS-related issues, and is endeavoring to combat base erosion and profit shifting out of Malaysia. The article outlined BEPS issues that are of significance in Malaysia, as well as the challenges faced by the MIRB in combating tax base erosion. The MIRB has also been actively attending OECD working party meetings as observers from developing countries.

The MIRB recently issued Mutual Agreement Procedure (MAP) Guidelines. The purpose of these guidelines is to provide guidance on obtaining assistance from the Malaysian Competent Authority (CA) to persons that fall within the scope of an effective Tax Treaty that Malaysia has with its Treaty Partners. This assistance is provided to taxpayers in order to try to resolve international tax disputes involving double taxation and inconsistencies in the interpretation and application of a Tax Treaty.

Transfer pricing study snapshot

The purpose of a transfer pricing study

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

Basic information

Tax authority name

Lembaga Hasil Dalam Negeri (Malaysian Inland Revenue Board or MIRB).

Citation for transfer pricing rules

The arm's length provision is set out in Section 140A of the Malaysian Income Tax Act 1967 (the Act). Section 140A requires taxpayers to determine and

apply the arm's length price for their transactions with an associated person for the acquisition or supply of property or services. Along with the introduction of Section 140A, the concept of thin capitalization was also introduced, but

implementation has been deferred until the end of December 2015.

Income Tax (Transfer Pricing) Rules 2012 (TP Rules 2012) were released to the public on 11 May 2012. The scope of TP Rules 2012 applies to the acquisition and supply of goods (including tangible and intangible goods), services between associated persons and intra-group financing. Both local and cross-border transactions are covered under TP Rules 2012.

Effective date of transfer pricing rules

- Section 140A became effective from 1 January 2009. Prior to this date, transfer pricing adjustments were made based on the general anti-avoidance provision.
- TP Rules 2012 are applied retroactively, from 1 January 2009.
- The transfer pricing guidelines issued in 2003 were revised in July 2012.

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

The scope of TP Rules 2012 applies to transactions between 'associated persons.' Generally, a relationship is deemed to exist if there is a shareholding relationship of more than 50 percent. However, the Malaysian transfer pricing guidelines also consider a relationship to exist if one party participates directly or indirectly in the management, control, or capital of the other party or the same person participates directly or indirectly in the management, control and capital of both companies.

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

The statute of limitation for non arm's length transaction is seven years upon the expiration of a particular year of assessment, except in cases of investigations, fraud, willful default, or negligence.

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. With effect from year of assessment 2014, taxpayers are required to declare in the annual tax return forms whether

they have prepared transfer pricing documentation.

Besides that, the amount of transactions with associated persons are also needed to be disclosed in the annual tax return forms.

In July 2011, Form MNE [2/2012] (latest version being [4/2015]) was introduced by the MIRB to collect certain information from taxpayers relating to their cross-border transactions. This is issued only to selected taxpayers and aims to complement the information already disclosed in the annual tax returns.

What types of transfer pricing information must be disclosed?

The annual tax return forms require taxpayers to declare whether they have prepared transfer pricing documentation, as well as the disclosure of the amount of transactions with associated persons for the following type of transactions:

- sales to associated persons
- purchases from associated persons
- other payments to associated persons
- loans to/from associated persons; and
- receipts from associated persons.

On the other hand, the Form MNE [4/2015] can be segregated into four sections:

- general information
- particulars of transactions with foreign related companies
- particulars of financial assistance with foreign related companies
- other information including: (i) a declaration whether transfer pricing documentation has been prepared for the relevant year, (ii) a declaration of any business restructuring for the taxpayer and its related parties in the group during the year or the last five years (and to indicate the relevant date if business restructuring took place), and (iii) an overall characterization of the company.

With regards to the TPAS, there are six different sections in total which require the taxpayer to rank the degree of their transfer pricing awareness:

- a) knowledge of transfer pricing taxation
- b) involvement of top management
- c) establishment of global transfer pricing policy

d) determination of transaction price in view of transfer pricing methodologies

e) communication with MIRB

f) awareness of Mutual Agreement Procedure (MAP).

What are the consequences of failure to submit disclosures?

For disclosures which are an integral component of the annual tax return forms, failure to furnish information relating to the disclosures could render the annual tax return form as an incorrect return, which could result in a fine not less than 1,000 Malaysian ringgits (MYR) and not more than MYR10,000.

However, if the taxpayer defaults in furnishing the annual tax return forms, on conviction, could result in a fine not less than MYR200 and not more than MYR20,000.

Transfer pricing study overview

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

Yes. The documentation can be prepared in Bahasa Malaysia or English.

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.

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

Yes.

Transfer pricing methods

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

No. The transfer pricing methods outlined in Chapter II of the OECD Guidelines are applicable to Malaysia. However, the TP Rules 2012 provide that traditional transactional methods should be considered first before transactional profit 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?

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.

Documentation should be made available to the MIRB within 30 days from the date of request.

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

Taxpayer can approach the dispute resolution panel (DRP) set up by the MIRB to resolve matters prior to court proceedings. With respect to the judicial system, the first level of the appeal is generally to the Special Commissioner of Income Tax through the submission of a Form Q.

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

Transfer pricing adjustments made during a tax audit which result in additional tax payable will be subject to a general penalty rate of 35 percent of the additional taxes payable. A lower penalty rate of 25 percent will apply where transfer pricing documentation is prepared and nil where the transfer pricing documentation meets the contemporaneous requirement.

To what extent are transfer pricing penalties enforced?

Always.

What defenses are available with respect to penalties?

The availability of a local contemporaneous transfer pricing documentation will assist taxpayers to appeal for a lower penalty rate. In addition, the MIRB will also take into account if the taxpayer has acted in good faith and fully cooperated during the tax audit.

What trends are being observed currently?

Transfer pricing audits have intensified and are expected to continue to intensify in Malaysia. In addition to the usual focus on transactions involving sales and purchases of goods, the MIRB is also increasing their scrutiny on payments for intra-group services as well as looking into intra-group financing arrangements and payments in relation to intangible properties.

Common audit triggers include companies exhibiting consistent losses, fluctuating profitability or those making very low profits. Companies with significant amounts of related party transactions, especially payments for intra-group services, royalties or intangible property and companies that have undergone supply chain or business restructurings are also likely to be selected for a tax audit.

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, MIRB prefers to use local companies as comparables. The use of foreign comparable companies in a benchmarking analysis will most likely not be sufficient to convince the MIRB of the arm's length outcome.

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

In Malaysia, a local benchmarking analysis is carried out manually based on publicly available directories and by extracting financial accounts from the Companies Commission of Malaysia. At present, there are no good quality commercial databases for local companies.

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.

Pursuant to TP Rules 2012, in determining the arm's length price, the comparison between a controlled transaction and uncontrolled transaction(s) shall be on a year-by-year basis. Further, for tax audit purposes, the MIRB often uses the median of the range as a starting point when evaluating whether related party transactions are at arm's length.

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

Presently low, however, the MIRB and the Royal Malaysian Customs Department have signed a memorandum of understanding on joint audit, where auditors from both departments will work together.

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

Yes, some. Management fees are generally deductible except for those relating to shareholder or custodial activities, duplicative services, services that provide incidental or passive association benefits and on-call services (note: the deductibility of on-call services can be reviewed on a case-by-case basis), or when taxpayers fail to provide evidence to support the receipt of management services and commercial benefits accrued to the local entity. The MIRB is intensifying their review on payments for intra-group services during transfer pricing audits to determine whether the payments comply with the arm's length principle. The MIRB has been very strict and in many recent transfer pricing audits, companies are finding it difficult to produce sufficient and reliable evidence to justify the arm's length nature of their payments.

Are management fees subject to withholding?

Yes.

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

Yes. Other than arm's length principle, one shall also determine the benefits of paying such royalty. For example, should a taxpayer continue paying the

same royalty rate for certain know-how or technology that was developed a number of years ago. If the dependence on the know-how or technology has reduced, the MIRB might disallow some portion of the claim on the royalty payment.

Are royalties subject to withholding?

Yes.

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

Yes. However, they may attract enquiries from MIRB and there are also indirect tax implications to be considered in respect of such adjustments.

Other unique attributes?

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?

Sometimes.

When may a taxpayer submit an adjustment to competent authority?

Normally, a taxpayer may initiate a MAP if there is a risk of double taxation and there is a treaty agreement with the foreign counterparty. In most cases, this is after being issued the Notice of Additional Assessment.

May a taxpayer go to competent authority before paying tax?

Yes. The taxpayer is permitted to initiate a competent authority negotiation even before the issuance of the Notice of Additional Assessment and paying taxes. Once the Notice of Assessment/ Notice of Additional Assessment is issued, the taxpayer needs to remit payment within 30 days; otherwise a penalty for late payment will be imposed.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

Is there a filing fee for APAs?

No. At the moment, to encourage taxpayers to apply for APAs, no fees are imposed. However, taxpayers will bear any overseas traveling and accommodation expenses incurred by the Malaysian government in relation to bilateral or multilateral 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?

No.

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

Not applicable.

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Mexico



KPMG observation

Mexico has been very active in transfer pricing. The Mexican tax authorities have been performing a considerable number of audits in different industries. One hot topic is service fees paid to a foreign related party. A frequent concern is lack of sufficient evidence to establish that the services were provided, and that there was a business reason for the services. In many cases, the deductibility of such service fees is being challenged. Additionally, documentation and reporting requirements have increased considerably, so it is very important for taxpayers to prepare a transfer pricing documentation study. Failure to do so may result in non-deductibility of payments to related parties.

Transfer pricing study snapshot

The purpose of a transfer pricing study

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

Basic information

Tax authority name

Servicio de Administración Tributaria (SAT).

Citation for transfer pricing rules

From 2002 to 2013: Ley del Impuesto Sobre la Renta (Mexican Income Tax Law) Articles 86-XII, 86-XIII, 86-XV, 215, 216, and 216-Bis. Starting 2014: Ley del Impuesto Sobre la Renta (Mexican Income Tax Law) Articles 76-IX, 76-X, 86-XII, 179, 180 and 181. From 2008 to 2013: Ley del Impuesto Empresarial a Tasa Unica (Mexican Business Flat Tax Law) Article 18-III.

Effective date of transfer pricing rules

Ley del Impuesto Sobre la Renta: 1 January 1997. Ley del Impuesto Empresarial a Tasa Unica: 1 January 2008 to 31 December 2013.

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

Direct or indirect ownership of capital, administration or control. No specific threshold for the entities to be considered related parties (i.e. even if there is a one percent ownership of the shares, the entities are considered related).

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

Five years from filing date of the tax return.

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. Mexican taxpayers are required to provide specific information in the transfer pricing studies documenting the arm's length nature of domestic and

cross-border intra-group transactions. These studies are not to be filed with the tax authority unless they are requested by the SAT. In addition, taxpayers must also disclose information regarding the conclusions of the transfer pricing documentation studies as part of the transfer pricing appendices of the Statutory Tax Audit report (i.e. Dictamen Fiscal) or the information alternative to the Statutory Tax Audit report. Taxpayers are also required to submit information regarding transactions with foreign-resident related parties during the immediately preceding calendar year.

What types of transfer pricing information must be disclosed?

Transfer pricing documentation report of domestic intra-group transactions: methodology used to show that the transactions were conducted in accordance with the arm's length principle.

Transfer pricing documentation report of cross-border intra-group transactions: 1) name, domicile, tax residence and detail of the direct or indirect participation between or among the related parties; (2) information of functions, assets, and risks borne by each type of operation; (3) detail of the controlled transactions; and (4) transfer pricing methodology used.

Companies that file a Statutory Tax Audit report must also submit the following appendices with regard to transfer pricing (the numbers of the appendices might vary depending on the type of company):

- Appendix of the Statutory Tax Audit report (Dictamen Fiscal) — information of intercompany transactions: Type and amount of intra-group transactions by related party, transfer pricing method used, whether the intra-group transaction is at arm's length, and amount of the adjustment so that the transaction is at arm's length.
- Appendix of the statutory tax audit report (Dictamen Fiscal) — additional information of intercompany transactions: Business activity of the taxpayer, ownership of intangible assets used, date in which the information return was submitted and whether the taxpayer has supporting documentation of the arm's length

nature of intra-group transactions, Advance Pricing Agreements (APAs) under negotiation, Tax ID of transfer pricing advisors, interests deemed to be dividends, prorated expenses, financial derivative transactions with related parties, thin capitalization issues, corresponding adjustments, etc.

Transfer pricing questionnaire: The external auditors of the Mexican taxpayer filing the Statutory Tax Audit report will also have to complete a transfer pricing questionnaire confirming that all transactions were at arm's length and that documentation requirements were met.

Companies that meet the threshold for filing the Dictamen Fiscal but choose not to do so must also submit additional information that is similar to the transfer pricing appendices of the Dictamen Fiscal previously mentioned.

What are the consequences of failure to submit disclosures?

Tax authorities might deny the tax deductions of the intra-group transactions that represent expenses for the Mexican taxpayer, (i.e. inbound transactions), if the Mexican taxpayer did not comply with the obligation of preparing the transfer pricing study or in those cases where the Information Return for cross-border intra-group transactions was not filed. A penalty may also be imposed if the taxpayer fails to submit the Information Return for cross-border intra-group transactions.

Transfer pricing study overview

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

No. The Mexican tax authorities require all documentation to be in Spanish. However, in those cases in which the initial documentation is provided in English, a translation by a certified translator will be required within 15 days.

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, provided that the analysis is conducted by using a transaction-by-transaction approach. The Mexican

Income Tax Law indicates Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations issued by the Committee on Fiscal Affairs of the OECD might be used as a reference for performing the transfer pricing documentation report to the extent that said Guidelines are consistent with the Mexican Income Tax Law and the tax treaties signed by Mexico.

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 OECD Transfer Pricing Guidelines are applicable to the extent that they are consistent with the Mexican Income Tax Law and the tax treaties signed by Mexico. In Mexico there is a priority of methods as described in the previous version of the OECD Transfer Pricing Guidelines. In general, Mexico does not accept pro rata expenses from foreign taxpayers; therefore, Cost Sharing Arrangements might not be possible to be used in Mexico.

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, 15 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 taxpayer has 15 business days. An extension of 10 business days could be granted by the tax authorities upon request.

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

Yes, taxpayers can submit the resolution to an administrative area within the Ministry of Finance, in order to object to the procedures. Also, taxpayers may appeal to tax court, or if the related party of the adjustment is a resident of a country with which Mexico has a tax treaty, Competent Authority may be applied.

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

Yes. General tax penalties only: 55 to 75 percent of the omitted income tax or 30 to 40 percent of excess loss if due to transfer pricing. However, if the taxpayer prepared transfer pricing documentation, they may be entitled to a 50 percent reduction in the penalty.

To what extent are transfer pricing penalties enforced?

Often.

What defenses are available with respect to penalties?

Article 76 of the Federal Fiscal Code allows the Mexican tax authority to assess penalties (i.e. 55 to 75 percent of the omitted income tax or 30 to 40 percent of excess loss if due to transfer pricing) in cases in which it deems a company's transfer pricing is not consistent with the arm's length standard under the Mexican transfer pricing regulations detailed in the Mexican Income Tax Law (LISR). The article also provides for a 50 percent reduction in the penalty imposed for underpaid taxes or for excess tax loss filed due to transfer pricing, if the taxpayer keeps transfer pricing supporting documentation. However, if imposed, penalties cannot be negotiated.

What trends are being observed currently?

Current audits focus on business restructuring, domestic intra-group transactions, sales of shares that trigger tax losses, management fees that Mexican tax authorities might consider to be pro rata expenses, and marketing fees for those companies with a license to use marketing intangible assets.

Special considerations

Are secret comparables used by tax authorities?

Yes. Any information to which the tax authority has access may be used. However, use of secret comparables is not very common.

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

Usually North American comparable companies are used by the SAT for audit purposes.

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

The Mexican tax authorities use Compustat (i.e. North American public companies) and RoyaltyStat.

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

Yes, always.

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

Not applicable.

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

Low.

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

Yes. It should be taken into account that pro rata expenses from foreign parties/service providers are non-deductible from a Mexican tax standpoint. Therefore, taxpayers must have evidence showing they were not prorated, as well as information demonstrating that the services (i) were actually rendered; (ii) provided a benefit to the Mexican taxpayer; (iii) were not duplicative services. When supporting evidence can be provided, service fees might be considered to be deductible, otherwise the tax authority will consider them as non-deductible. Additional special documentation requirements must be met based on the miscellaneous rule published on October 2014.

If the intercompany transaction is conducted with a taxpayer resident in a country with a treaty to avoid double taxation, no withholding applies. In any other case, a 25 percent withholding tax rate might apply according to the Mexican Income Tax Law.

Are management fees subject to withholding?

Yes.

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 might be conducted to support that the intra-group pricing could be concluded to be at arm's length. However, it is important that the year-end adjustments are accounted for before the end of the fiscal year to make sure tax and accounting figures are consistent. It is advisable to conduct periodic reviews in order to avoid significant year-end adjustments. Customs issues must also be taken into account.

Other unique attributes?

Pro rata expenses (cost-sharing) made to foreign entities might be considered non-deductible.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive. Mexico has treaties to avoid double taxation with 65 countries and negotiations in progress with another 15 countries.

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

Sometimes.

When may a taxpayer submit an adjustment to competent authority?

Depends on the time frame allowed by the tax treaty.

May a taxpayer go to competent authority before paying tax?

Yes.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

Is there a filing fee for APAs?

Yes. Approximately 1,000 US dollars (USD) for the first year and USD100 for a review to be conducted every year of the APA term.

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?

No. The APA program can be viewed as successful if we compare the number of APAs filed with the number of APAs that have been concluded. However, there are still opportunities to reduce the length of the process.

KPMG in Mexico

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Montenegro

KPMG observation

Transfer pricing rules have existed for more than a decade in the 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. Nevertheless, in setting or supporting intercompany prices, taxpayers should consider the transfer pricing rules stipulated in the CIT Law since the tax authorities may change their current practice retroactively.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Not applicable
Legal requirements		●
Protection from penalties		●
Reduce risk of adjustment	●	
Shifts burden of proof	●	

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
- if one entity is under control (direct or indirect) of another entity
- if two entities are subsidiaries of the same entity; or
- if entities are under direct or indirect control of a third entity.

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

Generally five 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 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 submit disclosures?

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

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?

Not applicable. As there is no required documentation necessary to support transfer prices applied, taxpayers are advised to follow 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

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

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

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.

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 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, what dispute resolution options are available?

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 performing transfer pricing audits due to lack of experience and a relatively low corporate income tax rate (nine 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.

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 practice exist in relation to benchmarking.

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

No. 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.

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?

No.

Other unique attributes?

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 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.

KPMG in Montenegro

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Namibia

KPMG observation

Namibia introduced transfer pricing legislation on 14 May 2005. The legislation in the form of Section 95A to the Namibian Income Tax Act is aimed at enforcing the arm's length principle in cross-border transactions carried out between connected persons.

In September 2006, the Directorate of Inland Revenue issued Practice Note 2 of 2006 (PN 2/2006) containing guidance on the application of the transfer pricing legislation.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Not applicable
Legal requirements		●
Protection from penalties	●	
Reduce risk of adjustment	●	
Shifts burden of proof	●	

Basic information

Tax authority name

Directorate: Inland Revenue (DIR).

Citation for transfer pricing rules

Section 95A of the Income Tax Act and Practice Note 2 of 2006.

Effective date of transfer pricing rules

14 May 2005.

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

In relation to a company, the following are regarded as connected persons:

- its holding company
- its subsidiary

- any other company, where both companies are subsidiaries of the same holding company
- any person (other than a company) that holds individually or jointly with any connected person in relation to that person at least 20 percent of the equity share capital or voting rights in the company
- any other company that holds at least 20 percent of the equity share capital, where no other shareholder holds the majority shares; and
- any other company if that other company is managed or controlled by a connected person in relation to the first company or a connected person in relation to the first connected person.

“Connected person” is also defined in relation to a natural person, trust, connected person in relation to a trust and a member of any partnership.

Additionally, Practice Note 2 also provides that the transfer pricing rules apply to transactions between a head office and a branch and branches of the same person dealing with each other.

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

In terms of section 69 of the Income Tax Act, the Commissioner may at any time issue additional assessments — there is no statute of limitations.

In practice, DIR allows for amended tax returns to be submitted by the taxpayer until the taxpayer is assessed.

In terms of section 71 of the Income Tax Act a taxpayer has only 90 days to object to a notice of assessment by the Commissioner.

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)?

No. The disclosures in the tax return are not specific to connected persons, except dividends to shareholders.

There is currently no statutory requirement that the transfer pricing policy should be submitted to the DIR as part of the Annual Income Tax Return.

What types of transfer pricing information must be disclosed?

Not applicable.

What are the consequences of failure to submit disclosures?

Not applicable.

Transfer pricing study overview

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

No. Documentation is filed in English which is the official language for Namibia.

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, with exceptions. Per Practice Note 2, the "Taxpayer needs to demonstrate that it has developed a sound transfer pricing policy in terms of which transfer prices are determined in accordance with the arm's length principle by documenting the policies and procedures for determining those prices".

The transfer pricing documentation should include the policies and procedures for determining the arm's length prices. However, the taxpayer is expected to use judgment in determining the level of documentation required. Practice Note 2 makes

reference to (the old) paragraph 5.4 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

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

Yes.

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.

The Income Tax Act does not specify a time period. However, Practice Note 2 says that the taxpayer must be in possession of transfer pricing documentation. Section 64 of the Income Tax Act allows for the Minister to require any person to produce documentation as required by the Minister.

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

Objections to assessments may be made, in writing, within 90 days after the date of issue of the assessment. If the taxpayer is not happy with the Minister's response on the objection, the taxpayer may appeal to a special court for hearing income tax appeals or a tax tribunal if all the requirements are met. Such notice of appeal must be furnished to the Minister within 30 days after the notice issued by the Minister on the objection.

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

Yes.

On late payment:

- 10 percent penalty on tax outstanding on due date for each month or part thereof during which the amount remains unpaid; and
- interest at 20 percent per annum.

On underestimation of the provisional tax payments:

- first provisional payment: Additional tax of 40 percent of the annual tax liability less any payments made; and
- second provisional payment: Additional tax of 80 percent of the annual tax liability less any payments made.

To what extent are transfer pricing penalties enforced?

DIR generally always enforces penalties if errors are detected. Only recently have we seen DIR starting to question transfer pricing matters.

What defenses are available with respect to penalties?

Generally, one can request a waiver of penalties if it can be shown that the error was not a result of intent to evade tax or circumstances which the taxpayer was not aware at the time of payment of the provisional tax payments.

However, KPMG in Namibia has not yet seen objections specific to transfer pricing being raised in practice.

Where the taxpayer has transfer pricing documentation it would be easier to substantiate any connected person/ transaction value queries by DIR.

What trends are being observed currently?

DIR has not raised transfer pricing queries in the past. However, DIR has made investments in this aspect and we expect transfer pricing queries to be raised in the future.

Special considerations

Are secret comparables used by tax authorities?

Not as far as KPMG in Namibia are aware.

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.

DIR has raised few transfer pricing queries in the past. We are not aware of any preferences in this regard.

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

Unknown, but we expect minimal as regards to corporate tax matters (import VAT matters are handled with reference to customs documentation).

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

Yes. In order to be deductible, fees charged for management services must be at arm's length and must meet the requirements of the general deduction formula.

Are management fees subject to withholding?

Yes.

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

Yes. In order to be deductible, royalties must be at arm's length and must meet the requirements of the general deduction formula.

Are royalties subject to withholding?

Yes.

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

No. The tax return does not make provision for year-end adjustments. The DIR has not provided any guidance surrounding year-end adjustments.

The underestimation of provisional payments penalties discussed above may apply.

Other unique attributes?

In practice a 3:1 debt-to-equity ratio is used for thin capitalization transactions.

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?

Not applicable.

When may a taxpayer submit an adjustment to competent authority?

Not applicable.

May a taxpayer go to competent authority before paying tax?

Not applicable.

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.

KPMG in Namibia

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Netherlands



KPMG observation

The Dutch Tax Authorities intend to adhere to the Organisation for Economic Co-operation and Development (OECD) Guidelines and Base Erosion and Profit Shifting (BEPS) initiative. The Netherlands also has an accessible and professional Advance Pricing Agreement (APA)/Advance Tax Ruling (ATR) practice.

As transfer pricing is becoming ever more important in the Netherlands, the tax authorities have expanded their resources with experienced transfer pricing staff.

Consequently, KPMG in the Netherlands has observed both a more enhanced review of transfer pricing documentation by the tax authorities and a substantial increase in transfer pricing audits and competent authority procedures.

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

Dutch Tax Authorities (DTA).

Citation for transfer pricing rules

- Article 8b of the Dutch Corporate Income Tax Act (Wet op de Vennootschapsbelasting 1969)
- Decree IFZ/2013/184, 14 November 2013
- Decree IFZ 2010/457M, 15 January 2011
- Decree IFZ 2008/248M, 29 September 2008
- Decree DGB 2004/1339M, 17 August 2004
- Decree DGB 2014/3101, 3 June 2014
- Decree DGB 2014/3102, 3 June 2014

- Decree DGB 2014/296, 3 June 2014
- Decree DGB 2004/1337M; and
- Decree DGB 2014/3098, 3 June 2014.

Effective date of transfer pricing rules

Codification as of 1 January 2002.

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

OECD definition (direct or indirect participation in management, control or capital).

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

Five years from the tax year-end plus any extensions granted for filing of

the tax return. In certain (international) cases this period may be extended to 12 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. The annual Dutch corporate income tax return includes one question on whether there are any transactions with related companies.

For intra-group financing and licensing and similar activities, certain substance related questions may need to be replied to.

What types of transfer pricing information must be disclosed?

If a company has any transactions with related companies, a brief description needs to be included on the corporate tax return form.

What are the consequences of failure to submit disclosures?

Potential reversal of the burden of proof and (general tax) penalties, where the DTA requests documentation and it is not submitted in time.

Transfer pricing study overview

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

Yes, English.

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. Documentation should be, in principle, prepared contemporaneously.

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.

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.

In principle, within 30 days of the request. However, this may be extended by the DTA depending on the complexity of the case.

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

Local litigation or mediation, or requesting a unilateral Dutch APA with a roll back provision.

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

Yes, general tax penalties only.

To what extent are transfer pricing penalties enforced?

There are no specific transfer pricing penalties. General tax penalties (up to 100 percent) may apply in the case of an intentional act (e.g. the taxpayer took a non-defendable standpoint) leading to underpayment of taxes.

What defenses are available with respect to penalties?

Transfer pricing documentation and to argue that any incorrect transfer pricing is not intentional and not of gross negligence.

What trends are being observed currently?

The DTA is enforcing the 14 November 2013 Decree on transfer pricing. Issues specifically dealt within this Decree are headquarter services, intra-group financing, guarantee provisions, captives, intangibles and centralized procurement.

The number of transfer pricing audits still increases. Business restructuring and exit (valuation) issues continue to be focus areas in audits. Latest (tax) audits have shown a more detailed review of documentation and comparable searches.

Special considerations

Are secret comparables used by tax authorities?

Yes, but in principle only for case selection.

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

No. Benchmarking helps to demonstrate that transfer prices are at arm's length, and the DTA accepts pan-European benchmarks, provided they meet comparable search strategy standards set by the DTA.

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

Yes, a strong preference for the extended full version Amadeus database. For financial and licensing transactions, other databases may be used.

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

Yes, always.

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

See above plus very strict independence criteria.

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. Not applicable.

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?

No.

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

Yes, provided they are on an arm's length basis.

Other unique attributes?

The DTA generally refers to multiple year data and the interquartile range in terms of benchmarking.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive. The Netherlands has one of the largest tax treaty networks in the world.

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

Yes, in practice, not effective for non-OECD countries.

When may a taxpayer submit an adjustment to competent authority?

The Netherlands aims to eliminate double taxation as early as possible. Therefore, in the Dutch Decree of 29 September 2008, IFZ2008/248M, dealing with mutual agreement procedures (MAPs), a distinction is made between "ordinary," "accelerated" and "extra-accelerated" procedures. If a Dutch taxpayer can show that due to an action by foreign tax authorities there will be taxation which is not in accordance with the tax treaty, and either no extension for payment of any

tax is available or the assessment will trigger substantial interest which might cause immediate financial difficulties for the taxpayer, the Dutch competent authority is willing to assist the taxpayer by commencing bilateral discussions immediately, namely an extra-accelerated MAP. The Dutch competent authority might even contact its foreign counterparts before any tax assessment (including a transfer pricing adjustment) is received by the Dutch taxpayer in the other jurisdiction, and before a position paper is received from the other jurisdiction's competent authority.

May a taxpayer go to competent authority before paying tax?

Yes, see previous.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

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?

Yes.

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

No. The APA program is very successful, and Dutch APAs may be concluded within short time frames. The main purpose is to agree on arm's length OECD based transfer pricing policies in advance.

KPMG in Netherlands

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New Zealand



KPMG observation

The New Zealand Inland Revenue published a new international tax questionnaire on its website (www.ird.govt.nz/international/business/questionnaire/).

Along with the increasing global focus on Base Erosion Profit Shifting, Inland Revenue designed this new questionnaire to collect key information on financing (including cash pooling), tax governance and transfer pricing issues. It is expected that Inland Revenue will distribute the questionnaire in May 2015 to New Zealand taxpayers (or NZ groups) that are foreign-owned, and which have turnover in excess of 80 million New Zealand dollars (NZ) per year. The questionnaire currently focuses on the 2014 income year (i.e. the year-ended 31 December 2013).

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Not applicable
Legal requirements		●
Protection from penalties	●	
Reduce risk of adjustment	●	
Shifts burden of proof	●	

Basic information

Tax authority name

Inland Revenue.

Citation for transfer pricing rules

Sections GC 6 – GC 14 of the Income Tax Act 2007.

Effective date of transfer pricing rules

1997.

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

Cross-border arrangement between associated persons, based on 50 percent or greater common shareholding or effective control.

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

Four years from the end of year in which the tax return is filed.

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. For New Zealand-owned outbound multinational groups, disclosures are required for Controlled Foreign Companies (CFCs).

What types of transfer pricing information must be disclosed?

The primary activity of the CFC, details of gross revenue, royalty income, earnings before interest and tax, among other detailed financial information.

What are the consequences of failure to submit disclosures?

None specifically related to the failure to prepare or submit the disclosure.

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.

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.

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, 28 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.

Normal Inland Revenue practice is to specify a due date. This is generally at least 28 days from the receipt of the information request. However, deadlines may be extended via negotiation.

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

Taxpayers can follow a prescribed dispute resolution process which includes:

- Inland Revenue issuing a notice of proposed adjustment to the taxpayer
- a conference between taxpayer and Inland Revenue disclosure by both parties
- adjudication and review
- assessment/amended assessment by Inland Revenue; or

- litigation, if both parties cannot reach an agreement in the earlier steps of the process.

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

Yes. General tax penalties only, normally 20 to 40 percent of the tax shortfall.

To what extent are transfer pricing penalties enforced?

Sometimes.

What defenses are available with respect to penalties?

Specific legislative and Inland Revenue ruling requirements dictate when penalties may be imposed. Taxpayers may be able to make a case that the penalty provisions should not apply in their circumstances (e.g. reasonable care has been taken in relation to their transfer prices evidenced through supporting documentation), or may be able to apply for a reduction in penalties on the basis of prior compliance with income tax rules.

What trends are being observed currently?

KPMG in New Zealand has observed a continuing increase in the level of transfer pricing audit activity, with transfer pricing questionnaires being issued in all general income tax audits of multinationals in the last four to five years. There is also an increasing use of APAs to resolve audit disputes.

Special considerations

Are secret comparables used by tax authorities?

Yes, but only for the purposes of transfer pricing risk assessment by Inland Revenue prior to an audit.

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

No. In practice it is difficult to identify sufficient qualitative and quantitative information on New Zealand comparables.

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

No specific database required.

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.

Multiple year averages, with a preference for five years.

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

Moderate. Inland Revenue and the New Zealand Customs Service have entered into a Memorandum of Understanding allowing the sharing of information in relation to GST, which may go to issues of valuation.

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

Yes. Management fees must meet the requirements of the normal deductibility rules.

Are management fees subject to withholding?

No.

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

Yes. Royalties must meet the requirements of the normal deductibility rules.

Are royalties subject to withholding?

Yes.

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

Yes. Where the tax treatment of a transaction differs to the accounting treatment.

