

# 2015 Global Transfer Pricing Country Guide



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# Foreword

The *2015 Global Transfer Pricing Country Guide* is one of the most comprehensive and authoritative guides of its kind, compiling essential information regarding the transfer pricing regimes in 67 jurisdictions around the world and the OECD. This 2015 edition of the *Global Transfer Pricing Country Guide* has been reviewed and updated as of 31 December 2014.

Given the complexity of transfer pricing issues, the *Global Transfer Pricing Country Guide* should be the starting point rather than the finish line for all your transfer pricing inquiries. The transfer pricing specialists in Deloitte member firms around the world have the knowledge and experience to help you on your journey.

For more information regarding transfer pricing issues in specific countries, and about Deloitte's tax practice in those jurisdictions, please see the list of Deloitte member firm contacts at the end of the *Global Transfer Pricing Country Guide*.

For further information about the *Global Transfer Pricing Country Guide* and the transfer pricing practice of Deloitte member firms in general, please contact Betty Fernández at [betfernandez@deloitte.com](mailto:betfernandez@deloitte.com), or visit <http://www.deloitte.com/tax>.



# Angola

## What's new

Specific transfer pricing rules were introduced in Angola at the end of 2013, but the entry into force of the underlying obligations was delayed to the 2014 tax cycle.

The transfer pricing rules set up documentation requirements, namely the obligation to deliver/submit to the tax authorities an annual transfer pricing file for all large taxpayers whose total annual revenue exceeds AOA 7,000 million.

## Tax authority and law

Tax General Administration, which resulted from the fusion, in December 2014, of the Tax National Directory, the Customs National Services, and the Executive Program for the Tax Reform.

Article 50.º of the Industrial Tax Code (Law 19/14 of October 22, 2014), applicable for tax years from 2014 onwards. Presidential Decree n.º 147/13, Articles 10.º to 13.º, published October 1, 2013.

## Regulations, rulings, guidelines

Circular No. 12/DLT/DNI/2014.

## Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

A special relationship exists between two entities if entity has or may have, directly or indirectly, a significant influence in the management of the other entity, namely:

- When the management of one entity (or their relatives), directly or indirectly, have a participation of not less than 10 percent in the capital or voting rights of the other entity;
- Entities in which the majority of the members of its corporate bodies, of any administrative body, board of directors, or supervision are the same persons or people connected by marriage, other (legal) forms of joint household, or by direct kinship;
- When entities are connected through a dependent relationship [implying direct or indirect 50 percent ownership], reciprocal participations, parity group, or any other with similar legal effect; and
- When two or more commercial entities engage in transactions that represent more than 80 percent of the total volume of operations or when one entity finances the other with more than 80 percent of its credit portfolio.

## Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

There is no specific guidance on this subject in the law. Because the transfer pricing rules are quite recent, there is no experience yet regarding the tax authorities' behavior on this subject.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price (CUP) method, the resale price method, and the cost plus method.

### Priority of methods

The most appropriate method should be applied.

### Availability of benchmarking/comparative data

There is no domestic public database available in the Angolan market. Public databases containing African comparables data are rare, and include few comparables, most of them located in only a few African countries (South Africa, Kenya, Algeria).

## Are foreign comparables acceptable to local tax authorities?

There is no experience yet with the tax authorities' approach to transfer pricing, as the transfer pricing rules are quite recent. It is likely that they will be compelled to accept foreign comparables given the lack of local data.

## Services issues

### Are management fees deductible?

Yes, although taxpayers may require prior formal approval from the Central Bank and/or some specific committees of the Finance Ministry, if the value of the fees exceeds certain amounts. Any payments to nonresident entities derived from technical assistance or management fees are limited to an amount corresponding to 10 times the value of the local companies' "own funds" (deemed as being the local entity equity), with reference to the contract's date of signature.

### Are management fees subject to withholding?

Yes.

### May stock option costs be included in the cost base for intercompany services charges?

There is no specific guidance and no local domestic experience on this.



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### Commissionaire arrangements

#### Are commissionaire arrangements allowed?

Yes.

### Cost sharing agreements

#### Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?

There is no specific domestic guidance on this. Those transactions will be deemed acceptable provided they comply with all other legal requirements.

#### Are cost contribution or cost sharing payments deductible?

There are no formal guidelines on this subject. Payments will be deemed deductible provided they comply with the domestic general deduction provision.

#### Are cost contribution or cost sharing payments subject to withholding tax?

Yes.

#### What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?

There is no specific domestic guidance on this topic. The tax treatment will be similar to that of any other cross-border payment. Depending on the nature of the transactions, payments should be deductible and amortizable over the period of use of the intangible, if applicable.

### Documentation and tax return disclosures

#### Tax return disclosures

No specific transfer pricing tax return disclosures are required, although there is a general tax return.

#### Documentation requirements

Taxpayers included in the large taxpayer list, and whose total revenue exceeds AOA 7,000 million in a certain tax cycle, will have to deliver a mandatory transfer pricing file to the tax authorities for that cycle by June 30 of the following year.

#### Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?

The documentation requirement is an annual obligation, and consists of a traditional complete transfer pricing file, including a presentation of the taxpayer and its corporate

group, a presentation of the taxpayer's sector/industry of activity, a presentation of the related entities, a description of the transactions conducted with those entities, and a transfer pricing analysis of the pricing conditions applied, taking into consideration the approved methods. There is no experience yet on the tax authorities' understanding of the time frame to refresh or perform new studies.

#### Deadline to prepare documentation

June 30 of the following year, that is 6 months after the closing of the accounts, as in Angola all tax exercises are mandatorily aligned with the calendar year (December 31).

#### Deadline to submit documentation

June 30 of the following year.

#### Deadline to file income tax return

May 31 of the following year.

#### Acceptable languages for documentation

Documentation must be in Portuguese.

### Transfer pricing adjustments

#### Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?

There aren't yet specific fields on the tax return for transfer pricing adjustments, nor is there specific guidance on transfer pricing adjustments in the tax laws. Taxpayers may perform general cost deductibility adjustments on their tax returns.

#### Self-initiated adjustments

Article 50.<sup>o</sup> of the Industrial Tax Code provides that the tax authorities may perform transfer pricing adjustments, whether primary adjustments or correlative adjustments, but there is no mention of taxpayer self-initiated adjustments.

#### Statute of limitations on assessment for transfer pricing adjustments

Five years, which may be extended to 10 years if the delay on the payment of the taxes owed is due to the taxpayer's infraction.

#### Taxpayer set-offs for other related-party transactions

There are no formal provisions on this topic.

### Interest and penalties

#### Additional assessment payment deadline

Fifteen days if the taxpayer does not contest the additional assessment.

#### Penalty on transfer pricing assessment

There are no specific transfer pricing penalties. General tax penalties apply.

#### Is interest charged on penalties?

No.

#### Reduction in transfer pricing penalties

Several reductions on general tax penalties are stipulated in the law, and may be applicable according to different circumstances.

#### Is interest payable when a refund is due to the taxpayer?

Yes.

### Advance Pricing Agreements (APAs)

#### Are APAs available?

APAs are not available.

#### APA filing fee

Not applicable.

#### APA term of agreement

Not applicable.

### Competent authority

#### When may taxpayer submit tax adjustment to Competent Authority (CA)?

Angola has not entered into any double tax treaties. Therefore, the mutual agreement procedure that is found in most tax treaties is not available.

#### May CA develop new settlement positions?

Not applicable.

#### May taxpayer go to CA before paying tax?

Not applicable.



# Argentina

Argentina's transfer pricing rules did not undergo any changes in 2014; however, the Argentine tax authorities conducted many foreign trade and transfer pricing audits during the year. The fiscal authorities are targeting transfer pricing flow of goods when there is an intermediary between the Argentine exporter and the importer by assessing export and import prices using customs information. Some high-profile cases were featured in the media.

On 17 November 2014, a decree was published in the Official Gazette providing for the creation of a special unit to monitor cross-border trade activities and to coordinate the work of the relevant government institutions to ensure the correct application of the law, including transfer pricing rules. The special unit is composed of representatives from different governmental institutions.

## General information

### Tax authority and law

Argentine Tax Office (Administración Federal de Ingresos Públicos); Law 20.628 and amendments (Article 8, Article 15, and new article added after Article 15).

### Regulations, rulings, guidelines

Decree 1344/98. General Resolution No. 1122/01.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

Transfer pricing rules apply when transactions are entered into with foreign affiliates, entities in tax havens, and foreign entities with an economic link.

For FY 2014, the Argentine tax authorities have issued a list of countries considered "cooperative" for tax transparency purposes; any country or jurisdiction not included on the published list of cooperative countries will be deemed to be a noncooperative country, and will be subject to all tax provisions that apply to low- or no-tax jurisdictions. The new list replaces the previous "black list" of jurisdictions considered tax havens.

### Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

Neither the local transfer pricing rules nor the tax authorities prohibit or disallow the use of transfer pricing

analyses to calculate profits attributable to a permanent establishment or branch. Transactions between the permanent establishment/branch with foreign related parties should be at arm's length.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the profit split method, the transactional net margin method (TNMM), and the quotation value of the asset on a transparent market on the day the goods have been shipped (when "commodities" are exported through an international intermediary agent who is not the ultimate recipient of the goods and the intermediary agent does not comply with specific requirements).

### Priority of methods

Argentina follows the best method rule, except in the case of commodities exports when made through an international intermediary agent who is not the ultimate recipient of the goods, in which case the quotation value of the asset on a transparent market on the day the goods are shipped is mandatory.

### Availability of benchmarking/comparative data

International databases are used. The availability of local information must be analyzed on a case-by-case basis. Some information is available, but it is not organized in a database.

### Are foreign comparables acceptable to local tax authorities?

Local regulations do not provide a clear answer. The use of foreign comparables has not been questioned up to now, and has been informally accepted when tax authorities review the annual transfer pricing reports.

## Services issues

### Are management fees deductible?

Yes, but payments must satisfy the arm's length standard and have a direct relation with the income generated, and documentation must be kept.

### Are management fees subject to withholding?

Yes.

### May stock option costs be included in the cost base for intercompany services charges?

Yes, if the employee who benefits from the plan is included in the subsidiary's payroll.



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### Commissionaire arrangements

#### Are commissionaire arrangements allowed?

Yes.

### Cost sharing agreements

#### Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?

There is no specific provision on this issue. However, it usually depends on the documentation and the way in which taxpayers prove the rationality of the charges.

#### Are cost contribution or cost sharing payments deductible?

Yes, but payments must satisfy the arm's length standard and have a direct relation to the income generated, and documentation must be kept.

#### Are cost contribution or cost sharing payments subject to withholding tax?

It depends on the nature of the charges; for example, does the cost contribution or cost sharing payment include services?

#### What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?

Payments are deductible if they satisfy the arm's length standard, have a direct relation with the income generated, and documentation is kept.

### Documentation and tax return disclosures

#### Documentation requirements

Taxpayers must submit the following to the tax authorities:

- Forms for transactions performed between foreign related parties: F742(semiannual), F743, and F969 (annual);
- Forms for transactions performed between foreign unrelated parties: F741(for commodities, semiannual), F867 (for import and export of noncommodity goods, annual);
- Transfer pricing report and CPA certification on certain contents of the transfer pricing report to be electronically filed through Form F4501 (annual);
- Form for transactions performed between local related parties: F968 (monthly) for transactions entered into after January 2014; and
- Record of Related Parties: registration of related parties (local and foreign)

#### Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?

Taxpayers must file the above-mentioned forms and the transfer pricing report with the tax authorities electronically each fiscal year.

#### Deadline to prepare documentation

The due date for submitting the transfer pricing report (Form F.4501) and the annual complementary documentation electronically to the tax authorities is eight months after the year-end. However, because the income tax return is due five months after the year-end, it is advisable to have at least the economic analysis to see if there is any impact on the income tax return.

#### Deadline to submit documentation

- Form 742 must be filed within five months from the end of the first six-month period of the fiscal year;
- Form 743, the financial statements (if appropriate), the transfer pricing study, and the CPA certification (Form F.4501) must be filed within eight months from the year-end;
- Form 969 must be filed within 15 days from the due date for filing the income tax return (approximately five months after the year-end);
- Form 741 must be filed within five months of the end of each semester of the fiscal year;
- Form F 867 must be filed within seven months from the year-end;
- Form 968 must be filed each month (for transactions entered into after January 2014; and
- Record of Related Parties: must be filed in FY 2014 and any update 10 days after the related-party relationship is entered into.

#### Deadline to file income tax return

The income tax return is due five months after the tax year-end.

#### Acceptable languages for documentation

Documentation must be in Spanish.

#### Tax return disclosures

- Forms 742 and 743 require disclosure of related-party transactions with foreign entities for the first six-month period of each fiscal year and for the entire fiscal year, respectively;

- Form 741 (semiannual) requires disclosure of imports or exports of assets with an international well-known price (commodities), performed with independent third parties;
- Form 867 requires disclosure of import and export transactions on noncommodities with unrelated parties in excess of ARS 1 million (US \$125,000), including related mark-ups of such transactions;
- Form 969 requires disclosure of related-party transactions with foreign entities for the entire fiscal year. This form requires more detailed information than Form 743; and
- Form 968 requires disclosure transactions with local related-party for each month.

### Transfer pricing adjustments

#### Statute of limitations on assessment for transfer pricing adjustments

Generally, six years from tax year-end.

#### Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?

Local regulations do not provide a clear answer. Profit-based analyses are based on Argentinian GAAP audited or segmented tested party's profit and loss statement.

#### Self-initiated adjustments

There is no formal procedure.

#### Taxpayer set-offs for other related-party transactions

There is no formal provision.

### Interest and penalties

#### Additional assessment payment deadline

Additional payment is due when the assessment is issued; interest is assessed from the original income tax return filing due date (five months after year-end).

#### Penalty on transfer pricing assessment

Specific transfer pricing penalties apply for failure to file transfer pricing returns (US \$2,500/\$1,250); for failure to comply with formal procedures (up to US \$5,000); and for underpayment of tax (one to four times the underpaid tax).

#### Is interest charged on penalties?

No.



#### Reduction in transfer pricing penalties

There is no provision on this specific issue.

#### Is interest payable when a refund is due to the taxpayer?

Interest is paid on refunds pursuant to the domestic tax rules; however, there are no refunds related to transfer pricing.

### Advance Pricing Agreements (APAs)

#### Are APAs available?

APAs are not available.

#### APA filing fee

Not applicable.

#### APA term of agreement

Not applicable.

### Competent authority

#### When may taxpayer submit tax adjustment to Competent Authority (CA)?

A request may be submitted after the amount of the proposed adjustment is communicated to the taxpayer in writing.