Other unique attributes?

Inland Revenue has reserved its position on Article 7 of the OECD Model Tax Convention. The Inland Revenue supports the single entity concept rather than the separate legal entity concept for branch taxation.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Medium. New Zealand's double tax treaty network is focused on countries with strong trading and investment ties to New Zealand, as well as developing countries that New Zealand may have trading ties with in the future.

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

Sometimes.

When may a taxpayer submit an adjustment to competent authority?

It depends on the mutual agreement provisions of the relevant double tax agreement.

May a taxpayer go to competent authority before paying tax?

Yes.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

Is there a filing fee for APAs?

Yes. The fee is NZD322.

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

Yes.

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

No. Unilateral APAs are highly successful and most APAs are concluded in a timely manner. Bilateral APAs are generally reserved for high value or high risk transactions.

KPMG in New Zealand

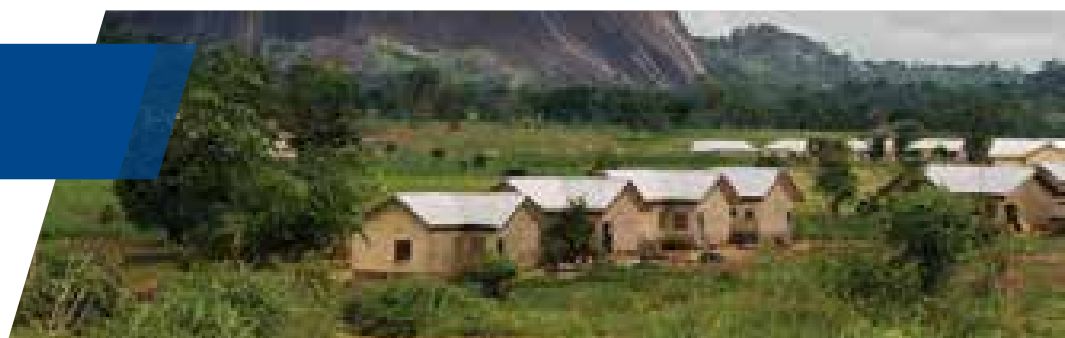
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Nigeria



KPMG observation

Income Tax (Transfer Pricing) Regulations were introduced in Nigeria in 2012 and became effective on 2 August 2012. Under the Regulations, companies are required to conduct transactions with related parties at arm's length and appropriate documentation must be available to verify that the pricing of controlled transactions is consistent with the arm's length principle. Such documentation includes a transfer pricing study (which should be in place before the filing of the taxpayer's tax returns for the year of interest) and statutory forms (i.e. transfer pricing declaration form and disclosure forms) along with the tax returns.

In line with the spirit of increased transparency under the Base Erosion and Profit Shifting (BEPS) Action Plan, the Federal Inland Revenue Service (FIRS) has sent letters to some taxpayers with related party transactions to submit their Group/Global transfer pricing policies as well as Local transfer pricing policies to aid with their transfer pricing risk assessment.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Not applicable	Required to be contemporaneous
Legal requirements			●
Protection from penalties		●	
Reduce risk of adjustment	●		
Shifts burden of proof	●		●

Basic information

Tax authority name

Federal Inland Revenue Service (FIRS).

Citation for transfer pricing rules

The Income Tax (Transfer Pricing) Regulations No. 1, 2012.

Effective date of transfer pricing rules

2 August 2012.

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

The Regulation covers all transactions entered into by connected taxable

persons. Enterprises are considered to be associated where one party participates directly or indirectly in the management, control or in the capital of the other; or, the same person or persons participate directly or indirectly in the management, control or in the capital of both enterprises.

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

The Regulations do not provide for a statute of limitations on assessment of transfer pricing adjustments. However, the Companies' Income Tax Act (CITA) provides that the statute of limitation is

six years except in cases of fraud, willful default, or neglect with respect to any tax payable, in which case there is no statute of limitation.

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 Regulations require companies to file statutory transfer pricing forms (Declaration and Disclosure Forms) along with their annual income tax returns.

What types of transfer pricing information must be disclosed?

The transfer pricing Declaration Form requires the disclosure of general information about the reporting company's legal form and ownership structure. Specifically, companies are to provide detailed information on the following:

- particulars of the reporting company or entity
- particulars of immediate parent company
- particulars of the directors of the reporting company or entity
- major shareholders of reporting company or entity
- particulars of subsidiaries and other connected persons to the reporting entity
- particulars of external auditors, company secretary and tax consultants to the reporting company; and
- particulars of the person completing the declaration form.

The transfer pricing Disclosure Form requires the disclosure of the nature of connected transactions. Specifically, companies are to provide detailed information on the following:

- particulars of the reporting company or entity
- income from controlled transactions
- costs of controlled transactions
- transfer pricing method and documentation
- basic financial information; and
- particulars of the person completing the Disclosure Form.

What are the consequences of failure to submit disclosures?

The penalties for failure to submit disclosures are the same as the penalties for not filing tax returns, and are provided for in the income tax legislation.

Further, the failure to submit the disclosures may be a potential audit trigger and result in unilateral income adjustment by the tax authority. Any resulting additional tax liability may also be subject to both penalties and interest.

Transfer pricing study overview

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

Transfer pricing documentation are required to be filed in English Language which is the official 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, for all transactions. Yes. The Regulations did not provide specific information regarding the content of transfer pricing documentation. It is therefore acceptable if it 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

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

Yes. In addition, if a taxpayer is of the view that none of the methods stated in Chapter II are appropriate for determining the arm's length pricing, a taxable person may apply transfer pricing methods other than those listed in the Regulations, so long as they can show that the transactions are at arm's length.

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, 21 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.

Twenty-one days. However, upon a reasonable request, the tax authority has discretionary power to grant an extension.

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

Taxpayers may approach the Decision Review Panel (DRP). The decision of the DRP on any assessment or adjustment is final and conclusive. However, where the taxpayer is dissatisfied with the decision of the DRP, it may refer the matter to a court of competent jurisdiction.

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

Yes. The applicable penalty rates are as follows:

- income tax of companies — in addition to the principal tax liability chargeable at 30 percent, the law imposes penalties of 10 percent plus interest at Central Bank of Nigeria's rediscount rate
- value added tax (VAT) — in addition to the principal liability chargeable at five percent, the law imposes penalties of five percent plus interest at the commercial rate.

To what extent are transfer pricing penalties enforced?

The tax authority has discretionary power to waive part or entire penalty. Nevertheless, we observed that the tax authority currently exercise significant caution in exercising this discretion.

What defenses are available with respect to penalties?

Taxpayers can generally appeal to the tax authority's sentiments to enable them exercise this power in their favor. This could be hinged on financial position of the company, ambiguity in interpretations of tax provisions, availability of company's key officers that will take decision, among others.

What trends are being observed currently?

The tax authority has commenced rigorous audit of some selected companies. The exercise is very detailed and time consuming.

Special considerations

Are secret comparables used by tax authorities?

Not yet known.

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

Not yet known.

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

The tax authority has subscribed to Orbis database. It could therefore be inferred that they will prefer it.

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.

Not yet known.

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

Minimal.

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

Yes. Management fees are deductible only if the taxpayer has obtained prior approval of the National Office for Technology Acquisition and Promotion (NOTAP) and the tax authority is satisfied that they are at arm's length.

Are management fees subject to withholding?

Yes.

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

Yes. Royalties are deductible only if the taxpayer has obtained prior approval of the National Office for Technology Acquisition and Promotion (NOTAP) and the tax authority is satisfied that they are at arm's length. However, NOTAP is often reluctant to grant approval where the recipient of royalties has more than 75 percent shareholding in the Nigerian subsidiary.

Are royalties subject to withholding?

Yes.

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

There is no express provision in this regard.

Other unique attributes?

There are safe harbor provisions in the Regulations. They provide that a taxpayer will no longer be required to prepare transfer pricing documents if the pricing arrangement is approved by relevant government agencies and the tax authority is satisfied that the transactions are at arm's length. The agencies include Department of Petroleum Resources (DPR), Central Bank of Nigeria (CBN), and, NOTAP, among others.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Minimal. Nigeria currently has double tax agreements with nine countries.

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

Sometimes.

When may a taxpayer submit an adjustment to competent authority?

The Regulation is silent on the timing for submission of adjustments. The

enabling legislation (i.e. Companies Income Tax Act 2007) however permits a taxpayer to file revised tax returns as often as necessary within six years after the accounting year-end date.

May a taxpayer go to competent authority before paying tax?

Yes.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

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?

Not applicable. Although the Nigerian transfer pricing Regulations provides for APAs, the tax authority is yet to commence the APA program.

KPMG in Nigeria

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Norway



KPMG observation

The focus on transfer pricing in Norway remains strong. There are several court cases being decided on transfer pricing issues and the Norwegian tax authorities have increased the number of tax audits conducted on various transfer pricing topics. Furthermore, intra-group interest deduction limitation rules have been implemented with effect from 1 January 2014. These rules will have a significant impact on multinationals with intra-group financing relating to their operations in Norway.

The Norwegian tax authorities are following the development of the Organisation for Economic Co-operation and Development's (OECD) Base Erosion and Profit Shifting (BEPS) Action Plan closely. As an example, the Ministry of Finance gathered a group of tax experts in Norway which evaluated the entire tax system and its alignment with international practice. The recommendations were presented at the end of 2014 but it remains to be seen whether any of these recommendations result any new legislation.

Finally, there is a particular focus on the quality of the comparability analysis presented to the tax authorities. This is in line with the updated OECD Guidelines and there is an expectation of a much more analytical approach to the determination and evaluation of transfer prices.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Thresholds apply/exist
Legal requirements	●
Protection from penalties	●
Reduce risk of adjustment	●
Shifts burden of proof	●

Basic information

Tax authority name

Norwegian Tax Authorities (Skatteetaten in Norwegian).

Citation for transfer pricing rules

- Section 13-1 in the General Tax Act (GTA). Income can be adjusted based on the general clause in section 13-1 of the GTA.

- Section 6-41 in the GTA sets out the rules on intra-group interest deduction limitation.
- Section 4-12 in the Tax Assessment Act (TAA) includes the requirements to prepare transfer pricing documentation.

Effective date of transfer pricing rules

Formal transfer pricing documentation requirements commenced on

1 January 2008, cf. Section 4-12 of the Tax Assessment Act with regulations.

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

Direct or indirect ownership or control of at least 50 percent.

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

The statute of limitations is 10 years from tax year-end if the taxpayer has not provided sufficient factual information about the transfer pricing in an appendix to the tax return. If taxpayers include an appendix to the tax return setting out sufficient factual information about the transfer pricing, the statute of limitations will be two years after the financial year.

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. From financial year 2007, taxpayers are obliged to file the form RF-1123 regarding intra-group transactions with the annual tax return, if the total amount of controlled transactions exceed 10 million Norwegian krone (NOK) or if the total amount of outstanding accounts exceeds NOK 25 million. In addition, the form RF-1315 is to be used regarding the rules on intra-group interest deduction limitation.

What types of transfer pricing information must be disclosed?

The value of related party transactions to be disclosed depends on the category of the transaction such as services, tangible property transactions, loans and interest, etc.

On the front page of the yearly tax return, taxpayers have to confirm whether they are covered by the formal transfer pricing documentation requirements and/or reporting requirements (RF-1123). There is no requirement to file the transfer pricing study before being requested by the tax authorities to do so. In cases of uncertainty one should consider an appendix to the tax return in order to limit the open years of re-assessment to two years after the financial year and/or to reduce the risk of penalty taxes if an adjustment is sustained.

What are the consequences of failure to submit disclosures?

If affected taxpayers do not submit form RF-1123, the tax filings can be deemed

incomplete. Providing insufficient or wrongful information can lead to penalty taxes being imposed on adjusted transfer pricing amounts in tax audits.

Transfer pricing study overview

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

Yes. English, Norwegian, Swedish, or Danish.

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. There are specific transfer pricing documentation regulations which must be adhered to. The study must include a company overview, industry analysis, functional analysis, selection of transfer pricing method and comparability analyses. There is no specific requirement to perform a database search although this is advisable if a net margin method is applied. The tax authorities can request such an analysis and the taxpayer will get an additional 60 to 90 days to file according to the transfer pricing documentation regulations in Norway.

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.

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, 45 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.

Within 45 days of a written request. Generally, no extension is granted.

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

The taxpayer can bring the case to the tax appeal board and/or the courts. In addition, taxpayers can opt for the international route, i.e. Mutual Agreement Procedure.

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

Yes. General tax penalties could apply. This means that a penalty, generally of 30 percent of the tax avoided, may be levied for transfer pricing adjustments. The penalty exposure can be reduced by including an appendix to the tax return where the intra-group transactions and methods applied are described in a correct and sufficient manner. The rate of penalty tax can be increased to 60 percent in cases of gross negligence by the taxpayer.

To what extent are transfer pricing penalties enforced?

In recent years we have noted that the tax authorities enforce penalties more frequently in transfer pricing cases. On the other hand, according to a new Supreme Court decision, an increase in taxable income should not automatically lead to a penalty if the taxpayer has acted in a prudent manner.

What defenses are available with respect to penalties?

Taxpayers are obliged to disclose sufficient and correct information about their transfer pricing. The defense would thus generally be to argue that the taxpayer has complied with these requirements.

What trends are being observed currently?

There is a particular focus on the quality of the comparability analyses presented to the tax authorities. This is in line with

the updated OECD Guidelines, and there is an expectation of a much more analytical approach to the determination and evaluation of transfer prices. In particular, the treatment of intangible assets are currently areas of great interest to the Norwegian tax authorities. A wide range of industries is being questioned by the tax authorities, however, the pharmaceutical, software and telecommunication industries are often shown particular attention with regard to questions about intangible assets. Finally, the Norwegian tax authorities have stated that they will continue to scrutinize Norwegian subsidiaries and branches with low margins or losses.

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?

No. There is no requirement to use local comparables. However, it is preferable since the tax authorities have more information on such comparables than others. That being said, the Norwegian tax authorities generally acknowledge that it is difficult to find proper comparables looking at the Norwegian market in isolation.

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

There are no specific requirements. The Norwegian tax authorities use several databases when conducting database searches, with Amadeus being the most frequently used.

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.

In cases where the Norwegian taxpayer is a limited risk entity, the Norwegian tax authorities expect loss-making entities to be excluded from the final set of comparables.

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

Medium.

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?

No.

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

Yes. There are situations where income and/or costs are treated differently for book and tax purposes. However, as a main principle, taxpayers should avoid discrepancies between book and tax numbers.

Other unique attributes?

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?

Almost always. However, there is pressure on the Norwegian tax authorities to handle MAP cases more rapidly. As a result, the Norwegian tax authorities have put in place a separate group exclusively dealing with MAP and APA cases.

When may a taxpayer submit an adjustment to competent authority?

There are no formal rules in this area, however, it must be in line with the applicable tax treaty.

May a taxpayer go to competent authority before paying tax?

This is permitted and meetings with the relevant tax authorities are possible. However, taxes become payable upon the tax office's decision being made, so generally taxes have to be paid prior to going to the competent authority. Taxpayers can postpone payment by obtaining a parent or bank guarantee.

Advance pricing agreements

What APA options are available, if any?

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?

Not applicable.

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

Not applicable. Norway does not have a formal APA program in place. The APAs currently negotiated are based on tax treaty provisions.

KPMG in Norway

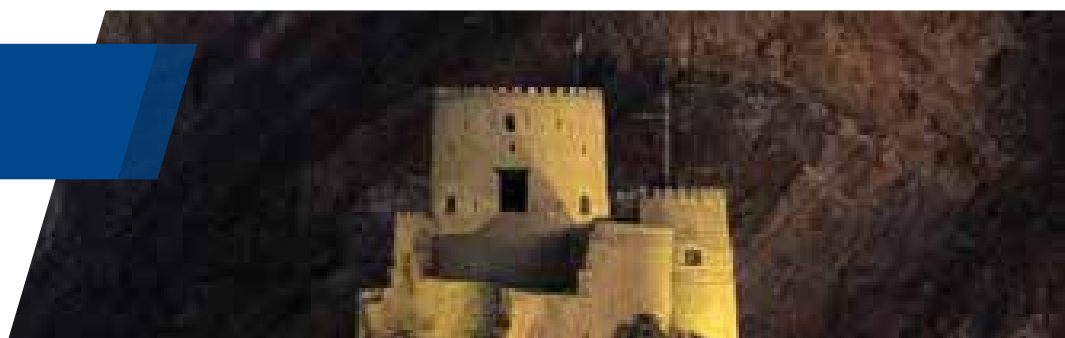
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Oman



KPMG observation

The Oman Tax Department is increasingly focusing on the pricing of related party transactions. In the context of tax law that includes only very broad, related party principles, this can present a challenge to a company in terms of demonstrating that the transactions have been concluded on an arm's length basis.

The Oman income tax law provides for a full tax assessment system. The Tax Department has five years from the end of the tax year in which the income tax return was submitted to raise enquiries. Typically, enquiries will be raised between three and five years from the date of filing, often with enquiries into multiple tax years issued at the same time.

Although there is no requirement to prepare formal transfer pricing documentation or to have documentation in place at the time of filing the income tax return, the length of the enquiry period, i.e. five years, may impact a company's ability to respond to enquiries, e.g. where the people with relevant knowledge have left the company and/or documents may have been lost or misplaced etc.

In the majority of cases where related party transactions occur, the Oman Tax Department will usually seek supporting information. This need not, necessarily, take the form of a full, formal transfer pricing report, provided the documentation that is submitted is adequate and appropriate to support the pricing adopted between the related parties. Even where a formal transfer pricing report is provided, the Tax Department will typically ask for other, contemporaneous evidence, to show that goods and services have actually been provided, and to what level, to support the level of related party charges in the taxpayer's books.

The Tax Department will typically make adjustments if supporting documentation is not provided or, despite some documentation being provided, they determine that transactions were not carried out at arm's length. A company would, therefore, be better placed to respond to enquiries if they were to prepare contemporaneous documentation, and hold this in readiness for the Tax Department's enquiries.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Not applicable
Legal requirements	●
Protection from penalties	●
Reduce risk of adjustment	●
Shifts burden of proof	●

Basic information

Tax authority name

Secretary General for Taxation, Ministry of Finance (generally referred to as the Tax Department).

Citation for transfer pricing rules

Income Tax Law No 28 / 2009 — Part Four, Chapter Two, Section One: Cases of Avoidance between related individuals — Articles 125 to 128.

The Oman Income Tax Law includes related party provisions (not specifically referred to as “transfer pricing” provisions) under which the value of related party transactions can be ignored and taxable income can be calculated, instead, on the basis of an independent price.

The related party rules sit alongside wider reaching, anti-avoidance rules, which give power to the Tax Department to adjust a taxpayer’s taxable income where it is felt that the “principle objective” of any transaction (or the combined effect of two or more transactions) is the avoidance of tax.

Effective date of transfer pricing rules

The current related party rules are included in Income Tax Law No. 28/2009, effective 1 January 2010.

Broadly similar related party rules were also included in the old Income Tax Law, the Law of Income Tax on Companies of 1981.

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

For the purpose of the related party provisions, persons will be treated as related if one party has control over the other or a third party has control over both of them.

Individuals will be treated as related if one person is a relative of the other, up to the third lineage, i.e. from grandparents through to grandchildren.

Control may be direct or indirect. Control will exist where a person has the right to exercise control over the activity and commercial matters of a company. In particular, this will be the case where a person:

- owns the greater part of the company’s capital or voting rights

- is entitled to the greater part of distributions by the company (where the company to distribute its total income); and
- is entitled to the greater part of the company’s assets on dissolution or cessation.

The ‘control’ test shall take into account entitlement to future rights, interests or authority, as well as:

- rights vested in another person in the capacity of representative
- rights that are required to be exercised by another person under directions; and
- rights held by relatives up to the third lineage (whether direct or indirect).

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

The Oman Income Tax Law provides for a full assessment system and the Tax Department have five years from the end of the tax year in which the income tax return is filed to raise enquiries into any aspect of the income tax return.

Where no income tax return has been filed, the period shall be extended to 10 years from the end of the tax year for which the return was due to be submitted.

The assessment period shall also be extended to 10 years in cases of deception or fraud.

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 income tax return requires taxpayers to disclose details of related party transactions. There is no prescribed format for these disclosures and reference is typically made to the related party disclosures in the audited financial statements that are submitted with the income tax return.

What types of transfer pricing information must be disclosed?

There is no prescribed format for the disclosures that are required with the income tax return and reference is typically made to the related party

disclosures in the audited financial statements that are submitted with the income tax return.

What are the consequences of failure to submit disclosures?

There are no specific penalties relating to the related party disclosures required within the income tax return. As noted, there is no requirement to provide documentation, nor to provide confirmation that documentation has been prepared at the time of filing the return, correspondingly, no specific penalties exist either.

Failure to provide full disclosures of related party transactions within the income tax return would likely amount to deception and would allow the Tax Department to apply the extended 10 year assessment period.

Transfer pricing study overview

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

Yes, English or Arabic. Objections to tax assessments, and higher appeals, must be filed in Arabic.

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

Not applicable. The Income Tax Law does not contain any guidance as to the format that related party documentation or evidence should take. That said, the Tax Department considers the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (2010) (the OECD Guidelines) to provide a suitable basis for the pricing of related party transactions and we would, therefore, consider Chapter V to be a suitable basis, if any documentation were being prepared.

The Tax Department will generally ask for “supporting documentation” in generic terms and enquiries may be resolved without the need for formal documentation following the format set out in Chapter V. It may be sufficient to provide, for example, copies of intra-group agreements and the basis for the calculation of the price under enquiry.

Our advice to taxpayers, though, would always be to prepare some, minimum documentation and benchmarking, to give the best defense against enquiries.

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.

No. The Tax Department may consider Chapter II of the OECD Guidelines as providing a suitable basis for the pricing of related party transactions, but the Tax Department will not be bound by the OECD Guidelines.

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.

A company normally has 30 days to respond to requests from the Tax Department for information, although a time extension may be granted, if required.

The Tax Department's questions will likely enquire into the taxpayer's related party pricing in more general terms, rather than specifically requesting formal transfer pricing documentation.

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

If a related party pricing adjustment is included in the Tax Department's final assessment, the taxpayer can file a formal Objection.

If the matter is not resolved through Objection, an Appeal can be made to the Tax Committee and, ultimately, a further appeal can be made to the Commercial Court.

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

The due date for payment of any additional tax is specified on the Tax Department's Assessment Order. Failure to pay by the date specified will attract additional tax at one percent per month on the unpaid amount (or balance thereof) until settled.

To what extent are transfer pricing penalties enforced?

Transfer pricing adjustments form part of the overall assessment of a company's tax position for a particular year. Any additional penalty tax resulting from non-payment is normally enforced.

What defenses are available with respect to penalties?

The Secretary General for Taxation has the power to grant exemption, in full or in part, from the additional penalty tax.

What trends are being observed currently?

The Tax Department is very active in requesting taxpayers to provide documentary evidence to support their related party transactions.

The Tax Department has a backlog of unassessed tax years and it is not uncommon for taxpayers to have three, four, or five years' income tax returns that have not yet been assessed. There is now a drive, within the Tax Department, to clear these open tax years and assessments are being accelerated, with several years' assessments being dealt with at the same time, to bring things up to date.

Taxpayers are, therefore, being asked to provide supporting documentation for multiple years. If documentation was not prepared at the time of completing the tax return, this imposes a significant burden on the company and, if adequate documentation cannot be provided, they may find themselves disadvantaged by the Tax Department's final assessment.

Special considerations

Are secret comparables used by tax authorities?

Yes, the Tax Department maintains its own databases and comparative information.

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.

The Tax Department may take account of the margins achieved by other, local businesses which they consider to be comparable to the taxpayer's business, which may not be determined by reference to commonly accepted databases.

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

There is a good level of interaction with the Customs authority. The Income Tax Law gives specific powers to the Tax Department to request information and documentation from a wide range of ministries and other public establishments and public juristic persons, and it uses this power regularly during the assessment process.

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

Yes, some. The deductibility of management fees (and other related party charges) is subject to the overarching principle that fees are reasonable by reference to the services provided to the taxpayer and to the services being necessary to the business of the taxpayer.

Are management fees subject to withholding?

Yes.

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

Yes. The deductibility of royalties (and other related party charges) is subject to the overarching principle that fees are reasonable by reference to the rights provided to the taxpayer, and to the rights (to which the royalty payments relate) being necessary to the business of the taxpayer.

Are royalties subject to withholding?

Yes.

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

No. In some, exceptional cases, the Tax Department may accept a tax return where the taxable income has been calculated on the basis of a 'deemed profit' margin. This is discouraged by the Tax Department and the Tax Department may push for 'deemed profit' margins which discourage this method.

Other unique attributes?

None.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Oman has approximately 30 double tax treaties in force.

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

In our experience, very few (if any) cases have been escalated to the level of the competent authority and it remains to be seen how effective the mutual agreement procedure would be in obtaining double tax relief.

When may a taxpayer submit an adjustment to competent authority?

We would expect to rely on the time limits included in the relevant tax treaty and to approach the Tax Department, prior to making any formal application, to discuss the process.

May a taxpayer go to competent authority before paying tax?

This would have to be agreed with the Tax Department at the time of discussing the application process.

Advance pricing agreements

What APA options are available, if any?

None.

Is there a filing fee for APAs?

Not applicable. There is no formal APA mechanism in place. In certain cases, the Tax Department may be prepared to provide an informal (non-binding) agreement as to the basis for pricing certain related party transactions.

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. The Tax Department is only willing to provide informal (non-binding) agreements, and such agreements are not sufficiently common to establish any sort of 'practice' of the Tax Department.

KPMG in Oman

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Panama



KPMG observation

In the process of the implementation of Panama's international tax policy, transfer pricing legislation was enacted in 2010. Originally, the scope of the legislation was limited to operations among related parties located in countries with which Panama had entered into agreements to avoid double taxation. However, on 28 August 2012, by means of Law No. 52 of 2012, Panama approved legislation widening the scope of its transfer pricing provisions, to include all taxpayers that carry out transactions with related parties abroad. The Law became effective beginning with fiscal year 2012.

On 7 August 2013 Panama's Finance Ministry (Ministerio de Economía y Finanzas) issued a decree that regulates transfer pricing documentation and studies. The transfer pricing documentation rules in Panama are based on the Organisation for Economic Co-operation and Development (OECD) Guidelines. According to Panama's transfer pricing legislation, the OECD Guidelines are to be considered the technical reference for purposes of interpreting of its transfer pricing rules and provisions.

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

Dirección General de Ingresos (DGI).

Citation for transfer pricing rules

Law No. 33, published in the Official Gazette No. 25,566-A of 30 June 2010, Articles 762-A through 762-Ñ in the Panamanian Fiscal Code. Modified by Law No. 52 published in the Official Gazette No. 27,108 of 28 August 2012, Articles 7 through 14, and Executive

Decree No. 958 published in the official gazette No. 27,347 of 7 August 2013.

Effective date of transfer pricing rules

Transfer pricing rules have been in place since 1 July 2010 but were mandatory only for certain taxpayers (i.e. those benefiting from the application of a tax treaty). The current scope of application to all intra-group operations with foreign based related parties is effective as of FY 2012.

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

Direct or indirect ownership of capital, administration or control. No specific threshold for the entities to be considered related parties (i.e., even if there is a one percent ownership of the shares, the entities are considered related).

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

Three years from the filing date of the income tax return.

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 taxpayer must submit a transfer pricing return (i.e. Form 930) within the six months following the fiscal year-end.

What types of transfer pricing information must be disclosed?

The information must include the name of the related parties with which the transactions were entered into, country of residence of such related parties, type of transactions, whether the transactions were income or expenses, nature and amounts of the transactions with related parties. Likewise, information regarding the transfer pricing analysis must be disclosed, such as, whether grouped or individual analysis was performed, transfer pricing method selected, entity selected as tested party (i.e., the taxpayer or the related party) type of margin used in the analysis (i.e., gross or operating), and percentage of profit, loss or rate obtained in the transaction.

What are the consequences of failure to submit disclosures?

In the Article 8 of Law 52 (modified Article 762-I of Law 33) it is established the sanction of one percent of the total operations carried out with related parties in the event that the taxpayer failed to submit Form 930.

The Law 114 enacted on December 10, 2013 modified the article 762-I of the Fiscal Code establishing the maximum amount for this penalty at 1 million US dollars (USD).

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.

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.

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, 45 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.

45 days.

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

Yes, taxpayers can submit the resolution to an administrative review before the DGI. Subsequently, taxpayers may appeal before the Tax Court. Finally, taxpayers are allowed to submit the case for judicial review before the Supreme Court of Justice (Third Chamber).

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

There is a surcharge of 10 percent of the difference in taxes paid due to the adjustment. Additionally, interest of about one percent per month is also applied on the same amount.

To what extent are transfer pricing penalties enforced?

The tax authorities are actively auditing transfer pricing documentation. It is customary that penalties are enforced.

What defenses are available with respect to penalties?

The taxpayer can initiate a controversy process with the tax authority in order to establish its criteria, seeking to modify the tax administration's position.

What trends are being observed currently?

The tax administration is currently reviewing the FY 2013 studies. However, few assessments had been issued so far.

It is likely that the tax administration will leverage on the transfer pricing documentation in order to develop its fiscal policies.

Special considerations

Are secret comparables used by tax authorities?

There is no evidence that the tax administration is utilizing secret comparables.

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

The transfer pricing decree expressly states that in searching for external comparables, taxpayers can use reliable commercial databases created by public information companies. If these commercial databases contain no information on Panamanian companies or with respect to comparable transactions within Panama, taxpayers can use information available to companies in other countries.

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

No formal rules exist in this area.

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

Yes, always.

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

Currently, there is no sufficient experience on how the Tax Administration will handle this issue.

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

Tax and customs authorities are separate entities. We are not aware of an active coordination between the two entities on transfer pricing issues.

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

Yes, the taxpayer should provide evidence that the services had been actually rendered and that are connected with the generation of taxable income in Panama.

Are management fees subject to withholding?

Yes.

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

Yes, it is a requirement that the royalties are necessary for the production of taxable income. It is important to mention that if the taxpayer is established in a special regime the royalties may not be deductible.

Are royalties subject to withholding?

Yes.

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

No.

Other unique attributes?

None.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Panama has 17 signed tax treaties.

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

Panama applies the exemption method for alleviating double taxation.

When may a taxpayer submit an adjustment to competent authority?

No formal rules exist in this area. Depends on the time frame allowed by the tax treaty.

May a taxpayer go to competent authority before paying tax?

Permitted after the assessment. There is no requirement to pay the assessment before going to the competent authority.

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.

KPMG in Panama

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Peru



KPMG observation

The tax authority in Peru is well informed about the Organisation for Economic Co-operation and Development's (OECD) Base Erosion and Profit Shifting (BEPS) Action Plan, and has internal initiatives to be aligned with this plan, as Peru is pursuing a possible admission into OECD in the future.

The Peruvian tax authorities were very active in 2014 with respect to transfer pricing audits. These audits have focused on primary industries and important local groups. In KPMG's experience, audits are very thorough and it appears that audit teams are focused on gaining experience.

Audits have been triggered by a number of factors — for example, transaction size, continuous losses, and industry analyses. The information provided by taxpayers in their transfer pricing return is also used to select taxpayers to be inspected.

A taxpayer's annual transfer pricing return and transfer pricing study need to be presented to the Peruvian tax authorities in June of the following year.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Not applicable	Required to be contemporaneous	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

Superintendencia Nacional de Administración Tributaria (SUNAT) (National Superintendency of Tax Administration).

Citation for transfer pricing rules

- Market value and transfer pricing rules are defined in Articles 32 and 32-A of Income Tax Law.

- More specific regulations are included in Articles 108 to 119 of Income Tax Law Rulings.
- Penalties are defined in Article 176, numbers 2) and 4); Article 177, numbers 25) and 27); and Article 178 number 1) of the Tax Code.
- Thresholds and exceptions issued with Superintendency Resolutions N° 175-2013-SUNAT.

- Advance Price Agreement rules are defined by Superintendency Resolution N° 377-2013-SUNAT.

Effective date of transfer pricing rules

January 2001.

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

Direct or indirect ownership greater than 30 percent of capital. Companies can also be considered related if they share common directors, managers or executives with decision power. Additional criteria for determining economic relationships also exist.

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

Four years, counting from 1 January of the year following the date of presentation of the Income Tax Return.

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. A transfer pricing return is required for taxpayers based on certain thresholds (revenues and amounts transacted with related parties and/or existence of transactions with tax havens). The transfer pricing return is not submitted with the Income Tax Return, but it is submitted in June of the year following the fiscal year under analysis.

The transfer pricing study is required to be attached to the transfer pricing return.

What types of transfer pricing information must be disclosed?

The transfer pricing return has two main sections:

- The first section reports the identification of the taxpayer, the related parties with which transactions exist, and the types and amounts of transactions.
- The second section must be completed when the taxpayer passes the thresholds and is required to have a transfer pricing study. In this second section, the taxpayer must report the methodologies used in the transfer pricing analysis and the adjustments made, if applicable.

What are the consequences of failure to submit disclosures?

In case the taxpayer fails to file its transfer pricing return, a fine of approximately 30,000 US dollars (USD) is applicable. In addition, failure to present the transfer pricing return may trigger an audit by the tax authority on the taxpayer.

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?

No. Peruvian legislation is very specific on the issues a transfer pricing study should contain. Even though most of the issues are similar to what is outlined in Chapter V of the OECD Guidelines, the taxpayer is required to follow the more specific requirements detailed in Peruvian legislation.

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. However, Peruvian transfer pricing legislation considers six methods instead of five. The difference is Peruvian legislation differentiates the profit split method and the residual profit split method as independent methodologies.

In addition, Peruvian transfer pricing legislation includes a special way of applying the comparable uncontrolled price method when the transaction under analysis is the purchase or sale

of commodities. In this case, the arm's length price needs to be estimated based on the international price of the commodity.

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, 5 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.

Formally, transfer pricing documentation needs to be provided within five working days of request. Nevertheless, the tax authority could set a time limit of one to two weeks, or more, depending on the complexity of the information requested and the stage of the inspection process.

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

Once an adjustment is proposed by the tax authority, it can be challenged by the taxpayer through an administrative process within the same tax authority. After that, the case can be taken to a specialized fiscal court outside the jurisdiction of the tax authority. And after that, if there is still conflict with the decision, the case can be taken to regular Peruvian courts.

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

Yes. 50 percent of the tax omitted, plus interest counting from the moment the tax should have been paid.

To what extent are transfer pricing penalties enforced?

There is little experience but some companies have already been assessed, adjusted and charged with penalties.

What defenses are available with respect to penalties?

The main defense is the documentation i.e. the transfer pricing study. Related documentation, such as intra-group contracts, invoices, or other documents, can also be useful as a means of defense.

Penalties can also be reduced if, during an audit from the tax authority, the taxpayer agrees that the transfer pricing adjustment suggested by the tax authority during its review is correct and accepts to pay the omitted tax without further discussion. In this case, the penalties arising from having omitted tax payments can be reduced to 50 percent or more, depending on the timing of the payment.

In addition, penalties can be avoided if the taxpayer negotiates an Advance Pricing Agreement (APA) with the tax authority.

What trends are being observed currently?

Over the last year, the Peruvian Tax Authority has significantly increased the number of specific requests to taxpayers to present transfer pricing studies and related documentation. The number of transfer pricing audits has also increased, resulting in adjustments and penalties for some taxpayers.

Currently, the principal of SUNAT is a specialist in transfer pricing, and the transfer pricing team of SUNAT has been hiring professionals with experience in transfer pricing. In addition, changes to the transfer pricing regulations have been issued during the last two years, and it is expected that further changes will be issued soon, in order to increase transfer pricing enforcement.

It is expected that audits will focus on the imports/exports of commodities such as mineral, agricultural and other similar products. Intra-group services and financial transactions are also expected to be audited.

Special considerations

Are secret comparables used by tax authorities?

Secret comparables may be used to determine which taxpayers should be inspected. Nevertheless, there is no evidence that the tax authority uses secret comparables to perform adjustments.

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

Yes, there is a preference, but information about local comparables is scarce, so international comparables are also accepted.

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

The tax authority has a specific database, but does not require that taxpayers use the same database for their studies.

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

Yes, always.

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

Use of interquartile range, when applying TNMM, is mandatory according to Peruvian transfer pricing legislation.

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

Tax and customs authorities are part of the same institution (SUNAT). Currently, the customs team usually reviews the transfer pricing reports in order to see if there are potential customs issues.

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

Yes, some. It is necessary to have documentation to support that the services have really been rendered and that the value is reasonable.

Are management fees subject to withholding?

Yes.

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

Yes. It is necessary to have documentation supporting that the royalties paid are related to an intangible necessary for the business.

Are royalties subject to withholding?

Yes.

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

Yes. There is no explicit prohibition in the legislation about this. However, these differences need to be carefully analyzed in each case, in order to evaluate whether it would be accepted or not by the tax authority.

Other unique attributes?

Transactions with local related parties fall into the scope of transfer pricing rulings.

The tax authority usually expects the transaction to be tested against same-year data. In addition, complete information about comparable companies, including complete annual reports or 10-K's are necessary for the company to be regarded as a valid comparable.

Transactions involving commodities need to be analyzed taking into account the international price of the commodity, following specific rules detailed in Peruvian transfer pricing legislation.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Minimal. Peru currently has double tax treaties with Brazil, Canada, Chile, Mexico, the Andean region and Korea. This network is expected to grow in the short and medium term, including countries such as China, Finland, Portugal, Spain, Switzerland and others.

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

Not applicable.

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?

Unilateral, bilateral, multilateral.

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?

Not applicable. No APAs have been filed yet, but taxpayers are expected to be interested in APAs. In 2013, the tax authority published the Superintendency Resolution N° 377-2013-SUNAT with specific rules about APAs.

KPMG in Peru

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Philippines



KPMG observation

While the Philippine tax office has not yet taken concrete steps to enforce the transfer pricing regulations, there is an indication that they will follow the Organisation for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines. This will allow taxpayers to be consistent with the transfer pricing strategies of the group of companies they belong to.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Not applicable
Legal requirements		●
Protection from penalties		●
Reduce risk of adjustment	●	
Shifts burden of proof	●	

Basic information

Tax authority name

Bureau of Internal Revenue (BIR).

Citation for transfer pricing rules

Section 50 of the National Internal Revenue Code (Tax Code): Revenue Regulations No. 02-2013, dated 23 January 2013 (RR No. 02-2013).

Effective date of transfer pricing rules

9 February 2013.

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

Direct or indirect participation in the management, control or capital or being under direct or indirect common management, control or capital.

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

There is no existing law or specific statute of limitations on transfer pricing assessment. However the statute of limitations under the Tax Code is generally three years from the date of filing of the return or from the date the return should have been filed. Under certain conditions, however, the statute of limitations may be 10 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)?

No.

What types of transfer pricing information must be disclosed?

Under Revenue Regulations No. 02-2014, dated 24 January 2014, the top 20 stockholders of a corporation, including their capital contribution and percentage of ownership, must be provided in the new forms of the annual corporate income tax returns starting with taxable year-ended 31 December 2013.

What are the consequences of failure to submit disclosures?

Administrative penalties.

Transfer pricing study overview

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

Yes, English.

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. RR No. 02-2013 enumerates the details of what should be the contents of an adequate documentation. The details include, but are not limited to, the following:

1. organizational structure
2. nature of the business/industry and market conditions
3. controlled transactions
4. assumptions, strategies, and policies
5. cost contributions assumptions, strategies, and policy arrangements
6. comparability, functional and risk analysis
7. selection of the transfer pricing method
8. application of the transfer pricing method
9. background documents; and
10. index to documents.

However, the details may vary, depending on what is crucial to demonstrate the efforts exerted to determine the arm's length pricing, given the nature or complexity of the related party transactions, appropriateness of the method used in determining the arm's length pricing, or other factors.

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.

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.

RR No. 02-2013 does not specify this. However, following rules under a regular tax audit, documents supporting the taxpayers' defenses are usually submitted within 15 to 30 days of the request, subject to extension if allowed.

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

RR No. 02-2013 remains silent on transfer pricing specific dispute resolution options and procedures. However, there are remedies available to taxpayers in the context of regular audits (for taxes of all types), such as protests, appeals and going to the courts. It is expected that these remedies will apply in the case of transfer pricing audits.

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

It is expected that penalties can be assessed in the case of transfer pricing adjustments. The penalties are expected to be the same as those imposed under regular tax audits (25 percent/50 percent surcharge; 20 percent deficiency interest; 20 percent delinquency interest; compromise penalties).

To what extent are transfer pricing penalties enforced?

Not yet known since the implementation of RR No. 02-2013 is in the early stages.

What defenses are available with respect to penalties?

Not yet known since the implementation of RR No. 02-2013 is in the early stages.

What trends are being observed currently?

Before the introduction of the recent transfer pricing regulations, the tax office is known to have transfer pricing related findings in conducting regular audits. Hence, the timely submission of documentation may be useful to contest deficiency tax findings. The documentation may also be a defense against possible benchmarking performed by the tax office based on industry averages.

Special considerations

Are secret comparables used by tax authorities?

Not yet known since the implementation of RR No. 02-2013 is in the early stages.

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

No, RR No. 02-2013 is silent on the matter.

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.

In exceptional circumstances where there may not be comparable transactions or sufficient data to apply the TP methods, the tax office may use the following approaches:

- a) extension of the TP methods. The comparable may be with enterprises in another industry segment or group of segments
- b) use of a combination or mixture of the TP methods or other methods or approaches.

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

High, but the interaction so far is not in relation to transfer pricing.

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

Yes, provided the management fees may still be shown to be ordinary and necessary expenses and are properly substantiated.

Are management fees subject to withholding?

Yes.

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

Yes, provided the royalty fees may still be shown to be ordinary and necessary expenses and are properly substantiated.

Are royalties subject to withholding?

Yes.

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

Yes, RR No. 02-2013 is silent on the matter.

Other unique attributes?

None.

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?

The BIR has no experience in this area.

When may a taxpayer submit an adjustment to competent authority?

Currently, no rules exist in this area.

May a taxpayer go to competent authority before paying tax?

Currently, no 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.

KPMG in Philippines

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Poland



KPMG observation

On 18 July 2013, amendments to Decrees of Ministry of Finance relating to transfer pricing came into force. They reflect changes in the Organisation for Economic Co-operation and Development (OECD) Guidelines and were aimed at integrating the conclusions developed by the European Union Joint Transfer Pricing Forum (EU JTPF) in the area of low value adding services into the Polish tax system.

The scope of the implemented changes is complex and extensive and includes provisions encompassing the following areas:

- business restructuring
- low value adding services (new documentation possibilities but no safe-harbor of mark-ups has been introduced)
- shareholder costs
- choice of transfer pricing method; and
- procedure for conducting benchmarking studies, including requirements for a comparability analysis.

Regulations on business restructuring must be especially emphasized, as this is an area of special interest to the tax authorities in Poland. In addition to the regulations implemented in July 2013, extensive guidelines on business restructuring were published by the Ministry of Finance in March 2014.

Following the OECD's Base Erosion and Profit Shifting (BEPS) initiative, a series of amendments to the Polish tax law have been implemented. The most important includes new more restrictive thin cap rules and controlled foreign corporation (CFC) rules.

Furthermore, completely new transfer pricing documentation rules may potentially come into force starting from 1 January 2017. Under the draft of amendments to the current regulations, the documentation obligation would depend on a taxpayer's turnover or costs. Three types of different documentation obligations are envisaged, among them, a domestic benchmarking study. Currently, the proposed amendments to the regulations also introduce an obligation to file an affirmation signed by a board member stating that a taxpayer's transfer pricing documentation is completed at the financial year-end. Such a statement is supposed to be filed together with the annual corporate income tax (CIT) return.

In 2014 and 2015, KPMG in Poland has noted a significant increase in the number of transfer pricing audits. Areas subject to scrutiny include, but are not limited to: localization of transfer pricing documentation (that is, documentation should be in line with the Polish transfer pricing documentation regulations; group transfer pricing documentation is not accepted) and charges for services provided by foreign related parties. KPMG in Poland expects that tax authorities' interest in related party transactions will become even stronger, especially due to the fact that a special central transfer pricing audit team was constituted in the Ministry of Finance last year.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable
Legal requirements	●
Protection from penalties	●
Reduce risk of adjustment	●
Shifts burden of proof	●

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, amended as of 18 July 2013.
- 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 9 April 2013.
- Advance Pricing Agreement (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.

- Advance Pricing Agreements (APA) — 1 January 2006.

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

Ownership of greater than five percent share capital means that the entities 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 submitted to the revenue authority on an annual basis (e.g. with the tax return)?

Yes. Certain transfer pricing information about transactions with foreign parties must be submitted to the tax authorities and statutory transfer pricing documentation must be prepared (but submitted only upon request).

What types of transfer pricing information must be disclosed?

Information on whether 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 submit disclosures?

Individuals responsible for the tax compliance of companies may be held responsible under the penal-fiscal code for not submitting required tax information.

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?

Generally yes, however there are specific requirements to be met.

A taxpayer is required to provide the tax authorities with statutory transfer pricing documentation within seven days of receiving the request. The documentation should be prepared for transactions concluded by a taxpayer with a related party which exceed, in the given tax year, the following thresholds:

- EUR100,000 – if the value of the transaction does not exceed 20 percent of the company's share capital
- EUR30,000 – for service transactions and transactions involving intangibles
- EUR50,000 – in the remaining cases.

Additionally, a taxpayer is required to prepare transfer pricing documentation for a contribution in a partnership, if the total value of contributions of all partners exceeds EUR50,000.

Moreover, 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.

The statutory transfer pricing documentation is not required to include a benchmarking study or other comparable economic analysis documenting the compliance of the transaction with the arm's length standard. However, inclusion of such an analysis prepared following the OECD Guidelines 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.

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. With some exceptions (for example the berry ratio is not an allowed profit level indicator).

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, 7 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.

Seven days following the request of the tax authorities.

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

No dispute resolution options available (only litigation after the adjustment is made).

In case of cross-border adjustments leading to double taxation Mutual Agreement Procedure (MAP) may be initiated with the Competent Authority.

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 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 the 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:

- strong emphasis on business restructuring issues: new regulations, additional explanations/guidelines published, media coverage following general OECD/global discussion on base erosion and tax 'morality'; bad press for companies adopting tax optimization measures
- new documentation possibilities for taxpayers concerning low value added services but no safe-harbor of mark-ups has been introduced

scrutiny of shareholders cost charged to subsidiaries

- 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); and
- 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, but it is a preference. 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: Tegiela (Polish database), Amadeus, Monitor Polski "B" (registry court data).

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.

The tax authorities focus on the interquartile range, however the preference exists for the median (unless there are strong arguments for different values). The rules are different for interest — the regulations indicate the lowest interest in the market to be considered as arm's length.

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. 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.

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

Yes. Similar to management fees, royalties should be incurred for the purpose of earning revenue in order to be treated as tax deductible.

Are royalties subject to withholding?

Yes.

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

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. Year-end adjustments may trigger a tax audit, especially if the amount of the corporate income tax pre-paid during the tax year is higher than the total tax due (i.e. when the refund of the pre-paid tax is requested in the final tax return).

Other unique attributes?

Multiple year data are required (on average, three year period) for comparables. The testing of a single year result of the tested company against a multiple year period is preferred.

No safe-harbors exist.

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 (financial penalties mostly).

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 agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

Is there a filing fee for APAs?

Yes. The filing fee is one 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; and
- 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?

No.

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

Yes. 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, mostly due to the costs of the proceedings. We have noticed a clear change of attitude of the authorities who are becoming significantly more business friendly and are encouraging taxpayers to benefit from the APA possibility.

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Portugal



KPMG observation

The Portuguese transfer pricing legislation has been in force since 1 January 2002, covering both cross-border and domestic transactions. The original rules experienced some changes over the years, typically because of increasing scope. One of the most significant changes was the introduction in 2008 of an Advance Pricing Agreement (APA) provision.

Currently, taxpayers can significantly reduce transfer pricing risk in Portugal through unilateral, bilateral or multilateral APAs. On the enforcement side, the tax authorities have increased transfer pricing audits across virtually all industries and transaction categories. Transfer pricing has been one of the Portuguese Government's top priorities to date. The Portuguese Government recently issued its strategic plan against fraud and tax evasion for 2015-2017, which will further increase the focus on transfer pricing.

Transfer pricing documentation is required in Portugal for taxpayers with net sales and other revenues equal or above 3 million euros (EUR). There are some tax forms that require specific transfer pricing information, including a statement of whether or not the taxpayer has adequate transfer pricing documentation at the time of filing the company's tax return.

After a discussion period during 2013, the Corporate Income Tax Reform was finally implemented with effect from 1 January 2014. This reform aims to significantly increase the competitiveness of Portugal for foreign investments and investors, therefore creating a number of challenges and opportunities from a Portuguese transfer pricing perspective.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Not applicable	Required to be contemporaneous	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

Autoridade Tributária e Aduaneira (ATA).

Citation for transfer pricing rules

Article 63 of the IRC Code; Ministerial Order (Portaria) n. 1446-C/2001 of

21 December; and Ministerial Order (Portaria) n. 620-A/2008 of 16 July.

Effective date of transfer pricing rules

1 January 2002.

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

There is a special relationship when one entity has the power to exercise, directly or indirectly, a significant influence in the management of the

other. As of 2014, any of the following conditions would define the relationship as related party:

- one entity participates directly or indirectly in at least 20 percent of the share capital or voting rights of another entity (10 percent until 2013 — inclusively)
- both entities are at least 20 percent owned, directly or indirectly, by the same legal entity (10 percent until 2013 — inclusively)
- an entity and the members of its corporate bodies, or any administration, direction, management or supervising boards entities in which the majority of the board of directors are constituted by the same persons
- entities related under a subordination agreement
- entities that are in a control relationship under the article 486 of Commercial Companies Code
- entities whose legal relationship allows, by its terms and conditions, the control of the management decisions of the other, arising from facts outside the commercial or professional relationship itself; and
- transactions between a resident entity and entities resident in a clearly more favorable tax regime (as listed in Ministerial Order (Portaria) n.º 292/2011, 8 November).

Moreover it should be noted that transfer pricing rules apply not only to transactions established between a permanent establishment located in the Portuguese territory and its foreign headquarters or other foreign permanent establishments, but also to transactions established between resident entities in Portugal and all its permanent foreign establishments and among its permanent establishments.

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

Generally, four years from the last day of the tax year-end (in cases where tax losses exist, it may vary, depending of the year being considered).

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. All Portuguese corporate taxpayers need to provide disclosure on a yearly basis, transfer pricing information on their Annual Tax and Accounting Return (IES) to be submitted by the 15th day of the seven-month period following the tax year-end.

What types of transfer pricing information must be disclosed?

Taxpayers usually need to disclose the following information:

- amounts of related party transactions, per transaction category, domestic and cross-border transactions
- selection of the transfer pricing methods on cross border transactions
- declaration whether documentation requirements were compiled when filing the income tax return.

What are the consequences of failure to submit disclosures?

Specific penalties have been published to transfer pricing infringements in 2012. Late submission of the documentation is subject to a penalty of from EUR500 to EUR10,000 and the refusal of presentation is subject to a penalty up to EUR150,000.

Transfer pricing study overview

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

Documentation must be in Portuguese. Documents in foreign languages must be translated into Portuguese before presented to tax authorities, although this requirement.

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.

Portuguese transfer pricing rules follow 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

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

Yes.

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, 10 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.

As a rule 10 working days.

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

Administrative claim, hierarchical appeal, arbitral court, competent authority and mutual agreement procedures.

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

Transfer pricing adjustments are regulated by the general tax penalty regime. If an adjustment is sustained, general penalties may be assessed from EUR750 to EUR45,000.

Compensatory interest is accrued at four percent monthly rate for late payment.

To what extent are transfer pricing penalties enforced?

With the expected increase of transfer pricing audits, a broader enforcement of transfer pricing penalties is also expected as foreseen in the Law.

The Strategic Plan Against Fraud and Tax Evasion 2015-2017 foresees the reinforcement of tax inspections regarding transfer pricing.

What defenses are available with respect to penalties?

Negligent behavior and cooperation will impact the penalty value.

What trends are being observed currently?

Given the current economic scenario in Portugal, the tax authorities are concentrating efforts on transfer pricing audits, as transfer pricing adjustments tend to result in larger tax assessments and tax collection.

Recent audits have focused more on adjusting operating losses (disregarding the effect of the global economic crisis), payment for intra-group services, financial transactions, IP transactions, as well as business restructuring processes.

The Portuguese Government has recently launched a strategic plan against fraud and tax evasion for 2015-2017 which lists a series of measures that aim to ensure a fairer distribution of the tax efforts and punish in a more effective way the intentional practices of tax failure. These measures that will be implemented in 2015, foresee some changes in transfer pricing, namely:

- the use of APAs more frequently as a means to increase tax certainty and predictability
- enforcement of the transfer pricing regime in terms of VAT in cases where there are transactions between related parties are subject to different deduction regimes
- assessment of the transfer pricing policy specifically in cross-border transactions and the payments made to related parties located in countries with a more favorable tax regime

- the increase in the number of ATA technicians assigned to the transfer pricing department, as well as to the analysis of complex tax issues such as transfer pricing, international taxation and the application of anti-abuse rules.

This plan is likely to increase transfer pricing audits.

Special considerations

Are secret comparables used by tax authorities?

No. As a rule secret comparables are not allowed. Nevertheless, tax authorities may use them in practice to benchmark a taxpayer's return in relation to its peers.

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

Yes. Local comparables (Portuguese and to a certain extent Spanish) are preferred, but others may be allowed whenever these are not available.

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

The Tax Authorities use both the SABI (with Iberian companies) and the Amadeus (with European companies) databases. The preference is for Portuguese (or Iberian) independent comparables, regardless of the database. Other databases may be used (and accepted by the ATA) for specific categories of transactions or industries (e.g. Royaltystat, Orbis, and Bloomberg).

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.

As a rule, tax authorities tend to select the median values of the benchmarking results.

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

Low, although increasing. The taxpayer is sometimes required to deliver its transfer pricing documentation under customs tax inspections.

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

No.

Are management fees subject to withholding?

Yes.

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. Positive transfer pricing adjustments are foreseen in the law. Negative transfer pricing adjustments are not permitted after the year-end. There could be VAT or customs implications, which should also be carefully evaluated on a case-by-case basis.

Other unique attributes?

Not applicable.

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?

Yes, as a rule.

When may a taxpayer submit an adjustment to competent authority?

After having been notified of an additional tax assessment.

May a taxpayer go to competent authority before paying tax?

Permitted by providing a guarantee or a similar measure.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

Is there a filing fee for APAs?

Yes. The submission of the request in respect of the preliminary phase is free of charge. The submission of the proposal implies the payment of a fee that may vary between approximately EUR3,150 and EUR35,000, depending on the revenue of the taxpayer.

Renewals or reviews of APAs require a filing fee, calculated in a similar way, but with a discount of 50 percent of the initial 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?

Yes.

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

No. From a Portuguese transfer pricing perspective APAs are run in a very efficient timing. However, in cases of bilateral and multilateral APA final results will depend on the counterpart.

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Puerto Rico



KPMG observation

After the termination of the Internal Revenue Code (IRC) section 936 election in 2006, some United States (US) companies decided to incorporate as non-US entities, subject to Puerto Rico tax rules. Any such companies should review their intra-group transactions to make sure they comply with local transfer pricing requirements.

In recent years, new non-transfer pricing provisions have been introduced into the Puerto Rico tax rules which nevertheless impact intra-group transactions. For example, inter- and intra-company charges are subject to a 51 percent disallowance for regular income tax purposes and those same charges are subject to a 20 percent tax for Alternative Minimum Tax (AMT) purposes. Thus, companies need to evaluate their intra-group transactions and the related impact of these new provisions.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Not applicable
Legal requirements	●
Protection from penalties	●
Reduce risk of adjustment	●
Shifts burden of proof	●

Basic information

Tax authority name

Departamento de Hacienda (Treasury Department).

Citation for transfer pricing rules

Articles 1047-1 to 1047-4 of the Puerto Rico Tax Regulation and Section 1040.09 of the Puerto Rico Internal Revenue Code of 2011, as amended (PRIRC).

Effective date of transfer pricing rules

21 January 2001 (Effective date of Regulations).

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

Parties are related when there is direct or indirect control, either legally established or just exercised. There is presumption of control if the income or deductions are arbitrarily manipulated.

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

Generally four years from the date the tax return is filed.

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)?

No. Puerto Rican taxpayers are not obliged to submit transfer pricing documentation to the tax authorities.

What types of transfer pricing information must be disclosed?

Under the revised statutory audited financial statements requirements, taxpayers with related entities operating

in Puerto Rico must file consolidated/combined audited financials and a reconciling schedule showing the results of operations of each of the entities and eliminating entries. An exception to the combined/audited financials has been approved for 2011, 2012 and 2013 to the extent that the related party name is mentioned in the notes of the audited financials.

What are the consequences of failure to submit disclosures?

Income tax return could be considered not filed.

Transfer pricing study overview

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

Yes, English or Spanish.

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

No. Since there is no requirement to prepare a transfer pricing study, the authority has not adopted specific requirements with respect to contents when the taxpayer elects to submit a TP study. The only underlying requirement would be to show that the result is consistent with the applicable regulations.

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.

Not applicable.

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.

Thirty days from the day requested. Extensions are generally granted.

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

No special procedure is applicable. However, besides the competent authority, the taxpayer could request the assistance of the United States Internal Revenue Service (IRS) in cases involving a US jurisdiction and creating a potential double taxation issue.

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

Yes, a deficiency will be assessed upon which interest and surcharges will be determined, which will be collected in the same manner as the tax. Interest consists of a 10 percent single annual rate and surcharge of 10 percent (one time).

To what extent are transfer pricing penalties enforced?

Always.

What defenses are available with respect to penalties?

None. Surcharge can only be removed at the discretion of the tax authority by execution of a closing agreement.

What trends are being observed currently?

Recent changes to the Internal Revenue Code shows the increasing attention

that transfer pricing topic is receiving from the Government. However, the rules adopted deal with the subject matter indirectly by way of limiting in different ways the deductibility of intercompany charges.

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. Usually US companies are accepted as comparable companies.

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

No specific preferences.

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 specific preferences.

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

Low.

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

Yes, some. Beginning in 2013 in the case of management fees paid to a home office or a related entity not engaged in a trade or business in Puerto Rico, only 49 percent of such fees are deductible. Further, amounts equal to 20 percent of any such management fees and all other intercompany charges, are added to the regular Alternative Minimum Tax (AMT).

Are management fees subject to withholding?

No.

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

Yes. These are deductible only when paid, not just accrued.

Are royalties subject to withholding?

Yes.

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

Yes. If the year-end adjustment is performed prior to the closing of the fiscal year, the year adjustments are acceptable. Nevertheless, it is important to consider any impact from an indirect taxes perspective, as well as customs duties.

Other unique attributes?

None.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Minimal. There is a competent tax authority agreement in place between the Puerto Rican Treasury Department and the IRS intended to resolve disputes when a transaction is treated differently in both tax jurisdictions.

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

Almost always.

When may a taxpayer submit an adjustment to competent authority?

When a double taxation issue has been identified.

May a taxpayer go to competent authority before paying tax?

Yes.

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.

KPMG in Puerto Rico

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Romania



KPMG observation

The Romanian legislation on transfer pricing documentation follows the principles of the European Union (EU) regulations on transfer pricing (e.g. the EU Code of Conduct on Transfer Pricing).

Although transfer pricing documentation requirements were introduced some time ago, many Romanian taxpayers prefer to wait for a specific request issued by the Romanian tax authorities in order to start preparing their transfer pricing documentation.

The Romanian tax authorities tend to adopt a simple approach when it comes to transfer pricing topics. Cases arise where the tax authorities challenge various aspects of a taxpayer's position, and typically the only way to resolve the resulting dispute is in court.

With respect to the Organisation for Economic Co-operation and Development's (OECD) Base Erosion and Profit Shifting (BEPS) initiative, and the United Nations' (UN) Practical Transfer Pricing Manual for Developing Countries issued October 2012, it is likely that the Romanian tax authorities will intensify their current practice of reclassifying transactions based on substance.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Not applicable
Legal requirements	●	
Protection from penalties	●	
Reduce risk of adjustment		●
Shifts burden of proof	●	

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 Advanced Pricing Agreements (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 were enforced, thus creating a more stable regulatory environment for transfer pricing purposes.

Although the obligation to document domestic intragroup 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 submitted to the revenue authority on an annual basis (e.g. with the tax return)?

No. There is 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 submit disclosures?

Not applicable.

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, with some additional local requirements regarding the TP 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

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

Yes.

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, 90 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.

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 up to three months to submit its documentation, with the possibility of an extension equal to the initial period granted within the tax authorities' official request.

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

Taxpayers can challenge a transfer pricing adjustment at administrative level, by submitting an appeal against the decision issued by the Romanian tax authorities, or in a court of justice. According to the Romanian transfer pricing legislation, when transfer pricing adjustments are made with respect to transactions between Romanian related parties, an automatic adjustment is to be made at the level of the other related parties involved in the adjusted transactions. Although the procedure to be followed in such a case is not very clear, the companies may apply for it. The possibility to apply the Mutual Agreement Procedure (MAP) is provided in the majority of double tax treaties concluded by Romania.

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

Starting from 1 March 2014 the late payment interest decreased from 0.04 percent per day to 0.03 percent per day, while another late payment penalty of 0.02 percent per day of delay 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 with high turnover.

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 tax authorities.

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 in 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.

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

Yes, always.

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

Yes, the interquartile range is taken into account in a TNMM analysis. In most cases in practice, the tax authorities focus on the search criteria used to select the comparable companies, in order to ensure that the criteria is in line with the Romanian legal requirements. However, in some cases the authorities did not agree with the comparable companies selected and performed separate benchmarking studies.

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

Yes, some. 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.

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

Yes. There are no specific rules or limitations regarding the deductibility of royalties. The general corporate rules for deductibility must be observed (see above). In practice there are cases where the tax authorities tried to reject the deductibility of royalties charged to Romanian taxpayers.

Are royalties subject to withholding?

Yes.

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

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.

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 exist in this area.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

Is there a filing fee for APAs?

Yes. The tariff which would be charged for releasing the APA is 10,000 euros (EUR) 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.

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

Not applicable. The APA program is developing slowly. So far, it seems that only four APAs have been concluded between the Romanian tax authorities and taxpayers.

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Russia

KPMG observation

The current Russian transfer pricing rules have been effective since 2012. They are generally based on the Organisation for Economic Co-operation and Development (OECD) Guidelines, but have certain differences. For example, while there are five basic transfer pricing methods (as in the OECD Guidelines), under the Russian transfer pricing rules, the Comparable Uncontrolled Price (CUP) method and Resale Price Method have priority over other methods.

Under Russian law, even large domestic transactions between related parties are subject to the transfer pricing rules. Furthermore, the Russian tax authorities may control prices not only in cross-border transactions with related parties, but also in transactions with unrelated companies located in offshore jurisdictions. Export / import prices for certain commodities (e.g. oil products, precious metals) are also within the scope of the Russian transfer pricing rules.

Taxpayers need to prepare transfer pricing documentation on an annual basis in Russia, and a local benchmarking study is required when testing the profitability of a Russian company. In addition, taxpayers are required to submit a notification on controlled transactions by 20 May following the reporting year.

Advance Pricing Agreements (APAs) are available in Russia, but the practice is not extensive.

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

Federal Tax Service (FTS).

Citation for transfer pricing rules

- Chapter 14.1. (Articles 105.1-105.2 of the Russian Tax Code) — Related parties
- Chapter 14.2. (Articles 105.3-105.6 of the Russian Tax Code) — General

provisions on prices and taxation. Information used for comparability analysis

- Chapter 14.3. (Articles 105.7-105.13 of the Russian Tax Code) — Transfer pricing methods
- Chapter 14.4. (Articles 105.14-105.16 of the Russian Tax Code) — Controlled transactions. Preparation and submission of documents for tax

authority monitoring. Notification of controlled transactions

- Chapter 14.5. (Articles 105.17-105.18 of the Russian Tax Code) — Tax control of prices between related parties
- Chapter 14.6. (Articles 105.19-105.25 of the Russian Tax Code) — Advance pricing arrangements
- Articles 129.3-129.4 of the Russian Tax Code — Penalties; and

- Certain articles of Chapter 25 of the Russian Tax Code stipulate specific transfer pricing rules for securities and derivatives (Article 280 of the Russian Tax Code) and interest (Article 269 of the Russian Tax Code).