#### May CA develop new settlement positions?

CA may negotiate an agreement based on a different position.

#### May taxpayer go to CA before paying tax?

Yes. The taxpayer could go to CA after the amount of the proposed adjustment is communicated in writing to the taxpayer.

# Australia

## What's new

Following the enactment of new transfer pricing laws in 2013, the Australian Taxation Office proceeded to release the first formal guidance regarding their application in late 2014. This included two tax rulings relating to the application of the new law's "reconstruction" provisions, and guidance on preparing transfer pricing documentation compliant with Subdivision 284-E of Schedule 1 of the Tax Administration Act (TAA) 1953 (applicable for penalty protection eligibility). Additionally, the ATO released two practice statements on the application of penalties under the new rules, as well as new guidance on eligibility criteria for simplified transfer pricing recordkeeping.

## General information

### Tax authority and law

Relevant dates	Applicable legislation
For income years starting on or after 1 July 2013	Subdivisions 815-B, 815-C and 815-D of the Income Tax Assessment Act (ITAA) 1997 & Subdivision 284-E of Schedule 1 of the Tax Administration Act (TAA) 1953 ("the new laws").
For income years starting on or after 1 July 2004 to 30 June 2013	Subdivision 815-A, ITAA 1997 (enacted in September 2012, with retroactive application to income years commencing on or after 1 July 2004). These provisions are applicable only to Australian taxpayers that transacted with affiliates in countries with which Australia has a double tax agreement.
Still in force (but prospectively replaced with Subdivisions 815-B, C, D ITAA 1997 for income years starting on or after 1 July 2013)	Division 13 of Part III, ITAA 1936 (enacted in 1982).

The new laws apply to income years starting on or after 1 July 2013, prospectively replacing Division 13 ITAA 1936 and Subdivision 815-A ITAA 1997. Subdivision 815-B applies to entities, 815-C to permanent establishments, and 815-D to partnerships and trusts.

New Subdivision 815-B applies when an entity gets a "transfer pricing benefit," defined as a lesser tax outcome due to the cross-border conditions of its commercial or financial relations with another entity differing from arm's length conditions. When this is the case, the new provision substitutes the arm's length conditions for the actual conditions. This focus on arm's length profit and profit allocation is a key difference with the former laws in Division 13 ITAA 1936, which focused on the arm's length consideration of transactions under international agreements. This potentially opens the door for a broader inquiry by the ATO as to whether a taxpayer's profit outcomes are "commercially realistic," notwithstanding that particular cross-border related-party transactions may reflect market prices.

The new laws also include a specific provision enabling the transfer pricing rules to be applied when a taxpayer has received a withholding tax benefit by virtue of non-arm's-length conditions (for example, due to reduced interest or royalty payments). Furthermore, when thin capitalization rules apply, arm's length interest rates on inbound debt must be determined based on the rate that would have been applied to a notional arm's length amount of debt.

### Regulations, rulings, guidelines

The new laws must be applied to best achieve consistency with the OECD's transfer pricing guidelines.

The new laws must be applied to best achieve consistency with the OECD's transfer pricing guidelines.

The following ATO Taxation Rulings address transfer pricing matters (these rulings are being reviewed in light of the new laws):

- TR 92/11 – Loan arrangements and credit balances
- TR 94/14 – Basic concepts underlying the operation of Australia's transfer pricing rules
- TR 97/20 – Pricing methodologies
- TR 98/11 – Documentation (applicable to income years commencing before 29 June 2013)
- TR 98/16 – Penalties
- TR 1999/1 – Charging for services
- TR 2000/16 – Relief from double taxation and the Mutual Agreement Procedure



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- TR 2001/11 – Operation of Australia’s permanent establishment attribution rules
- TR 2003/1 – Thin capitalization – Applying the arm’s length debt test
- TR 2004/1 – Cost contribution arrangements
- TR 2007/1 – Effect of determinations under Division 13
- TR 2010/7 – Interaction of Australia’s thin capitalization rules and the transfer pricing provisions
- TR 2011/1 – Application of the transfer pricing provisions to business restructurings by multinational enterprises
- TR 2014/6 – Application of new reconstruction provisions (applicable to income years commencing on or after 29 June 2013)
- TR 2014/8 – Documentation (applicable to income years commencing on or after 29 June 2013).

Two new taxation rulings were released in late 2014.

TR 2014/6 provides the Commissioner’s views on the application of section 815-130 of the ITAA 1997 (commonly termed reconstruction provisions) which specifies the relevance of the actual commercial or financial relations to the identification of arm’s length conditions. The identification of these conditions is relevant to ascertain whether an entity gets a transfer pricing benefit from the actual conditions that operate between the entity and another entity in connection with their cross-border dealings. TR 2014/8 sets out the Commissioner’s views on the transfer pricing documentation an entity should have kept to meet the requirements of Subdivision 284-E.

The ATO has also issued a number of PS LAs that provide guidance on the practical application of the transfer pricing laws in Australia. PS LA 2011/1 contains the ATO’s guidance on advance pricing arrangements. In 2014, the ATO issued PS LAs on the application of penalties (PS LA 2014/3) under the new rules and guidance for ATO personnel on applying options under the ATO’s online guidance for Simplifying Transfer Pricing Record Keeping (reducing compliance obligations of certain taxpayers to prepare documentation in accordance with Subdivision 284-E; PS LA 2014/2).

#### **Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?**

The new transfer pricing rules are applicable if an Australian entity gets a tax benefit in Australia from cross-border conditions that are inconsistent with the arm’s length principle. The parties involved in relevant transfer pricing arrangements need not be related to one another, and there are no control requirements or ownership thresholds under the new laws.

#### **Do the local transfer pricing rules or tax authority allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?**

For income years starting 1 July 2004 to the point in time from which Subdivision 815-C applies to the taxpayer (depending on whether they have a June or December year-end), if no double tax agreement (DTA) is in place, profits should be attributed to a permanent establishment by applying a single-entity approach. The taxpayer’s actual income and expenses should be attributed to a permanent establishment by undertaking a functional analysis and applying the arm’s length principle by analogy. This process is outlined in TR 2001/11.

When there is a DTA in place, the attribution of profits should be in accordance with Article 7 of the relevant DTA.

The new laws are intended to ensure that the profit taxed in Australia from an entity operating through a permanent establishment is no less than it would be if the permanent establishment were a separate entity, dealing wholly independently with the other part of the entity (Subdivision 815-C ITAA 1997).

Under the separate-entity approach, taxpayers should allocate the actual expenditure and income of the entity between the permanent establishment and the entity so that the profits attributed to the permanent establishment equal the profits the permanent establishment might be expected to make if:

- The permanent establishment were a distinct and separate entity;
- That separate entity were engaged in the same or comparable activities under the same or comparable circumstances; and
- The conditions that operated between that separate entity and the entity of which it is a permanent establishment, in relation to the conditions assumed because of paragraphs (a) and (b) to operate, were arm’s length conditions (Subdivision 815-C ITAA 1997).

The Board of Taxation recently conducted a review of the implications of Australia’s adoption of a functionally separate entity approach as endorsed by the OECD. The board provided its report to the Assistant Treasurer in April 2013, but the timing for release of the board’s report to the public is unknown at the time of writing.

## Methods and comparables

### Acceptable methods

The various methods outlined in the OECD transfer pricing guidelines are acceptable under the new rules – the comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the profit split method (contribution analysis or residual analysis), and the transactional net margin method (TNMM).

These methods are not the only ones that can be used. Consistent with the OECD transfer pricing guidelines, when an alternate method (or combination of methods) gives a more appropriate arm's length outcome, that alternate method (or combination of methods) may be used.

### Priority of methods

An entity required to identify arm's length conditions under the new rules must use the method or methods that produces the most appropriate and reliable assessment of the conditions.

While there is recognition that transactional methods are preferred when they may be reliably applied, the ATO under the new laws also requires that Australian taxpayers support the commerciality of their overall outcomes. Accordingly, in appropriate cases, performing a TNMM analysis as a secondary method may be helpful.

### Availability of benchmarking/comparative data

Financial data from published accounts is available via numerous databases.

The ATO does not use secret comparables.

For purposes of analyzing comparable company financial results when performing a TNMM benchmarking analysis, the ATO usually considers the year under review and the preceding four years (TR 97/20, paras 2.96-2.98). Thus, five-year (not three-year) weighted average arm's length ranges are typically calculated.

### Are foreign comparables acceptable to local tax authorities?

The ATO requires the use of the most reliable comparable data available. In practice, the ATO has a strong preference for local comparable data. However, it may accept foreign comparables when reliable local comparable data are not available. Any analysis using foreign comparables should "take into account the differences in geographic,

economic and market conditions, etc., operating offshore and other factors which may affect reliability of the data." (TR 98/11, para. 10.11).

## Services issues

### Are management fees deductible?

Yes, subject to the general rules of deductibility under s. 8-1, ITAA 1997.

### Are management fees subject to withholding?

No. However, taxpayers should ensure that the management fee does not relate to the use of intangible assets, because the ATO may seek to recharacterize the transaction as a royalty. Withholding tax is charged on royalties.

### May stock option costs be included in the cost base for intercompany services charges?

The provision of stock options and costs for running an employee share scheme should be recharged. Methods for valuing a recharge for stock options are included in the OECD document, Employee Stock Option Plans: Impact on Transfer Pricing.

There is a specific disclosure requirement for cross-border stock option costs in the International Dealings Schedule (IDS), a form filed as part of Australian taxpayers' annual income tax returns.



## Commissionaire arrangements

### Are commissionaire arrangements allowed?

Yes. Under Australian common law, commissionaire arrangements take effect as undisclosed agencies. A commissionaire arrangement may be ineffective at reducing taxable Australian profit when it gives rise to a dependent agent PE of the nonresident principal.

## Cost sharing agreements

### Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?

Yes.

### Are cost contribution or cost sharing payments deductible?

Yes, subject to the general rules of deductibility under s. 8-1, ITAA 1997.

### Are cost contribution or cost sharing payments subject to withholding tax?

No.

### What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?

Consideration would have to be given to Australia's domestic tax treatment around revenue versus capital expenditure and receipts, on a case-by-case basis.

## Documentation and tax return disclosures

### Tax return disclosures

When certain conditions are triggered, the International Dealings Schedule (IDS) must be lodged as part of the Australian taxpayer's income tax return. The IDS is a lengthy form that contains five sections; section A specifically relates to transfer pricing arrangements.

Section A of the IDS requires extensive disclosure of a taxpayer's international related-party dealings on a transaction-by-transaction basis, including activity type, dollar amounts, countries involved, transfer pricing documentation maintained, and methodologies applied to set/support intercompany pricing. Section A also requires specific disclosures on employee share schemes, cost contribution arrangements, restructuring events, and branch operations.

### Documentation requirements

While there is no mandatory legal requirement for Australian taxpayers to prepare and maintain transfer pricing records, the new laws contain specific provisions

(Subdivision 284-E, Schedule 1, TAA 1953) regarding transfer pricing documentation.

The new laws provide that the failure to prepare transfer pricing documentation by the time the relevant tax return is filed means that a reasonably arguable position (RAP) cannot exist, which has implications from a penalty protection perspective. In practice, the failure to support a transfer pricing position with a RAP will result in a minimum penalty of 25 percent being applied to any subsequent adjustment to taxable income imposed by the ATO.

Guidance for preparing documentation compliant with Subdivision 284-E under the new laws is arguably more onerous, with a strong emphasis on self-assessing whether the actual conditions are aligned with the arm's length conditions. Additionally, new guidance now explicitly states that to qualify for a RAP, documentation must be prepared and readily available to the Australian taxpayer in its entirety by the date of lodgment of the income tax return.

In addition to greater emphasis on the timing of preparation of supporting transfer pricing documentation, the content and focus of such documentation will be required to change under the new laws, particularly regarding substantiating arm's length conditions and aligning actual conditions to arm's length conditions. This will require taxpayers to explain the application, or non-application, of the new laws, as well as how the documentation and methodologies applied achieve consistency with OECD guidance.

Furthermore, transfer pricing reports prepared offshore for Australian taxpayers will have to be reviewed to ensure that they comply with the new laws. For example, appropriate material regarding the Australian business's operations, transactions, financial results, and market conditions will have to be included. This may present a challenge to multinational corporations that have centralized approaches for the preparation of global transfer pricing documentation.

For income tax years covered by Division 13 of the ITAA 1936, the ATO expects contemporaneous transfer pricing documentation to be prepared that complies with the ATO's "four-step process" for documenting and reviewing transfer pricing arrangements as set out in TR 98/11:

- Step 1: Accurately characterize the international dealings between the associated enterprises in the context of the taxpayer's business and document that characterization;

- Step 2: Select the most appropriate transfer pricing method or methods and document the choice;
- Step 3: Apply the most appropriate method, determine the arm's length outcome, and document the process; and
- Step 4: Ensure documentation is complete and implement support processes. Install review process to ensure adjustment for material changes.

For income tax years commencing on or after 29 June 2013, taxpayers are expected to correctly self-assess their tax positions under the new transfer pricing rules and document their transfer pricing treatment before lodging their income tax return for the relevant year. New guidance released by the ATO (TR 2014/8) sets out five "key questions" to be considered by the taxpayer when documenting its transfer pricing treatment:

- What are the actual conditions that are relevant to the matter (or matters)?
- What are the comparable circumstances relevant to identifying the arm's length conditions?
- What are the particulars of the methods used to identify the arm's length conditions?
- What are the arm's length conditions and is/was the transfer pricing treatment appropriate?
- Have any material changes and updates been identified and documented?

In addition to the above, TR 2014/8 also contains specific guidance on how the ATO believes taxpayers should address the transfer pricing reconstruction provisions in section 815-130 of the Income Tax Assessment Act 1997.

**Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values)? Must comparables be refreshed or a new search performed?**

Preparing transfer pricing documentation is required to be an annual event, because taxpayers must self-assess compliance with the new rules and disclose on their IDSs whether they have contemporaneous transfer pricing documentation to support the pricing of each transaction disclosed. However, a comprehensive report need not be prepared each year if the nature, quantum, terms, and conditions of the transactions, and the taxpayer's operations have not materially

changed. Broadly, guidance for complying with the contemporaneity requirements under the new laws requires that any "relevant and material" changes during the year be included in the transfer pricing documentation. An entity's documentation will not be contemporaneous and therefore will not be eligible for a RAP if material changes relevant to the transfer pricing treatment are not explained in documentation.