Effective date of transfer pricing rules

1 January 2012.

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

More than 25 percent direct/indirect ownership of one company by another company including parties in which one company participates directly or indirectly and such participation exceeds 25 percent (sister companies).

Moreover, the definition of related parties also includes:

- parties that are controlled by the same CEO or board of directors, 50 percent of which are the same persons
- parties where one party has the right to appoint the CEO for the other party or at least 50 percent of the board of directors for the other party
- party and an individual where the individual performs the duties of the party's chief executive officer
- parties and/or individuals, if the share of direct participation of each preceding party in each subsequent organization equals more than 50 percent
- individuals, if one individual is subordinate to another individual by official position
- an individual, his or her spouse, parents (including adoptive parents), children (including adopted children), full and half brothers and sisters; and
- a trustee and ward by a court decision on related party status.

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

The tax authorities can audit only three calendar years preceding the year in which the decision to conduct a transfer pricing audit was taken by the transfer pricing authority.

The new transfer pricing rules also stipulate certain transitional provisions for 2012-2013:

- a decision to conduct a tax audit of controlled transactions performed in 2012 can be taken no later than 30 June 2014 (amendments to the transfer pricing legislation of April 2013); and
- a decision to conduct a tax audit of controlled transactions performed in 2013 can be taken no later than 31 December 2015.

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. A taxpayer must submit notification to the tax authorities about controlled transactions that occurred in each calendar year by 20 May of the following year.

What types of transfer pricing information must be disclosed?

The form of the taxpayer's notification is rather complex and contains the following main fields:

- calendar year in which a transaction subject to the transfer pricing regulations occurred
- subject matter of the transaction
- information about the parties to the transactions, (name, taxpayer's identification number)
- income received and expenses incurred relating to the transaction
- grounds for classifying the transactions as controlled
- pricing methods used by the taxpayer (optional); and
- information sources used by the taxpayer (optional).

When providing information on the subject matter of the transaction, it will be necessary not only to give a full description (e.g. goods, works, services, or property rights), but also to submit more detailed data, including the code for the subject matter of the transaction in accordance with one of three classifications:

- TNVED (Foreign Economic Activity Commodity Nomenclature) — for cross-border transactions with goods

- OKP (Russian Classification of Products) — domestic transactions for goods; and
- OKVED (Russian Classification of Economic Activities) (for works, services, or property rights) — for services and other transactions.

The most detailed information is required for transactions with goods where the taxpayer will have to inform the tax authority additionally of:

- the country of origin, shipping (loading) point
- delivery (discharging) point; and
- as well as the terms of delivery.

Please note that the above information should be provided for each transaction. As a result, companies usually prepare and file a transfer pricing notification in the electronic format.

What are the consequences of failure to submit disclosures?

Failure to submit notification to the tax authorities about controlled transactions or the disclosure of incorrect data may result in fine of 5,000 Russian rubles (RUB) per taxpayer. Also, failure to submit notification increases likelihood of transfer pricing audit (in case local tax inspectorate informs Federal Tax Service about controlled transactions of the taxpayer).

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?

No. Transfer pricing documentation can be presented in any format, but under the Tax Code should contain the following details:

- indication of the parties to the transaction and their residence, description of their functions, assets and risks attributable to the transactions

- description of the transaction: subject matter, terms and conditions, methodology applied, etc.
- justification of the transfer pricing method applied: indication of sources of information used, calculation of the range of arm's length prices/ profitability, amount of income received and/or expenses incurred relating to the transactions and related economic benefits received
- description of adjustments to the tax base (if any) performed by the taxpayer
- other information necessary to justify the transfer prices used.

Transfer pricing documentation should be prepared with references to the Russian tax code (rather than the OECD transfer pricing Guidelines). A local benchmarking analysis is usually required.

In addition, the Russian tax authorities published for taxpayers Guidelines on preparing transfer pricing documentation. It is strongly recommended to prepare local transfer pricing files in accordance with these 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

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

No. Under the Tax Code, the Resale Price Method is a priority method for goods, which were purchased in a controlled transaction and resold to the independent party. The CUP method requires a high degree of comparability for its application. In the case where general transfer pricing methods (or a combination thereof) cannot be applied, the market price for non-recurring transactions (e.g. sale of a trademark) could be determined using an independent appraisal report.

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 taxpayer must provide the transfer pricing documentation to the tax authorities within 30 working days from the date of the tax authorities' request.

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

Upon the audit, the tax authorities issue the act summarizing the audit results. The taxpayer is able to provide their appeal to this act. Then, the tax authorities take the decision on the transfer pricing audit. If the taxpayer does not agree with the decision, the tax authorities will try to enforce it via a litigation procedure in the Russian arbitration 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 1/300 of the currently effective refinancing rate established by the Central Bank of the Russian Federation (8.25 percent as of 1 July 2015).

The penalty for underpayment of tax arising from non-compliance with the transfer pricing regulations is 40 percent of the underpaid tax. This penalty applies starting from 2017. For 2012-2013, the penalty is not applied. For 2014-2016, the penalty will be 20 percent of the underpaid tax.

To what extent are transfer pricing penalties enforced?

Penalties are generally enforced in practice.

What defenses are available with respect to penalties?

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

A taxpayer is exempt from 20 percent/ 40 percent penalty if the relevant transfer pricing documentation supporting arm's length level of prices was properly prepared and provided to the tax authorities within 30 working days upon receiving their request.

What trends are being observed currently?

During transfer pricing audits the Federal Tax Service mainly focus on cross-border transactions. From our experience, they tend to apply the CUP method in transactions with commodities.

The local tax authorities generally pay much attention to intra-group transactions such as management services, IP royalty, interest deduction. They inter alia analyze substance of transactions and their proper document support. Also, Russian tax authorities may test the arm's length nature of prices in non-controlled transactions (i.e. transactions between unrelated parties) in case they assume unjustified tax benefit of the taxpayer.

Special considerations

Are secret comparables used by tax authorities?

No. Nonetheless, tax authorities may use secret comparables for selection of companies for transfer pricing audits.

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

A local study is required for testing profitability of Russian companies (a permanent establishment in Russia of a foreign company). For testing profitability of foreign companies, a foreign study may be accepted, but the search strategy in the study should be in line with requirements under the Russian Tax Code (e.g. requirement to reject loss-making companies etc.).

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

The results of benchmarking studies aimed at testing the arm's length nature of prices/margins of Russian companies (or foreign companies with a Russian permanent establishment) are more likely to be acceptable if the data for the search were obtained from Russian databases (i.e. SPARK, RUSLANA, etc.).

To test the arm's length nature of prices/margins of European companies, the Amadeus database can be used.

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

Yes, always.

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

Please note that the Russian Tax Code contains a special formula for calculating the arm's length range. This formula is slightly different from the interquartile range.

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

There is some interaction, but it is generally limited.

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

Yes. They must be supported by documentation evidencing the fact that services were actually rendered and that a Russian taxpayer received the economic benefit from such services.

Are management fees subject to withholding?

No.

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

Yes. There should be economic justification of the royalty payment. There are certain court decisions arguing the economic substance of royalty payment outside of Russia.

Are royalties subject to withholding?

Yes.

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

Yes. If a company underestimated its tax base due to non-arm-length prices and confirm this during preparation of transfer pricing documentation, the company is required to make a self-adjustment in the tax return.

For cross-border transactions true down adjustments (i.e. adjustments to decrease the tax base in Russia) are generally not feasible due to tax and customs issues and prohibited as such under Russian transfer pricing rules. True-up adjustments should be carefully structured as various options can be considered.

For domestic transactions starting from 2015, the mechanism of correlative adjustments is introduced.

Other unique attributes?

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?

The Russian competent authority has little experience in transfer pricing matters.

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?

Unilateral, bilateral, multilateral.

Is there a filing fee for APAs?

Yes. The fee for concluding a unilateral APA is RUB2 million.

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 available only for 'large taxpayer'. The general qualification criteria for a 'large taxpayer' varies depending at which level (federal or regional) such taxpayer is subject to tax administration. A taxpayer is generally considered a 'large taxpayer' at the regional level if any of the following criteria is met:

- total amount of annual federal taxes equals RUB1 billion; or
- total annual revenue equals RUB1 billion to RUB20 billion (amendment of Federal Tax Service dated 24 April 2012) of Federal Tax Service dated 24 April 2012).

The qualification criteria for a 'large taxpayer' at the federal level are even higher.

The practice of APA develops in Russia. According to the official information, the 1st APA was concluded by an oil company, Rosneft, in November 2012. Under this agreement, Rosneft and the Federal Tax Service agreed on certain pricing methods for oil sales transactions in the domestic market. As of July 2015, more than 20 APAs were concluded, mostly on domestic Russian transactions. KPMG Russia has an extensive practical experience on obtaining APAs in Russia.

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Saudi Arabia

KPMG observation

While Saudi Arabia does not have complex transfer pricing rules, transactions between related parties must be concluded on terms as if the parties were independent. As a result, KPMG in Saudi Arabia is seeing the Department of Zakat and Income Tax (DZIT) scrutinizing cross-border transactions between related parties and challenging such transactions where arm's length principles are not satisfied.

Even though there is a need to maintain arm's length pricing under Saudi tax law, there are no detailed transfer pricing rules in Saudi Arabia to reach an acceptable arm's length price for a particular transaction. In the absence of such detailed rules, the Saudi tax authorities generally accept a price if they are satisfied that it represents the fair market value (FMV) of the subject services or goods.

The lack of specific transfer pricing rules does provide wide powers to the Saudi tax authorities to accept or reject any particular pricing mechanism. Hence, it is always better to provide as much objective support as possible for arm's length pricing between related parties to be able to defend any potential challenge from the Saudi tax authorities.

KPMG in Saudi Arabia notes that transfer pricing is one of the top priorities for the DZIT. The DZIT is currently in the process of developing detailed guidelines on transfer pricing. A recent Ministerial Resolution (No. 1776 dated 19 March 2014 — Article 10, Para 11) states:

- in respect of transactions with related parties, the DZIT will issue rules for determining the "fair value" or "arm's length value" of those transactions in accordance with agreed international standards
- however, the DZIT has not made any formal announcement on a timeline for implementation of formal transfer pricing guidelines/rules. KPMG's current understanding, based on informal discussions, is that the projected timeline for the introduction of formal transfer pricing guidelines/rules is late 2015.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Not applicable
Legal requirements		●
Protection from penalties	●	
Reduce risk of adjustment	●	
Shifts burden of proof		●

Basic information

Tax authority name

Department of Zakat and Income Tax (DZIT).

Citation for transfer pricing rules

No specific transfer pricing rules have been issued by the Saudi tax authority, however, the principle of arm's length transactions has been embedded within Saudi tax law.

We note that transfer pricing is one of the top priorities for the DZIT in Saudi Arabia. The DZIT is currently in the process of developing detailed guidelines on transfer pricing. A recent Ministerial Resolution (No. 1776 dated 19 March 2014 — Article 10, Para 11) states:

"In respect of transactions with related parties, the DZIT will issue rules for determining the "fair value" or "arms' length value" of those transactions in accordance with agreed international standards."

However, the DZIT has not made any formal announcement on a timeline for implementation of formal transfer pricing guidelines/rules. Based on informal discussions, our current understanding is that the projected timeline for the introduction of formal transfer pricing guidelines/rules is late 2015.

Effective date of transfer pricing rules

Not applicable.

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

50 percent or more directly or indirectly related; beneficial ownership may also be taken into account by the DZIT.

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

There is no specific statute of limitations set out in Saudi tax law, however, there is a general statute of limitations which shall apply in case the Saudi tax authority is making adjustments to taxable income from the perspective of the arm's length standard. The specific limitation is five years, and 10 years in cases where the tax return was not filed, or if filed, was found to be incomplete or incorrect with intent to evade tax. In practice the DZIT does not follow this and has been known to extend beyond 10 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)?

No.

What types of transfer pricing information must be disclosed?

Not applicable.

What are the consequences of failure to submit disclosures?

Not applicable.

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.

Notwithstanding the lack of formal transfer pricing guidelines, we recommend companies prepare transfer pricing documentation (following OECD Guidelines) especially, where related party transactions are significant. This will assist in mitigating the risk where the DZIT applies the anti-avoidance provisions in the tax law.

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.

No. While the DZIT is not required to follow OECD Guidelines currently, we recommend that any transfer pricing study undertaken be completed in accordance with the OECD Guidelines.

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.

Generally where the DZIT requests information they expect a response within 30 days. However, in practice this varies considerably and is usually longer as the DZIT may grant an extension.

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

If an adjustment is proposed by the Saudi tax authority because of a dispute regarding an arm's length price and an addition is made to taxable income because of this, such adjustment will become part of a larger tax assessment by the Saudi tax authority. However, such assessment orders can be challenged by the taxpayer like an assessment order addressing any other issues. A taxpayer can appeal against such an order in the Preliminary Appeal Committee (First Appellate Authority), and if not satisfied, in the Higher Appeal Committee (Second Appellate Authority), and finally the Board of Grievance will be the last Appellate Authority.

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

Penalties are applicable under general provisions of Saudi tax law. Penalties resulting from misrepresentation is 25 percent of the tax sought to be evaded. Additionally, there is also a delay fine on unpaid or underpaid tax amounting to one percent for each 30 days.

To what extent are transfer pricing penalties enforced?

No specific transfer pricing penalties but general penalties under the tax law may apply.

What defenses are available with respect to penalties?

Not applicable.

What trends are being observed currently?

From a practical perspective, taxpayers are already required to produce documentation to support related party transactions. The DZIT has the power to request documentation to support related party transactions (Article 61). Failure to produce documentation can lead to the disallowance of expenses (Article 58). based on our experience, the DZIT in Saudi Arabia is increasingly requesting documentation to support related party transactions and comparing the price paid to third party prices. In some cases, the DZIT has adjusted transfer prices between related parties but there is a lack of applied transfer pricing methodology to support these transfer price adjustments.

For goods supplied by related parties, Saudi companies are being requested to submit custom clearance documents. In some cases a certificate from the sellers' auditors has been requested confirming that the supply of goods was made at international market prices, prevailing at the date of dispatch. The DZIT has also raised questions around substance, beneficial ownership, and the nature of the services provided.

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?

While there are no local comparables in any benchmarking set used by the DZIT in Saudi Arabia, the DZIT has a right to raise an arbitrary assessment in the case of any transaction between related parties or parties under common control, to allocate income or deductions between these parties as is necessary to reflect the income that would have resulted from a transaction between independent persons.

Furthermore, the tax law provides for the DZIT to adjust the tax base of an

individual taxpayer and other person to prevent any reduction in tax payable as a result of income splitting (assumed to apply to corporate taxpayers as well). For purposes of the above, income splitting means:

- the transfer of income, directly or indirectly, from one person to an associate; and
- the transfer of property (including money), directly or indirectly, from one person to an associate with the result that the associate realizes income from that property, where the reason or one of the reasons for the transfer is to lower the total tax payable upon the income of the transferor or the transferee.

In determining whether the taxpayer is seeking to split income, the DZIT may consider the value given by the transferee.

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

Not applicable.

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.

Not applicable.

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

The Saudi tax authority (DZIT) interacts quite extensively with customs authorities, and many taxpayers have received notices in the past for the gap in their purchases/imports or sales/exports etc. as reported to/recorded by the two respective authorities.

In practice, the DZIT often compares the value of the goods as per the invoice/contracts, the auditors' certificate, the amount declared for customs duty, the value as reflected in the financial statements, etc.

In the case where the cost of 'Imported Goods' reflected in the income statement would not match with the value of goods declared for customs duty purposes, the DZIT may disallow

deduction of the difference and accordingly raise the assessment of the corporate tax liability and penalty for the period of default.

It is therefore important to ensure consistency between the value of the goods as disclosed in the contract/invoice, auditor's certificate, customs clearances, financial statements, etc.

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

Yes. A branch is not allowed to take a deduction for a head office cost allocation.

Are management fees subject to withholding?

Yes.

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?

No.

Other unique attributes?

Not applicable.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Saudi Arabia has expanded its double tax treaty network in recent past and around 30 tax treaties are now in effect.

All of the Saudi Arabian treaties (except France) follow the Organisation for Economic Co-operation and Development/United Nations model and include the 'Associated Enterprises' article. However, the practical application of this provision is yet to be challenged by the DZIT in Saudi Arabia.

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

This is yet to be ascertained in terms of the existing tax treaty network in Saudi Arabia.

When may a taxpayer submit an adjustment to competent authority?

Not applicable.

May a taxpayer go to competent authority before paying tax?

Not applicable.

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.

KPMG in Saudi Arabia

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Serbia



KPMG observation

Transfer pricing rules have been present for more than a decade in Serbian corporate income tax (CIT) legislation. However, specific and detailed regulations on the application of these rules were published by the Ministry of Finance only in 2013. Significant efforts have been made to align local rules and practices to established international guidelines.

Tax authorities have yet to issue an official approach regarding transfer pricing audits, which are currently conducted sporadically.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Not applicable	Required to be contemporaneous	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

Tax Administration of Serbia.

Citation for transfer pricing rules

Articles 59, 60, 61, 61a and 62 of the CIT Law, Rulebook on Transfer Prices and Methods Applied for Determining Prices in Related Party Transactions in Accordance With the Arm's Length Principle (Rulebook) and Rulebook on 'Arm's Length' Interest Rates (Interest Rates Rulebook).

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. The Rulebook was enacted on 20 July 2013, and was amended on 29 January 2014, while the latest Interest Rates Rulebook came into force on 2 March 2015. Our comments relate to the latest amendments and rules in force from 15 February 2014.

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 (but the companies owned by those family members are not).

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, access to information on ownership or other data relevant for resolving taxation issues.

The Ministry of Finance published a list of jurisdictions with a preferential tax system in 2013, which includes 51 tax jurisdictions, mainly tax havens.

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 five 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 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. The deadline is set to 180 days from the observed period end.

What types of transfer pricing information must be disclosed?

A transfer pricing documentation study must be submitted along with the tax balance sheet. The tax balance sheet needs to disclose the volume of

transactions with related parties, as well as the amount of the tax base adjustment relating to transfer pricing if any.

Transfer pricing study must contain information on the group, industry, functional and economic analysis, as well as the assessment of "arm's length" nature of all of the transactions. In case a transaction is assessed not to be at "arm's length", the calculation of respective adjustment has to be made.

What are the consequences of failure to submit disclosures?

Failure to submit transfer pricing study or separately disclose the value of related party transactions in accordance with the arm's length principle carries penalty exposure from 100,000 Serbian dinar (RSD) to RSD2 million.

Submission of transfer pricing study after the deadline carries penalty exposure of RSD100,000.

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. Additional guidance regarding the content of the transfer pricing study is provided in the Rulebook.

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. Please note that interest rates can also be assessed using an interest rate prescribed as arm's length by the Ministry of Finance.

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 documentation needs to be submitted along with the CIT return. However, an additional deadline may apply for amending the documentation as well as for providing additional information. Such additional deadline is defined as 'adequate' or 'appropriate', and may vary from 30 to 90 days.

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

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 RSD100,000 to RSD2 million (approximately between 9,000 euros (EUR) to EUR17,000) for non-disclosure of transfer prices at arm's length in the tax balance sheet. In addition, there is a potential penalty depending on the additional tax liability assessed by the tax authorities. This penalty amounts to 30 percent of the assessed additional tax liability but not less than RSD200,000 (approximately EUR1,600).

To what extent are transfer pricing penalties enforced?

Rarely, although a significant shift is expected in this respect during 2015 and 2016.

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 comparable uncontrolled price (CUP) method, but apply that method in a very simplified way.

There are also strong indications that the tax authorities will place a firm focus on transfer pricing during tax audits in the following period.

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 Rulebook states that the search for comparables must start with local companies and only if insufficient companies are found, the search for comparables can be broadened to other jurisdictions. The consequence of not starting the search with local comparables can be that the comparable sample may be viewed as inadequate allowing the Tax Authorities to assess the arm's length nature of transactions by themselves.

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, always.

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

Not applicable.

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

Yes, some. 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?

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?

No. Adjustments, aimed at aligning transactions with the arm's length value and mitigating the risk of tax base increase, are not permitted in Serbian regulations. However, adjustments can be executed for specific transactions by issuing credit/debit notes relating to specific invoices.

Other unique attributes?

Local authorities publish annual arm's length interest rates which can be used to assess intercompany loans. The rates are set depending on the term and currency of the loan, and are different for financial institutions and businesses. Taxpayers can opt to use another transfer pricing method to set an interest rate but this implies an 'all or nothing' approach i.e. all intercompany loans can either be assessed by using the published interest rates or by using transfer pricing methods.

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?

The formal procedure for obtaining a corresponding adjustment is regulated by double tax treaties mutual agreement procedure (MAP). CIT Law generally allows corresponding adjustments only when it is available through a mechanism provided in a double tax treaty signed by Serbia.

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.

KPMG in Serbia

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Singapore



KPMG observation

With the addition of Section 34D (Transactions not at arm's length) to the Singapore Income Tax Act (the Act) in 2010, the Inland Revenue Authority of Singapore (IRAS) has become more focused on enforcing transfer pricing compliance in Singapore.

In January 2015, the IRAS released significantly expanded transfer pricing requirements. The IRAS' objective is for the new requirements to foster greater transfer pricing compliance, and alignment with broader international transfer pricing developments such as the Base Erosion and Profit Shifting (BEPS) initiative.

Most notably, there is now a requirement for taxpayers to prepare adequate and contemporaneous transfer pricing documentation by their tax filing due date. To provide legislative weight to the publication, the IRAS makes explicit references to certain sections of the Act – including the aforementioned Section 34D and Section 94(2) (General penalty).

The IRAS continues to use computer analytics to select transfer pricing audit targets, and continues to send out transfer pricing questionnaires to taxpayers to assess their transfer pricing compliance levels. These questionnaires are usually seven to eight pages in length, with detailed questions on transfer pricing arrangements and availability of supporting documentation. Depending on the response received, the case may progress through a transfer pricing consultation process that includes further rounds of questioning and field audits.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Not applicable	Required to be contemporaneous
Legal requirements	●		●
Protection from penalties		●	
Reduce risk of adjustment	●		●
Shifts burden of proof	●		●

Basic information

Tax authority name

Inland Revenue Authority of Singapore (IRAS).

Citation for transfer pricing rules

IRAS e-Tax Guide: Transfer Pricing Guidelines (Second Edition) (2015), and Section 34D of the Singapore Income

Tax Act (Transactions not at arm's length) (2010).

Effective date of transfer pricing rules

Transfer pricing guidelines were first issued in 2006, and this was subsequently updated and expanded in 2015. Explicit legislative reference was included in Section 34D of the

Singapore Income Tax Act (Transactions not at arm's length) in 2010.

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

Under direct/indirect common control or significant influence.

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

From FY 2007, five years from the fiscal year in which the transaction occurred.

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)?

No. Not directly. However, the audited financial statements of the taxpayer have to be submitted and material related party transactions must be disclosed in the notes to the financial statements.

What types of transfer pricing information must be disclosed?

Not applicable.

What are the consequences of failure to submit disclosures?

Not applicable.

Transfer pricing study overview

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

No, English.

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

No. It should follow the Singapore transfer pricing guidelines, which provide guidance on the content expected, in order for the transfer pricing study to be considered adequate.

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.

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.

IRAS is empowered to invoke the relevant sections of the Singapore Income Tax Act to request documentation be submitted within 30 days from the date of request. The taxpayer may ask for an extension to submit documentation. However, this may lower the taxpayer's compliance rating and increase the risk of a full transfer pricing audit.

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

Domestically through the objections and appeals process, or through MAP/APA processes.

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

Yes. Up to 400 percent of tax evaded and even incarceration. However, most penalties are in the 100 percent to 200 percent range of tax under-declared. There are also penalties for failure to produce documentation in a timely manner.

To what extent are transfer pricing penalties enforced?

Increasingly so.

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.

What trends are being observed currently?

IRAS continues to issue transfer pricing questionnaires to companies and a

considerable number of these cases have progressed to full transfer pricing audits. Increasingly, non-transfer pricing specialists within the IRAS are raising queries and reassessments on related party transactions in the course of their review of taxpayers' annual corporate tax computations.

Special considerations

Are secret comparables used by tax authorities?

No. IRAS is of the view that use of secret comparables is not conducive to transparency and that it can hamper competent authority procedures.

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

IRAS indicates that taxpayers should use local comparables due to a higher degree of comparability in terms of their market and economic circumstances.

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, always.

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

IRAS is of the view that loss-generating comparables (i.e. weighted average loss for the tested period, or losses incurred for more than half of the tested period) should be excluded. Use of multiple-year data for establishing a comparable set is preferred.

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

Low interaction as very few items attract custom duties in Singapore.

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

Yes. Management fees are generally tax deductible in Singapore if they are charged to the Singapore entity on an arm's length basis and are incurred

wholly and exclusively in the production of the taxpayer's income, and not prohibited under any provisions of the Singapore Income Tax Act.

Are management fees subject to withholding?

Yes.

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

Yes. Royalties are generally tax deductible in Singapore if they are charged to the Singapore entity on an arm's length basis and are incurred wholly and exclusively in the production of the taxpayer's income, and not prohibited under any provisions of the Singapore Income Tax Act.

It should be noted that Singapore has various special incentives with respect to companies investing in productivity and innovation, and intellectual property.

Are royalties subject to withholding?

Yes.

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

Yes. It is possible to deem additional taxable income in the taxpayer's tax return which will then be subject to tax.

Other unique attributes?

Exemption from documentation (but not from the arm's length principle) is possible for transactions whose value falls below certain low thresholds.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive. There are more than 70 comprehensive tax treaties in place.

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

Almost always. As at 31 March 2014, IRAS has 17 MAPs at different stages of completion.

When may a taxpayer submit an adjustment to competent authority?

Within the time limit specified in the MAP Article of the relevant double tax treaty. Taxpayers are advised to contact the IRAS early and not to settle their cases with the overseas tax authority before submitting an adjustment to the competent authority.

May a taxpayer go to competent authority before paying tax?

No. Any late payment will be subject to late penalties.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

Is there a filing fee for APAs?

Yes. A filing fee is only applicable for unilateral APAs where the related party transactions involve a jurisdiction with which Singapore does not have a tax treaty. There is no filing fee for bilateral or multilateral APAs as the Singapore tax authorities view this as part of their treaty obligations.

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

Yes.

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

No. In 2013/2014, IRAS completed 11 unilateral and bilateral APAs. As at 31 March 2014 IRAS has 33 ongoing unilateral, bilateral and multilateral APAs. IRAS is particularly encouraging to taxpayers to submit bilateral APA applications.

KPMG in Singapore

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Slovakia



KPMG observation

Beginning with the introduction of mandatory transfer pricing documentation (for taxable periods starting from 2009), transfer pricing has become one of the top priorities for the Slovak tax authorities. The tax authorities have started to initiate transfer pricing audits and inspect transfer pricing arrangements in more detail than ever before. The tax authorities have built specialized transfer pricing teams and it is expected that the number of transfer pricing audits is going to increase.

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

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 and MF/8120/2014-721 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 detailing 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 submitted to the revenue authority on an annual basis (e.g. with the tax return)?

Yes. Corporate taxpayers are required to disclose volumes of transactions with related parties in their annual tax return.

What types of transfer pricing information must be disclosed?

Terms of the following transactions concluded with foreign 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; and
- transfer of inventory.

However, disclosure of details regarding individual transactions is not required in the annual tax return.

What are the consequences of failure to submit disclosures?

If the tax return is not complete, 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

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

Yes. Subject to agreement with tax authorities.

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

No. The content of the full scope transfer pricing documentation prepared by IFRS reporters should correspond with the requirements of the European Union (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.

If certain conditions are met, the taxpayer may provide reduced-scope 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

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

Yes.

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, 15 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.

According to Article 18 (6) of the Slovak Income Tax Act, transfer pricing documentation must be made available to the tax authorities within 15 days of request.

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

Most tax treaties which Slovakia has with other OECD countries contain mutual agreement procedures (MAPs) if the adjustment assessed by the tax authorities results, or is likely to result, in double taxation.

Furthermore, the EU Arbitration Convention provides 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?

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. Taxpayers are advised 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.

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.

Not applicable.

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

No.

Are management fees subject to withholding?

Yes.

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, 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 utilized. In general, it is expected that a year-end adjustment is described/anticipated in relevant agreements covering intragroup transactions and specific formulae/ calculations are in place.

Other unique attributes?

Not applicable.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive. The current double tax treaty network includes 65 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 exist in this area. 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 agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

Is there a filing fee for APAs?

Yes. As of 1 September 2014, an administrative fee applies for filing the APA request. The amount of the fee is different for unilateral (one percent of the value of the transaction, minimum EUR4,000 and maximum EUR30,000) and bilateral/multilateral APAs (two percent of the value of the transaction, minimum EUR5,000 and maximum

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?

Not applicable. Currently, APAs are not commonly requested in Slovakia.

KPMG in Slovakia

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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, Finančna 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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South Africa



KPMG observation

Transfer pricing in South Africa, and Africa as a whole, has taken on immense importance and is currently in the spotlight. The South African Revenue Authority is training its transfer pricing department to be able to cast its net wider as far as audits are concerned.

Transfer pricing has recently been a topic of much media coverage in South Africa, with increasing calls from politicians and the judiciary for transfer pricing to be prioritized by the South African Revenue Service (SARS).

KPMG anticipates that the SARS will continue to support the Base Erosion and Profit Shifting (BEPS) Action Plan.

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

South African Revenue Service (SARS).

Citation for transfer pricing rules

Section 31 of the Income Tax Act and Practice Note 7.

Effective date of transfer pricing rules

1995.

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

Ownership of greater than 20 percent of the share capital or under common management or control.

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

Three years from the date of assessments unless there has been fraud, misrepresentation and/or a material nondisclosure by the taxpayer.

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. Transfer pricing documentation, together with justification for the pricing of transactions, should be prepared and available to SARS on request.

The income tax return does however request disclosure of transactions.

What types of transfer pricing information must be disclosed?

The following information must be disclosed:

- disclosure of related party transactions
- disclosure as to whether the company has transfer pricing documentation
- disclosure of financial assistance to/from an offshore-related party
- disclosure of any Advance Pricing Agreements (APAs) in a foreign jurisdiction.

What are the consequences of failure to submit disclosures?

The annual income tax return requires disclosure relating to transactions with related parties. Failure to provide accurate responses would lead to the prescription period not applying to the return, which would mean SARS could challenge the transfer pricing at any time and would not be limited to the prescription period of three years after assessment.

Transfer pricing study overview

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

No. Documentation can be submitted in any of South Africa's 11 official languages. However, on a practical level, English is preferable.

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.

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.

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.

Generally, the response period is 30 days. Extensions of the time period can be requested and are generally approved.

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

The taxpayer may approach SARS and follow alternative dispute resolution (ADR) procedures. This procedure is between the taxpayer and SARS. MAP procedures could also be followed.

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

Yes. Up to 200 percent of the adjusted tax amount.

To what extent are transfer pricing penalties enforced?

Depends largely on the intention of the taxpayer.

What defenses are available with respect to penalties?

The maintenance of contemporaneous documentation evidencing the taxpayer's intention and that consideration has been given to the transfer prices can be used as a defense against penalties.

What trends are being observed currently?

Extensive audits by SARS across all industries. SARS is focusing on distribution entities, particularly where these have been classified as low-risk distributors. Companies that have effected true-up payments at year-end are also being looked at.

Special considerations

Are secret comparables used by tax authorities?

Not to our knowledge.

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, but it is common practice to use Bureau van Dijk Orbis database.

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.

Comparable Uncontrolled Prices (CUPs) are preferred if available but generally all OECD methods are accepted.

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. General deduction principles and Exchange Control requirements may in certain circumstances limit this.

Are management fees subject to withholding?

No.

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

No. General deduction principles and Exchange Control requirements may in certain circumstances limit this.

Are royalties subject to withholding?

Yes.

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

Yes, but these need to be supported by the transfer pricing policy and methodology applied and may lead to queries from SARS.

Other unique attributes?

SARS works closely with the South African Reserve Bank to monitor the inflow and outflow of money from and to South Africa.

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.

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.

KPMG in South Africa

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South Korea



KPMG observation

The Korean Transfer Pricing Regulations, namely, the Law for the Co-ordination of International Tax Affairs (LCITA) and the Presidential Enforcement Decree (PED) of the LCITA (PED of LCITA), were extensively amended in 2010 to reflect changes made to the Organisation for Economic Co-operation and Development (OECD) Guidelines at the same time. They were also modified in other ways with the intention of increasing transparency and broadening the scope for interpreting and applying the LCITA.