In practice, a short-form report or addendum may be prepared in the first and second years following the preparation of a comprehensive documentation report with fresh benchmarking. Beginning in years two and three, the financial data of the selected comparables should be updated annually so as to determine updated arm's length results against which to test the taxpayer's outcomes.

It is recommended that by year four new transfer pricing documentation (as opposed to an update report or addendums) containing a fresh comparables search be prepared.

**Deadline to prepare documentation**

Transfer pricing documentation meets the timing requirements of subdivision 284-E TAA 1953 if it is prepared and readily available (that is, in the entity's possession or care and control) to the taxpayer by the date the entity files its income tax return relevant to the transfer pricing matters covered in the documentation.

**Deadline to submit documentation**

There is no formal requirement to file transfer pricing documentation with the ATO, unless requested. In an ATO transfer pricing review or audit scenario, typical ATO practice is to expect documentation to be supplied within 21 to 28 days of a request.

**Deadline to file income tax return**

Assuming a 30 June year-end, the filing due dates of income tax returns are generally as follows:

- 15 January – Tax returns for large/medium-sized taxpayers (companies, partnerships, or trusts with annual income greater than A\$10 million or investments of more than A\$50 million) with 30 June year-ends; and
- For companies with a substituted accounting period (for example, December year-ends) – income tax return filing is due the 15th day of the seventh month after the close of the substituted accounting period (that is, for 31 December year-ends, 15 July).

### **Acceptable languages for documentation**

Australian entities' transfer pricing documentation must be in English (or readily convertible to English).

### **Transfer pricing adjustments**

#### **Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

Book/tax differences are allowed. In an IDS context, disclosures in Section A are mainly based on accounting records. However, question 6 (royalties and license fees), question 15 (employee share-based remuneration), and question 18 (branches) are based on a taxpayer's income tax records.

#### **Self-initiated adjustments**

Under Division 13, ITAA 1936, the arm's length consideration in respect of the supply or acquisition of goods is deemed to be such amount as the Commissioner of Taxation determines. There is no self-assessment requirement with respect to arm's length prices under Division 13.

Under the new laws (for income tax years commencing on or after 1 July 2013), transfer pricing is subject to a self-assessment regime. Accordingly, the onus is now on the public officer signing the income tax return to confirm that the actual conditions operating between the Australian taxpayer and its related party(ies) are in line with arm's length conditions as described in the new laws.

Under the new laws, self-initiated transfer pricing adjustments can only increase Australian taxable profits or reduce taxable losses. That is, when non-arm's length pricing has led to insufficient Australian taxable income, upward transfer pricing adjustments must be self-assessed – either through the accounts before year-end, or in the tax return. However, downward transfer pricing adjustments cannot be self-assessed after year-end in the tax return.

#### **Statute of limitations on assessment for transfer pricing adjustments**

Under Division 13, ITAA 1936, there is no limitation on how far back the Commissioner of Taxation can go to make transfer pricing adjustments.

Under Subdivision 815-A, ITAA 1997, the Commissioner can go back to 1 July 2004 to make transfer pricing adjustments, when there is an income tax treaty in place.

The new laws include a seven-year time limit on the Commissioner's ability to amend assessments to give effect to transfer pricing adjustments.

#### **Taxpayer set-offs for other related-party transactions**

Intentional set-offs are allowed if they are on arm's length terms and conditions. Unintentional set-offs are considered only in the context of mutual agreement procedures.

In an IDS disclosure context, amounts included in Section A are on a gross basis, meaning that amounts must not be set off against other transactions for disclosure purposes.

### **Interest and penalties**

#### **Additional assessment payment deadline**

The ATO will state the time frame for payment of any additional tax in its notice of assessment or other relevant notice. The time frame is typically between 14 and 28 days.

#### **Penalty on transfer pricing assessment**

A taxpayer may be subject to an administrative penalty if it is liable to pay an additional amount of income tax because the Commissioner of Taxation amends an assessment for an income year (Subsection 284-145(2A), Taxation Administration Act 1953).

Under current law, the penalty rates are as follows:

- 50 percent of the tax avoided for transfer pricing arrangements entered into with the sole or dominant purpose of enabling a taxpayer to pay no or less tax; and
- 25 percent of the tax avoided for other transfer pricing arrangements.

#### **Is interest charged on penalties?**

A general interest charge (GIC) will also be imposed when there is a late payment of a tax debt. The GIC rate is updated quarterly and generally reflects the interest rate charged by financial institutions on unsecured loans. When an amount is left unpaid, GIC begins to accrue from the due date until the amount is paid in full.

#### **Is interest payable when a refund is due to the taxpayer?**

Generally, the ATO will pay interest when it takes more than 30 days (after the income tax return is filed) to issue a tax refund to the taxpayer.

### Reduction in transfer pricing penalties

Under Division 13 of the ITAA 1936, the penalty rates are reduced if a taxpayer has a reasonably arguable position (RAP) as follows:

- 50 percent of the tax avoided for transfer pricing arrangements entered into with the sole or dominant purpose of enabling a taxpayer to pay no or less tax will reduce to 25 percent of the tax shortfall if the taxpayer has a RAP; and
- 25 percent of the tax shortfall for other transfer pricing arrangements will reduce to 10 percent if the taxpayer has a RAP.

Under the new laws, provided a taxpayer has prepared quality, contemporaneous transfer pricing documentation in accordance with Subdivision 284-E, Schedule 1, TAA 1953, it will have a RAP that will provide penalty protection. When a RAP exists, the applicable penalty will be 10 percent of the tax shortfall. When there is no RAP, the applicable penalty will be 25 percent of the tax shortfall.

Under both Division 13, ITAA 1936, and the new laws, a penalty may also be reduced to zero at the discretion of the ATO when specified conditions apply (see TR98/16, para. 36 and PS LA 2014/2, para. 110, respectively).

### Is interest payable when a refund is due to the taxpayer?

Generally, the ATO will pay interest when it takes more than 30 days (after the income tax return is filed) to issue a tax refund to the taxpayer.

### Advance Pricing Agreements (APAs)

#### Are APAs available?

Yes. The ATO's APA program is outlined in ATO Practice Statement Law Administration (PS LA) 2011/1. The practice statement outlines the policies and procedures of the ATO's APA program (which allows unilateral, bilateral, and multilateral APAs).

The APA program is currently being updated to reflect changes to the global economy, the community, and the ATO's profit-shifting work. Key changes include conducting additional upfront workshops with internal experts to address whole-of-tax code issues, and the selective use of more-frequent transfer pricing review panels.



### APA filing fee

There is no fee for filing a unilateral APA application with the ATO. Bilateral APA applications will incur a filing fee when the overseas tax authority charges such a fee.

### APA term of agreement

APAs with the ATO are generally for three to five income tax years. The method agreed to in the APA may also be applied retroactively (that is, rolled back), subject to the ATO's agreement and the taxpayer's facts and circumstances.

### Competent authority

#### When may taxpayer submit tax adjustment to Competent Authority (CA)?

The Mutual Agreement Procedure (MAP) article in most of Australia's income tax treaties permits taxpayers to present a case to the competent authority within three years from the first notification to the taxpayer of the actions giving rise to taxation not being in accordance with the treaty. This may be before the issue of formal notices of assessment/amended assessment.

#### May CA develop new settlement positions?

The CA may negotiate an agreement based on a different position from an ATO-initiated adjustment (unless an adjustment is decided by an appellate body, such as the Administrative Appeals Tribunal or a court).

#### May taxpayer go to CA before paying tax?

Yes. A taxpayer may go to the CA after the amount of a proposed adjustment is communicated in writing to the taxpayer; this may be before payment of the tax.

# Austria

## What's new

The year 2014 was characterized by the OECD's BEPS initiative, which was met with great interest by the Austrian fiscal authorities. Changes in legislation that could also affect new and existing transfer pricing systems refer mainly to the nondeductibility of intragroup interest and royalty payments in Austria under specific conditions.

## General information

### Tax authority and law

Federal Ministry of Finance; Section 6 para. 6 Income Tax Act, Section 8 para 1 and 2 Corporate Income Tax Act.

### Regulations, rulings, guidelines

The Austrian Ministry of Finance in October 2010 issued specific transfer pricing guidelines as a decree, which is binding on the Austrian tax authorities but nonbinding on taxpayers and the courts. These are the first domestic transfer pricing guidelines ever published by the Austrian Ministry of Finance, and they refer to the OECD transfer pricing guidelines, as amended in 2010, as well as to the OECD Report on the Attribution of Profits to Permanent Establishments.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

Two enterprises are deemed associated if one participates directly or indirectly in the management, control, or capital of the other, or if both are under common control.

### Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

The arm's length principle is generally accepted when profits attributable to a permanent establishment or branch have to be calculated. The tax authorities apply the "authorized OECD approach" (AOA) as long as it does not contradict the "old" Article 7 of the OECD Model Tax Convention on Income and on Capital.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the profit split method, and the transactional net margin method (TNMM).

## Priority of methods

Austria follows the 2010 OECD transfer pricing guidelines, whereby the selection of a transfer pricing method aims to find the most appropriate method for a particular case. In cases when more than one method can be applied in an equally reliable manner, the traditional transaction methods are preferable to the transactional profit methods.

## Availability of benchmarking/comparative data

Pan-European data is used.

## Are foreign comparables acceptable to local tax authorities?

Yes.

## Services issues

### Are management fees deductible?

Yes, provided the arm's length fees are deductible according to general Austrian tax rules. Austria follows the OECD transfer pricing guidelines in this regard.

### Are management fees subject to withholding?

Generally, no. However, royalties and payments for the provision of technical or commercial consulting services carried out in Austria are subject to withholding tax.

### May stock option costs be included in the cost base for intercompany services charges?

The Austrian tax authorities have issued no specific opinion regarding services. However, the Austrian transfer pricing guidelines indicate that stock option costs must be included in the cost base when applying the TNMM.

## Commissionaire arrangements

### Are commissionaire arrangements allowed?

Yes.

## Cost sharing agreements

### Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?

Yes. Austria follows Chapter VIII of the OECD transfer pricing guidelines in this regard.

### Are cost contribution or cost sharing payments deductible?

Yes, provided the arm's length payments to the CCA or CSA are deductible according to general Austrian tax rules.



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### **Are cost contribution or cost sharing payments subject to withholding tax?**

Generally, no. However, royalties and payments for the provision of technical or commercial consulting services carried out in Austria are subject to withholding tax.

### **What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?**

In principle, under the Austrian Commercial Code it must be decided if buy-in payments are deductible or amortizable over the useful life of the intangible.

## **Documentation and tax return disclosures**

### **Tax return disclosures**

No specific disclosure required.

### **Documentation requirements**

The Austrian tax and transfer pricing legislation does not include any explicit transfer pricing documentation requirements. However, the fiscal authorities derive transfer pricing documentation requirements from general tax documentation requirements under §124 et seq. Federal Fiscal Code (FFC).

Documentation should follow the OECD transfer pricing guidelines. The Austrian Ministry of Finance accepts the EU-TPD (from the Code of Conduct of the European Union's Joint Transfer Pricing Forum). Information concerning documentation of cross-border transactions can also be found in the Austrian transfer pricing guidelines.

### **Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

There are no specific regulations as to whether documentation must be updated each year. Documentation could cover multiple years. However, transfer pricing documentation must be updated if material changes occur. In Austria, transfer pricing documentation is normally requested during a tax audit, and should refer to the specific period under tax audit. Otherwise, a three-year-period might be sufficient. The Austrian tax authorities expect a new benchmarking study every three years.

### **Deadline to prepare documentation**

Not applicable.

### **Deadline to submit documentation**

Not applicable.

### **Deadline to file income tax return**

The income tax return must be submitted by 30 June of the year following the tax year if filed electronically. In the case of hard copy filing, the income tax return must be submitted by 30 April of the year following the tax year. Taxpayers represented by a tax advisor may file their income tax returns by 30 April of the second year following the tax year if the tax office does not demand an earlier filing.

### **Acceptable languages for documentation**

Generally, documentation should be prepared in German. However, a tax auditor may accept documentation in English, depending on his or her language ability. According to nonbinding information from the Austrian fiscal authorities, the Austrian country file prepared pursuant to the European Commission's transfer pricing Code of Conduct should be prepared in German. The masterfile (pertaining to the foreign headquarters) may be submitted in English.

## **Transfer pricing adjustments**

### **Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

The income calculation for tax purposes generally starts with the income reflected in the financial statements by applying several adjustments. If the figures turn out to be incorrect (after a tax audit), they must be replaced.

### **Self-initiated adjustments**

An intercompany agreement is required in advance. If transfer prices are determined to not be at arm's length, an adjusted tax return must be filed.

### **Taxpayer set-offs for other related-party transactions**

Austria follows the OECD transfer pricing guidelines with regard to international transactions; for domestic transactions, more stringent limitations would apply.

### **Statute of limitations on assessment for transfer pricing adjustments**

Five to 10 years from tax year-end, depending on the specific circumstances.

## Interest and penalties

### Additional assessment payment deadline

Payment is due one month after assessment, if no suspension is granted.

### Penalty on transfer pricing assessment

There are no specific transfer pricing penalties. Interest may be imposed on late payment of any additional corporate income tax liabilities caused by a transfer pricing assessment. If a hidden dividend distribution is assumed, withholding taxes might be imposed.

Generally, interest on late payment of due taxes may be assessed on the outstanding balance (balance of the processed corporate income tax return minus tax payments during the year minus additional down payments). If the corporate income tax assessment results in a tax credit, interest will be credited to the tax account for the tax credit amount. Late payment interest or interest for tax credits not exceeding the amount of EUR 50 will not be assessed. The calculation of late payment interest or interest for tax credits is effected for a maximum period of 48 months.

### Is interest charged on penalties?

Not applicable.

### Is interest payable when a refund is due to the taxpayer?

As of 2012, Sec. 205a of the Federal Fiscal Code offers the possibility to receive interest on amounts under appeal (for example, caused by a transfer pricing assessment) if the appeal is successful. The main prerequisites are the filing of a separate application and the payment of the pertinent amount that is under appeal to the fiscal authorities.

### Reduction in transfer pricing penalties

There is no provision in this regard.

## Advance Pricing Agreements (APAs)

### Are APAs available?

Effective January 1, 2011, two unilateral procedures are available: (1) a ruling request, binding on the basis of good faith; and (2) a formal unilateral APA procedure. Moreover, bilateral or multilateral procedures may be possible based on Article 25 of the OECD Model Tax Convention, the mutual agreement procedure.

### APA filing fee

Filing fees for bilateral or multilateral APAs are not mandatory under Austrian tax law or the transfer pricing

regulations. However, we cannot exclude the possibility that a fee might be imposed when implementing the outcome of the APA procedure.