In recent years, offshore tax evasion and profit shifting have made the headlines in Korea, and the Korean government has repeatedly announced its intention to fight such tax behaviors.

In 2015, the Korean government announced that they are reviewing the Base Erosion and Profit Shifting (BEPS) Action Plan recommendations and intend to incorporate the recommendations into the LCITA in 2016.

Lastly, to promote proactive transfer pricing risk management, the Korean government introduced in 2015 two new advanced management tools:

- a new "Simplified APA" for non-resident taxpayers with gross revenues less than 50 billion South Korean won (KRW); and
- a mechanism for combined filing and review of unilateral Advance Pricing Agreements (APA) and advanced customs valuation arrangements
- both new tools have been introduced to provide taxpayers with more clarity and simplified processes.

Transfer pricing study snapshot

The purpose of a transfer pricing study

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

Basic information

Tax authority name

National Tax Service (NTS).

Citation for transfer pricing rules

The Law for the Coordination of International Tax Affairs (LCITA) and Presidential Enforcement Decree of the LCITA (PED of LCITA).

Effective date of transfer pricing rules

1 January 1996.

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

Ownership of greater than 50 percent, based on voting power, is under common control, and under de facto control in substance.

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

The general statute of limitations for transfer pricing adjustments is five years from the date the annual tax return filing due date (within three months of the last day of the fiscal year). However, in the case where a company utilizes its net operating losses (NOL) incurred after 1 January 2009 to offset taxable income, a different statute of limitations may apply. If the NOL is used within five years, the statute of limitations is still five years. If the NOL is used for a period of up to 10 years, then the statute of limitations is one year greater than the number of years of taxable income offset by the NOL.

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 transfer pricing details are to be submitted on a prescribed foreign reporting form with the annual tax return.

What types of transfer pricing information must be disclosed?

A taxpayer is required to submit with the annual tax return:

- a detailed statement of the cross-border intra-group transactions
- summarized income statements of the foreign affiliates
- the transfer pricing method selected and description of the reasons for the selection, if:
 - (i) the total accumulated volume of annual cross-border tangible intra-group transactions of the taxpayer is greater than KRW5 billion or the total volume of annual cross-border intra-group service transactions of the taxpayer is greater than KRW1 billion; or

- (ii) the volume of annual cross-border tangible intra-group transactions to each foreign affiliate is greater than KRW1 billion or the volume of annual intra-group service transactions to each foreign affiliate is greater than KRW200 million.

What are the consequences of failure to submit disclosures?

The failure to provide the requested information on the prescribed form may result in penalties up to KRW100 million.

Transfer pricing study overview

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

No. The document should be filed in Korean. English is acceptable only with the tax authorities' approval.

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.

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.

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, 60 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.

In general, the NTS expects the taxpayer to submit transfer pricing documentation immediately in the case of a tax audit due to the specified number of days set for each tax audit. Failure to do so may lead to suspension or extension of audit. Generally, the responses should be made within 60 days to avoid non-compliance penalties.

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

There are three levels of appeals in South Korea.

1. Review by the NTS
2. Appeal to Tax Tribunal or Board of Audit and Inspection (but taxpayers may elect to by-pass this step and appeal in Court)
3. Appeal in the Courts
4. Initiate MAP

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

Yes. Generally speaking, a 10 percent under-reporting penalty and 10.95 percent interest on the income tax assessment will be levied as penalties for the transfer pricing income adjustment. In case of gross negligence additional penalties could apply.

To what extent are transfer pricing penalties enforced?

If a transfer pricing income adjustment is sustained, transfer pricing penalties are likely to be enforced.

What defenses are available with respect to penalties?

LCITA provides a relief from under-reporting penalties where a taxpayer has exercised due care as demonstrated either by contemporaneous documentation or through mutual agreement procedure (MAP).

In addition, where new information (e.g. comparables' most recent financial information) is obtained subsequent to

the filing of the tax return, resulting in an upward adjustment to taxable income, a relief from under-reporting penalties is granted where the taxpayer, within 60 days of the findings, files an amended tax return.

What trends are being observed currently?

Payments of royalties (for brand, know-how, intangibles, et.), intra-group service charges and intercompany guarantees are heavily scrutinized during tax audits. The level of details on the information requests have intensified making it difficult to defend.

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. Only local comparables are accepted when the tested party is a Korean entity.

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

The tax authorities use the local database called Korea Information Service Line (KIS-Line). The KIS-Line database contains financial data on various companies, many of which maintain assets over KRW10 billion and thus are subject to an independent annual audit.

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

Yes, always.

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

Generally, interquartile ranges are used but other more reasonable methods can be explored. If the results of the tested party falls outside the interquartile range, the adjustments are made to the median of the comparables.

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

Ministry of Strategy and Finance amended the LCITA and the Korea

Customs Act to harmonize the transfer pricing and customs regulations. The harmonizing legislation, which became effective on 1 July 2012, states that transfer pricing or customs valuation adjustments made by one tax authority should be respected by the other.

Additionally beginning 2015, the new legislation has been enacted to allow for combined advanced pricing review of transfer pricing and customs valuation (joint APA/ACVA).

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

Yes. Any compensation above the arm's length price will likely be denied for taxable deduction.

Are management fees subject to withholding?

No.

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

Yes. Any compensation above the arm's length price will likely be denied for taxable deduction.

Are royalties subject to withholding?

Yes.

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

Yes. There may be permanent and temporary timing differences which require reconciliation between book and tax. However, these items should be tracked and reconciled each year.

Other unique attributes?

If the company does not receive remuneration from related parties for the transfer pricing income adjustment assessed by the tax authorities, the tax authorities can assess secondary adjustment in the form of deemed dividend subject to withholding tax and additional investment of capital.

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 can file a request for competent authority procedure within three years from the date when a notice of income tax assessment is received.

May a taxpayer go to competent authority before paying tax?

Yes. In the case of a transfer pricing income adjustment, the taxpayer is allowed to make the request to suspend the tax payment until the conclusion MAP. However, this option is only available when the other contracting state also allows the suspension. The taxpayer may still be subject to interest penalty upon the conclusion of MAP.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

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?

Yes.

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

Not applicable.

KPMG in South Korea

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Spain



KPMG observation

The Spanish Tax Administration has participated in every Base Erosion and Profit Shifting (BEPS) Focus Group and has actively followed the discussions. The Tax Administration is supportive of the BEPS Action Plan, and legislation is already in place regarding the treatment of hybrid instruments or hybrid income and limitations on the deductibility of financial expenses. In addition, the Tax Administration has announced new documentation requirements, which focus on transparency and Country-by-Country reporting (CbyC), as of 2016.

There are some areas, such as the permanent establishment definition, where Spain has a quite aggressive position — not only due to Court Decisions, but also to some general rulings and administrative practices in the last three or four years.

Additionally, taxpayers are also required to disclose specific information with respect to their intra-group transactions when filing their corporate income tax return, such as the type of transaction, the relationship of the parties involved, the transfer pricing methodology applied and the amount of each type of transaction disclosed.

Transfer pricing study snapshot

The purpose of a transfer pricing study

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

Basic information

Tax authority name

Spanish Tax Agency (Agencia Estatal de Administración Tributaria – AEAT).

Citation for transfer pricing rules

Legislation: Article 18 of the Corporate Income Tax Law (Law 27/2014 of 27 November; hereinafter referred to as CITL)

Recent legislation:

Regulation developing Law 27/2014

- Royal Decree 634/2015 of 10 July.

Additional Regulations:

- Royal Decree 1794/2008, on MAPS, 18 November 2008.

Effective date of transfer pricing rules

New transfer pricing legislation is applicable to fiscal years that commenced on or after 1 January 2015.

Regulations developing the CITL approved by Royal Decree 1777/2004 of 30 July, modified by the regulation approved by Royal Decree 1793/2008 of 18 November and by Royal

Decree 897/2010 of 9 July, are partly applicable, especially on documentation requirements, during 2015.

Notwithstanding this, it should be highlighted that a new CIT draft Regulation is expected to be passed in the following months, and will be effective as of January 2016.

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

The relationship threshold is as follows:

- companies that belong to the same group
- at least 25 percent direct or indirect participation in another related entity.

Also considered related parties in Spain:

- partners, shareholders, board members, directors, and their immediate, collateral, third-degree consanguinity or affinity spouses or relatives, and the company and their cross relations with other companies of the group.

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

Four years from the due date of the tax return (same as general tax regime).

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. Taxpayers are required to disclose, in their corporate income tax returns, information regarding the intra-group transactions performed during the fiscal year.

What types of transfer pricing information must be disclosed?

Taxpayers are required to disclose, in their corporate income tax returns, the following information with respect to their intra-group transactions (with certain limitations and exemptions): the identification of the related parties, the type of relationship between them, the type of intra-group transaction carried out, the volume of the same, and the transfer pricing methodology applied to test the intra-group price applied.

What are the consequences of failure to submit disclosures?

A penalty of 150 euros (EUR) per data missing. Chances of being audited are much higher.

Transfer pricing study overview

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

Documentation must be prepared in Spanish in principle. In an ordinary tax audit, the tax auditor may accept the transfer pricing documentation in other languages (e.g. English), but a translation into Spanish may still be requested.

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. Similar to requirements of the OECD Guidelines and European Union Joint Transfer Pricing Forum (EUJTPF) — master file and country-specific concepts are required.

Taxpayers' documentation, when requested to be disclosed, should include the identification of the companies involved in the related transactions, legal, organizational and operational structure of the group, nature and volume of the intra-group transactions carried out, functional analyses of such transactions, transfer pricing policy applied to set the prices of the transactions and transfer pricing methodologies and economic analyses used to test such prices.

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.

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, 10 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.

Upon tax audit, the tax inspector will determine the submission deadline on a case-by-case basis with a minimum period of 10 business days counting from the business day subsequent to the request.

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

The taxpayer has the following options for claiming against the adjustment proposed:

- "recurso de reposición": Appeal before the same administrative body that issued the final assessment
- claim before the Economic-Administrative Courts: Appeal before an independent administrative body
- claim before judicial Spanish Courts (First Instance; National High Court; Supreme Court)
- MAP; and
- Arbitration Convention (EU).

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

For transfer pricing adjustments based on the legislation that came into force on 19 February 2009, penalties could amount to 50 percent to 150 percent of the additional tax due, although they have very seldom been applied.

Based on the penalty regime foreseen in Law 27/2104, (which may be applied retroactively to fiscal years previous to 1 January 2015), penalties linked to the formal requirements of the documentation are also enforceable

and may apply to both (i) the lack of documentation supporting the related party transactions carried out by the taxpayer and (ii) adjustments imposed by the tax authorities when the arm's length price supported on the documentation does not match with the amounts declared in the CIT Form, thus establishing the following two types of penalties:

- when there is no transfer pricing adjustment, a fixed fine of EUR1,000 per data and EUR10,000 per group of omitted or misleading data might be imposed on the taxpayer due to faults in the documentation provided. There is a limit which cannot exceed one percent turnover
- when a transfer pricing adjustment is proposed by the tax authorities, a penalty of 15 percent of the additional tax base is applicable in addition to the tax due and the corresponding interest associated with the delayed payment of the additional tax.

To what extent are transfer pricing penalties enforced?

In principle, the existence of solid transfer pricing documentation (in accordance with the Spanish Regulations) will protect from documentation related penalties.

What defenses are available with respect to penalties?

Where the taxpayer has a sound documentation requirements, penalties should not be levied. If imposed high chances to be eliminated at Court level.

What trends are being observed currently?

An increasing number of audits and a more aggressive approach is being observed, especially regarding:

- financial expenses
- leveraged acquisitions
- reorganizations
- management services (reality and benefit test); and
- loss-making companies.

Sectors being audited: electronics, chemicals, pharmaceuticals and new technologies, large distributor.

Special considerations

Are secret comparables used by tax authorities?

Secret comparables are not used.

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

Normally pan-European comparables are accepted although there are not specific written guidelines.

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

The tax authority uses Bureau van Dijk's pan-European Amadeus database to perform its own analyses using external comparables.

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.

- tax authorities very normally focus on the interquartile range in a TNMM analysis
- Spanish or European comparables are used
- independence threshold: lower than 25 percent
- multiple year averages are normally used.

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

There is little communication between the income tax and the customs authorities, but such communication is increasing and there is a plan to undertake joint audits.

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

No. However, taxpayers must provide very sound evidence on:

- whether in fact the services have been provided

- whether the services rendered provide the entity with economic or commercial value; and
- the arm's length nature of the transaction.

Are management fees subject to withholding?

Yes.

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

No. However, taxpayers must provide very sound evidence on:

- whether in fact the services have been provided
- whether the services rendered provide the entity with economic or commercial value; and
- the arm's length nature of the transaction.

Are royalties subject to withholding?

Yes.

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

No. There is no clarity around this issue but in some occasions it is accepted if soundly explained. It is recommended that in order to ensure that the adjustments will be respected by the tax authority, transfer pricing adjustments (i) should be made prior to the end of the fiscal year, and (ii) should be carried out via rectifying invoices, which should include the reason for the change in price and should specifically reference the previously issued invoice(s) to be modified.

Other unique attributes?

- Management fees are not subject to withholding when there is a double tax convention in place.
- Royalties are subject to withholding except when the EU Directive on interest and royalty payments applies.

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?

On 18 November 2008, the Spanish Ministry of Economy and Finance officially published the Royal Decree 1794/2008 of 3 November, which regulates mutual agreement and arbitration procedures.

When a transfer pricing adjustment affects transactions between a Spanish entity and a non-resident, the mechanisms established in the relevant double taxation treaty should be applied. When the non-resident is within the EU, the provisions of the Arbitration Convention regarding the elimination of double taxation can also be applied.

The Royal Decree establishes different regimes, depending on whether the procedures for double taxation are initiated by the Spanish or the foreign competent authorities and depending on which tax administration has made the evaluations.

The timing for competent authority assistance requests varies depending on the applicable tax treaty between Spain and the other country in question.

May a taxpayer go to competent authority before paying tax?

Yes, however, if the taxpayer applies for a suspension of collection of taxes it should provide a guarantee in the same terms as if it were appealing to internal courts.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

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?

No. Although the Spanish APA program does not publish an annual report with statistics regarding the program's success rate, the process has a generally high rate of success, for both unilateral and bilateral agreements. Unilateral APAs are routinely concluded between 12 and 18 months, while bilateral agreements generally require closer to 24 months.

The success rate and duration of an APA are closely linked with the nature and complexity of the underlying transactions. In particular, transactions involving the sale or licensing of intangible property tend to present more of a challenge. One can expect an in-depth discussion.

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Sri Lanka



KPMG observation

Transfer pricing regulations were introduced into Sri Lanka Income Tax legislation in April 2006. The regulations rely on the arm's length standard as the guiding principle for transactions between 'associated undertakings'. Recently, revised transfer pricing regulations were issued via gazette to address the ambiguities in the previous regulations. The revised regulations supplement the previous ones with administrative guidance on the enforcement of the transfer pricing rules.

Transfer pricing is very new in Sri Lanka, with enforcement only beginning in 2013. Hence, Revenue Authorities have not indicated a position to the Organisation for Economic Co-operation and Development's (OECD) Base Erosion and Profit Shifting (BEPS) Action Plan.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable
Legal requirements	●
Protection from penalties	●
Reduce risk of adjustment	●
Shifts burden of proof	●

Basic information

Tax authority name

Department of Inland Revenue.

Citation for transfer pricing rules

Section 104 of the Inland Revenue Act No. 10 of 2006 and the Gazette Notification No 1823/5 of 12 August 2013.

Effective date of transfer pricing rules

Practical enforcement (as per recent IRA circular) — Not confirmed by the IRD yet.

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

Transfer pricing rules apply to transactions between the taxpayer

and an 'associated undertaking', that is where there is a degree of direct or indirect control between the parties. Transfer pricing provisions apply to all transactions regardless of value.

A person is considered to be an associate of the other in the following instances:

- direct or indirect shareholding with not less than 50 percent voting power
- any person directly or indirectly holds not less than 50 percent of the voting power in both undertakings
- loans and advances granted exceed 51 percent of the book value of total assets of the recipient
- guarantees not less than 25 percent of the borrowings of the other undertaking

- more than half of the directors, or one or more executive directors or members of the governing board of one undertaking are appointed by the other undertaking
- more than half of the directors are appointed by the same person or persons
- the manufacture, process, or business is wholly dependent on the input provided by the other undertaking
- 90 percent or more of the raw materials required for manufacture or process is provided directly or by persons specified; and

- a mutual relationship which can be prescribed.

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

The statute of limitations applicable to income tax applies. Accordingly:

- if return of income has been filed on time: 1.5 years
- if return of income has not been filed on time: four years; and
- where return has not been filed or in the case of fraud, evasion, or wilful default: no time limitation.

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)?

No. There are no mandated disclosures in tax returns or document to be submitted with the tax return.

It is required that specified documentation be maintained for possible audit for five years to prove arm's length pricing in the event of a revenue assertion.

The revised regulations mandate that the directors certify that transactions concluded with the related parties are at arm's length, and such certification should be included in the annual accounts.

What types of transfer pricing information must be disclosed?

Not applicable.

What are the consequences of failure to submit disclosures?

None.

Transfer pricing study overview

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

Yes. No formal rules. The generally accepted rule is that documentation can be filed in one of the national languages — Sinhala or Tamil — or in English.

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. Regulations are still to be enforced, but prescribed documentation includes the following:

- a description of the ownership structure of the assessee undertaking
- a profile of the multinational or group of which the assessee undertaking is a part
- a broad description of the business of the assessee and the industry in which the assessee operates, and of the business of the associated undertakings with whom the assessee has transacted
- the nature and terms (including prices) of international or group transactions entered into with each associated undertaking
- a description of the functions performed, risks assumed and assets employed or to be employed by the assessee and by the associated undertaking
- a record of the economic and market analysis, forecasts, budgets or any other financial estimates prepared by the assessee for the business as a whole and for each division or product separately, which may have a bearing on the transactions entered into by the assessee
- a record of uncontrolled transactions taken into account for analyzing their comparability with the transactions entered into, including a record of the nature, terms and conditions relating to any uncontrolled transaction with third parties which may be of relevance to the pricing of the transactions
- a record of the analysis performed to evaluate comparability of uncontrolled transactions with the relevant transaction
- a description of the methods considered for determining the arm's length price in relation to each transaction or class of transaction; the method selected as the most appropriate method along with explanations as to why such method was selected, and how such method was applied in each case

- a record of the actual work carried out in determining the arm's length price, including details of the comparable data and financial information used in applying the most appropriate method, and adjustments, if any, which were made to account for differences between the transaction and the comparable uncontrolled transactions, or between the undertakings entering into such transactions; and
- the assumptions, policies and price negotiations, if any, which have critically affected the determination of the arm's length price details of the adjustments, if any, made to transfer prices to align them with arm's length prices determined under these rules and consequent adjustments made to the total income for tax purposes.

Availability of supporting documentation in the public domain as prescribed includes:

- official publications, reports, studies and databases from the government of the country of residence of the associated undertaking, or of any other country
- reports of market research studies carried out and technical publications brought out by institutions of national or international repute
- price publications including stock exchange and commodity market quotations
- published accounts and financial statements relating to the business affairs of the associated undertaking
- agreements and contracts entered into with associated undertaking or with unrelated enterprises in respect of transactions similar to that transaction; and
- letters and other correspondence documenting any terms negotiated between the assessee and the associated undertaking documents normally issued in connection with various transactions under the accounting practices 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.

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.

The law does not prescribe a time frame but requires it to be maintained for five years.

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

The normal appeal procedure available in the Inland Revenue Act would be applicable.

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

Yes. The penalty applicable for income tax default would be applicable (i.e. 10 percent for the first month and thereafter two percent for each of the subsequent months).

To what extent are transfer pricing penalties enforced?

To date, revenue investigations into transfer pricing have been limited and carried out under general anti-avoidance provisions in the domestic statute and the Associated Enterprises Article under treaties.

What defenses are available with respect to penalties?

None.

What trends are being observed currently?

Not applicable.

Special considerations

Are secret comparables used by tax authorities?

It is theoretically possible. However, to date, we have not seen this in practice.

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

None to date.

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.

Regulation prescribes the use of arithmetic mean.

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. Deductibility of management fee is limited to 2 million Sri Lankan Rupees (LKR) or one percent of the turnover whichever is lower.

Are management fees subject to withholding?

Yes.

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?

No. The current regulations do not provide for this.

Other unique attributes?

Multiple year data permitted for two prior years.

Safe harbor rule exists at three percent. Specifically, the regulation provides for a three percent tolerance level i.e. if the arm's length price is within three percent range from the actual price, no adjustment is required.

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.

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?

Yes, under an Advance Pricing Agreement (APA).

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?

Not applicable.

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

Not applicable.

KPMG in Sri Lanka

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Sweden



KPMG observation

Transfer pricing continues to be one of the main focus areas of the Swedish Tax Agency. In the last couple of years, companies with intellectual property transfers or having undergone reorganizations, have been frequently audited. A new focus area within transfer pricing appears to be branches and Permanent Establishments (PEs) in Sweden, where the number of audits have increased at a rapid pace. Branches and PEs are audited by non-transfer pricing specialists having limited knowledge of transfer pricing.

This fact has already lead to several misunderstandings from the Swedish Tax Agency's side, resulting in adjustments being made and penalties levied. Litigation is bound to follow.

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

Skatteverket (Swedish Tax Agency or STA).

Citation for transfer pricing rules

The arm's length principle is found in 14:19 Inkomstskattelagen, Chapter 14, Section 19 of the Income Tax Act.

Documentation requirements are found in 39:15 -16 Skatteförfarandelagen, Chapter 39, sections 15 -16 of the Tax Procedures Act. Arm's length principle introduced 1928; amended last time in 2001 with no material changes save for a change in the burden of proof. Documentation requirements were introduced in STA regulations (SKVFS 2007:1) published 20 February 2007.

The regulations are binding. STA Guidelines (SKV M 2007:25) published 15 November 2007.

Effective date of transfer pricing rules

1928.

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

Direct or indirect management, supervision, ownership or control is required.

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 submitted to the revenue authority on an annual basis (e.g. with the tax return)?

No. There is no requirement to disclose any transfer pricing information with the tax return, but there is a statutory requirement that transfer pricing documentation be prepared annually. Submitting transfer pricing documentation with the tax return when it is filed makes it more difficult for the STA to levy penalties should an adjustment be made. Different filing dates for the tax return (depending on financial year-end) apply from 2013.

What types of transfer pricing information must be disclosed?

No disclosure has to be made in the tax return save for information on Advance Pricing Agreements (APAs) that have been concluded. Taxpayers with APAs must disclose information whether the APA has been applied and whether the assumptions etc. on which the APA rests are still valid.

What are the consequences of failure to submit disclosures?

Failure to provide disclosures/documentation upon request will likely shift the burden of proof from the STA to the taxpayer and will make it more difficult to avoid penalties in the case of adjustments being made.

Transfer pricing study overview

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

Yes. Swedish, Danish, Norwegian, and English.

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, but in addition the following information is also required:

- intra-group agreements (if numerous a list of the agreements will suffice)
- APAs
- Mutual Agreement Procedures (MAPs)
- rulings.

No economic analysis is required for documentation of transactions with low value. However, in the case of an audit, the STA has the right to request that an economic analysis be prepared by the taxpayer.

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.

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.

Normal STA practice is to request that the documentation be submitted within 30 days.

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

- 1) Filing an appeal with the Administrative Court.
- 2) Application of the Arbitration Convention may be requested for transactions within the European Union (EU).
- 3) Requesting that a MAP be initiated. The vast majority of Swedish tax treaties contain provisions for MAP.

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

Yes. General tax penalties only: 40 percent of the additional tax due on the transfer pricing adjustment.

To what extent are transfer pricing penalties enforced?

Almost always.

What defenses are available with respect to penalties?

Penalties might be avoided if complete documentation is filed with the tax return as an integral part of the tax return.

Disclosing more limited information on intra-group cross-border transactions as an appendix to the tax return might also help avoiding penalties.

What trends are being observed currently?

The number of transfer pricing audits continues to increase dramatically. Most of the audits result in adjustments at the STA level.

The STA has a national focus group of experienced tax advisors/auditors based in Stockholm, Gothenburg and Malmö. They work solely on transfer pricing and act as in-house advisors to the auditors in transfer pricing audits and other transfer pricing related issues. With the STA appointing dedicated transfer pricing auditors and litigators, the result has been an increased focus on transfer pricing.

The STA's current focus areas are restructurings and profit/loss allocation to permanent establishments. Industry focuses are pharmaceutical companies and private equity firms.

Special considerations

Are secret comparables used by tax authorities?

This has happened in a few instances. It will likely not be the case in the future.

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

Yes. The STA prefers Swedish comparables when auditing a Swedish company, but pan-European comparables are readily accepted. Comparability is more important than location. Local comparables are preferred when a foreign entity is the tested party, but also in these cases pan-European, pan-Asian comparables etc. are readily accepted depending on tested party's location.

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

There are no legal requirements to present a benchmark. Only a comparability analysis is required. However, a benchmark is commonly

requested by the STA. The STA uses Orbis and Amadeus. The quality of the comparables is more important than the database.

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

Yes, always.

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

The STA requires strict independence for the comparables.

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

Low, but increasing, especially between the Nordic countries.

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?

No.

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

Yes. True-ups and true-downs are normally expected and accepted. Year-end adjustments should preferably be reflected in the financial statements (tax follows the accounting treatment in Sweden with few exceptions). It is, however, also possible to make the adjustments in the tax return. Adjustments may have both customs and VAT implications. The method for year-end adjustments should be clearly described in the transfer pricing documentation.

Other unique attributes?

Documentation in EU transfer pricing format is explicitly referred to as

acceptable. Multi-year data is preferred over single-year data. There are no safe harbors.

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?

The taxpayer should submit an application to the competent authority within three years of being made aware of the decision that resulted in the taxation violating the applicable tax treaty. There is no such timeframe in domestic Swedish law. A tax treaty may contain another statute of limitation in this respect. It is advisable that submission is made to the competent authority as soon as possible when the taxpayer has been made aware of the double taxation.

May a taxpayer go to competent authority before paying tax?

Yes. It is possible to obtain an extension for the tax payment when the case is referred to the competent authority in a mutual agreement procedure and when the arbitration convention is applied as long as it can be proven that the tax has been paid on the income in the other state. It is normally also possible to be granted an extension for the tax payment when a case is appealed to the court.

Advance pricing agreements

What APA options are available, if any?

Bilateral, multilateral.

Is there a filing fee for APAs?

Yes. The current filing fee is 150,000 Swedish krona (SEK) per country involved for a new APA and SEK100,000 for a renewal.

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

Yes.

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

Yes. The competent authority has limited resources which makes the APA process slow.

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Switzerland



KPMG observation

Switzerland is a member of the Organisation for Economic Co-operation and Development (OECD) and has accepted the OECD Guidelines without reservation. On 4 March 1997, the Federal Tax Administration issued a circular letter instructing the cantonal tax administrations to adhere to the OECD Guidelines when assessing multinational companies.

Recent experience with tax audits seems to indicate that the tax authorities are increasingly considering transfer pricing issues, as some have requested OECD-compliant transfer pricing documentation. However, the level of awareness is different from canton to canton.

The OECD's Base Erosion and Profit Shifting (BEPS) Action Plan provoked measurable reaction in Switzerland. In particular, actions to increase transparency and disclosure — such as the proposed Country-by-Country reporting — concern Swiss-based companies as well as Swiss authorities.

Significantly increased transparency is seen as the starting point to detecting base erosion and profit shifting, and as such, is generally welcomed by the Swiss authorities. However, there are practical questions around how to obtain all the information, in what form, and how to reconcile the pattern(s) the information shows with the actual business models and their commercial and economical rationales. The fact that Switzerland is widely seen as a destination for profit shifting further increases the threat of Switzerland being the immediate focus of many assessing tax authorities around the world.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Not applicable
Legal requirements		●
Protection from penalties		●
Reduce risk of adjustment	●	
Shifts burden of proof		●

Basic information

Tax authority name

Eidgenössische Steuerverwaltung (ESTV) [Federal Tax Administration] as well as the relevant cantonal tax authorities are the assessing authorities for direct corporate income taxes at all levels (federal, cantonal and communal).

Citation for transfer pricing rules

Not applicable.

Effective date of transfer pricing rules

Not applicable.

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

Not applicable.

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

Ten years from tax year-end. Changes to facts and figures as filed with the tax return are possible until the final assessment of the tax return by the assessing taxing authorities. Any changes after final assessment require

a court decision or closing letter of a mutual agreement procedure (MAP).

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)?

No.

What types of transfer pricing information must be disclosed?

Not applicable.

What are the consequences of failure to submit disclosures?

Failure to prepare or submit requested information in an enquiry of the assessing tax authority (i.e. information requested in addition to the normal tax return during the assessment) could lead to a formal tax audit and subsequently to a shift of the burden of proof on an assessment of the taxable income of the taxpayer.

Transfer pricing study overview

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

Yes. One of the official languages (depending on the canton): German, French, Italian, Rhaeto-Romanic. English is frequently accepted.

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. Generally, OECD compliant transfer pricing documentation is 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.

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.

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, 60 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.

Tax authorities expect to be provided with transfer pricing documentation within a reasonable time frame which can be negotiated to a certain extent, often up to 90 days.

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

Legal proceedings.

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

General tax penalties could be assessed. Furthermore, adjustments can be treated as a hidden profit distribution subject to 35 percent Swiss withholding tax (non-treaty) or the applicable treaty rate (portfolio rate, i.e. 15 percent) according to the relevant tax treaty.

To what extent are transfer pricing penalties enforced?

Not applicable.

What defenses are available with respect to penalties?

Although Switzerland does not have specific transfer pricing penalties, general tax penalties can be assessed in severe cases of non-arm's length arrangements, ultimately assessed as abusive or even fraudulent. In such cases, taxpayers are recommended to provide full disclosure of all available information to counter the assessment and avoid penalization.

What trends are being observed currently?

Increased scrutiny is observed with any structures and corresponding intra-

group transactions involving offshore locations and entities. In particular, with respect to the financial services industry and intra-group financing transactions, there are increasing challenges to the 'correct' allocation of the profits. Lack of substance or requalification of the actual place of management of a foreign counterparty to the transactions concerned are often reported.

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, the Amadeus database is largely accepted and applied.

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.

Not applicable.

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

Low.

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

Yes, some. Question is are the fees and the corresponding services provided commercially justified or would a third party not have requested such as not necessary for the tested party's business. In such case, not the mark-up and the cost are crucial but the arm's length price on the services provided as such.

Are management fees subject to withholding?

No.

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

Yes. Similar to management fees, if a royalty payment is not to be justified (completely) commercially, it can be refused and deductibility can be denied.

Are royalties subject to withholding?

No.

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

Yes, any adjustments need to be reflected in the financial statements (following the principle that tax accounting should be based on commercial accounting).

Other unique attributes?

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?

Almost always.

When may a taxpayer submit an adjustment to competent authority?

After an adjustment notice is provided to the taxpayer.

May a taxpayer go to competent authority before paying tax?

Yes.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

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?

No. The Swiss competent authority is frequently involved in bilateral APA negotiations and applies the APA program often and very successfully. Since 2008 there have been about 250 APAs involving Switzerland. More than half of them have been settled successfully, none failed or were rejected by the taxpayer.

KPMG in Switzerland

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Taiwan



KPMG observation

The Taiwan Transfer Pricing Regulations came into effect in 2005 and are generally in line with the Organisation for Economic Co-operation and Development (OECD) Guidelines. Transfer pricing has been one of the hottest tax topics since then, and the enforcement of transfer pricing has intensified significantly in recent years. Transfer pricing-focused task force teams have been formed at the regional tax office level, and the number of companies selected as transfer pricing audit targets has continued to multiply. In terms of the types of transactions targeted, the Taiwan tax authorities have focused more and more on transactions involving marketing intangibles, provision of services and intercompany funding arrangements (particularly, intercompany guarantees).

In 2015, the concepts of business restructuring were incorporated into the Transfer Pricing Regulations. Companies that restructure their businesses are required to evaluate the arm's length nature of the restructuring in their transfer pricing reports beginning with tax year 2014. This is expected to result in a significant increase in the compliance burden borne by applicable companies in Taiwan.