For formal unilateral APA procedures, the filing fee ranges between EUR 1,500 and EUR 20,000, depending primarily on the taxpayer's sales.

### APA term of agreement

Not specified.

## Competent authority

### When may taxpayer submit tax adjustment to competent authority (CA)?

A taxpayer may submit an application for mutual agreement procedure during a tax audit after notification of the proposed adjustment and within the deadline specified in the applicable income tax treaty.

### May CA develop new settlement positions?

Yes.

### May taxpayer go to CA before paying tax?

Yes, provided certain procedures are followed. Interest may be assessed.



# Belgium

## What's new

During 2014, the Belgian tax authorities continued their audits of taxpayers' transfer pricing practices to prevent base erosion and profit shifting, and incidentally, raise revenues. The OECD's BEPS Action Plan serves as a primary source of information, as the Belgian tax authorities tend to adhere to OECD developments quite strictly. This has resulted in a significant expansion of the transfer pricing department, with several regional tax inspectors added. In addition, significantly more transfer pricing questionnaires were sent to a variety of taxpayers in early 2014. This audit wave is going through its third phase in 2015.

Following this increased scrutiny of companies' transfer pricing policies, taxpayers are advised to have contemporaneous transfer pricing documentation available and to apply their policies consistently.

## General information

### Tax authority and law

Administration of Direct Taxes. In 2006, a Special Transfer Pricing Audit Cell was created. General tax law on avoidance of profit shifting applies (articles 26, 49, 54, 55, 56, 79, 207, and 344 of the Income Tax Code). Law of 21 June 2004 introduced transfer-pricing-specific cross-border rules and correlative adjustments under Articles 185, §2, and 235 ITC. For APAs, mutual agreement, or arbitration procedure, the OECD's arm's length standard, as introduced by article 185 §2 ITC, applies.

### Regulations, rulings, guidelines

Administrative Transfer Pricing Circular Letter of 28.06.1999; Administrative Arbitration Convention Circular Letter of 07.07.2000 and Administrative Circular Letter of 25.05.2003 (addendum to Circular Letter of 07.07.2000); Administrative Circular Letter of 04.07.2006 regarding article 185 §2 ITC; Administrative Circular Letter of 14.11.2006 on transfer pricing documentation and transfer pricing audits.

Rulings are published (in French or Dutch) on <http://www.ruling.be/>.

## Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

Belgium has a very broad interpretation of interdependence criteria, which includes not only legal but also factual control (e.g., common management). In theory, the arm's length principle could even apply to relations between third parties.

## Do the local transfer pricing rules or tax authority allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

The Belgian Tax Code does not contain any specific rules on the attribution of profits to permanent establishments or branches. The Belgian tax authorities endorse the OECD guidance in this respect and rely on the Report on the Attribution of Profits to Permanent Establishments.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the profit split method (contribution analysis or residual analysis), and the transactional net margin method (TNMM).

### Priority of methods

The most appropriate method should be used. Belgium follows the OECD transfer pricing guidelines. Profit-based methods (TNMM, profit split) are commonly accepted by the Belgian tax authorities.

### Availability of benchmarking/comparative data

Financial data from published accounts is available via numerous databases, primarily Amadeus, Belfirst, and the Belgian National Bank for annual accounts.

## Are foreign comparables acceptable to local tax authorities?

Yes. The Belgian tax authorities allow the use of pan-European comparables.

## Services issues

### Are management fees deductible?

Yes. Belgium follows the OECD transfer pricing guidelines in this regard. The OECD's discussion draft on proposed changes to Chapter VII of the transfer pricing guidelines is relevant.

### Are management fees subject to withholding?

No (except in certain limited circumstances).



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**May stock option costs be included in the cost base for intercompany services charges?**

Belgium has no special rules on this issue. General OECD transfer pricing guidelines principles apply.

**Commissionaire arrangements**

**Are commissionaire arrangements allowed?**

Yes. However, scrutiny of these arrangements may be expected, given recent developments regarding BEPS, and more specifically, the OECD's discussion draft on the definition of permanent establishments.

**Cost sharing agreements**

**Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?**

Yes. Articles 26, 49, and 185 §2 of ITC.

**Are cost contribution or cost sharing payments deductible?**

Yes. Articles 26, 49, and 185 §2 of ITC.

**Are cost contribution or cost sharing payments subject to withholding tax?**

No.

**What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?**

Belgium follows the OECD transfer pricing guidelines in this regard.

**Documentation and tax return disclosures**

**Tax return disclosures**

No specific tax return disclosures are required. For accounting periods starting on 1 September 2008, certain corporations are required to report material non-arm's-length transactions with related parties in their annual accounts. Extensive reporting obligations apply to the following corporations:

- Corporations listed on a stock exchange;
- Corporations whose shares are traded on a Multilateral Trading Facility; and
- Corporations that meet more than one of the criteria to be considered a large group under article 16§1 of the Belgian Companies Code.

These companies must report all non-arm's-length transactions with related parties. However, there is an exemption for transactions between group members when the subsidiaries involved are wholly owned by a member of that group. The following information must be reported:

- The amounts involved in the transactions;

- The nature of the relationship with the related parties; and
- All other information needed to ensure an accurate view of the financial position of the corporation.

For payments made from January 1, 2010, there is a reporting obligation for companies to report all direct and indirect payments to entities in tax havens. The new reporting obligation applies to resident and nonresident companies. They must report all direct and indirect payments insofar as these payments:

- Amount to at least EUR 100,000 in the taxable basis (on a consolidated basis); and
- Are made to persons located in countries that are considered (i) uncooperative jurisdictions by the OECD, throughout the entire taxable period, as not having effectively or substantially implemented the OECD standards on the exchange of information, or (ii) tax havens (zero-tax or low-tax jurisdictions).

The payments must be reported in euro on Form 275F, which must be attached to the corporate income tax return.

**Documentation requirements**

Belgium has no statutory documentation requirements. Recommended documentation should follow the OECD transfer pricing guidelines. Administrative Circular of 14.11.2006 on transfer pricing documentation refers explicitly to EU-TPD (from the Code of Conduct of the European Union's Joint Transfer Pricing Forum). There is no contemporaneous documentation obligation, but lack of documentation creates a substantial risk of a thorough transfer pricing audit and the imposition of penalties.

**Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

There are no formal requirements on the timing/form for documentation. The Belgian tax authorities' position, echoed to some extent in the Belgian transfer pricing circulars, is generally that documentation (including comparables searches) must be OECD-compliant and updated every three years, unless there is a change in facts and circumstances that may impact the transfer pricing policy.

**Deadline to prepare documentation**

There is no statutory deadline for the preparation of documentation.

### **Deadline to submit documentation**

Within 30 days of a request. Administrative Circular of 14.11.2006 on transfer pricing documentation encourages tax inspectors to grant extensions if it is practically impossible to provide transfer pricing documentation within the 30-day period.

### **Deadline to file income tax return**

The deadline to file the income tax return is indicated on the tax return form, and varies between one month from receipt of the form and six months from the end of the taxpayer's accounting year. Individual extensions are possible at the taxpayer's request. However, on 29 April 2013, the tax authorities published Circular letter n° Ci.RH.81/626.947 (AA Fisc. N° 15/2013), reiterating that granting an extension for the filing of a tax return should be an exception. Henceforth, extensions will be available only if it can be justified by "serious reasons" or in case of force majeure. In addition, the previously available possibility of obtaining a collective extension has been abolished.

### **Acceptable languages for documentation**

Documentation may be in Dutch, English, French, or German.

### **Transfer pricing adjustments**

#### **Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

Transfer prices are reflected in the financial statements. That is the basis for the corporate tax return, and in principle should not differ from the financial statements regarding transfer prices.

### **Self-initiated adjustments**

Not permitted in principle, but possibly allowed under an APA.

### **Statute of limitations on assessment for transfer pricing adjustments**

Generally, three years from tax year-end (seven years in case of fraud).

### **Taxpayer set-offs for other related-party transactions**

The tax authorities are traditionally reluctant to accept set-offs. Intentional set-offs (direct or indirect) have been accepted by tax courts under certain conditions.



### **Interest and penalties**

#### **Additional assessment payment deadline**

Assessments must be paid within two months after the notification is sent. Interest for late payment is due on payments made after the deadline. If a taxpayer files a tax protest, special rules are applicable for the payment of tax and interest.

#### **Penalty on transfer pricing assessment**

Ordinary penalties apply – 10 to 200 percent of the additional tax (10 percent penalty even in the absence of bad faith).

#### **Is interest charged on penalties?**

Yes, late payment interest is due on the total amount of taxes due if they are not paid within the legal deadlines. Interest, however, is not applied on penalties.

#### **Reduction in transfer pricing penalties?**

No penalty is imposed if the taxpayer proves incorrect reporting was due to circumstances beyond its control and action was taken in good faith (assuming documentation is present at the start of the tax audit). Penalties increase in cases of bad faith and/or repeated infringement.

#### **Is interest payable when a refund is due to the taxpayer?**

In principle yes, but often in competent authority procedures the Belgian CA asks the taxpayer to waive its right to a refund.

### **Advance Pricing Agreements**

#### **Are APAs available?**

APAs are available under Law of 21.06.2004 introducing a new ruling regime and (in the case of bilateral APAs) under the mutual agreement procedure (MAP) of the applicable double tax treaty.

#### **APA filing fee**

here is no APA filing fee.

#### **APA term of agreement**

Maximum term of five years, potentially renewable.

## **Competent authority**

### **When may taxpayer submit tax adjustment to competent authority (CA)?**

An application for MAP must be filed within two or three years (or a shorter time frame, depending on the applicable income tax treaty) of first notification of the action resulting in double taxation.

### **May CA develop new settlement positions?**

The tax authorities may unilaterally withdraw or reduce a tax adjustment (Article 376, Sec. 1 of ITC). In practice, however, withdrawal is unlikely.

### **May taxpayer go to CA before paying tax?**

Yes. A MAP request can be filed before the tax is paid. Usually, suspension of collection is granted as long as MAP is pending

# Brazil

## What's new

Since the introduction of the Law 12,715 in September 17, 2012, which brought significant changes to the calculation procedure for Brazilian transfer pricing methods, taxpayers have generally been adapting the pricing models and intercompany policies to seek the maximum legal deductibility and minimum revenue limits.

For fiscal year 2014, the most common alternative used by taxpayers was the adoption of methods that required information from affiliated companies, such as the manufacturing cost from foreign exporters and the resale price for products originally imported from Brazil.

## General information

### Tax authority and law

Brazilian Revenue Services (Receita Federal do Brasil — RFB); Laws 9,430/96 and 9,959/00 (generally applicable to all calendar years before 2013) and Laws 12,715/12 and 12,766/12 (generally applicable to all calendar years starting on or after January 1, 2013) and Normative Rulings from the RFB.

### Regulations, rulings, guidelines

Normative Rulings #602/05, 703/06, 801/07, 898/08, 1,124/11, 1,312/12, and 1,322/13.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

Article 2 of Normative Ruling 1,312/12 provides detailed information on related entities. Entities located in jurisdictions Brazil considers tax havens or low-tax jurisdictions are considered related for transfer pricing purposes, regardless of investment equity.

### Do the local transfer pricing rules or tax authority allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

There is no provision in Brazilian law in this regard. Permanent establishment issues are virtually nonexistent in Brazil. Branches of foreign entities are also rare. Taxpayers are generally established as public or limited liability companies. It is virtually impossible to operate outside these two structures.

## Methods and comparables

### Acceptable methods

Several methods are allowed. These vary in accordance with the nature (import or export) of the tested transaction. For import transactions: (i) PIC (comparable uncontrolled price method); (ii) PRL (resale price method - prescribes statutory gross profit margins of 20, 30, or 40 percent, depending on the tested party's economic sector, for calendar year 2013 onwards. The gross profit margins vary in accordance with the business segment for the imported goods, services, and/or rights. For calendar years before 2013, the statutory gross profit margins were 60 percent for imports of components or raw materials and 20 percent for imports that were resold in Brazil); (iii) CPL (production cost in the country of origin plus 20 percent profit margin); and (iv) PCI (commodity exchange import price).

For export transactions: (i) CAP (production cost plus 15 percent profit margin); (ii) PVEX (sales price on exports); (iii) PVA and PVV (resale price minus 15 percent for wholesale, 30 percent for retail); and (iv) PCEX (commodity exchange export price). Waivers of proof for exports are available if certain conditions are met. Refer to Normative Rulings 243/02, 382/03, and 1,312/12..

### Priority of methods

Taxpayers may use the method that yields the lowest taxable income. As an exception, commodity transactions are subject to specific transfer pricing methods (PCI and PCEX).

### Availability of benchmarking/comparative data

Limited local data is available. Reliable international information may be used to determine comparable prices. The application of the methods for commodity products should be based on reliable stock exchange prices and/or reputable market institutions.

### Are foreign comparables acceptable to local tax authorities?

Foreign comparables are acceptable only for purposes of the PIC method in relation to import transactions, and the PVA and PVV methods in relation to export transactions. Information obtained from foreign stock exchanges and/or reputable market institutions can be used to assess the reasonableness of the prices charged on intercompany commodity transactions.



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## Services issues

### Are management fees deductible?

Foreign comparables are acceptable only for purposes of the PIC method in relation to import transactions, and the PVA and PVV methods in relation to export transactions. Information obtained from foreign stock exchanges and/or reputable market institutions can be used to assess the reasonableness of the prices charged on intercompany commodity transactions.

### Are management fees subject to withholding?

Yes, generally 25 percent withholding tax will be applied.

### May stock option costs be included in the cost base for intercompany services charges?

There is no specific regulation in this regard. Generally, Brazilian tax legislation considers only the costs directly related to the service performed as part of that service. Each situation must be analyzed individually.

## Commissionaire arrangements

### Are commissionaire arrangements allowed?

Yes.

## Cost sharing agreements

### Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?

There is no specific statutory authority, but limited cost sharing may be possible.

### Are cost contribution or cost sharing payments deductible?

Yes, provided the conditions for deductibility are met — the payments must have a direct relation with the income generated and documentation must be kept.

### Are cost contribution or cost sharing payments subject to withholding tax?

Yes. Ordinary Federal Law 9.779/99.

### What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?

Payments may be deductible, provided the conditions for deductibility are met — the payments must have a direct relation with the income generated and documentation must be kept.