The Taiwan tax authorities have been closely monitoring the progress achieved by the Base Erosion and Profit Shifting (BEPS) Action Plan, both the OECD level and in terms its implementation in major economies around the world. It is not clear at this time if the Transfer Pricing Regulations will be amended again to incorporate the recommendations of the BEPS Action Plan. However, it is anticipated that Taiwan will follow a similar approach as countries in the surrounding area and major economies around the world.

The Taiwan tax authorities have started requesting that taxpayers provide information resembling that suggested by the OECD for the Country-by-Country (CbbyC) report during recent transfer pricing audits. Going forward, in transfer pricing audits, it is likely that the tax authorities will be more and more inclined to invoke the exchange of information procedures provided for under tax treaties to access more information from other countries. Multinational enterprises with corporate residences in tax treaty partner states of Taiwan should seriously consider pursuing bilateral advance pricing agreements (APA) to obtain certainty for transactions with relatively high audit risk.

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

Ministry of Finance (MOF) and the district offices of the National Tax Administration (NTA).

Citation for transfer pricing rules

Article 43-1 of the Income Tax Act and Regulations Governing Assessment of Profit-Seeking Enterprise Income Tax on Non-Arm's Length Transfer Pricing (Taiwan Transfer Pricing Assessment Rules).

Effective date of transfer pricing rules

28 December 2004.

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

In addition to a 20 percent ownership, the MOF has adopted the 'substantive management and control' and 'material influence' concepts in defining a related party relationship.

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

Five years from the tax return filing date if the return is filed in a timely fashion. In situations where a taxpayer fails to file the annual tax return within the statutory deadline or is involved in tax fraud or tax avoidance, the statute of limitations will be extended to seven 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. The taxpayer must disclose information about controlled transactions on forms filed with income tax returns.

What types of transfer pricing information must be disclosed?

The types of information to be disclosed include, but are not limited to:

- legal structure
- detailed information on related parties
- controlled transaction types and respective amounts

- whether the taxpayer has signed APAs with tax authorities in Taiwan or foreign jurisdictions and the relevant information; and
- whether a transfer pricing study has been prepared.

What are the consequences of failure to submit disclosures?

There is no penalty involved, but if uncovered by the tax offices, it will undermine the credibility of taxpayers.

Transfer pricing study overview

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

Yes. Documentation could be filed in English if prior approval could be obtained from the tax authorities concerned.

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

No. Taiwan Transfer Pricing Assessment Rules have listed out the following minimum required items to be included in the transfer pricing study:

- 1) industry and economic condition analysis
- 2) function and risk analysis of each entity engaged in the controlled transactions under review
- 3) the application of arm's length principle
- 4) selection of comparables
- 5) comparability analysis
- 6) selection of the most appropriate method, methods considered and reasons for rejection of specific methods
- 7) pricing method adopted by the counterparty of controlled transactions; and
- 8) evaluation of arm's length nature achieved by the controlled transactions or determination of arm's length result(s).

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. With some exceptions. Instead of the transactional net margin method (TNMM), Taiwan Transfer Pricing Assessment Rules adopt the comparable profits method, which is very similar to the TNMM outlined in the OECD Guidelines. Advance approval must be obtained from the MOF for applying unspecified 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?

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.

Upon request, taxpayers are required to submit the documentation within one month from the date of receipt of notification. In special circumstances, taxpayers are also given the option of a one-time extension of an additional month.

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

Yes, the taxpayer has the option to resolve disputes through the administration remedy or litigation procedure.

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

Yes. If the transfer pricing audit results in income adjustments and assessments, a penalty of up to 200 percent of the underpaid tax amount (where the taxpayer has filed their tax returns on time) will be imposed under any one of the following situations:

- where the reported controlled transaction prices are 200 percent or more, or 50 percent or less of the arm's length prices as assessed by the tax authority
- where the income adjustment assessed by the tax authority reaches 10 percent of the taxpayer's assessed annual income and 3 percent of the assessed annual net sales
- where the taxpayer fails to provide a transfer pricing study and cannot provide other documentation to prove that its transfer price is at arm's length; and
- other situations where the tax authority finds evidence of underreporting income and the amount underreported is considered significant.

To what extent are transfer pricing penalties enforced?

In practice, penalties are rarely enforced because most audits are settled via negotiation.

What defenses are available with respect to penalties?

There is no defense to any of the penalties, other than to defend against the underlying adjustment.

What trends are being observed currently?

The tax authorities are currently stepping up the pace of transfer pricing audits as a way to actively seek additional tax revenue. As a result, special transfer pricing audit teams have been formed by the tax authorities to conduct more comprehensive and in-depth transfer pricing audits than in the past. The number of cases selected has increased along with the intensity of the tax authorities' review.

We have observed that under audit, the tax authorities tend to question the aggregate testing approach and request separate testing for different controlled transactions. Moreover, the tax authorities have focused more on intangible property and intra-group funding arrangements, especially cash-pooling and intra-group guarantee arrangements.

Special considerations

Are secret comparables used by tax authorities?

Based on our observation of the current practice, secret comparables are not used by tax authorities.

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

Yes. If the tested party is a company in Taiwan, the tax authorities prefer to apply local comparables. However, foreign comparables are acceptable if insufficient number of local comparables are available.

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

There are no specific requirements regarding which database should be applied.

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

Yes, always.

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

Analysis based on multiple-year averages preferred.

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

Currently, low.

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

Yes. Generally speaking, expenses will be deductible for Taiwan income tax purposes only if they are necessary and relevant to a business' operation. In practice, taxpayers bear a heavy burden of proof to justify to the tax authorities that management fees are necessary and relevant to a business's operation.

Are management fees subject to withholding?

Yes.

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

Yes. Royalties expenses will be deductible for Taiwan income tax purposes only if they are necessary and relevant to a business' operation.

Are royalties subject to withholding?

Yes.

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

Yes. In general only adjustments increasing taxable income are allowed. According to the Taiwan Transfer Pricing Assessment Rules, if the results of a controlled transaction fall outside the arm's length range, the current year result shall be adjusted based on the median of the range. Nonetheless, no transfer pricing adjustment is allowed if it results in a decrease in Taiwan tax liability.

The MOF once issued a private ruling to a company allowing it to make a one-time downward transfer pricing adjustment before closing the financial accounts, provided certain conditions were met. Other companies who wish to make downward transfer pricing adjustments should apply for a specific pre-approval ruling with the MOF based on their own facts and circumstances. The application process is expected to be lengthy and extensive supporting information will be required.

Other unique attributes?

None.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Up to the time when this review is updated, Taiwan has concluded and ratified 28 tax treaties.

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

To our knowledge, Taiwan has limited experience with competent authority.

On the other hand, the information related to the implementation and effectiveness of the competent authority is not available to the public.

When may a taxpayer submit an adjustment to competent authority?

Depends on the mutual agreement procedure provision of each tax treaty.

May a taxpayer go to competent authority before paying tax?

Yes.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

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?

No.

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Tanzania



KPMG observation

Most companies operating in Tanzania are subsidiaries of multinational enterprises that have engaged in foreign direct investment in Tanzania. The tax authority is generally of the view that these multinationals are focused on repatriating as much profit out of Tanzania as possible, while suffering the least possible tax costs. For this reason, the Tanzanian tax authority is aggressively challenging transactions between Tanzanian operations and their non-resident related parties.

In 2014, Income Tax (Transfer Pricing) Regulations were published and became effective on 2 February 2014 (even though the Regulations only became available on 23 May 2014). The Regulations apply to controlled transactions between Tanzania resident entities and non-resident entities. The Regulations also apply for controlled transactions between two Tanzania entities. With the publication of these Regulations, Tanzania now joins Kenya, Uganda and Rwanda as countries in the region which have transfer pricing rules in place.

It is important for taxpayers with related party transactions, whether cross-border or in-country to maintain contemporaneous transfer pricing documentation as required by the Regulations. The penalty for not having the transfer pricing documentation in place is imprisonment for a term not exceeding six months, a fine not less than TShs 50 million (approx. 25,000 US dollars (USD) at the exchange rate of 1 USD = 2000 TShs), or both. Violation of the Regulations attracts a penalty of 100% of the underpaid tax and resulting interest thereon.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Required to be contemporaneous	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

Tanzania Revenue Authority (TRA).

Citation for transfer pricing rules

- Section 33 of the Income Tax Act (ITA) requires that any arrangement

between related parties must be conducted at arm's length

- The Income Tax (Transfer Pricing) Regulations, 2014 (TP Regulations)
- Tanzania Revenue Authority (TRA) Transfer Pricing Guidelines (TP Guidelines).

Effective date of transfer pricing rules

- 2004 — Section 33 of ITA
- 2014 — TP Regulations were published and came to force on 2 February 2014, even though the Regulations became available to public on 23 May 2014.

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

The relationship threshold is as follows:

- a company which controls or may benefit from 50 percent or more of the rights to income or capital or voting power of other entity whether directly or indirectly
- partners in the same partnership, unless the Commissioner is satisfied that it is not reasonable to expect that either person will act in accordance with the intentions of the other; and
- an individual and a relative of the individual, unless the Commissioner is satisfied that it is not reasonable to expect that either individual will act in accordance with the intentions of the other.

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

Three years from the date of filing the tax return. However, in cases where the tax authorities suspect fraud or intent to evade payment of tax, the three year limitation can be ignored.

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. Details of related party transaction must be disclosed in the tax return.

What types of transfer pricing information must be disclosed?

Description and amounts of related party transactions must be disclosed in the tax returns.

What are the consequences of failure to submit disclosures?

The taxpayer could be deemed either to have failed to maintain proper documents for a year of income, or to have misled the tax authorities in a material manner by omitting to disclose certain matters. The first offence is punishable by a monthly penalty of 2.5 percent of any outstanding income tax at the time of filing the return (a penalty

that runs until the proper documents are prepared), or 100,000 Tanzanian shillings (TZS), whichever is higher. The second offence is punishable by a penalty of either 50 percent or 100 percent of tax that the authorities believe would have been underpaid if the omission went undetected, depending on whether the omission was made with reasonable excuse (50 percent) or made knowingly or recklessly (100 percent).

Transfer pricing study overview

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

Yes, English.

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. The TP Regulations are broadly based on OECD Guidelines.

A contemporaneous transfer pricing documentation is required to be prepared and maintained before the due date of filing the final tax return. The transfer pricing documentation needs to be maintained and updated on a year on year basis.

The transfer pricing documentation needs to be submitted to the revenue authority only after receipt of request from Commissioner within 30 days of receipt of such request.

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.

No. The TP Regulations provide for a hierarchy of transfer pricing methods with traditional methods ranking higher than other methods. The first

three methods (CUP, RPM, CPM) are considered as traditional methods.

However, the TP Regulations also lay down application of most appropriate method having regard to the nature of the transaction, or class of transaction, or class of associated persons or functions performed by such person in relation to the transaction.

Hence, there seems to be an inconsistency with the TP Regulations which also provide for application of OECD and UN model Tax Conventions which have themselves scrapped hierarchy of transfer pricing 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?

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.

Yes. 30 days from date of such request.

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

The tax authority first attempts to resolve the dispute, and if this fails, dispute resolution is progressed to the Tax Revenue Appeals Board. If the taxpayer remains aggrieved by the decision of the Appeals Board, an appeal can be lodged with the Tax Revenue Appeals Tribunal, and eventually with the Court of Appeal.

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

The penalty for not having the transfer pricing documentation in place is imprisonment for a term not exceeding six months or a fine not less than TZS50 million (approx. SD25,000 at the exchange rate of 1 USD =

TZS2000) or both. Contravention of the TP Regulations attracts a penalty of 100 percent of the underpaid tax and resulting interest thereon.

Further, interest can be assessed where the sustained adjustment creates a situation where tax is deemed to have been paid later than its due date. Interest rates are amended annually, based on the Bank of Tanzania discount rate at the beginning of the year. In 2014, the applicable rate is 21 percent per annum, compounded on a monthly basis.

To what extent are transfer pricing penalties enforced?

Without fail, penalties are computed and assessed where a taxpayer is deemed to have failed to pay tax by the date on which it was due.

What defenses are available with respect to penalties?

Documentation and reasonable cause. The tax authority has legislative power to reduce or remove penalties where the taxpayer submits justifiable reasons for the reduction or removal to be considered.

What trends are being observed currently?

Generally, all transactions between local companies and their related parties who are Tanzanian non-resident are coming under immense scrutiny. The tax authority is asking for evidence that services were rendered (where the transactions relate to payment by the Tanzanian company for services provided by related persons); together with documentation proving that the prices were at arm's length. Where the authorities remain dissatisfied, the consequence is for the service fees/related party payments to be disallowed as expenses for the Tanzanian company, thus increasing taxable profits.

Special considerations

Are secret comparables used by tax authorities?

The tax authority may use comparables that will not be disclosed to the taxpayer due to the confidentiality of the information collected by the authority from other taxpayers.

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

No. Priority is given to the availability of sufficient and verifiable information on both tested party and comparables.

TRA will not accept foreign tested parties where information is neither available nor verifiable.

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, always.

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

None.

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

Significant. The customs authorities are actually a facet/department of the larger tax authority.

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

Yes, some. For management fee to be deductible, in addition to arm's length principle they should be incurred for business purposes.

Are management fees subject to withholding?

Yes.

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

Yes. For royalties to be deductible, in addition to arm's length principle they should be incurred for business purposes.

Are royalties subject to withholding?

Yes.

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

Yes. With an approval from the Commissioner. As per section 33 of the Income Tax Act, 2004, the Commissioner is empowered to make corrective adjustments should he think that the transactions between related parties are not at arm's length.

Other unique attributes?

None.

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?

Not applicable.

When may a taxpayer submit an adjustment to competent authority?

Where the taxpayer essentially feels that the adjustment is creating double taxation (taxation of the same income in Tanzania and in another jurisdiction), and the two countries share a double tax relief treaty that provides for competent authority intervention.

May a taxpayer go to competent authority before paying tax?

Yes, provided that negotiations with the tax authority have failed and the tax authority has either made a final decision to proceed with the adjustment or has raised an assessment for tax that the taxpayer disagrees with.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

Is there a filing fee for APAs?

No formal rules exists in this area.

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?

Yes. The APA program is provided for in the income tax regulations, but the tax authority has been hesitant to conclude any APAs with taxpayers, and we suppose that the reason for this would be the lack of skilled expertise in the tax authority in so far as transfer pricing is concerned.

KPMG in Tanzania

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Thailand



KPMG observation

In May 2015, the Thai cabinet approved a draft Transfer Pricing law that will amend the Revenue Code to prevent tax evasion driven by transfer pricing. The purpose of draft law is to add provisions in the Thailand Revenue Code which will:

- define the criteria for determining pricing that should be applied between related entities
- allow a tax officer to make adjustments to assessable income and allowable deductions; and
- determine the period of eligibility for tax refunds.

One of requirements of the draft law is that entities with related party transactions will have to prepare and submit certain documentation within 150 days of the end of their accounting period. Failure to do so will result in a penalty of up to 400,000 Thai baht (THB) (about 12,000 US dollars (USD)).

The draft law is broad, and it is expected that more details (which may be in form of Departmental Instruction or Notification) will be issued once the law is enacted. Given this new transfer pricing law — specifically, the provision for mandatory transfer pricing documentation, transfer pricing will be one of the most pressing issues in Thailand going forward. A company operating in Thailand, with related party transactions, should be prepared to manage its transfer pricing risk and compliance.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Not applicable	Required to be contemporaneous
Legal requirements			●
Protection from penalties		●	
Reduce risk of adjustment	●		
Shifts burden of proof	●		

Basic information

Tax authority name

Krom Sumpakorn (Thai Revenue Department (TRD)).

Citation for transfer pricing rules

General laws:

- Sections 65 bis (4), (7)
- Section 65 ter (13), (14), and (15).

Specific rules:

Departmental Instruction Paw 113/2545. The Guidance on the Advance Pricing Agreement (APA) Process (APA Guidance) was issued in April 2010.

Transfer Pricing Law: Cabinet has approved draft law in May 2015. The law has not been enacted.

Effective date of transfer pricing rules

Specific rules issued in May 2002 as guidelines for TRD officers. No legal effect.

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

Direct or indirect relationship with regard to management, control or capital.

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

Five years from due date or filing date. Transfer pricing assessments follow the statute of limitations on income tax return audits, which is five years from due date of tax return, or from filing date if failure to file by due date.

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)?

No. No specific requirement for transfer pricing disclosure. However, there are questions in the annual corporate income tax return (yes or no answers) which the taxpayer is required to answer in relation transactions departing from market price.

Under the draft transfer pricing law, the taxpayer is required to submit the document required by law within the same deadline of tax return. The level of disclosure has not been available yet.

What types of transfer pricing information must be disclosed?

The questions in the tax return that require the taxpayer's confirmation are:

- has the business sold products, services or property, lent money, or leased out property, without value received or with received value below market price in amounts considered substantial?
- has the business bought assets, or incurred expenses in acquiring such assets, at a value above normal price in an amount considered substantial?

What are the consequences of failure to submit disclosures?

Not applicable (the questions in the annual corporate income tax return, as mentioned, have to be answered as part of the tax return).

Under the draft transfer pricing law, there will be a penalty up to THB400,000 (about USD 12,000) if the taxpayer does not submit the document as required by law.

Transfer pricing study overview

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

Yes but may be asked to provide Thai translation. English.

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 certain transactions. Thailand is not an OECD member. However, Thailand's transfer pricing guidelines follow similar concepts to the OECD.

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.

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, seven 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.

A normal timeline in the tax authorities' requested letter is between 7 and 15 days, but, in practice, a request for an extension is possible.

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

If a conclusion cannot be reached at the documentation review and a notice of assessment is issued, the dispute may be settled by filing a tax appeal within 30 days after receiving the notice of assessment. If the taxpayer fails to obtain a successful resolution at this level, the taxpayer may appeal to the tax court.

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

Yes. General income tax penalties — i.e. a surcharge of 1.5 percent per month of additional tax payable up to the amount of tax will be imposed. Penalties of up to 100 percent of additional tax payable will be added if the adjustment is made as a result of a tax audit summons.

To what extent are transfer pricing penalties enforced?

Always (if the adjustment results in additional tax).

What defenses are available with respect to penalties?

None, if there is tax payable. It is necessary to negotiate with the tax authorities at the documentation review to reduce the assessed tax amount such that the penalties can be reduced accordingly.

What trends are being observed currently?

Tangible property transactions are still the main target but the tax authorities are more and more focused on intragroup services transactions as well. If there are intra-group fees for services or for intangible property, there may be questions about tax deductions. The taxpayers are often required to demonstrate that the services have been received and are relevant to the Thai operations, and that the consideration is not excessive.

Special considerations

Are secret comparables used by tax authorities?

This is possible.

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

Yes. If the taxpayers do not provide a set of local comparable companies during the transfer pricing audits, the transfer pricing audit team will conduct their own search for local comparables and use the local benchmarking results as a starting point to challenge the taxpayers.

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

No requirements, however, the tax authorities use Business Online, a well-known local database.

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

Yes, always.

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?

None.

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

Yes, some. Generally, management fees are deductible if the taxpayer can substantiate the expenses incurred for business and the fees are not excessive.

Are management fees subject to withholding?

Yes.

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

Yes. For tax deduction, Thai tax authority would also focus on benefits received by Thailand.

Are royalties subject to withholding?

Yes.

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

Yes. It is strongly recommended that the year-end transfer pricing adjustment should be performed before closing the financial statements for the period. Care must be taken if the transfer pricing adjustment results in reduced profitability in Thailand.

Other unique attributes?

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.

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?

Where a client requires double taxation relief, the same can be obtained from the tax authorities prior to paying the tax.

Advance pricing agreements

What APA options are available, if any?

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?

No. Since the APA guidance has been issued in April 2010, there have been

more requests for APAs. With more experience and the requirement to submit the APA application in both Thai and English, the Thai tax authorities should begin to review and process the APAs faster. The APA working team has been requesting factory tours, in the case of manufacturing subsidiaries in Thailand, in order to obtain more understanding of functional and risk profiles as well as manufacturing process for comparable selection.

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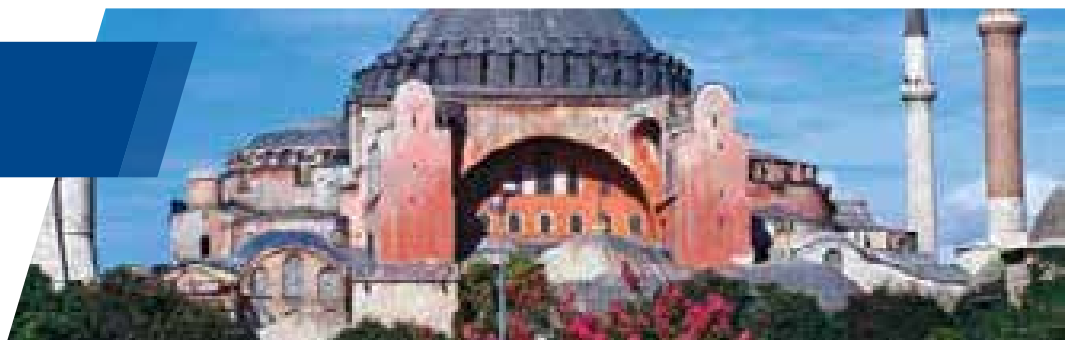
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Turkey



KPMG observation

Turkey follows global trends, and the Turkish government is implementing new compliance rules, and opening many audits, in the area of transfer pricing. Since the beginning of 2007, transfer pricing has emerged as one of the main focus of inquiries by the Turkish tax authorities. During recent years, this focus on transfer pricing has intensified.

Management fees and royalties are the most frequent issues raised in these recent tax audits. In addition, if taxpayers have internal comparables, the Turkish tax authorities generally have been trying to use these prices as a comparable in tax audits even if the factors are not completely comparable. Therefore, taxpayers are advised to use internal comparables wherever possible, and, to include discussion of the selection or rejection of internal comparables along with the factors of comparability considered.

Regarding Base Erosion and Profit Shifting (BEPS) Action Plan and the United Nations (UN) Practical Transfer Pricing Manual for Developing Countries issued October 2012, the Turkish administration has not taken any action thus far. Since Turkey already has a 'substance over form' principle under its Tax Procedural Law, the application of BEPS may require only minor changes in transfer pricing rules in the future.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Not applicable
Legal requirements	●	
Protection from penalties		●
Reduce risk of adjustment	●	
Shifts burden of proof	●	

Basic information

Tax authority name

Revenue Administration, Ministry of Finance.

Citation for transfer pricing rules

- Article 13 of Corporate Tax Law No. 5520
- Transfer Pricing Communiqué No. 1–18 November 2007

- Transfer Pricing Communiqué No. 2 — 22 April 2008
- General Communiqué No. 3 — November 2008
- Decree 2007/12888 — 6 December 2007
- Decree 2008/13490 — 13 April 2008; and
- Circular TF-1/2008–1 — 24 April 2008.

A rule that was added to Article 13 states that the “disguised profit distribution through transfer pricing” provision would be applicable if there is a “treasury loss” with respect to the domestic intra-group transactions of a corporate taxpayer. The term “treasury loss” is defined as an under-declaration or late declaration of all types of taxes resulting from transfer prices that do not comply with the arm’s length principle.

This rule was effective as from 6 June 2008 and applied to 2008 and later tax returns.

Effective date of transfer pricing rules

1 January 2007.

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

Based on shareholding (an individual or a legal entity related to a shareholder) that provides a direct or indirect control over related parties including a transaction effected with a resident of a low-tax jurisdiction i.e. a resident located in a tax haven country. There are no thresholds for transfer pricing rules to apply between parties.

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

Five years starting from the close of related fiscal period (i.e. 31 December 2014 is the expiry period for the fiscal year 2009). Following the completion of fiscal period, no tax related adjustment/tax return preparation/use of standard tax attributes is allowed for taxpayers and it is binding for the tax administration as well, since it is not authorized to carry out tax audits on the accounts of taxpayers or make tax adjustments.

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. All corporate taxpayers are required to complete and attach a transfer pricing form attached to their annual corporate income tax returns to be submitted with the corporate tax return.

What types of transfer pricing information must be disclosed?

The information should include:

- the list of related parties that the taxpayer entered into the transaction with
- the amounts of related party transaction by transaction type (i.e. financing, services, goods etc.); and

- a summary of the transfer pricing methods used for the transactions.

What are the consequences of failure to submit disclosures?

The tax penalty for failure to prepare or submit the disclosures is a procedural irregularity penalty, which is immaterial. However, this failure may cause further tax audit and tax assessment by the tax authorities.

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?

No. There is no official binding requirement to follow OECD Guidelines. OECD Guidelines should only be used for reference purposes.

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.

No. CUP method has priority over other methods. Turkish transfer pricing rules are not updated per to OECD Chapter II.

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, 15 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.

See prior question.

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

The taxpayer may choose to apply to courts in its jurisdiction.

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

Yes. The tax penalty equals 100 percent of the additional taxes accrued. If the tax assessment is in recurring nature (taxpayer has been imposed to more than one tax assessment in five years time), the penalty equals to 150 percent of the additional taxes accrued.

To what extent are transfer pricing penalties enforced?

Where there is a penalty assessment after a tax audit for transfer pricing issues, these penalties are almost always enforced.

What defenses are available with respect to penalties?

Taxpayers can apply for settlement after a tax penalty is imposed. Generally 80 to 100 percent of the penalties are cancelled by virtue of settlement.

What trends are being observed currently?

The structural change in the tax audit organization of the Ministry of Finance has contributed to the increased number of transfer pricing audits. In July 2011, tax auditors were reorganized and merged under a single board, the Turkish Tax Inspection Board. Four subgroups were formed under this board, one of which was organized to perform transfer pricing investigations as a special department.

This formation shows that transfer pricing is regarded as a special field in tax audits and is organized accordingly. Recurring losses, royalties and intra-group service charges are the specific focus areas of transfer pricing audits.

Tax auditors tend to treat management fee charges as royalties and apply withholding taxes.

Special considerations

Are secret comparables used by tax authorities?

Yes, secret comparables are used by the tax authorities. Since there are not enough local comparables in the database, tax authorities choose to adopt secret comparables.

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

There is no requirement for using local databases. However, Tax authorities have a preference for local comparables. If a broader set is used, performing necessary adjustments including country specific adjustments is recommended. There are a limited number of local comparables in the Amadeus database, therefore, both local comparables and broader sets can be used.

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

Tax Authorities have Amadeus (Orbis) and Thomson Reuters.

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.

Not applicable.

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

The two authorities are generally working separately.

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

No.

Are management fees subject to withholding?

Yes.

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

No.

Are royalties subject to withholding?

No.

Are taxpayers allowed to file tax return numbers that differ from book numbers?

Yes. Satisfying that the differences are explainable and supportable.

Other unique attributes?

None.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive. Turkey has signed 80 income tax treaties to date, and these generally include mutual agreement procedures (MAPs) in Article 25 of the subject treaties.

If extensive, is the competent authority effective in obtaining double tax relief?

Not effective.

When may a taxpayer submit an adjustment to competent authority?

A taxpayer must make a MAP application within the time period listed in the double tax treaty. However, if the double tax treaty does not provide a time period for filing a MAP application, then the period for making a MAP application will be determined by the tax laws of the country, which is one year for Turkey. MAP request can be made when the double taxation have been realized.

May a taxpayer go to competent authority before paying tax?

No.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

Is there a filing fee for APAs?

Yes. Effective 1 January 2015, the application fee for an APA is 50,202 Turkish lira (TRY) (approximately 19,000 US dollars (USD)). The fee for an APA application renewal is TRY40,162 (approximately USD15,400). The application and renewal fees are typically re-assessed at the beginning of each calendar year.

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. Turkey's APA system is still in its early stages. The first unilateral APA was concluded in July 2011 and the other two agreements were signed as of December 2012. However, corporations in Turkey are becoming more aware of its advantages as APA is regarded as a major means of resolving transfer pricing disputes globally.

KPMG in Turkey

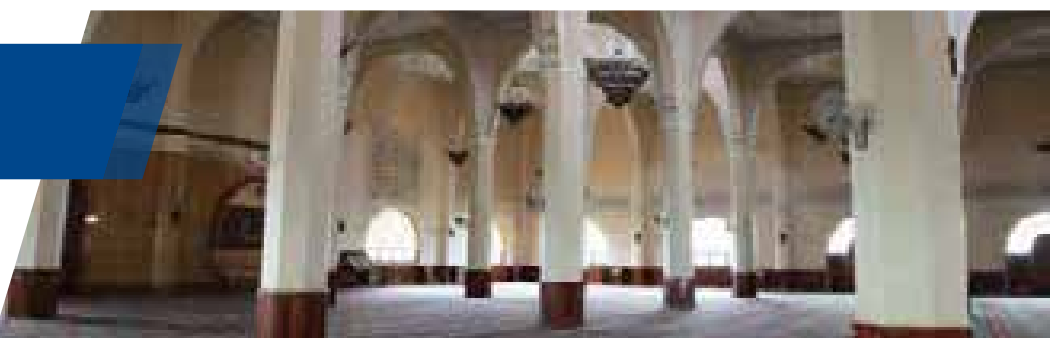
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Uganda



KPMG observation

Transfer pricing rules in Uganda came into effect on 1 July 2011. From that time, the Income Tax Act (the Act) and the Transfer Pricing Regulations contained therein became binding legislation. Under the Act, the Organisation for Economic Co-operation and Development (OECD) Guidelines are to be referred to unless they differ from the Act, in which case, the Act takes precedence. A practice note was released in May 2012 to aid taxpayers in compliance. The 2012/2013 financial year was the first time taxpayers had to have transfer pricing documentation in place. As a result, information on trends and existing practices is still limited.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Not applicable
Legal requirements	●	
Protection from penalties	●	
Reduce risk of adjustment	●	
Shifts burden of proof		●

Basic information

Tax authority name

Uganda Revenue Authority (URA).

Citation for transfer pricing rules

S.90 and S.91 of the Income Tax Act, Cap. 340 read together with the Transfer Pricing Regulations 2011, OECD and the Transfer Pricing Practice Note, 2012.

Effective date of transfer pricing rules

Although the transfer pricing regulations came into effect 1 July 2011, S.90 and 91 of the Income Tax Act had been in place requiring taxpayers with related party transactions to deal at arm's length.

What is the relationship threshold for transfer pricing rules to apply between parties?

The rules apply to controlled transactions for multinational enterprises (MNEs) or controlled transactions in aggregate equal to or exceeding 25,000 currency points in a year of income (500 million Uganda shillings (UGX)). This relates to transactions between related parties within Uganda. There is no threshold for transactions across borders.

What is the statute of limitations on assessment of transfer pricing adjustments?

This has not yet been specified. The Act gives the URA commissioner the authority to make adjustments but does not indicate a time limit for such adjustments.

The Income Tax Act also allows the taxpayer to amend their return in case there are some adjustments to be made but does not give a limitation on the time within which this can be done.

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)?

No. The taxpayer is not required to submit disclosures to the URA on an annual basis but is expected to keep all information up to date related to the transfer pricing policies, to be provided to the URA on request.

What types of transfer pricing information must be disclosed?

Not applicable.

What are the consequences of failure to submit disclosures?

Not applicable.

Transfer pricing study overview

Can documentation be filed in a language other than the local language? If yes, which ones?

Yes, English.

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. In addition, the Practice Note also gives guidelines of the required documentation to be maintained by the taxpayer:

- Company details including brief history and the relationships with their related parties, brief history of the company, worldwide organizational structure and participants in the transactions.
- Transaction details including description of the transactions, names of the participants and the functions of each of the parties in the transaction.
- Determination of arm's length entailing selection of the method and the reason for selection of the method, searches and databases used, and, the criteria used in the selection of comparables.
- Conclusion as to whether transactions with the related parties are at arm's length basing on the comparables derived from the database used.

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.

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.

This has not been specified. The Regulations state that the policy should be submitted upon request. The taxpayer is expected to have the policy in place before filing the annual tax return for the year of income.

If an adjustment is proposed by the tax authority, what dispute resolution options are available?

Not yet specified, but it is expected that the tax authorities would pay attention to explanations by the tax consultants in defending transactions and in case this does not work out, the tribunal would have jurisdiction for such cases.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

This has not been specified, but it is expected that penalties would be the same as if one had not submitted a policy in the first place, i.e. a financial penalty of UGX500,000, and/or six months imprisonment for the directors if convicted. There would also be penalties in respect of the tax not paid that should have been paid, based on the taxation Acts. The penalty for income tax is two percent per month.