## Documentation and tax return disclosures

### Tax return disclosures

Taxpayers must identify parties, the selected transfer pricing method, and transaction prices for the purchase and/or sale of tangible goods, services, rights, and/or interests in transfer pricing disclosure forms provided in the new corporate income tax electronic filing system -- ECF, or Fiscal Accounting Bookkeeping – which replaces the corporate income tax return, and increases the amount of information to be disclosed to the tax authorities. A taxpayer cannot change the selected transfer pricing method after the start of a tax audit.

### Documentation requirements

Detailed information is required to complete the ECF forms. This is generally obtained from full-blown transfer pricing studies. The tax authorities may request additional information during tax audits.

### Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?

Yes. Taxpayers must select and apply a transfer pricing method to assess the reasonableness of their intercompany pricing. In practical terms, this process includes identifying all relevant intercompany transactions, assessing the availability of third-party data, selecting and applying a transfer pricing method, and summarizing the transfer pricing method application in the Brazilian ECF. This process should be performed on a product-by-product, service-by-service, and right-by-right basis. Because Brazil does not follow the OECD transfer pricing guidelines, the search for comparable companies is not necessary.

### Deadline to prepare documentation

Transfer pricing adjustments (if any) are due on January 31 of the following fiscal year. The ECF should be filed annually by September 30. Interest for the period from January to September and penalties apply on any transfer pricing adjustments that should have been included in the Brazilian income tax and social contribution basis payable on January 31.

### Deadline to submit documentation

Documentation must be submitted within 20 days of request.

#### **Deadline to file income tax return**

The income tax return has been replaced by the ECF, which must be filed by September 30.

#### **Acceptable languages for documentation**

Documentation must be prepared in Portuguese.

#### **Transfer pricing adjustments**

**Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

Generally, yes. Differences associated with allowed/required adjustments to improve reliability of results, such as interest expense, are expected.

#### **Self-initiated adjustments**

Adjustments of taxable income based on transfer pricing study.

#### **Statute of limitations on assessment for transfer pricing adjustments**

Five years from the date of filing the ECF.

#### **Taxpayer set-offs for other related-party transactions**

Not applicable.

#### **Interest and penalties**

##### **Additional assessment payment deadline**

Generally, 30 days from the date of assessment. The deadline may vary if the assessment is administratively and/or judicially contested.

##### **Penalty on transfer pricing assessment**

Ordinary penalties apply based on additional tax: 75 percent to 150 percent could increase to 112.5 percent

to 225 percent. In the case of incorrect or omitted information on ECF, the new corporate income tax electronic filing system, a penalty of 3 percent of the transaction price would be imposed. Failure to submit ECF by the deadline would result in a penalty of 0.25 percent of profit before income tax per month, limited to 10 percent of the year's net revenue. Additional penalty limitations are BRL 100,000 for taxpayers with gross revenue up to BRL 3,600,000, and BRL 5,000,000 in all other cases.

##### **Is interest charged on penalties?**

Yes, if the penalties are not paid by the due date.

##### **Is interest payable when a refund is due to the taxpayer?**

Generally speaking, the same interest due on late tax collection is also payable in the case of a refund to a taxpayer because of excess tax collection.

##### **Reduction in transfer pricing penalties**

Upon examination and assessment, taxpayers may be granted a 50 percent reduction in penalties for an uncontested payment.

#### **Advance Pricing Agreements**

##### **Are APAs available?**

No. Brazilian rules do not contemplate APAs. However, a taxpayer is allowed to request modifications of the stated statutory margins, based on proper studies and analyses.

##### **APA filing fee**

Not applicable.

##### **APA term of agreement**

Not applicable.

#### **Competent authority**

##### **When may taxpayer submit tax adjustment to competent authority (CA)?**

Upon filing of the ECF.

##### **May CA develop new settlement positions?**

Yes.

##### **May taxpayer go to CA before paying tax?**

Yes. The taxpayer may go to CA for a formal consultation to verify the correct application of transfer pricing legislation.



# Bulgaria

## What's new

Bulgaria's transfer pricing rules implement the arm's length principle, and for the most part follow the OECD's transfer pricing guidelines. During tax audits, taxpayers involved in intragroup transactions are obligated to prove that they comply with the arm's length principle. The Bulgarian tax authorities have shown increased interest in transfer pricing issues in the course of recent tax audits. In response, Bulgarian taxpayers have been focusing increasingly on the preparation of transfer pricing documentation.

## General information

### Tax authority and law

The National Revenue Agency (NRA) at the Ministry of Finance; Corporate Income Taxation Act (CITA) and Ordinance H-9/14 August 2006 on the procedure for application of transfer pricing methods.

### Regulations, rulings, guidelines

Bulgaria's revenue authorities released a Transfer Pricing Manual in 2010 that follows closely the 1995 OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations. The EU's Code of Conduct for Transfer Pricing Documentation for Associated Enterprises also was used to develop the manual.

The Transfer Pricing Manual is not legally binding. However, adherence to its principles could mitigate potential challenges by the authorities in the course of tax audits or tax checks.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

Bulgaria's Tax and Social Security Procedure Code (TSSPC) provides a broad definition of "related parties." The criteria for "relatedness" are: a minimum of 5 percent direct shareholding; employment; exercising control; common control; common management bodies (or persons participating therein); commercial agency; donation; kinship. A specific legal definition of "control" applies for this purpose.

A rebuttable presumption of relatedness applies if:

- One of the parties is registered in a jurisdiction (outside the EU) with a corporate income tax rate of 4 percent or lower (unless the resident person submits evidence that the nonresident person is liable to tax that is not subject to a preferential regime, or that the nonresident person

has sold the goods or has provided the services on the local market) and the tax administration of the country of registration refuses or is unable to provide information on the transaction/relationship under scrutiny, despite an existing double taxation agreement in force;

- Entities are controlled by persons described above; or
- The owners of the local party and the related parties are described above.

### Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

Generally, the practice of the Bulgarian authorities follows the OECD Commentary on the model tax convention. Domestic legislation provides specific rules regarding transfers between a PE in Bulgaria and other parts of the enterprise located abroad.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the profit split method (contribution analysis or residual analysis), and the transactional net margin method (TNMM).

### Priority of methods

As a general rule, the CUP method has priority, then transaction-based methods are preferred over profit-based methods.

For intragroup services, the CUP method and the cost plus method are preferred (applied separately or in combination), then transaction-based methods are preferred over profit-based methods.

For intangibles, the CUP method and the resale price method are preferred if comparable transactions are available. If there are no comparable transactions, the profit split method is allowed.

### Availability of benchmarking /comparative data

Limited local data is available. Databases of the National Statistics Institute, economic branch organizations, statistical reference books, online and paper publications, as well as databases such as Amadeus and Orbis are admissible for transfer pricing purposes. The NRA does not have access to Amadeus and Orbis.



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**Are foreign comparables acceptable to local tax authorities?**

Yes, provided that local comparables are not available and foreign markets are deemed sufficiently comparable. Pan-European comparables are normally accepted. Taxpayers are allowed to present any relevant evidence from abroad to prove the market terms of the controlled transactions.

**Services issues**

**Are management fees deductible?**

Yes, according to the general rules of deductibility.

**Are management fees subject to withholding?**

Yes, provided they include: (i) services of a consulting nature; (ii) marketing research; or (iii) royalties. The domestic tax rate is 10 percent, but it may be reduced or eliminated under an applicable tax treaty.

**May stock option costs be included in the cost base for intercompany services charges?**

No specific provisions in this regard.

**Commissionaire arrangements**

**Are commissionaire arrangements allowed?**

Yes.

**Cost sharing agreements**

**Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?**

Yes. However, cost contribution arrangements (CCAs) are not legally defined in Bulgarian legislation, and there are no specific provisions for their tax treatment, only high-level guidelines in the Transfer Pricing Manual. General tax provisions are to be applied.

**Are cost contribution or cost sharing payments deductible?**

General rules of deductibility apply. To be allowed to deduct payments, the taxpayer should provide evidence of the actual receipt of CCA benefits and corresponding actual expenses.

**Are cost contribution or cost sharing payments subject to withholding tax?**

The general rules apply. A case-by-case analysis is necessary.

**What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?**

The general rules apply. A case-by-case analysis is necessary.

**Documentation and tax return disclosures**

**Tax return disclosures**

As of 2014, Bulgarian tax residents are required to submit an appendix to their annual tax return (including for FY 2014) disclosing the annual turnover of transactions with related parties. Failure to comply may result in an administrative fine ranging between €50 and €500.

**Documentation requirements**

There are no legally binding transfer pricing documentation requirements in Bulgaria. It is recommended that taxpayers follow the Transfer Pricing Manual guidelines in this respect, which generally comply with the EU's Code of Conduct for Transfer Pricing Documentation for Associated Enterprises.

As a general rule, taxpayers bear the burden of proof to evidence the arm's length nature of related-party transactions.

**Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

There is no requirement for annual submission of documentation. The documentation could be requested by the NRA during a tax audit or tax check.

Transfer pricing documentation prepared for a previous tax period can be used for subsequent tax periods, provided it reflects current market conditions.

**Deadline to prepare documentation**

There is no statutory deadline to prepare documentation. However, if documentation is requested in the course of a tax audit, the general time limit for administrative proceedings of 14 days is applied, if no specific term is set by the tax authorities performing the tax audit.

**Deadline to submit documentation**

There is no requirement to submit documentation, other than as requested by the tax authorities during the course of a tax audit.

**Deadline to file income tax return**

March 31 of the year following the fiscal year for which the income tax return is due. The fiscal year coincides with the calendar year.

### Acceptable languages for documentation

Documentation should be in Bulgarian, or a certified translation if it is prepared in another language. If submitted in another language, the authorities are allowed to translate the documents at the taxpayer's expense.

### Transfer pricing adjustments

#### Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?

Book/tax differences are allowed. Transfer pricing adjustments (the difference between the agreed price and the arm's length price) should be reflected in the corporate income tax return.

### Self-initiated adjustments

The CITA provides that all transactions between related parties should be at arm's length. Therefore, when necessary, financial results should be adjusted for tax purposes.

### Statute of limitations on assessment for transfer pricing adjustments

The general statute of limitation — five years following the year in which the liability should have been paid — applies.

### Taxpayer set-offs for other related-party transactions

There are no tax provisions regarding set-offs in a transfer pricing context. Generally, the tax authorities would consider the set-off transactions separately and apply general transfer pricing rules.

### Interest and penalties

#### Additional assessment payment deadline

General rules apply.

#### Penalty on transfer pricing assessment

If the tax authorities claim a hidden profit distribution occurred, a penalty of 20 percent of the adjusted amount may be levied. There are no other transfer-pricing-specific penalties.

An administrative penalty between €250 and €1,500 is imposed if the taxable result is not correctly defined in the tax return, resulting in an underpayment of tax.

#### Is interest charged on penalties?

Not if the penalties are imposed on individuals. For penalties imposed on legal entities, this is a controversial

issue. Because provisions in the law are unclear, the decision is often left to the local courts.

#### Is interest payable when a refund is due to the taxpayer?

Yes, interest is payable if the overpaid tax was caused by the tax administration.

#### Reduction in transfer pricing penalties

Taxpayer will benefit from penalty exemption in cases of hidden profits distribution, if the taxpayer discloses such distribution in its annual tax return.

### Advance Pricing Agreements (APAs)

#### Are APAs available?

APAs are not currently available.

#### APA filing fee

Not applicable.

#### APA term of agreement

Not applicable.

### Competent authority

#### When may taxpayer submit tax adjustment to competent authority (CA)?

The initiation of a mutual agreement procedure may be based either on a tax treaty or the EU Arbitration Convention. Taxpayers may address the Minister of Finance — the competent authority — if the taxpayer considers taxation as not being in accordance with the treaty or the Convention. In general, the time limit to present the case to the CA is three years from the first notification of the tax assessment resulting in double taxation.

#### May CA develop new settlement positions?

Yes, unless the taxpayer has received a court decision.

#### May taxpayer go to CA before paying tax?

No specific rules.



# Canada

## What's new

The Canada Revenue Agency (CRA) issued Transfer Pricing Memorandum TPM-05R "Requests for Contemporaneous Documentation" in March 2014, replacing TPM-05. TPM-05R clarifies the obligations of taxpayers when responding to CRA requests for contemporaneous documentation. One of the stated purposes of these clarifications is to facilitate the evaluation of whether the taxpayer has made reasonable efforts in assessing transfer pricing penalties. Additionally, in January 2015 the Canada Border Services Agency (CBSA) issued Customs Notice 15-001, communicating that when there is a downward adjustment to the transfer price and the imported goods are subject to duties, a request for refund of duties may be made if certain circumstances are met (historically, CBSA denied such refund claims).

Canadian courts advanced a number of cases involving transfer pricing topics in 2014 and early 2015. The Tax Court of Canada (TCC) held for the CRA in the Marzen Artistic Aluminum Ltd. case involving transfer pricing adjustments that disallowed a portion of the marketing fees paid by the Canadian taxpayer to its subsidiary in Barbados. Conversely, taxpayer appeals were allowed in full in the TCC case involving Elk Trading Co. Ltd., in which it was determined that the CRA erred in applying the transactional net margin method to determine how much profit the Canadian taxpayer would have earned had it been dealing at arm's length, without specifying exactly what the arm's length prices should have been in the taxpayer's situation.

## General information

### Tax authority and law

Canada Revenue Agency (CRA); Income Tax Act (ITA) Section 247.

### Regulations, rulings, guidelines

CRA Information Circular 87-2R, International Transfer Pricing.  
CRA Information Circular 87-2R, International Transfer Pricing.  
Canada generally follows the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations as amended on July 2010.

In addition, the CRA has published various Transfer Pricing Memoranda (TPM) that provide general guidance and an overview of the CRA's interpretation of transfer pricing rules.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

Parent companies and subsidiaries are subject to transfer pricing rules, as are companies subject to common control. In addition, certain companies that are deemed not to be dealing at arm's length are also subject to the transfer pricing rules.

### Do the local transfer pricing rules or tax authority allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

Although the transfer pricing rules in section 247 of the ITA do not deal with branches or permanent establishments, the arm's length principle and the OECD transfer pricing guidelines are considered to provide guidance and are generally applied in computing income attributable to a permanent establishment or branch. The CRA will generally use the principles and methods outlined in section 247 and Information Circular 87-2R to determine the allocation of income between a permanent establishment or branch and other parts of the same entity.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the profit split method, and the transactional net margin method (TNMM).

### Priority of methods

In CRA TPM-14, dated October 31, 2012, the CRA announced that in the administration of the ITA regarding transfer pricing matters, it would accept the "most appropriate method" by stating that it endorsed the application of the arm's length principle and the 2010 OECD transfer pricing guidelines (which adopted the "most appropriate method" standard).

### Availability of benchmarking/comparative data

Numerous databases containing detailed information on Canadian public companies are available.

### Are foreign comparables acceptable to local tax authorities?

Yes, foreign comparables are often used to supplement a Canadian comparables set, provided the taxpayer



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conducts additional analysis to account for any differences in geographic markets and ensures that the foreign comparables meet the comparability standards required by the transfer pricing methods used in Canada.

### Services issues

#### Are management fees deductible?

Yes, provided the charge is in accordance with the arm's length principle.

#### Are management fees subject to withholding?

Yes; however, withholding tax is exempted under most of Canada's income tax treaties.

#### May stock option costs be included in the cost base for intercompany services charges?

Stock option costs may be included in the cost base for a Canadian outbound intercompany service charge, but stock option costs are not deductible in Canada.

### Commissionaire arrangements

#### Are commissionaire arrangements allowed?

No.

### Cost sharing agreements

#### Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?

Yes, Canada follows Chapter VIII of the OECD transfer pricing guidelines.

#### Are cost contribution or cost sharing payments deductible?

Yes, payments are currently deductible either under ITA subsection 37(1) if they qualify as scientific research and experimental development or paragraph 18 (1)(a) if they qualify as regular business expenses that are income in nature. Payments are amortizable if capital in nature.

#### Are cost contribution or cost sharing payments subject to withholding tax?

No, in accordance with subparagraph 212(1)(d)(viii) of the ITA.

#### What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?

Canada follows the OECD transfer pricing guidelines. Thus, payments are deductible or amortizable over the useful life of the intangibles.

### Documentation and tax return disclosures

#### Tax return disclosures

Form T106, Information Return of Non-Arm's Length Transactions with Non-Residents, requires disclosure of types of transactions, dollar amounts, non-arm's-length entities and countries involved, methodologies used, and whether the documentation requirements have been met. The reporting person must file Form T106 if the total of reportable transactions (including sales and purchases of tangible property, revenue and expenditures relating to rents, services, financial transactions, increases and decreases of loans/advances/investments, and derivative contract details) for all non-arm's-length nonresidents exceeds CAN \$1,000,000.

#### Documentation requirements

Taxpayers must document pricing decisions in accordance with prudent business practices. Documentation contemporaneous with transactions is required to avoid a potential transfer pricing penalty.

#### Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?

For each taxation year or fiscal period in which a transaction continues from a prior year, and contemporaneous documentation regarding that transaction had previously been provided to the tax authorities, records or documents that completely and accurately describe each material change in the year or period regarding these transactions must be retained. In addition, taxpayers are required to perform - on an annual basis - a "sanity check" on transactions carried on from prior years to identify any material changes and ensure that the transactions continue to be conducted at arm's length prices.

Any new transactions must be fully documented.

#### Deadline to prepare documentation

Documentation must be prepared by the due date for filing the annual income tax return.

#### Deadline to submit documentation

Documentation must be submitted within three months after a written request from the CRA.

### **Deadline to file income tax return**

Income tax returns must be filed within six months after the taxation year end.

### **Acceptable languages for documentation**

Documentation is accepted in both English and French, the official languages of Canada.

### **Transfer pricing adjustments**

#### **Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

Taxpayers are expected to make reasonable efforts to determine and implement arm's length transfer prices in their transactions with nonresident related parties. The arm's length prices should be reflected in the transactions during the course of the year at the time the transactions occur.

When it is recognized that the transfer prices recorded during the year for some or all transactions did not represent arm's length prices, it is acceptable practice to record a compensating year-end adjustment prior to filing the tax returns and after the books have been closed.

### **Self-initiated adjustments**

Adjustments should be made if a taxpayer recognizes that its transfer prices are not arm's length. Adjustments should accrue in the year in which a transaction occurs and be fully documented. Adjustments favorable to the taxpayer are subject to the discretion of the Minister of National Revenue.

Self-initiated adjustments may not be eligible for competent authority relief from double taxation in the case of some countries, including the United States. This is because self-initiated adjustments are not considered equivalent to the actions of a contracting state under the mutual agreement procedure of the relevant tax treaty.

### **Statute of limitations on assessment for transfer pricing adjustments**

For Canadian-controlled private corporations, the limitation period is six years from the date of the initial assessment after return filing; for foreign controlled corporations and public corporations, it is seven years from that date.

### **Taxpayer set-offs for other related-party transactions**

The CRA is reluctant to accept set-offs, and prefers that transactions be "unbundled" and priced separately; a set-off may be allowed for purposes of calculating a

penalty, subject to the documentation requirements. TPM-06 provides information on the CRA's administrative positions regarding bundled transactions.

### **Interest and penalties**

#### **Additional assessment payment deadline**

An additional payment is due when an assessment is issued; interest begins to accrue from the due date of the original tax return. However, provisions exist to allow the deferral of the payment of additional taxes owed.

#### **Penalty on transfer pricing assessment**

A transfer pricing penalty of 10 percent of the total transfer pricing adjustment may be imposed if the adjustment exceeds a threshold.

#### **Is interest charged on penalties?**

Yes the Canadian tax authorities will charge interest on penalties levied.

#### **Reduction in transfer pricing penalties**

No penalty is imposed if the taxpayer made a reasonable effort to determine an arm's length price, including the preparation of contemporaneous documentation. TPM-09 provides information on the CRA's administrative positions on the meaning of reasonable efforts.

#### **Is interest payable when a refund is due to the taxpayer?**

Interest is payable by the government on refunds of overpaid taxes at rates that are set for each calendar quarter.

### **Advance Pricing Agreements**

#### **Are APAs available?**

Yes, under Information Circular 94-4R (International Transfer Pricing: Advance Pricing Arrangements (APAs)), unilateral, bilateral, and multilateral APAs are available. The CRA issued Information Circular 94-4R (Special Release), "Advance Pricing Arrangements for Small Businesses," on March 18, 2005, allowing only unilateral APAs for small businesses.

#### **APA filing fee**

A nonrefundable user charge for each accepted APA request or renewal to cover estimated out-of-pocket costs, such as travel and accommodation expenses, is imposed. Any amount paid in excess of actual costs will be refunded to the taxpayer. For small-business APAs, a flat fee of CAN \$5,000 will be charged.

**APA term of agreement**

Depending on the proposal, the industry, and the transactions involved, the term is usually three to five years, but may vary depending on facts, circumstances, and the resolution of the particular case. Taxpayers can roll back only to non-statute-barred taxation years that are not under audit or for which a documentation request letter has not been received. Rollbacks are not permitted for any unilateral APAs, including small-business APAs

**Competent authority****When may taxpayer submit tax adjustment to Competent Authority (CA)?**

A request may be submitted after the proposed adjustment is communicated to the taxpayer in writing.

For certain treaties, there are also specific notification requirements.

**May CA develop new settlement positions?**

The CA may negotiate an agreement based on new settlement positions, unless an adjustment has been determined by CRA Appeals or the courts. CA cannot settle on an amount higher than the amount initially reassessed.

**May taxpayer go to CA before paying tax?**

Yes, a taxpayer may go to CA after a proposed adjustment is communicated in writing to the taxpayer. There are also rules allowing full or partial deferral of payment of the taxes in dispute.



# Chile

## What's new

Chile enacted tax reform legislation on September 29, 2014, introducing changes to the transfer pricing regime, including changes to the deductibility of payments to related parties abroad, an increase in the additional penalty tax rate from 35 percent to 40 percent, and changes to the tax treatment of transactions derived from business restructurings with related parties abroad. Most of these amendments will be in force on January 1, 2015.

## General information

### Tax authority and law

Internal Revenue Service (Servicio de Impuestos Internos – SII); Article 41 E of Income Tax Law. It's worth mentioning that the SII has created a special Transfer Pricing Unit.

### Regulations, rulings, guidelines

The transfer pricing regime is embodied in the following resolutions:

- Resolution N°14 (January 2013) introduced the obligation to submit a transfer pricing affidavit (Form #1907), when applicable.
- Resolution N°67 (June 2013) establishes the procedure to rectify values or results.
- Resolution N° 68 (June 2'13) incorporates guidance for the submission of APA applications.
- A supplement to Form 1907 (the transfer pricing affidavit) was issued recently, with specific instructions.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

Article 41 E of the Income Tax Law specifies that cross-border transactions between related parties and tax havens will be subject to the transfer pricing rules. Parties are considered related:

- When an entity or company "is directly or indirectly involved in the management, control, capital, profits or income of the other party."
- "...agency, branch or any other form of permanent establishment" with any related party.
- Any transaction carried out with "parties that are resident, domiciled, established, or incorporated in a country or territory included in the list referred to in number 2 of Article 41 D," except if a significant tax information exchange agreement is signed or in force with that country.
- Natural persons that are "spouses, directly related or have kinship up to the fourth degree included."

- "When a party carries out one or more transactions with a third party that, in turn, directly or indirectly carries out with a related party of that party one or more transactions, which are similar or equal to the transactions that it carries out with the former one, regardless of the capacity in which the third party or parties are involved in such transactions."

### Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

Yes.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the profit split method, the net margin method, and residual methods. *The residual methods are used only in exceptional cases, if none of the other methods is applicable, and provided the taxpayer offers justification for the exception.*

### Priority of methods

Taxpayers should use the most appropriate method considering the characteristics and circumstances of every case, the advantages and disadvantages of every method, its applicability to the type of transactions and the circumstances of every case, the availability of information, and the existence of comparable transactions.

### Availability of benchmarking/comparative data

Limited local data is available. Comprehensive information exists for particular industries, such as banking and insurance.

### Are foreign comparables acceptable to local tax authorities?

Yes.

## Services issues

### Are management fees deductible?

Yes, as long as there is a direct and verifiable relationship between the need for the service and the local taxable income.



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**Are management fees subject to withholding?**

Yes, payments made to entities or individuals not domiciled in Chile for services rendered abroad are subject, without any deductions, to withholding as the remuneration is paid, credited, or placed at the beneficiary's disposal. Exemptions apply for residents of countries that have entered into double taxation treaties with Chile.

**May stock option costs be included in the cost base for intercompany services charges?**

Yes.

**Commissionaire arrangements****Are commissionaire arrangements allowed?**

Yes.

**Cost sharing agreements****Are cost contribution arrangements or cost sharing agreements accepted?**

Yes, as long as it can be demonstrated that the cost is reasonably attributed, is needed to generate local taxable income, documentation is available, and no there is no duplication.

**Are cost contribution or cost sharing payments deductible?**

Yes.

**Are cost contribution or cost sharing payments subject to withholding tax?**

Payments would most likely be subject to withholding tax.

**What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?**

No information on this subject is available.

**Documentation and tax return disclosures****Tax return disclosures**

A transfer pricing return must be submitted in June on an annual basis (Form 1907). The following entities are subject to this requirement:

- Companies registered as medium-sized or large taxpayers;
- Companies with more than CLP 500 million in intercompany transactions; and
- Companies with operations with entities resident in tax havens.

**Documentation requirements**

Contemporaneous documentation must be prepared and must be available in case the tax authorities request it. This

documentation should be prepared in most cases before filing Form 1907, because the form requires taxpayers to declare the method applied, results obtained, etc., which must be available for the tax authorities upon request.

**Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

A transfer pricing return must be submitted each year. The transfer pricing study must also be maintained by the taxpayer in case the SII requests it. There are no specific requirements regarding comparable companies' information or refreshing of searches. All documentation must be prepared for the entire commercial year (January-December), because all companies in Chile have a January-December fiscal year.

**Deadline to prepare documentation**

Chilean law does not specifically require the preparation of a transfer pricing study, but taxpayers must keep all documentation necessary to support the arm's length nature of their intragroup transactions. The documentation must be available by the transfer pricing return filing date (June of each year). The transfer pricing rules also provide penalty protection for taxpayers that provide supporting documentation regarding their transfer prices.

**Deadline to submit documentation**

The transfer pricing study must be submitted upon request.

**Deadline to file income tax return**

The income tax return must be filed in April on an annual basis.

**Acceptable languages for documentation**

Documentation must be in Spanish.

**Transfer pricing adjustments****Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

There is no specific statutory provision regarding this issue.

**Self-initiated adjustments**

Adjustments are permitted.

**Statute of limitations on assessment for transfer pricing adjustments**

The general statute of limitations is three years from the date of the infraction or breach. The period is extended to six years when a tax return has not been filed, or in cases of fraud.

**Taxpayer set-offs for other related-party transactions**

There is no formal provision in this regard.

**Interest and penalties**

**Additional assessment payment deadline**

The general rules for administrative assessments apply. Interest is applicable from the date the tax would have been payable.

**Penalty on transfer pricing assessment**

If a taxpayer cannot prove that transactions with related parties were carried out at arm's length, the Chilean IRS will redetermine the prices to calculate the tax due. The difference between the two prices will be subject to additional penalty tax, and a fine equal to 5 percent of the omitted amount will also be imposed (for a total of 40 percent plus interest).

**Is interest charged on penalties?**

Yes.

**Reduction in transfer pricing penalties**

There is no provision in this regard.

**Is interest payable when a refund is due to the taxpayer?**

The refund amount will be subject only to an inflation adjustment.

**Advance Pricing Agreements (APAs)**

**Are APAs available?**

Yes. Resolution 68 (21 June 2013) establishes the relevant requirements and procedures.

**APA filing fee**

There is no filing fee for an APA application.

**APA term of agreement**

An APA will be in force for the year in which the APA is entered into and the following three years.

**Competent authority**

**When may taxpayer submit tax adjustment to Competent Authority (CA)?**

A request may be submitted after the proposed adjustment is communicated to the taxpayer in writing.

**May CA develop new settlement positions?**

There is no formal procedure.

**May taxpayer go to CA before paying tax?**

There is no formal procedure.



# China

## What's new

China has been actively involved in the OECD's BEPS initiative, and is updating and revising transfer pricing and other tax regulations to take into account the expected changes. The updates are expected to start with a revised Circular 2 (Implementation Measures for Special Tax Adjustments (Trial Implementation)) that is expected early in 2015, and will include new sections on monitoring and management, intangibles, and group services.

The APA report for 2013 – released in December 2014 -- showed there was an increase in the number of APAs concluded in 2013, exceeding the previous record for APAs concluded in one year. However, 2015 APAs may be limited, given that the State Administration of Taxation's (SAT's) attention has been focused on the BEPS project, and the conclusion of APAs will be limited until changes in tax laws and regulations under the BEPS Action Plan is completed. The SAT's release of bulletin 54 has also resulted in an increase in the oversight of outbound royalties and service fees.