To what extent are transfer pricing penalties enforced?

The extent of enforcement will only be known after some companies have been found not to be compliant on carrying out reviews of their transfer pricing documentation.

What defenses are available with respect to penalties?

Default defense is documentation but other defenses are to be established once the authorities have taken on some noncompliant taxpayers.

What trends are being observed currently?

The Tax Authorities have started asking for policies from taxpayers.

Special considerations

Are secret comparables used by tax authorities?

Unknown. The authorities are just starting to roll out audits of transfer pricing documentation prepared by taxpayers.

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?

None have been specified.

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.

No experience yet.

What level of interaction do tax authorities have with customs authorities?

The customs body is a subset of the tax authority and hence there is a high level of interaction and all information from customs is accessible to the authorities.

Are there limitations on deductibility of management fees beyond the arm's length principle?

Yes. The income Tax Act gives the commissioner the powers to reclassify transactions and if a fee is deemed above arm's length, the commissioner may disallow the excess.

Are management fees subject to withholding?

Yes.

Are there limitations on the deductibility of royalties beyond the arm's length principle?

Yes. Excess over the arm's length price may be disallowed.

Are royalties subject to withholding?

Yes.

Are taxpayers allowed to file tax return numbers that differ from book numbers?

No. The URA has not yet clarified this but it is highly unlikely that such adjustments will be acceptable.

Other unique attributes?

There are no specifications on the use of single versus multiple year data or same year data.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Minimal (there are double taxation agreements with only seven 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?

Not applicable.

May a taxpayer go to competent authority before paying tax?

This has not been specified.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

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?

No known case has been handled.

KPMG in Uganda

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Ukraine



KPMG observation

A law in Ukraine concerning transfer pricing, that is effective as of 1 January 2015, enhances the compliance rules for taxpayers. Concerning transfer pricing, the law:

- expands the criteria for those that qualify as related parties
- revises the requirements for controlled transactions
- imposes new compliance requirements
- increases the penalty regime; and
- introduces a new mechanism for transfer pricing adjustments.

Under the new transfer pricing law, the arm's length principle is introduced, and this standard must apply to all controlled transactions.

Transactions with non-resident related parties as well as with non-related parties registered in certain jurisdictions, as listed by the Cabinet of Ministers of Ukraine, are deemed controlled if the following criteria are satisfied:

- a taxpayer's and/or the related parties' joint annual revenue exceeds 20 million Ukrainian Hryvnia (UAH) (approximately 757,000 US dollars (USD)); and
- the transaction volume exceeds the lesser of UAH1 million or three percent of the taxpayer's annual revenue.

Given the devaluation of the Ukrainian currency, it appears that the vast majority of business transactions of all types involving (non-resident) related parties will be deemed to be controlled transactions, thereby imposing an additional compliance burden on Ukrainian companies with foreign capital.

Prices in controlled transactions are assumed not to be at arm's length, unless otherwise proved by the taxpayer. Companies must also prove that the commercial and economic conditions of a controlled transaction are comparable to those for transactions between unrelated parties. The burden of proof, thus, shifts from the tax authorities to taxpayers engaged in controlled transactions.

Ukrainian companies need to review their intra-group transactions and prepare thorough transfer pricing documentation (in the Ukrainian language) so as to confirm that the arm's length principle has been applied in such transactions.

An advance pricing agreement (APA) between the taxpayer and the tax authorities can provide a level of certainty against adjustments and penalties.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Required to be contemporaneous	Submission to tax authority required
Legal requirements	●	●	
Protection from penalties	●	●	●
Reduce risk of adjustment	●	●	●
Shifts burden of proof	●	●	●

Basic information

Tax authority name

State Fiscal Service of Ukraine (SFS).

Citation for transfer pricing rules

Tax Code of Ukraine (TC):

- Paragraph 14.1.159 (definition of related parties)
- Article 39 (arm's length principle, definition of controlled transactions, transfer pricing methods, advance pricing agreements); and
- Articles 133 — 142 (corporate profit tax).

Effective date of transfer pricing rules

1 September 2013. Enhanced transfer pricing rules came into force on 1 January 2015.

What is the relationship threshold for transfer pricing rules to apply between parties?

- Ownership of at least 20 percent of capital, directly or through third entities. If an entity is owned by another entity or physical person both directly or through third entity(ies), all direct and indirect ownership will be added to calculate effective ownership.
- Entities under common control (by ownership, voting power, common management) will be recognized as related.
- If the amount of all loans provided and/or guaranteed by one party to another exceeds a ratio of 3.5 of the recipient company's own capital, parties are recognized to be related.

- Moreover, the tax authorities can prove in court that the parties are related "based on facts and circumstances" by demonstrating that one legal entity (or physical person) had practical control over another entity's (or both entities') business decisions.

What is the statute of limitations on assessment of transfer pricing adjustments?

Seven 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. Taxpayers engaged in controlled transactions during the reporting year must file a Report on Controlled Transactions with the Ukrainian tax authorities no later than 1 May of the next calendar year.

Transfer pricing documentation must be prepared at the time when a transaction is performed, but submitted upon request of the tax authorities only.

What types of transfer pricing information must be disclosed?

The Report on Controlled Transactions must contain detailed information on the subjects of controlled transactions, including (physical) characteristics, industry-specific codes, prices applied, transfer pricing method used, arm's length price etc.

What are the consequences of failure to submit disclosures?

300 minimal wages, as set at the beginning of the reporting year (UAH 1218 or ca. USD55 for 2015) for failure to file the Report on Controlled Transactions in a timely fashion.

One percent of the volume of transactions not disclosed in the Report on Controlled Transactions (but not more than 300 minimal wages).

Three percent of the transaction volume for failure to submit transfer pricing documentation at request, but not more than 200 minimal wages for all controlled transactions.

Minimal wages = UAH1218 as of 1 January 2015 (ca. USD55 using the exchange rate for 18 August 2015). This amount is reviewed annually by the Government of Ukraine.

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.

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.

No. Transfer pricing methods described in Chapter II of the OECD Guidelines are recognized and used in Ukraine. However, a specific hierarchy of these methods applies:

- 1) CUP method
- 2) Resale Price or Cost Plus method; and
- 3) TNMM or Profit Split method.

If a taxpayer engages in a transaction with a counterparty (whether related or not) registered in a so-called "low-tax" jurisdictions, and subject(s) of the transaction are listed commodities, CUP method must be applied. In other cases, the taxpayer must submit to the tax authorities copies of contracts used in the entire supply chain of such commodities, up to the first unrelated party.

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.

Yes, 30 days.

If an adjustment is proposed by the tax authority, what dispute resolution options are available?

Following the administrative procedure, a taxpayer can apply to the tax authority of a higher ranking. If still dissatisfied, the taxpayer can file a claim to District

Administrative Court, Administrative Court of Appeal, High Administrative Court and Supreme Court of Ukraine (for limited instances only), in that order.

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 additional tax liabilities, the taxpayer can be subject to penalties of 25 percent and up to 75 percent of the tax underpayment if there is a recurring violation.

A taxpayer can reassess own tax liabilities in connection with transfer pricing adjustments and reflect them in the tax return. In this case, no penalties apply. Such reassessment can also be made and filed separately after the tax return is submitted. In such case, penalties will apply to the amount of underpaid tax for each day of delay.

The penalty for violations (use of non-arm's length transfer prices) committed in 2013 and 2014 is UAH1.

To what extent are transfer pricing penalties enforced?

Strictly enforced.

What defenses are available with respect to penalties?

Contemporaneous transfer pricing documentation.

What trends are being observed currently?

The Ukrainian tax authorities have already requested about 60 transfer pricing documentations from taxpayers. The first special tax audit in the field is underway. We expect numerous court disputes between the taxpayers and the tax authorities to begin in the nearest future.

Special considerations

Are secret comparables used by tax authorities?

No. The use of secret comparables is forbidden.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

Yes. Ideally, the comparables should be local or derived from the geographically

closest market. However, this only applies if the selected tested party is a resident of Ukraine. The Tax Code states that the selected tested party does not necessarily need to be a resident of Ukraine.

Do tax authorities have requirements or preferences regarding databases for comparables?

The tax authorities give preference to state statistical information and databases.

The following official sources of information will be acceptable for establishing the arm's length price:

- information sources officially approved by the Cabinet of Ministers of Ukraine
- statistical data of the state authorities and agencies
- commodity exchange prices and stock exchange quotation
- benchmark prices of specialized commercial publications, including electronic and other databases
- reports and data provided by economic departments of Ukrainian diplomatic missions abroad
- results of public auctions; and
- internal comparable prices of taxpayers.

If the official sources do not contain sufficient information for the analysis of prices in controlled transactions, other information sources, including commercial databases (RUSLANA, Amadeus, Thomson Reuters, ktMINE and Bloomberg etc.) can be used.

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.

The Ukrainian transfer pricing legislation prescribes the use of a range that is calculated slightly differently from the interquartile range, though resembles it closely.

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. Management fees are generally deductible in full.

Management fees payable to a non-resident service provider are deductible in the amount of 70 percent of such fees if paid to a non-resident registered in a "low-tax" jurisdiction.

The above limitation does not apply to transactions, for which a taxpayer has a contemporaneous transfer pricing documentation substantiating the arm's length level of prices in such transactions (even if such transaction is not deemed controlled for transfer pricing purposes).

Are management fees subject to withholding?

No.

Are there limitations on the deductibility of royalties beyond the arm's length principle?

Yes. Royalties are only deductible in the amount not exceeding 4 percent of the previous year's revenue.

Royalties are fully non-deductible if:

- paid to a non-resident registered in a "low-tax jurisdiction"
- paid to any non-resident with regard to intangible property, the ownership rights for which were initially created in Ukraine
- paid to a non-resident who is not the beneficial owner of royalties
- paid to a non-resident who is not subject to tax with regard to royalties in their jurisdiction; or
- paid to any legal entity (resident or non-resident) who is not subject to income tax or pays it at a different rate, or pays it included in the amount of other taxes.

The above limitations do not apply, and royalties are deductible in full if proved to be at arm's length (via a contemporaneous transfer pricing documentation), even if such transaction is not deemed controlled for transfer pricing purposes.

Are royalties subject to withholding?

Yes.

Are taxpayers allowed to file tax return numbers that differ from book numbers?

Yes. True-up adjustments are allowed; true-down adjustments are not allowed.

Generally, the numbers in the tax return will differ from the book numbers due to adjustments, as prescribed by the Tax Code.

Other unique attributes?

Information available at the moment when controlled transaction is performed and/or information available from previous years can be used. Common practice is to use multiple-year data (usually, data is used from three years preceding the year when controlled transaction took place).

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive (nearly 70 effective double tax treaties).

If extensive, is the competent authority effective in obtaining double tax relief?

Yes. Historically, double tax relief has been available to a taxpayer if there was a valid tax residence certificate of its counterparty confirming that the latter is tax resident in a jurisdiction which has an effective double tax treaty with Ukraine.

Since 2011, the Tax Code introduced a beneficial ownership concept as an additional mandatory prerequisite for the application of a double tax treaty relief. The tax authorities have already started challenging certain structures (e.g. trademark sublicensing contracts) which they believe have been introduced to benefit from the double tax treaty protection.

When may a taxpayer submit an adjustment to competent authority?

If a corresponding adjustment is applicable, the taxpayer may only claim a corresponding adjustment after its counterparty has paid the amount of tax resulting from the adjustments of their tax liabilities. Documents verifying that such payment has been made must be available in order for the taxpayer to claim a corresponding adjustment.

May a taxpayer go to competent authority before paying tax?

No (see above).

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

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 to large taxpayers.

KPMG in Ukraine

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United Kingdom



KPMG observation

Her Majesty's Revenue and Customs (HMRC) supports the Organisation for Economic Co-operation and Development's (OECD) Base Erosion and Profit Shifting (BEPS) initiative and the UK is expected to be an early adopter of the recommendations arising from the BEPS Action Plan. The UK transfer pricing legislation already incorporates the 2010 OECD Transfer Pricing Guidelines and KPMG in the UK is starting to see the principles contained in the new draft of Intangibles Chapter VI being raised during HMRC inquiries.

Following BEPS, KPMG in the UK expects to see an increase in Advance Pricing Agreement (APA) applications and Mutual Agreement Procedures (MAP) claims. HMRC recognizes the importance of these tools in making the UK a good place to do business and helping taxpayers manage their double taxation risk. Its willingness to assist taxpayers and enter into negotiations with other tax authorities will continue after BEPS.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Thresholds apply/exist
Legal requirements	●	●
Protection from penalties	●	
Reduce risk of adjustment	●	
Shifts burden of proof	●	

Basic information

Tax authority name

HMRC (Her Majesty's Revenue and Customs).

Citation for transfer pricing rules

For years ending before 1 April 2010, Schedule 28AA ICTA 1988. For years ending on or after 1 April 2010, the relevant legislation has been rewritten as Part 4 of the Taxation (International and Other Provisions) Act 2010. The changes were merely an attempt to present the legislation in a more logical and accessible format.

Effective date of transfer pricing rules

1 July 1999.

What is the relationship threshold for transfer pricing rules to apply between parties?

Ownership between 40 percent and 50 percent; based on voting power, share capital, or management control. With respect to financing transactions, where the lender has acted together with shareholders to provide funding, the shareholders' stake can be attributed to the lender, meaning a financing transaction may be caught by the legislation where there is no, or a very

small, direct relationship between the lender and borrower.

What is the statute of limitations on assessment of transfer pricing adjustments?

Four years from tax year-end (except in cases involving fraud or carelessness).

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)?

No.

What types of transfer pricing information must be disclosed?

Not applicable.

What are the consequences of failure to submit disclosures?

Not applicable.

Transfer pricing study overview

Can documentation be filed in a language other than the local language? If yes, which ones?

Nothing specified in Legislation. Time will be allowed for translation.

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.

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.

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, 45 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.

There are no specific deadlines. HMRC will decide on a case-by-case basis but will typically allow 45–90 days.

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. Such an appeal will be heard by the Tribunals Service. There is now an additional option of trying to resolve the dispute using mediation to avoid the appeal going to tribunal.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Under the general penalty regime for incorrect returns, a transfer pricing adjustment may lead to a penalty based on a percentage of actual tax loss. Penalties are up to 30 percent for a failure to take reasonable care; up to 70 percent for a deliberate understatement or over claim; and up to 100 percent for a deliberate understatement aggravated by concealment.

HMRC may apply a lower percentage penalty where there is disclosure, the extent of mitigation depending on whether disclosure is prompted or unprompted. A 10 percent penalty is applied to overstated losses.

To what extent are transfer pricing penalties enforced?

KPMG in the UK is seeing HMRC enforce penalties more strictly in recent years.

What defenses are available with respect to penalties?

In its guidance, HMRC indicates that the existence of appropriate transfer pricing documentation may help to mitigate any tax-geared penalty due as a result of a transfer pricing adjustment. Penalties may also be mitigated through cooperation with HMRC.

What trends are being observed currently?

There has been an increased focus on transfer pricing in the media, which has led to large multinationals being questioned on their transfer pricing practices by the government's Public Accounts Committee. This scrutiny has led to increased funding for HMRC transfer pricing specialists.

HMRC is fully involved in the BEPS project. Principles being debated in the BEPS Actions are regularly raised on audit.

HMRC is willing to work with taxpayers on transfer pricing issues in real-time and provide general opinion on the transfer pricing methodology, but not the price. The only way a taxpayer can get legal certainty about the transfer pricing treatment of transactions is under the formal APA process.

Special considerations

Are secret comparables used by tax authorities?

No. Secret comparables may be used by HMRC to select companies for audit, but they are not used for setting an arm's length rate.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

Yes. HMRC would prefer to see UK comparables for UK based activity. In practice European comparables are accepted when limited UK companies are available.

Do tax authorities have requirements or preferences regarding databases for comparables?

No. Typically when European activities are being benchmarked Fame would be used for UK searches and Amadeus for European searches. HMRC has access to the databases.

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.

HMRC expects sound economic principles to be used in applying database screens. Poor screens could lead to penalties for carelessness if this results in a tax adjustment.

What level of interaction do tax authorities have with customs authorities?

HMRC was formed in 2005 by the merger of the Inland Revenue and HM Customs and Excise. KPMG in the UK has observed that customs officials sometimes request transfer pricing documentation as part of their review.

Are there limitations on deductibility of management fees beyond the arm's length principle?

Yes, some. General tax principles require expenses to be incurred wholly and exclusively for the purpose of the trade.

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. Both upward and downward transfer pricing adjustments may be made in the financial statements. If transfer pricing adjustments are invoiced and made in the financial statements, indirect tax implications must also be considered.

Only upward transfer pricing adjustments may be made in the tax computation. Tax computation transfer pricing adjustments may lead to increased analysis of transfer pricing arrangements and increase the likelihood of double taxation. A transfer pricing adjustment in the tax computation in itself is not an event which creates a customs duty or VAT requirement. However, this might be seen by HMRC as an indication that the original transaction was not in accordance with VAT and customs duty valuation principles and may result in an indirect tax enquiry and adjustments.

Other unique attributes?

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?

Almost always.

When may a taxpayer submit an adjustment to competent authority?

Typically, after an adjustment is proposed to the taxpayer. However, an application can be made and HMRC is prepared to enter into discussions with the treaty partner before an adjustment is finalized.

May a taxpayer go to competent authority before paying tax?

Yes.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

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?

Yes.

Are there any difficulties or limitations on the availability or effectiveness of APAs?

No. The APA program is well-established and very successful in the UK. HMRC has extended the number of countries with which it has concluded APAs, including countries starting up their APA programs.

A taxpayer must demonstrate doubt or difficulty in the application of the UK transfer pricing legislation in order to apply for an APA. Consequently, APAs are not commonly obtained for routine transfer pricing situations.

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United States

KPMG observation

The United States has one of the oldest and most mature transfer pricing regimes in the world.

Over the last year the US Treasury Department has been actively engaged in the Organisation for Economic Co-operation and Development's (OECD) Base Erosion and Profit Shifting (BEPS) project. As the OECD has made progress over the last year on Action Items relating to transfer pricing, the US has indicated that it agrees with the broad parameters of the OECD's proposals on country-by-country reporting, master file and local file rules under Action 13. The US plans to implement country-by-country reporting, but has not yet issued any related rules or guidance.

With respect to audits, the Internal Revenue Service (IRS) issued the Transfer Pricing Roadmap in February 2014, guiding Exam teams on how to focus on up-front planning and better factual development of transfer pricing issues. In addition, as part of the IRS's efforts toward greater knowledge sharing, issue-based analyses, and training of additional Examiners, the IRS published a number of training guides on international tax and transfer pricing topics (including, for example, exhaustion of remedies, review of transfer pricing documentation, and treatment of management fees). These guides are available within the IRS and to the public on the internet.

In the courts, the IRS is pursuing a number of different transfer pricing cases, more now than at any other point in history. The largest of these cases, of course, address the transfer of intangibles.

The IRS's combination of the Advance Pricing Agreement (APA) program and the competent authority program into a newly created group, the Advance Pricing & Mutual Agreement program (APMA), has allowed for more expedited processing and resolution of transfer pricing disputes.

In late 2013, the IRS released draft guidance with respect to APAs and competent authority matters. This proposed guidance represents substantial changes compared to the current procedures and is consistent with the objectives of APMA to enhance integration between competent authority matters and APAs, to improve allocation of resources, and to increase transparency and efficiency. The IRS has received comments on this draft guidance, and plans to release final guidance during 2015.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Not applicable	Required to be contemporaneous	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

Internal Revenue Service (IRS).

Citation for transfer pricing rules

Substantive rules: Internal Revenue Code (IRC) Section 482

- Treas. Reg. Section 1.482–1 through Section 1.482–9
- Penalty rules: IRC Section 6662(e) and Treas. Reg. Section 1.6662–6.

Effective date of transfer pricing rules

- Effective 6 October 1994 for Treas. Reg. Section 1.482–1 through Section 1.482–6, and Section 1.482–8
- 9 February 1996 for Section 1.6662–6
- 1 August 2009 for Section 1.482–9 and
- 19 December 2011 for Section 1.482–7.

What is the relationship threshold for transfer pricing rules to apply between parties?

The parties must be under common control. Control is based on a facts and circumstances test, and not on specific ownership thresholds.

What is the statute of limitations on assessment of transfer pricing adjustments?

Generally, the IRS has three years from the tax return filing date to make adjustments. However, if gross income in excess of 25 percent of the gross income stated in the return is omitted, the statute is extended to six years. The statute is unlimited if a false or fraudulent return is filed, if a wilful attempt to evade taxes is made, or if no return is filed.

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.

What types of transfer pricing information must be disclosed?

IRS Forms 5471, (generally, US companies with foreign subsidiaries), 5472 (generally, US companies with

foreign parents), and Schedule UTP (Uncertain Tax Position), which is part of Form 1120, must be attached to the US tax return. In addition, participants in an intangible development cost sharing arrangement (CSA) must file a CSA statement upon formation of the arrangement and annually with their tax returns if they wish to ensure the arrangement will be governed by Treas. Reg. Section 1.482–7.

Forms 5471 and 5472, in general, require disclosure of related party transactions including loans, tangible goods, services, and intangibles. Schedule UTP requires certain taxpayers to report federal income tax positions (including positions relating to transfer pricing) for which an audited financial statement reserve is recorded or is not recorded due to an expectation to litigate.

What are the consequences of failure to submit disclosures?

A penalty of 10,000 US dollars (USD) is imposed for each Form 5471 or Form 5472 that is filed after the due date of the income tax return (including extensions) or does not include the complete and accurate information described in Section 6038(a). Currently, there are no penalties directly associated with Schedule UTP; the IRS is studying the issue. If a CSA statement is not filed (and other requirements not met), a taxpayer cannot rely on Treas. Reg. Section 1.482–7 to allow sharing of intangible development expenses at cost rather than value, the netting of royalty and cost sharing payments, or any other of its provisions.

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 certain transactions. The US transfer pricing rules are similar to, but do not reference, the OECD Guidelines.

Under the US transfer pricing rules, there are 10 principal documents required to be included in a transfer pricing study:

1. overview of the business
2. organization structure chart
3. documentation required by regulation, e.g. cost share participant names, market share strategy
4. description of transfer pricing methodology and reason for selection (best method analysis)
5. discussion of alternative methods not selected
6. description of controlled transactions
7. description and analysis of comparables
8. economic analysis
9. description of any relevant post year-end data, if applicable, and
10. an index of the principal and background documents relied on.

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. There are some minor differences. The US allows for:

- tangible property transactions: comparable uncontrolled price (CUP) method resale price, cost plus, profit splits (comparable and residual), comparable profits method (CPM, equivalent to OECD transactional net margin method), and other unspecified methods
- intangible property transactions: CUT, profit splits, CPM, other unspecified methods, and, in certain circumstances, methods for platform contribution transactions (PCTs) under a cost sharing arrangement (CSA)
- services transactions: services cost (safe harbor), comparable

uncontrolled services price (CUSP), gross services margin, cost of services plus, profit splits, CPM, and other unspecified methods

- loans or advances: arm's length, status of the borrower, and method based on applicable federal rate (safe harbor)
- cost sharing transactions (balancing payments): reasonably anticipated benefit share
- PCTs (cost sharing buy-ins): CUT, CUSP, income method, acquisition price, market capitalization, residual profit split, and other unspecified 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?

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.

By regulation, the taxpayer has 30 days to submit documentation to avoid penalties.

If an adjustment is proposed by the tax authority, what dispute resolution options are available?

There are several administrative appeal routes including: regular appeals process, fast track appeals, early referral to appeals, Advance Pricing Agreements (APAs) with a 'rollback' to include the years under audit, and the simultaneous appeals and competent authority process.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

There are two types of penalties that can be assessed as an additional 20 percent or 40 percent of the tax underpayment. The Transactional

Penalty applies at a 20 percent rate where the misstated transfer price for any property or service is 200 percent or more, or 50 percent or less, of the correct price. The Transactional Penalty applies at a 40 percent rate if the misstated transfer price is 400 percent or more, or 25 percent or less, of the correct price. The Net Adjustment Penalty applies at a 20 percent rate if the total net transfer pricing adjustment for the year is more than USD5 million or 10 percent of gross receipts. The Net Adjustment Penalty applies at a 40 percent rate if the adjustment is more than USD20 million or 20 percent of gross receipts.

To what extent are transfer pricing penalties enforced?

The Net Adjustment Penalty is nearly always enforced unless a valid defense applies (e.g. a reasonable basis). In practice, the IRS rarely, if ever, has asserted the Transactional Penalty.

What defenses are available with respect to penalties?

Submitting a reasonable transfer pricing study to the tax authority is the sole way to avoid the Net Adjustment Penalty. The Transactional Penalty can be avoided by demonstrating reasonable cause and good faith, which can be established through a transfer pricing study or in other ways.

What trends are being observed currently?

The IRS continues to treat transfer pricing as a key priority both from its own compliance and enforcement perspective and on the international stage. Not alone in this effort, the IRS is working closely with the OECD and G-20 member countries in the global trend toward tax transparency.

The IRS is also carefully scrutinizing concerns regarding the confidentiality of taxpayer information. Although consensus exists regarding country-by-country reporting, how information is exchanged among tax administrations—particularly given confidentiality concerns—remains to be negotiated. The IRS experienced a significant increase in requests for double tax relief from 2013 to 2014, and many expect

the trend to continue as increased reporting requirements take hold around the world. More IRS resources will be needed to move cases efficiently to resolution.

Finally, IRS positions on the transfer of intangible assets will be affected by the transfer pricing litigation cases currently in the pipeline.

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, although it depends on the tested party. Because the US Securities and Exchange Commission has detailed reporting requirements for public corporations that are used by providers to create company databases and by practitioners to prepare transfer pricing reports, the IRS would expect US (and sometimes Canadian) comparables to be used to benchmark a US tested party, in the absence of a compelling reason to use a different set. For foreign tested parties, the IRS historically has been receptive to using any set (e.g. US comparables, global comparables, regional comparables or specific country comparables) that can be supported based upon the specific facts and circumstances and the reliability of available data.

Do tax authorities have requirements or preferences regarding databases for comparables?

Although there are no requirements to use a specific database, APMA and the IRS field generally use Standard and Poor's Compustat database to identify comparable companies worldwide. In some circumstances, particularly involving the competent authority, other databases (e.g. Disclosure Mergent, Orbis GlobalVantage, Worldscope OneSource, Osirus) may be used, including non-US databases that are used by its income tax treaty partners.

Does the tax authority generally focus on the interquartile range in a TNMM analysis?

Yes.

Does the tax authority have other preferences in benchmarking? If so, please describe.

The IRS makes public certain informal guidance, such as the format in which it prefers benchmarking data presented as well as certain adjustments to be used in comparable searches.

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. While the arm's length principle is the primary vehicle for establishing the tax treatment of management fees, the IRS has other tools to challenge the deductibility of such fees under the Internal Revenue Code and based on case-law precedent. These situations are rare.

Are management fees subject to withholding?

No.

Are there limitations on the deductibility of royalties beyond the arm's length principle?

Yes. While the arm's length principle is the primary vehicle for establishing the tax treatment of royalties, the IRS has other tools to challenge the deductibility of such fees under the Internal Revenue Code and based on case-law precedent. These situations are rare.

Are royalties subject to withholding?

Yes.

Are taxpayers allowed to file tax return numbers that differ from book numbers?

Yes. When year-end financial results are not within an arm's length range, the US rules allow taxpayers to make post-year-end adjustments — to be reported on Schedule M of a timely filed original tax return — to bring the taxpayer within the arm's length range. Such adjustments

may have US customs reporting implications. Additionally, there are rules prescribed (Revenue Procedure 99-32) for moving the cash accounts consistent with the post year-end adjustment.

Other unique attributes?

The US regulations permit comparison of controlled and uncontrolled transactions based upon results over an appropriate multiple-year period.

The US regulations also have safe harbors for interest rates and certain types of services.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive. There are approximately 60 income tax treaties that the US currently has in force with other nations.

If extensive, is the competent authority effective in obtaining double tax relief?

Yes, generally. The IRS publishes annual statistics indicating that, overall, double tax relief is almost always provided. However, these statistics are not published on a country by country basis.

When may a taxpayer submit an adjustment to competent authority?

For a US-initiated adjustment, a written request for competent authority assistance may be submitted as soon as is practical after the proposed adjustment is communicated to the taxpayer in writing (generally, when the IRS Notice of Proposed Adjustment is issued). For a foreign-initiated adjustment, competent authority assistance may be requested as soon as the taxpayer believes such filing is warranted, based on the actions of the country proposing the adjustment. The income tax treaties of the US have varying provisions as to when notice must be provided of the action giving rise to the need for competent authority assistance.

May a taxpayer go to competent authority before paying tax?

Yes.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

Is there a filing fee for APAs?

Yes. Currently, the filing fee is USD50,000 for large taxpayers (USD35,000 for renewals), and USD22,500 for smaller taxpayers in certain circumstances (i.e. gross worldwide income less than USD200 million or small transactions not greater than USD50 million annually and intangible transactions not greater than USD10 million).

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

Yes.

Are there any difficulties or limitations on the availability or effectiveness of APAs?

Yes. The creation of the APMA Program has improved efficiency in the processing of APAs by the IRS. The program completed 42 APAs in 2011 as compared with 140 in 2012 and 145 in 2013. However, over the past year the IRS has lost resources, resulting in a decline in APAs closed to 101 in 2014.

The IRS received 108 APA requests in 2014, an insignificant change from the 108 received in 2013. As such, APAs remain an important tool to achieve certainty and mitigate transfer pricing risk for many companies.

Cites: (Announcement 2014-14, 2014-16 I.R.B. 948, (14 April 2014)) and (Announcement 2015-11, 2015-15 I.R.B. 883, (30 March 2015)).

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Uruguay



KPMG observation

After transfer pricing rules were introduced in Uruguay in 2007 in the context of a global tax reform, and the enactment of other rules during 2009, the tax authorities have expressed their concerns with respect to transfer pricing issues and hence have been paying increasing attention to transfer pricing during tax audits. An Advance Pricing Agreement (APA) regime has recently been implemented, allowing for unilateral APAs, and the first APAs have already been executed.

Transactions under the scope of the transfer pricing regulations include those with certain low tax jurisdictions listed by the Decree as well as with free trade zones (even those located in Uruguay). Additionally, the regulations include a specific methodology to measure the taxable income derived from import or export transactions involving “commodities”.

No types of transactions have yet been identified as subject to special scrutiny by the Dirección General Impositiva (DGI). In 2011, the first transfer pricing audits commenced and, initially, attention was focused on companies with low margins and transactions structured through international traders, especially if these transactions involve commodities with internationally known market prices. In the current audit environment, the focus of the tax authorities continues to be on transfer pricing issues, with a strong emphasis on transparency (e.g. through the exchange of information provisions contained in an increasing network of international tax treaties).

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable
Legal requirements	●
Protection from penalties	●
Reduce risk of adjustment	●
Shifts burden of proof	●

Basic information

Tax authority name

Dirección General Impositiva (DGI).

Citation for transfer pricing rules

Income Taxes Act Articles 38–46 and supplementary regulations.

Effective date of transfer pricing rules

1 July 2007.

What is the relationship threshold for transfer pricing rules to apply between parties?

Based on voting power, share capital and other. The law does not

discriminate between different thresholds; rather they apply equally to all levels of ownership (a DGI Resolution establishes 10 percent of capital). Furthermore, and beyond the company capital interest, under the Local Income Tax Law, there are several other relationships for which transfer pricing rules apply, such as functional or other kinds, whether contractual or

otherwise, that influence the decision power to direct or define the activities of the operations. Transactions with unrelated companies located in low tax jurisdictions are subject to increased transfer pricing scrutiny.

What is the statute of limitations on assessment of transfer pricing adjustments?

Five years from 1 January of the year after the filing date (can be extended to 10 years in certain cases, including fraud).

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. Taxpayers must submit an annual declaration (Transfer Pricing Return) and a transfer pricing documentation report when any of the following conditions are met:

- the value of the transactions is higher than 50 million Unidades Indexadas (UI) (approximately 6 million US dollars (USD) in the corresponding fiscal period; or
- if notified by the DGI.

Although not all taxpayers are required to file the Transfer Pricing Return and the transfer pricing documentation report, the ones with no obligation to submit information must prepare and maintain the documentation that supports the correct pricing determination.

What types of transfer pricing information must be disclosed?