## General information

### Tax authority and law

Ministry of Finance, State Administration of Taxation (SAT); article 36 of the Tax Collection and Administration Law; articles 41 to 48 of the PRC's Enterprise Income Tax (EIT) Law (Chapter 6, Special Tax Adjustments) that entered into effect on January 1, 2008.

### Regulations, rulings, guidelines

- Articles 109 to 115 and articles 121 to 123 of the implementation rules for the new EIT Law govern the transfer pricing regime;
- Articles 51 to 56 of the implementation rules for the Tax Collection and Administration Law;
- Circular of the State Administration of Taxation on the Issuance of the Implementation Measures for Special Tax Adjustments (Trial Implementation) (Guo Shui Fa [2009] No. 2);
- Circular of the State Administration of Taxation on Printing and Issuing the Annual Report on the Affiliated Transactions of Enterprises of the People's Republic of China (Guo Shui Fa [2008] No. 114);
- Circular of the Ministry of Finance and the State Administration of Taxation of Notice on the Tax Deductibility of Interest Expense Paid to Related Parties (Cai Shui [2008] No. 121);

- Circular of the State Administration of Taxation on the Issuance of Requirements of Annual Reporting Forms for Related-Party Transactions of Enterprises (2008 version) (Guo Shui Han [2009] No. 72);
- Circular of the State Administration of Taxation on Collection of 2008 Enterprise Income Tax (Guo Shui Han [2009] No. 134);
- Circular of the State Administration of Taxation on the Notice on Relevant Issues Concerning Enhancement of the Follow-up Administration on Transfer Pricing Adjustments (Guo Shui Han [2009] No. 188);
- Circular of the State Administration of Taxation on Strengthening Supervision and Investigation of Cross-Border Related-Party Transactions (Guo Shui Han [2009] No. 363);
- Circular of the State Administration of Taxation on Notice regarding the Status of Anti-tax Avoidance Efforts in 2009 (Guo Shui Han [2010] No. 84);
- Circular of the State Administration of Taxation on Notice on Conducting Examinations of Contemporaneous Documentation (Guo Shui Han [2010] No. 323);
- Internal Work Rules of Special Tax Adjustments (Trial) (Guo Shui Fa [2012] No. 13)
- Panel Review Rules for Significant Special Tax Adjustment Cases (Trial) (Guo Shui Fa [2012] No. 16);
- China Advance Pricing Arrangement Annual Report (2009-2012);
- China Advance Pricing Arrangement Annual Report (2013);
- Circular of the State Administration of Taxation on Organizing the Work of Tax Collection (Shui Zong Fa [2014] No. 78)
- Circular of the General Office of the State Administration of Taxation on the Anti-Tax Evasion Investigation of External Payment of Large Expenses (Shui Zong Ban Fa [2014] No.146)
- Announcement of the State Administration of Taxation on Issues concerning the Monitoring and Administration of Special Tax Adjustments (Announcement of the State Administration of Taxation [2014] No.54)
- China Country Practice Paper (Chapter 10.2) as part of the UN Practice Manual on Transfer Pricing for Developing Countries

The SAT is expected to amend SAT Circular 2, the transfer pricing guidelines, in 2015. There are also likely to be other regulations, rulings, and guidelines issued in response to the OECD's BEPS project.



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### **Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?**

China has adopted a broad definition of associated enterprises, with a strong emphasis on control. Entities with shareholdings of 25 percent or more in another entity are defined as related parties, as well as entities with significant control over the taxpayer's senior management, purchases, sales, production, capital financing, and the intangibles and technologies required for the operation.

### **Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?**

Yes. According to Article 41 of the EIT law, business transactions between Chinese enterprises (which are believed to include resident enterprises and nonresident enterprises, and permanent establishments of nonresident enterprises) and their related parties should comply with the arm's length principle.

According to Circular Guo Shui Fa [2010] No.19, if it is determined that an entity has a permanent establishment in China, the permanent establishment must maintain sound accounting books and records to calculate the enterprise income tax by following the principle that taxable income must be in line with the permanent establishment's functional and risk profile. For PEs without sound and complete accounting books and records, the tax authorities can deem the taxable income based on certain methods provided by the tax rules. In practice, the deemed income method is commonly used.

### **Methods and comparables**

#### **Acceptable methods**

The comparable uncontrolled price method, the resale price method, the cost plus method, the transactional net margin method, the profit split method, and other methods in compliance with the arm's length principle according to article 111 of the implementation rules to the new EIT Law, and to article 23-27 of Circular of the State Administration of Taxation on the Issuance of the Implementation Measures for Special Tax Adjustments (Trial Implementation) (Guo Shui Fa [2009] No. 2).

#### **Priority of methods**

There is no priority of methods; the SAT will accept a reasonable method that follows the arm's length principle.

### **Availability of benchmarking/comparative data**

The tax authorities generally require the use of Chinese comparable companies (listed on the Shanghai and Shenzhen stock markets) but may also accept foreign comparable companies if necessary. In Circular Guo Shui Han [2005] No. 239, the tax authorities state that they could use as a possible resource the BvD Osiris database during a transfer pricing audit. Based on the implementation regulations, the tax authorities may use both public and nonpublic information to analyze whether related-party transactions conform to the arm's length principle.

### **Are foreign comparables acceptable to local tax authorities?**

If the tax authorities are convinced that no domestic comparables are available, taxpayers may use foreign comparables. However, the degree of acceptance is subject to the local tax authorities' discretion. Under Guo Shui Han [2005] 239, taxpayers searching for comparable companies should use the BvD Osiris database.

### **Services issues**

#### **Are management fees deductible?**

According to article 49 of the implementation rules to the EIT law, management fees are not deductible. Fees for specific services received may be deductible, but the tax authorities will likely request extensive documentary evidence on the services being provided, the reasonableness of the charging basis, and benefits derived by the PRC entity from such services. In 2014 the SAT made comments regarding six tests that should be considered before making outbound service fee payments, and local tax bureaus were advised to request supporting information from companies making outbound payments for royalties and intragroup services.

#### **Are management fees subject to withholding?**

Service fees may be subject to China enterprise income tax based on the portion of the fee attributable to a China source and the profit generated from the China-source revenue. In practice, the payor will be requested to withhold the relevant income tax and indirect tax (value added tax or business tax).

Effective 1 January 2008, service fees for services rendered both in and outside the PRC are subject to business tax, generally at a 5 percent rate. However, effective 1 January 2012, China launched a pilot value added tax (VAT) reform program that initially applied to transportation and modern service industries in Shanghai, and was rolled out nationwide effective 1 August 2013. Effective 1 January 2014, the program was extended to railway transportation and postal services. All types of services are expected to be covered by the program by the end of 2015.

Fees for services rendered by overseas suppliers will be subject to the applicable VAT rate (11 percent for transportation, postal, and basic telecommunication services, 17 percent for leasing of moveable and tangible goods, and 6 percent for certain specified modern services and value-added telecommunication services). Services outside these categories are still subject to business tax.

As the rules and practices are still evolving, taxpayers should follow up on the development of relevant rules and seek clarification from advisors and the relevant tax authorities.

Fees for services rendered by overseas suppliers will be subject to the applicable VAT rate (11 percent for transportation services, 17 percent for leasing of moveable and tangible goods, and 6 percent for certain specified modern services).

Effective 1 January 2014, the pilot program will be extended to railway transportation and the postal service with a tax rate of 11 percent.

However, many issues arose during the program's initial implementation stage that must be further clarified. Affected taxpayers should follow up on the development of relevant rules and seek clarification from the relevant tax authorities.

#### **May stock option costs be included in the cost base for intercompany services charges?**

China has no formal regulations on this issue. In practice, stock option costs are not included in the cost base for intercompany services charges, unless they are included in the local statutory financial statements.

#### **Commissionaire arrangements**

##### **Are commissionaire arrangements allowed?**

China has no specific provision on this issue. However, a foreign principal would likely be deemed to have a permanent establishment in China if a commissionaire structure were adopted.

#### **Cost sharing agreements**

##### **Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?**

Yes. Chapter 7 of Circular of the State Administration of Taxation on the Issuance of the Implementation Measures for Special Tax Adjustments (Trial Implementation) (Guo Shui Fa [2009] No. 2) provides guidance on cost sharing arrangement administration in China. An enterprise is required to report the cost sharing arrangement to the SAT within 30 days of the arrangement being concluded, and the arrangement should comply with the cost-revenue matching principle. Generally, the tax authorities prefer R&D arrangements; currently, service cost sharing arrangements are acceptable for group procurement and group marketing activities only.

##### **Are cost contribution or cost sharing payments deductible?**

Yes, provided the arrangement complies with the arm's length principle and relevant supporting documents are filed with the tax authorities upon request, in accordance with article 112 of the implementation rules to the EIT law. However, the allocated costs may become nondeductible if there is a lack of commercial purpose and economic substance; failure to comply with the arm's length principle; failure to maintain documentation; or if the enterprise's operating period is less than 20 years from the signing of the cost sharing arrangement.

##### **Are cost contribution or cost sharing payments subject to withholding tax?**

China has no specific provisions on this issue.

##### **What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?**

Buy-in payments should be treated in accordance with the relevant provisions for asset purchase.

## Documentation and tax return disclosures

### Tax return disclosures

The annual income tax return package includes a set of nine related-party transaction disclosure forms requiring disclosure of information on associated parties, related-party transactions (including sales and purchases, services, financing, transfers of tangible and intangible assets), CFCs, and outbound payments.

### Documentation requirements

Taxpayers with related-party transactions are required to prepare contemporaneous documentation, subject to the following exemption criteria: (1) Foreign direct or indirect ownership is less than 50 percent and all related-party transactions are with Chinese resident companies; (2) related-party purchase/sale of goods transactions are less than RMB 200 million (when toll manufacturing transactions are determined based on customs declared import/export prices of consigned materials and finished goods) and all other related-party transactions are less than RMB 40 million (including services, interest, and royalties), excluding transactions covered by APAs or CSAs; or (3) the taxpayer has an APA with the tax authorities.

Guo Shui Han [2009] No. 363 requires loss-making enterprises with limited functions and risks, such as toll and contract manufacturers, limited-risk distributors, or contract R&D service providers to prepare and submit contemporaneous documentation and other relevant materials to justify the structuring of related-party transactions and arm's length nature of their profits to the relevant in-charge tax bureau. Regardless of whether these companies exceed the minimum threshold of documentation requirement under Guo Shui Fa [2009] No. 2, they are required to prepare and submit contemporaneous documentation by June 20 of the following year when the company incurs losses.

**Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

Taxpayers that meet the threshold for the preparation of contemporaneous transfer pricing documentation must submit a report on their related-party transactions and prepare the contemporaneous transfer pricing documentation in an annual income tax return.

Contemporaneous transfer pricing documentation should be a complete report under Guoshuifa [2009] No. 2, including organizational structure, overview of business operations, information regarding related-party transactions, comparability analysis, and selection and application of transfer pricing methods.

The comparable companies should be updated according to the company's actual related transactions conditions during the year.

### Deadline to prepare documentation

For companies that meet the requirements of Guo Shui Fa [2009] No. 2, documentation should be prepared by the filing date of the annual income tax return (31 May).

For companies that meet the requirements of Guo Shui Han [2009] No. 363, documentation should be prepared by June 20 of the following year when the company incurs losses.

### Deadline to submit documentation

Taxpayers are required to submit documentation within 20 days of a request by the tax authorities.

If taxpayers are in the follow-up monitoring period after being investigated and assessed, they are required to submit documentation before June 20 of the following year.

Companies that meet the requirements of Guo Shui Han [2009] No. 363 should furnish the documentation voluntarily to the tax bureau by the deadline, as specified in the circular.

### Deadline to file income tax return

The filing date of the annual income tax return is 31 May.

### Acceptable languages for documentation

Documentation must be in Chinese.

### Transfer pricing adjustments

**Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

Transfer pricing adjustments would not necessarily be reflected in financial statements, whereas the corresponding adjusted tax amount should be regarded as the tax liability and be reflected in the financial statements.

#### Self-initiated adjustments

In practice, upward adjustments to the tax paid are permitted when filing the annual income tax return after closing of the accounts.

#### Statute of limitations on assessment for transfer pricing adjustments

The EIT law confirms that the statute of limitations on assessments for transfer pricing adjustments is 10 years.

#### Taxpayer set-offs for other related-party transactions

When transactions between related parties are offset, the tax authorities in principle will restore the transactions and evaluate each related-party transaction separately when conducting a comparability analysis and making adjustments.

### Interest and penalties

#### Additional assessment payment deadline

Payment is due within the time frame set by the governing tax bureaus, normally between 15 days and one month. An extension for payment (for a maximum of three months) will be subject to approval by the governing tax bureau at the provincial level.

#### Penalty on transfer pricing assessment

Penalties apply for failure to file the related-party transaction disclosure forms (RMB 2,000 – RMB 10,000); for refusing to provide contemporaneous documentation and other information on related-party transactions, or providing false or incomplete information (RMB 10,000 – RMB 50,000). Transfer pricing adjustments are subject to interest (based on the RMB benchmark lending rate published by the People's Bank of China) plus penalty interest of 5 percent if the taxpayer has not complied with the contemporaneous documentation requirements.

#### Is interest charged on penalties?

According to the EIT law, when the tax authorities make tax adjustments for enterprises, they will impose interest charges for the underpaid tax computed on a daily basis from June 1 following the tax year in which the tax is attributed, through the date when the additional tax is paid.

#### Reduction in transfer pricing penalties

The 5 percent penalty interest may be waived if contemporaneous documentation is prepared.

#### Is interest payable when a refund is due to the taxpayer?

Article 51 of the Tax Collection and Administration Law allows taxpayers to apply for interest on overpaid tax and the interest is calculated based on the prevailing bank interest rate, within three years from the date of tax payment. In practice, it is extremely difficult and rare to apply for a refund of overpaid tax, and the tax authorities will more likely offset the overpaid tax against the current and future tax payables without paying interest to the taxpayer.



## **Advance Pricing Agreements (APAs)**

### **Are APAs available?**

APAs are allowed under Chapter 6 of the State Administration of Taxation on the Issuance of the Implementation Measures for Special Tax Adjustments (Trial Implementation) (Guo Shui Fa [2009] No. 2). An APA generally includes six phases, including pre-filing meeting, formal application, review and evaluation, negotiations, signing of the agreement, and monitoring and execution. APAs may be unilateral, bilateral, or multilateral. Since the issuance of China's first Advance Pricing Arrangement Annual Report [2009] in January 2011, the Chinese tax authorities have signaled their willingness to accept more APA applications going forward. The report has become an annual publication, most recently with the annual report for 2013, issued in December 2014.

### **APA filing fee**

There is no fee for filing an APA request.