The following information must be disclosed:

- business description/overview
- functional analysis
- risk analysis
- description of controlled transactions
- method selection
- rejection of alternate methods
- identification of comparables
- economic analysis; and

- identification of the foreign counterparty for the intercompany transaction
- determination of the median and the interquartile range
- transcription of the statement of income of the comparable companies corresponding to the fiscal years necessary for the comparability analysis, with an indication of the sources of such information
- description of the corporate activity and the characteristics of the business carried out by the comparable companies
- rejection matrix with criteria followed to discard companies as comparables; and
- conclusions obtained, and the Transfer Pricing Return indicating the different related party transactions, the transaction amount, and other general information.

What are the consequences of failure to submit disclosures?

Taxpayers that fail any of the formal duties established under the transfer pricing regime provisions is graded according to the severity of the violation and other circumstances and a fine levied of 6,090 Uruguayan pesos (UYU) to a maximum of UYU6,090,000 (approximately USD250).

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. Even though Uruguayan regulations do not make direct reference to the Guidelines, the transfer pricing study to be prepared for local purposes mostly takes into account the general content of 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

Does your country follow the transfer pricing methods outlined in Chapter II of the OECD Guidelines? If exceptions apply, please describe.

Yes. The regulations includes a special methodology to measure the taxable income derived from import or export involving commodities transactions.

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, 10 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.

Responses to tax authority requests are normally expected to be submitted within 10 days of the request.

If an adjustment is proposed by the tax authority, what dispute resolution options are available?

In order to appeal the adjustment proposed by the tax authorities, the taxpayer must first appeal administratively against the Tax Office itself and the Ministry of Economy. After that stage the taxpayer will be able to appeal to a specialized court (Tribunal de lo Contencioso Administrativo).

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

The transfer pricing tax adjustment is subject to the general penalties regime

(fines and surcharges/interest). In the case of fraud, the penalties will range from one to 15 times the unpaid tax amount. The statute of limitations period is 5 years, which can be extended to 10 years in certain cases, including tax fraud.

To what extent are transfer pricing penalties enforced?

Although the application of the transfer pricing regime is fairly recent, if irregular situations are detected, penalties will be applied.

What defenses are available with respect to penalties?

In principle, documentation.

What trends are being observed currently?

The tax authorities have expressed their concerns with respect to transfer pricing issues and hence have been paying increased attention to transfer pricing during tax audits. Since the 2011 audits, special attention is placed on companies with low margins and transactions structured through international traders, especially if these transactions involve commodities with internationally known market prices.

The tax authorities are also working on the implementation of an APA regime.

Special considerations

Are secret comparables used by tax authorities?

The possibility of using transfer pricing information from one taxpayer in another taxpayer's audit is available for the Tax Office, however, it is not clear whether this facility is actually being used.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

In principle, no, however the regime is recent in Uruguay and administrative practices may change.

Do tax authorities have requirements or preferences regarding databases for comparables?

Although the Tax Office uses an international database, as far as we

know in relation to taxpayers it does not have special requirements or preferences on the subject.

Does the tax authority generally focus on the interquartile range in a TNMM analysis?

Yes, always.

Does the tax authority have other preferences in benchmarking? If so, please describe.

Not applicable.

What level of interaction do tax authorities have with customs authorities?

Medium.

Are there limitations on deductibility of management fees beyond the arm's length principle?

Yes. For fees to be considered deductible, the Uruguayan entity must show that the management fees were paid in order to obtain, maintain and preserve profits assessed by Uruguayan tax. In addition, there should be sufficient proof that such expenses relate to the Uruguayan entity's operations. Additionally, the deductible amount will depend on the percentage of income tax applicable to non-residents in Uruguay and the income tax paid abroad by the non-residents.

Are management fees subject to withholding?

Yes.

Are there limitations on the deductibility of royalties beyond the arm's length principle?

Yes. For royalties to be considered deductible, the Uruguayan entity must show that royalties were paid in order to obtain, maintain and preserve profits assessed by Uruguayan tax. In addition, there should be sufficient proof that such expenses relate to the Uruguayan entity's operations. Additionally, the deductible amount will depend on the percentage of income tax applicable to non-residents in Uruguay and the income tax paid abroad by the non-residents.

Are royalties subject to withholding?

Yes.

Are taxpayers allowed to file tax return numbers that differ from book numbers?

Yes. It is not explicitly stated in the regulations, but under an evaluation of the transfer pricing policy, the taxpayer could consider an adjustment. However, the impact of the adjustment in the financial statements, other taxes, custom issues, documentation and others should be considered.

Other unique attributes?

An additional method included in the Uruguayan Income Tax Law establishes that in the case of imports and exports of commodities to related parties and in general, any assets having a known quotation in transparent markets, involving an international broker who will not be the effective receiver of the goods, the best method for the purpose of determining the export's and import's Uruguayan sourced income will be the goods' quotation in the transparent market on the date of a registered contract or the bill of lading date for non-registered contracts. This methodology could be left out providing that the international broker complies with certain requirements.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

At the moment Uruguay has 23 treaties in force, with others additional ones in the process of approval.

If extensive, is the competent authority effective in obtaining double tax relief?

No experience currently.

When may a taxpayer submit an adjustment to competent authority?

No formal rules have currently been established.

May a taxpayer go to competent authority before paying tax?

No formal rules have currently been established.

Advance pricing agreements

What APA options are available, if any?

Unilateral.

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?

The first APAs have been executed and others are in progress.

KPMG in Uruguay

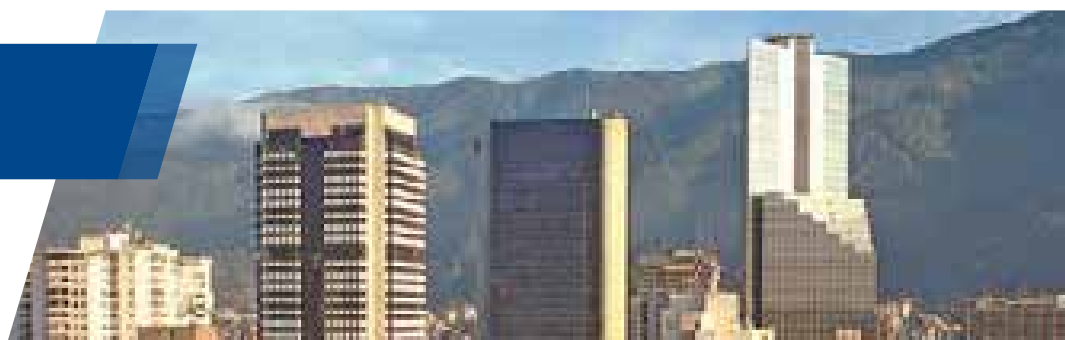
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Venezuela



KPMG observation

The Venezuelan Income Tax Law recently established rules regarding thin capitalization that limit the deduction of interest expenses registered with related parties. The thin capitalization rules require a 1:1 debt-to-equity relationship (i.e. debts with related parties plus debts with non-related parties over equity should be less than or equal to one) to be deductible. In addition, the Tax Administration recently established procedures to calculate the interquartile range and perform transfer pricing.

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

Servicio Nacional Integrado de Administración Aduanera y Tributaria (SENIAT).

Citation for transfer pricing rules

Venezuelan Income Tax Law.

Effective date of transfer pricing rules

1 January 2000.

What is the relationship threshold for transfer pricing rules to apply between parties?

A related party shall be any company participating directly or indirectly in the direction, control or capital of another company, or when the same companies

participate directly or indirectly in the direction, control or capital of both companies.

The rules apply to the operations performed through intermediaries that do not qualify as related persons, residing in the Bolivarian Republic of Venezuela, whereby the latter operates with another party abroad qualifying as a related party.

Transactions performed with companies domiciled in tax havens are considered as performed with related parties.

What is the statute of limitations on assessment of transfer pricing adjustments?

The Venezuelan Tax Code establishes a six year statute of limitations. If no tax return is filed the statute of limitations

becomes ten years. The term for lapsing will be calculated from 1 January of the calendar year following that in which the taxable event occurred.

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. An informative transfer pricing return (Form PT99, discussed below) must be submitted six months after year-end. Such declaration contains all the transactions registered by the taxpayer with foreign related parties.

What types of transfer pricing information must be disclosed?

General information to be included in the transfer pricing return (Form PT99) includes:

- type of transaction (code indicated in the form)
- transaction date
- currency of the transaction
- exchange rate
- transaction amount
- tax residence code of the related party (code indicated in the form)
- name of the related party
- transfer pricing method applied for the transfer pricing analysis
- if the transaction generated gain or losses; and
- margin generated in the transaction, Interest rate, royalty fee (percentage), cost plus that applies to the transaction subject to analysis (percentage), among others.

What are the consequences of failure to submit disclosures?

Taxpayers are subject to penalties where they have failed to prepare the transfer pricing analysis or submit the transfer pricing return. The penalty goes from 50 to 150 tax units.

In addition, this situation could trigger a tax audit.

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. The Venezuela Income Tax Law established the formal duties that all companies that register transactions with related parties must conserve, this information is according with the 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

Does your country follow the transfer pricing methods outlined in Chapter II of the OECD Guidelines? If exceptions apply, please describe adjustments.

Yes.

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, three 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.

Normally when the SENIAT requests transfer pricing documentation, taxpayers must submit the information requested within three working days.

If an adjustment is proposed by the tax authority, what dispute resolution options are available?

The taxpayer has two options available to solve a dispute: a tax administrative appeal (Tax Administration) or tax litigation appeal (Court).

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

If an adjustment is sustained, the taxpayer is subject to fine from 100 to 1000 percent of the unpaid tax plus interest.

To what extent are transfer pricing penalties enforced?

Frequently.

What defenses are available with respect to penalties?

During an audit review there is the possibility to negotiate with the Tax Administration. In this situation the quality of the documentation and analysis supporting the transactions and rejected comparables are important.

Another defense is the tax administrative appeal or tax litigation appeal, where other factors would be taken into consideration.

What trends are being observed currently?

The Tax Administration has placed special emphasis on transactions such as royalties, technical assistance, export of goods, management fees and interest rates applicable to loans.

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. The Tax Administration requires for the transfer pricing analysis the selection of comparables companies with public information. Venezuela only has two public data bases for banks and insurances companies.

Do tax authorities have requirements or preferences regarding databases for comparables?

The Tax Administration uses a commercial database for comparables, although its use is not a requirement. The taxpayer must use databases with public information of the companies.

Does the tax authority generally focus on the interquartile range in a TNMM analysis?

Yes, always.

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?

High.

Are there limitations on deductibility of management fees beyond the arm's length principle?

Yes. If the taxpayer in Venezuela is a branch, the expenses for management fees are non-deductible.

Are management fees subject to withholding?

Yes.

Are there limitations on the deductibility of royalties beyond the arm's length principle?

Yes. If the taxpayer in Venezuela is a branch, the expenses for royalty fees are non-deductible.

Are royalties subject to withholding?

Yes.

Are taxpayers allowed to file tax return numbers that differ from book numbers?

Yes. An adjustment should be included when the transactions performed between related parties are not arm's length. The transfer pricing adjustment, if required, must be included as a non-deductible item in the income tax return. Likewise, the transfer pricing adjustment is for tax purposes only, therefore, it is not recorded in the financial statements.

Other unique attributes?

The Tax Law has introduced a thin capitalization rule. This rule limits the deduction of interest payments to related parties. The maximum debt/equity ratio will be one-to-one.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Venezuela has signed tax treaties with 31 countries.

If extensive, is the competent authority effective in obtaining double tax relief?

No experience yet.

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?

Venezuela Income Tax Law has rules about the applications of APAs, but till today the Tax Administration has not signed any APAs.

Advance pricing agreements

What APA options are available, if any?

Unilateral.

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. The APA program has not been successful in Venezuela mainly because the APA option established in the Tax Law is a unilateral one and the procedures to access this program are unclear.

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Vietnam



KPMG observation

In line with the Action Plan on transfer pricing management for the 2012-2015 period (Action Plan) announced by the Ministry of Finance (MOF) in 2012, transfer pricing audits have been initiated by provincial tax departments under the General Department of Taxation (GDT)'s instruction across a number of provinces since late 2013. Until now, the transfer pricing audits, which have generally included two to three tax years for a specific audit cycle, have focused primarily on transactions pertaining to the export and import of tangible goods (e.g. raw materials, semi-finished and finished goods). In the future it is expected that the focus of transfer pricing audits will shift to royalties for manufacturing and trademark intangibles, expatriate payments, management fees, and financial payments.

With the introduction of official regulations on the application of Mutual Agreement Procedures (MAP) and Advance Pricing Agreements (APAs), the Vietnamese transfer pricing regime has now become comprehensive. The Vietnamese tax authorities have taken several serious steps to build capacity and expertise in transfer pricing enforcement, such as consulting experts at the Organisation for Economic Co-operation and Development (OECD). Despite these advances though, additional measures are still needed in order for Vietnam to evolve into a mature transfer pricing regime.

Vietnamese policy makers are closely monitoring progress on the OECD's Base Erosion and Profit Shifting (BEPS) Action Plan, but are waiting for developments in other countries before amending local regulations.

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

Ministry of Finance (MOF), General Department of Taxation (GDT).

Citation for transfer pricing rules

- Tax Administration Law No 78/2006/QH11
- Amended Tax Administration Law No 21/2012/QH13 (effective from 1 July 2013)

- Decree 83/2013/ND-CP dated 22 July 2013 of the Government (effective 15 September 2013)
- Law No 71/2014/QH13 dated 26 November 2014 on amendments and supplementation of a number of tax laws

- Decree 91/2014/ND-CP of the Government dated 1 October 2014
- Decree 12/2015/ND-CP dated 12 February 2015
- Circular 66/2010/TT-BTC dated 22 April 2010 (which replaces Circular 117/2005/TT-BTC dated 19 December 2005)
- Circular 201/2013/TT-BTC dated 20 December 2013 of the MOF providing detailed guidance on APA (effective 5 February 2014)
- Circular 205/2013/TT-BTC dated 24 December 2013 of the MOF providing guidance on application of double tax treaties, effective from 6 February 2014.

Effective date of transfer pricing rules

Since 27 January 2006.

What is the relationship threshold for transfer pricing rules to apply between parties?

Ownership of 20 percent or more: control and management, family relationship, and others.

What is the statute of limitations on assessment of transfer pricing adjustments?

Ten years. However, the tax recovery can be indefinite if the entity failed to register itself as a taxpayer.

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. Form GCN-01/QLT (applicable from 2010 to 2013) and Form 03-7/TNDN (applicable from tax year commencing 1 January 2014 onwards) is to be completed and filed with the annual corporate income tax return. Form 03-7/TNDN should be filed within 90 days from the end of the financial year.

What types of transfer pricing information must be disclosed?

Under Form GCN-01/QLT, related party transactions (detailed by transacting related parties), value of related party transactions, transfer pricing method for each of the categories of related

party transactions disclosed, transacting related parties, and criterion defining the related party relationship.

Under Form 03-7/TNDN, in addition to the above, transfer pricing adjustments as self-assessed by taxpayers are also required.

What are the consequences of failure to submit disclosures?

Failure to make disclosures in Form GCN-01/QLT or Form 03-7/TNDN implies an exposure to the reassessment of transfer prices or profits for tax purposes, which can be accompanied by penalties and interest charges. Administrative penalties for failure to submit a tax return may also be applied.

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?

No. Technically required for all transactions, although no specific mention has been stated in the regulations. Having said that the tax authorities or the taxpayer may eventually refer to the OECD Guidelines for any guidance.

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, with comparable profit method (CPM) being used in place of transactional net margin method (TNMM).

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 taxpayer has 30 working days from the date of receipt of the tax authority's written request (with a one-time extension allowed for up to 30 days where good reasons can be provided).

If an adjustment is proposed by the tax authority, what dispute resolution options are available?

Appeals to the tax authority and the administrative tribunal are possible.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Underpayment penalties being 20 percent of the shortfall amount, associated with late payment interest charges of 0.05 percent per day on overdue tax (applicable from 1 January 2015) or evasion penalties (from one to three times the tax liability amount) apply, depending on the nature of the offences and circumstances. Late payment of tax will be subject to late payment interest charge only if voluntarily corrected by the taxpayers prior to the tax audit/ inspection notice by local tax authorities.

To what extent are transfer pricing penalties enforced?

Administrative penalties apply in case of transfer pricing adjustments.

What defenses are available with respect to penalties?

Documentation. Further appeal to tax authorities providing and explaining genuine business case for non-levy of penalty in the case of the taxpayer.

What trends are being observed currently?

Transfer pricing audits will be stepped up in accordance with the Action Plan. Controversies are mainly around ability of the tax authorities to make transfer pricing assessment or adjustments, comparables and use of secret company data, and accordingly range of profit levels, share of profits and tax. MAP and APAs may be used to resolve such controversies.

Intangibles royalty payments, interest and secondment charges are a few of the recent inter-company transactions which have been challenged in recent audits.

Special considerations

Are secret comparables used by tax authorities?

Yes. Under certain circumstances, the tax authority is empowered to make a presumptive assessment of tax based on its internal data.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

Yes, local companies are preferred as comparables. However, the transfer pricing regulations also provide that information and data extracted from certified and verifiable sources may be used for supporting the comparability along with regional comparables, if any.

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, always.

Does the tax authority have other preferences in benchmarking? If so, please describe.

No specific guidance.

What level of interaction do tax authorities have with customs authorities?

Low but increasing.

Are there limitations on deductibility of management fees beyond the arm's length principle?

No.

Are management fees subject to withholding?

Yes.

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. Per Form 03-7/TNDN, taxpayers can offer self-adjustment for transfer pricing.

Other unique attributes?

Royalties are subject to specific rules, besides the transfer pricing rules.

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.

When may a taxpayer submit an adjustment to competent authority?

Apply for MAP within three years from the date of first decision on adjustment by the tax authority in relation to the tax treatment which the taxpayers consider not to be in accordance with a double tax treaty.

May a taxpayer go to competent authority before paying tax?

No. To be eligible for applying MAP, taxpayers are required to fulfil all obligations which have been stated in an official decision on tax collection before and during the appeal process, except for the circumstance where a government competent authority decides to suspend the implementation of such a decision on tax amounts or tax impositions.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

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?

No APAs has been concluded yet. APA regulations are yet to be tested.

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Zambia

KPMG observation

Transfer pricing provisions were written into the Income Tax Act (ITA) in 1999 in the form of Sections 97A, 97B, 97C and 97D. Together, these sections permit the Commissioner General to compute income from transactions between associated parties to reflect arm's length conditions, and to assess the taxpayer a corresponding amount of tax. While these broad provisions exist, currently, there are no detailed rules on transfer pricing in Zambia.

The ITA was amended, effective 1 January 2014, to allow the Minister of Finance (MOF), by way of a statutory instrument, to prescribe documentation rules. The documentation rules will specify the information and documents required to be kept by a taxpayer, and prescribe penalties for non-compliance with the rules. As of the time of this publication, the MOF has not yet formally issued the rules.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable
Legal requirements	●
Protection from penalties	●
Reduce risk of adjustment	●
Shifts burden of proof	●

Basic information

Tax authority name

The Zambia Revenue Authority (ZRA) is mandated to enforce the provisions of the ITA, Value Added Tax Chapter 331, Customs and Excise Act Chapter 322 and the Property Transfer Tax Act Chapter 340 of the laws of Zambia.

Citation for transfer pricing rules

There are no detailed rules on transfer pricing. However, the ITA sections 97A, 97B, 97C and 97D make provisions relating to transfer pricing. The Central Bank of Zambia (BOZ) introduced gazette notice No. 7171 of 2014 applicable to companies falling under the Banking and Financial Services act.

Effective date of transfer pricing rules

The transfer pricing legislation was initially enacted in 1999 and came into force on 1 April 1999. The BOZ administered provisions took effect on 5 December 2014.

What is the relationship threshold for transfer pricing rules to apply between parties?

Two persons are associated if one of them participates, directly or indirectly, in the management, control or capital of the other, or if another person participates, directly or indirectly, in the management, control or capital of both of them. Further, the MOF may issue a statutory instrument spelling out documentation requirements and

the definition of control. Specifically, the MOF may prescribe the direct and indirect participation in the management, control or capital of a person, and different provision that may be made in relation to different cases or different classes of each case. The BOZ provisions apply to related parties in a "group" or "conglomerate".

What is the statute of limitations on assessment of transfer pricing adjustments?

The ZRA is not limited by law as to how many revised assessments it can issue. The only limitation is that the revised assessments, in non-fraud cases, must be issued within six years after the tax return due date.

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)?

No. Parts five, six and seven of the tax return require disclosure to be made of shareholding and shareholder emoluments, advances to shareholders and associated companies, and interests in other businesses. Apart from the disclosures as per tax return, there is no additional requirement to make any transfer pricing disclosures together with the tax return except for what is provided for under International Accounting Standards (IAS) and International Financial Reporting Standards (IFRS). The tax authorities require tax returns to be accompanied by financial statements.

Please note that with effect from 1 January 2014, the MOF is now empowered to specify, by way of statutory instrument, information and documents to be kept by a taxpayer. BOZ regulations require its regulated entities to clearly articulate and demonstrate evidence of its arm's length pricing methodologies when seeking approvals for the outsource.

What types of transfer pricing information must be disclosed?

ZRA introduced a new return which is submitted electronically. The return requires disclosure of related party transactions and disclosure of basis of pricing and confirmation whether functional analysis was performed to arrive at the price and relevant documentation kept.

What are the consequences of failure to submit disclosures?

ZRA officials periodically carry out audits and review whether transactions between related parties are at arm's length. If transactions are not at arm's length, adjustments are made and penalties and interest levied accordingly. Further, the MOF may prescribe penalties for non-compliance, by statutory instrument. With regard to BOZ, approval would not be granted to outsource the services. Any breach could lead to sanctions.

Transfer pricing study overview

Can documentation be filed in a language other than the local language? If yes, which ones?

Yes, English.

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. ZRA generally accepts studies based on OECD Guidelines. There is no requirement to submit such studies but ZRA expects that such a study would be used to prepare the tax return. BOZ requires evidence to be submitted as a basis for approval to outsource.

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.

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.

The normal period for the Commissioner General to require a company to submit information is 30 days, and this can be extended at the Commissioner General's discretion. We anticipate new information and documents requirement when the MOF prescribes additional guidelines.

If an adjustment is proposed by the tax authority, what dispute resolution options are available?

The taxpayer can appeal to the Commissioner General and if still dissatisfied, appeal to the Revenue Appeal Tribunal. Further recourse can be sought at the High Court of Zambia and finally, the Supreme Court of Zambia, in that order.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

The penalties prescribed under the ITA depend on whether the omission is negligent, wilfull, or as a result of a fraud. The penalties are determined as follows:

- in case of negligence, 17.5 percent of the amount
- in the case of wilfull default, 35 percent of the amount
- in the case of fraud, 52.5 percent of the amount of any income omitted or understated, or any expenses overstated, in consequence of such failure, incorrect return, information or submission.

To what extent are transfer pricing penalties enforced?

Penalties are enforced in full by the Commissioner General and where a court process is preferred; the sanctions imposed by the court would subsist.

What defenses are available with respect to penalties?

The Commissioner General has the discretion to waive the penalties or partially reduce the penalties depending on the mitigating circumstances. Where documentation is supplied to the satisfaction of the Commissioner General, the penalties can be waived in full.

What trends are being observed currently?

There has been an increased desire by the tax authorities to clamp down on transfer pricing. Experts from Norway have been assisting the tax authorities on audits of mining and large taxpayers. BOZ too is actively monitoring related party transactions. Furthermore, in recent years, the Government has a strong drive on getting more taxes from corporate institutions and less from employed individuals.

Special considerations

Are secret comparables used by tax authorities?

ZRA has procured a database for the use of comparables.

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?

There are no such requirements.

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.

For related party loans, there is an expectation that the status of the balance sheet of the borrower must be such that an independent person could be willing to lend to the borrower.

What level of interaction do tax authorities have with customs authorities?

The Zambian tax authorities have an integrated tax administration system which captures information from the customs system called Asycuda++ and uses this information as intelligence data in income tax and VAT audits.

Are there limitations on deductibility of management fees beyond the arm's length principle?

Yes. ZRA expects that management fees will be paid by based on actual services provided to the Zambian entity.

Generally, OECD Guidelines methods are applied on all transfer pricing transactions, except those related to minerals which have specific provisions under the Act. The arm's length price for minerals is determined using the reference price as described below.

The sale price (i.e. arm's length price) in any transaction involving the sale of minerals by a company carrying out mining operations, directly or indirectly, to related or associated parties is the reference price.

The reference price is defined as:

- the monthly average London Metal Exchange (LME) cash price
- the monthly average Metal Bulletin (MB) cash price to the extent that the base metals or precious metal prices are not quoted on the LME
- the monthly average cash price of any other metal exchange market as approved by the Commissioner General to the extent that the base metal price or precious metal price is not quoted on the LME or MB.

The average monthly LME cash price, average monthly MB cash price or any other monthly average metal market exchange cash price approved by the Commissioner General, less any discounts on account of poor or low quality or grade.

Are management fees subject to withholding?

Yes.

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. Generally, year-end adjustments are permitted. For transfer pricing, adjustments can be made in order to make the results clear or fairly presented. Such adjustments may give rise to VAT and withholding tax depending on whether they relate to services or not.

Other unique attributes?

Thin capitalization is dealt with under general transfer pricing rules.

For mining companies, the maximum accepted debt-to-equity ratio is 3:1. Interest outside the thin capitalization ratio is not allowed as a deduction.

Prior to 2013, mining companies' thin capitalization was dealt with outside the transfer pricing rules. With effect from 1 January 2013, interest payments on debt made by mining companies shall be subjected to transfer pricing rules too. The new BOZ regulations

apply to companies under the banking and financial services act and require approval from BOZ before outsourcing services from a related party.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

A number of tax treaties are being renegotiated among them Ireland, the United Kingdom, India, South Africa and the Netherlands. New treaties with Serbia, Botswana among others have been negotiated.

If extensive, is the competent authority effective in obtaining double tax relief?

No experience yet.

When may a taxpayer submit an adjustment to competent authority?

This process is yet to be formalized.

May a taxpayer go to competent authority before paying tax?

Where a client requires double taxation relief, the same can be obtained from the tax authorities prior to paying the tax.

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?

No.

Are there any difficulties or limitations on the availability or effectiveness of APAs?

Not applicable.

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Country Snapshots

The following countries are those which currently do not have transfer pricing regulation, or guidance surrounding their transfer pricing regulations is still evolving.

Country	Answer
Bahamas	There are no transfer pricing regulations in the Bahamas. However, Bahamas Customs does have the right to reassess the declared value of imports if they believe such value is not based on commercial terms.
Belarus	In the Republic of Belarus, transfer pricing regulations allow the tax authorities to correct the corporate profit tax base in the following cases: Sale of immovable property if the transaction price deviates downward by more than 20 percent of its market value; and, foreign transactions with related or unrelated parties, if the price of the transaction(s) with one party exceeds one billion Belarusian rubles within the period of one calendar year on the date of the provision/acquisition of goods/services, and the price of the transaction deviates from the market price by more than 20 percent on the date of sale.
Cambodia	<p>Currently, there are no Directives, Circulars or Rulings issued by the Cambodian Tax Office with respect to transfer pricing. However, the Tax Laws (Article 18) give power to the Tax Office to adjust related party transactions. A related party relationship is one where there is a 20 percent or more shareholders relationship.</p> <p>Article 18 of the Tax Laws states that "In the case of two or more enterprises, whether incorporated in or outside of the Kingdom of Cambodia, which are under common ownership, the tax administration may as may be necessary distribute, gross income, deductions or other benefits among such enterprises and their owners in order to prevent the avoidance or evasion of taxes or to clearly reflect the income of such enterprises, or their owners."</p> <p>Through using the power of the related party provisions, the Tax Office has adopted a very aggressive approach to the tax audit of related party transactions.</p>

Country	Answer
Cayman Islands	There are no existing transfer pricing regulations in the Cayman Islands.
Kazakhstan	<p>Kazakhstan has a transfer price law specifying a hierarchy of transfer pricing methodologies that taxpayers must consider and apply. This hierarchy places the Comparable Uncontrolled Price (CUP) method at the very top. That is, the CUP method must be employed unless it is impossible to do so (e.g. due to data limitations).</p> <p>The law further stipulates that any cross-border transaction (except for sales and purchases of agricultural goods) with a transaction price deviating from market price may be reviewed, regardless of whether it occurs between related parties. Cross-border sales and purchases of agricultural goods are subject to transfer pricing scrutiny only if the transaction price deviates from market price by more than 10 percent. The transfer pricing law also contains rules that specify pricing of uranium, titanium and magnesium products. Recent updates to the law have added guidance on the pricing of oil and gas products being sold under production-sharing agreements.</p> <p>Advance Pricing Agreements (APAs) are, in principle envisaged by the law, but the revenue authorities are reluctant to conclude them and the applicable rules are complex.</p>
Kuwait	<p>Kuwait does not currently have formal transfer pricing regulations. However, Executive Rule No. 49 issued by the Kuwait Tax Authority (KTA) provides that the KTA is entitled to verify that intra-group transactions are conducted on an arm's length basis and not for the purpose of obtaining illegal tax privileges. In such a case, the intra-group transactions of related companies shall be compared in accordance with the arrangements between companies that are not legally or financially related. Furthermore, depending on the nature of the relationship between the supplier/service provider and the acquirer with respect to a transaction, KTA deems certain percentage of the costs or services rendered outside Kuwait as inadmissible.</p>
Macedonia	<p>The Macedonian tax legislation does not include explicit transfer pricing provisions regarding the transfer pricing documentation requirements of taxpayers. The transfer pricing provisions that do exist are quite general (i.e. that the tax authorities can request a taxpayer to provide information and evidence that the conditions under which the transfer prices are set are at arm's length).</p> <p>The transfer pricing provisions in the Macedonian Corporate Profit Tax Law stipulate that revenues and expenses incurred on transactions between related parties are recognized for tax purposes at market prices, and the law prescribes the Comparable Uncontrolled Price (CUP) or the Cost Plus Method (CPLM) as the basis for determining any differences. The definition of related parties is provided in the Macedonian Trading Companies' Law.</p> <p>In addition, the Macedonian Personal Income Tax Law provides that expenses incurred between related parties are recognized for tax purposes up to the level of the prices which would have been agreed on the domestic market (i.e. the Macedonian market) or on a comparable foreign market between unrelated parties.</p>
Mauritius	There are no transfer pricing regulations in Mauritius. Transactions between related parties should be at arm's length.
Moldova	<p>In Moldova, transactions carried out between related parties must follow the arm's length principle and must be documented from a transfer pricing perspective, otherwise the expenses/losses registered in relation to such transactions cannot be deducted for corporate tax purposes.</p> <p>In terms of transfer pricing documentation requirements, currently, there are no specific provisions regarding the content of a taxpayer's transfer pricing documentation. There is, however, draft legislation on this subject which is expected to enter into force starting on 1 January 2016.</p>
United Arab Emirates	There are currently no transfer pricing regulations in the United Arab Emirates.

Glossary of Terms

APA –	Advance Pricing Agreements	IFRS –	International Financial Reporting Standards
APMA –	Advance Pricing and Mutual Agreement	IP –	Intellectual Property
ATR –	Advance Tax Ruling	IRC –	Internal Revenue Code
BvD –	Bureau van Dijk	IRS –	Internal Revenue Service
CA –	Competent Authority	MAP –	Mutual Agreement Procedure
CFCs –	Controlled Foreign Companies	MB –	Metal Bulletin
CPM –	Comparable Profits Method	OECD –	Organisation for Economic Co-operation and Development
CSA –	Cost Sharing Arrangement	OECD Guidelines –	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (22 July 2010)
CUP –	Comparable Uncontrolled Price	PCT –	Platform Contribution Transactions
CUSP –	Comparable Uncontrolled Services Price	SEC –	Securities and Exchange Commission
CUT –	Comparable Uncontrolled Transaction	SME –	Small and Medium Enterprises
DTA –	Double Tax Agreement	TNMM –	Transactional Net Margin Method
EEA –	European Economic Area	UK –	United Kingdom
EU –	European Union	US –	United States
EU JTPF –	EU Joint Transfer Pricing Forum	USD –	US Dollars
EUR –	Euro	VAT –	Value Added Tax
GBP –	Great Britain Pound		
HMRC –	Her Majesty's Revenue and Customs		
IAS –	International Accounting Standards		

Find Out More

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