### **APA term of agreement**

Generally three to five years forward; rollback is available subject to approval from the tax authorities.

## **Competent authority**

### **When may taxpayer submit tax adjustment to Competent Authority (CA)?**

After obtaining approval from the tax authorities of the treaty partner, the affected enterprise will report the adjustment, including the basis for the adjustment, contents, covered time period, and detailed calculation, in writing to its governing tax bureau. After review, the governing tax bureau will report the case to the SAT, which will deal with it accordingly. The enterprise should apply for corresponding adjustments within three years from the date the enterprise or its related parties receive the transfer pricing adjustment notice. Late applications will not be entertained.

### **May CA develop new settlement positions?**

There is no formal procedure. However, CA may develop a new position after a tax administrative or judicial review. According to Guo Shui Han [2010] No. 84, CA negotiations are listed as a means of reaching a settlement in the tax authority's 2010 anti-avoidance tax work arrangement.

### **May taxpayer go to CA before paying tax?**

within the prescribed time period. If payment is delayed for valid reasons, an application must be filed within the prescribed time period. Upon approval, tax payment may be postponed for no more than three months.

# Colombia

## What's new

Under the Colombian transfer pricing regime in force, taxpayers subject to the income tax rules and permanent establishments of nonresident individuals or legal entities who engage in transactions with foreign related parties, related parties located in free-trade zones, or individuals or entities located, resident, or domiciled in tax havens are required to determine for income tax purposes their ordinary and extraordinary income, costs, deductions, assets and liabilities, considering for those transactions the arm's length principle..

In cases of business restructurings, the redeployment of functions, assets, and risks, between taxpayers and their related parties located abroad must be compensated in compliance with the arm's length principle.

It is important to point out that transactions carried out with individuals or entities domiciled in tax havens are regulated by the Colombian transfer pricing regime as of FY 2014.

## General information

### Tax authority and law

Colombia Tax Office (Dirección de Impuestos y Aduanas Nacionales-DIAN); Book 1, Title I, Chapter XI, Articles 260-1 to 260-11, 319, 20-2 of the Tax Code.

### Regulations, rulings, guidelines

Tax Code Articles 260-1 to 260-11. Decree 3030 of 2013. Decree 2193 of 2013 (tax havens list).

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

Article 260-2 of the Tax Code provides the definition of related parties, which includes entities with direct or indirect ownership of more than 50 percent.

Administrative, economic, or commercial (sales) control variables also apply. Transactions with related parties located in Free Trade Zone, and transactions with companies located in tax havens are subject to the transfer pricing rules.

### Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

In accordance with Article 20-2 of the Colombian Tax Code and Decree 3026 of 2013, permanent establishments and branches have to prepare a factual analysis of functions, assets, risks, and key personnel. Permanent establishments must attribute their fiscal benefits based on the aforementioned analyses for income tax purposes, keep that document, and make it available in case of a request by the tax authorities.

## Methods and comparables

### Acceptable methods

Under Article 260-3 of the Colombian Tax Code, there are five possible methods: the comparable uncontrolled price (CUP) method, the resale price method (RPM), the cost plus method (CPM), the transactional net margin method (TNMM), and the profit split method and its residual version.

### Priority of methods

To determine which of the acceptable methods is the most appropriate, the following criteria must be used: (i) the facts and circumstances of the transactions, based on a detailed functional analysis; (ii) the availability of reliable information, particularly on transactions between independent parties; (iii) the comparability of the controlled transactions with independent parties; and (iv) the reliability of comparability adjustments that may be necessary to remove significant differences concerning transactions between related and independent parties.

### Availability of benchmarking/comparative data

There is local public information about private companies, but no formal position from the tax authorities on its use as benchmark. Decree 3030 provides that priority must be given to internal comparables, if available.

### Are foreign comparables acceptable to local tax authorities?

Yes. The tax authorities' position is that the information must be public.

## Services issues

### Are management fees deductible?

Yes. The following formal requirements apply: (i) there must be a written agreement; (ii) the agreement must be registered, when necessary; and (iii) tax must be withheld when required.



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However, compliance with the formal requirements does not guarantee that expenses for services will be deemed deductible for income tax purposes. In addition, the payments must meet the arm's length principle and the services must be necessary, proportional to the taxpayer's activities, and must generate an actual benefit for the taxpayer.

#### **Are management fees subject to withholding?**

According to the tax regulations in effect, these services are deemed to be rendered in the national territory of Colombia, regardless of where they were actually rendered. A single withholding rate of 10 percent applies to these types of payment, and they are 100 percent deductible.

#### **May stock option costs be included in the cost base for intercompany services charges?**

There is no formal provision in this regard.

#### **Commissionaire arrangements**

##### **Are commissionaire arrangements allowed?**

Yes.

#### **Cost sharing agreements**

##### **Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?**

Yes.

##### **Are cost contribution or cost sharing payments deductible?**

Yes, but only if the payments meet the general deductibility requirements: (i) the expenditure must be real; (ii) expenditure causality; (iii) spending needs; and (iv) proportionality of the expenditure. Paragraph 2, Article 260-3 of the Tax Code, Article 5 of Decree 3030 of 2013, and Article 107 of the Tax Code.

##### **Are cost contribution or cost sharing payments subject to withholding tax?**

Yes, depending on the type of service.

##### **What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?**

Payments are deductible or amortizable if tax has been withheld.

#### **Documentation and tax return disclosures**

##### **Tax return disclosures**

Article 260-9 of the Tax Code requires taxpayers to file an annual informative transfer pricing return, which must

include transactions carried out with related parties located abroad, related parties in free trade zones, and individuals or companies located in tax havens. The return is usually submitted in July, depending on the taxpayer's tax ID.

##### **Documentation requirements**

Transfer pricing supporting documentation (study) must be prepared and filed if the total amount of the taxpayer's transactions with related parties located abroad or in free trade zones exceeds 61,000 tax unit values (U.V.T.) (approx. USD 840,000), only for those transactions that in the fiscal year exceed the amount equivalent to 32,000 U.V.T. (approx. USD 440,000).

Taxpayers also must document transactions carried out with individuals or entities located in tax havens if the total amount of those transactions exceeds 10,000 UVT (approx. USD 137,000).

The supporting documentation must be filed with the tax authorities by July, depending on the taxpayer's ID.

##### **Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

Taxpayers subject to the transfer pricing regime must prepare and file a transfer pricing report annually. The comparable companies used must have financial information for the same fiscal period as the taxpayer. However, previous years of information might be used for the comparables, as long as such use is justified.

##### **Deadline to prepare documentation**

According to Articles 23 and 24 of Decree N° 2623, dated December 2014, both the transfer pricing study and the informative return must be filed the same day in July. The exact due date depends on the taxpayer's Colombian Tax ID.

##### **Deadline to submit documentation**

According to Articles 23 and 24 of Decree 2623, dated December 2014, both the transfer pricing study and the informative return must be filed the same day in July. The exact due date depends on the taxpayer's Colombian Tax ID.

### Acceptable languages for documentation

Documentation must be prepared in Spanish; however, some appendixes could be submitted in English, but the tax authorities could request an official translation.

### Transfer pricing adjustments

**Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

All financial information used for transfer pricing purposes must be in accordance with Colombian generally accepted accounting principles; therefore, there could be some differences between financial and tax information. Differences are accepted because for fiscal purposes, some deductions or other concepts do not apply.

### Self-initiated adjustments

There is no formal procedure.

### Statute of limitations on assessment for transfer pricing adjustments

The general rule is two years from the date of filing the income tax return.

### Taxpayer set-offs for other related-party transactions

There is no formal provision in this regard.

### Interest and penalties

#### Additional assessment payment deadline

Additional payment is due when the assessment is issued; interest is assessed from the due date of the original filing.

#### Penalty on transfer pricing assessment

Ordinary penalties of up to 160 percent of unpaid tax may apply.

A special regime for transfer pricing penalties applies to late submissions of the transfer pricing disclosure or supporting documentation, inconsistencies or omissions in the information, and recidivism, among others.

#### Is interest charged on penalties?

No.

#### Reduction in Transfer Pricing Penalties

Decree 3030 provides that if taxpayers self-assess any penalties, the inconsistencies, omissions, or large filings will not be taken into account for purposes of the application of the penalty for repeated infractions.



#### Is interest payable when a refund is due to the taxpayer?

Yes.

### Advance Pricing Agreements (APAs)

#### Are APAs available?

APAs have been available since 2004.

#### APA filing fee

The filing fee for an APA application has not been established.

#### APA term of agreement

The total term of an APA is five years. The APA will be effective in the year the agreement is entered into, the previous year, and the three subsequent fiscal years. The tax authorities will have nine months immediately after the filing of a request for a unilateral agreement to accept or reject the request.

### Competent authority

#### When may taxpayer submit tax adjustment to competent authority (CA)?

There is no formal procedure.

#### May CA develop new settlement positions?

There is no formal procedure.

#### May taxpayer go to CA before paying tax?

There is no formal procedure.

# Costa Rica

## What's new

No new regulations have been added to the Costa Rica transfer pricing rules. Given that 2014 is the first fiscal year to which the transfer pricing rules apply, it is foreseeable that 2015 will bring new regulations and new clarifications from the Costa Rica tax authorities. A draft of the requirements to be included in the Transfer Pricing Informative Return has been prepared by the Costa Rica Tax Administration, but the draft had not been released at the time of this guide's publication.

## General information

### Tax authority and law

The competent authority that deals with all tax issues is the General Tax Directorate (Dirección General de Tributación), under the supervision of the Ministry of the Treasury. The transfer pricing law is found in Executive Decree No. 37898-H, issued by the ministry on September 13, 2013.

### Regulations, rulings, guidelines

No regulations have been issued under Decree No. 37898-H, issued by the Ministry of the Treasury. The Income Tax Law, as well as the Costa Rican Tax Code, is also applicable in the absence of a specific provision.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

The definition of control for transfer pricing purposes refers to the parties that participate directly or indirectly in the direction, control, or capital of the taxpayer, or when the same entity/individual participates directly or indirectly in the direction, control, or capital of both taxpayers, or any other objective cause that may systematically affect decisions and pricing. Transfer pricing rules also apply to beneficiaries of the Free Trade Zone regime and exclusive distributors located on Costa Rican territory.

### Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a PE or branch?

There is no written regulation that either allows or prohibits the use of transfer pricing analyses to attribute profits to a PE or branch.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price method (CUP), the resale price method, the cost plus method, the profit split method, and the transactional net margin method (TNMM).

### Priority of methods

The best (most reliable) method is required.

### Availability of benchmarking/comparative data

Multiple databases containing sufficient qualitative and quantitative information to identify comparables exist, and information from those databases is acceptable to the local tax authorities.

### Are foreign comparables acceptable to local tax authorities?

Ordinarily, comparables should be derived from the geographic market in which the tested party operates. Geographic market is any geographic area in which the economic conditions are substantially the same, and may include multiple countries. Adjustments may be necessary to render comparables adequate for the conditions in the market where the tested party operates. As long as they serve as reasonable comparables, they should be acceptable to the tax authorities.

## Services issues

### Are management fees deductible?

In accordance with the Costa Rican Tax Code, any expense that is useful, pertinent, and necessary for creating taxable income will be deductible for tax purposes, as long as it is supported by proper accounting records.

### Are management fees subject to withholding?

Yes, but the applicable rate will differ, depending on the type of service that is rendered, and taking into considering any applicable double income tax treaties.

### May stock option costs be included in the cost base for intercompany services charges?

There are no specific regulations that deal with stock options, but applying the principles of the Income Tax Code, it may be concluded that as long as such stock options may be construed as necessary, pertinent, and useful for creating the taxable income, they may be included in the cost base for intercompany services charges.



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### Commissionaire arrangements

#### Are commissionaire arrangements allowed?

Commissionaire arrangements are not forbidden, therefore, under section 28 of the Constitution of Costa Rica, they are allowed, but every arrangement should be analyzed on a case-by-case basis to eliminate any possible contingency.

### Cost sharing agreements

#### Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?

CCAs are not common in Costa Rica, but they are not forbidden. However, they would require a case-by-case analysis to confirm their validity.

#### Are cost contribution or cost sharing payments deductible?

Yes, as long as the payments are useful, pertinent, and necessary for creating taxable income, and proper records of the payments are kept.

#### Are cost contribution or cost sharing payments subject to withholding tax?

Payments should be analyzed on a case-by-case basis, because depending on the type of service or product that is being jointly contributed to, withholding tax may or may not apply, and the applicable tax rate may vary.

#### What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?

Because CCAs and CSAs are not common in Costa Rica, such payments should be analyzed on a case-by-case basis. In general terms, payments may be construed as royalty payments and therefore taxed at a 25 percent rate, unless a double tax treaty is applicable.

### Documentation and tax return disclosures

#### Tax return disclosures

The following taxpayers are obligated to prepare a tax return disclosure:

- Those who engage in domestic and international intercompany transactions; and
- Those classified as large taxpayers, large regional companies, individuals or companies that perform their activities under the free zone regime, or any individual or company that perform transactions between related parties.

### Documentation requirements

The required documentation should be sufficient to demonstrate to the tax authorities that the intercompany transactions comply with the arm's length principle.

#### Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?

No, there are no annual requirements. Considering that the economic conditions under which a set of comparables was extracted may change, then to support the soundness of the comparables, it would be advisable to refresh them.

#### Deadline to prepare documentation

There is no deadline for the preparation of documentation; however, documentation must be available to the tax authorities at the time an audit is performed or as requested.

#### Deadline to submit documentation

There is no deadline to submit documentation, but it should be available in the event of an audit by the tax authorities or as requested.

#### Deadline to file income tax return

In general terms, the Costa Rican fiscal year runs from October 1 through September 30, and the income tax return must be filed within two months and 15 days after the end of the tax year. Subsidiaries of foreign companies may request permission to use the parent company's fiscal year in filing their returns. In addition, certain agricultural companies may use the calendar year or other fiscal year.

#### Acceptable languages for documentation

Even though the transfer pricing decree does not specify the language that must be used for documentation, all documentation filed with the Costa Rican tax authorities must be filed in Spanish or with an official translation performed by an official translator.

### Transfer pricing adjustments

#### Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?

It is not specified on the local regulations, but any difference between financial and tax accounting must be reconciled.

#### **Self-initiated adjustments**

Costa Rican's regulations do not provide for self-initiated adjustments, but in general terms, taxpayers are allowed to amend their tax returns.

#### **Statute of limitations on assessment for transfer pricing adjustments**

The statute of limitations for corporate income tax applies -- four years if the company had proper accounting records, or 10 years if the company had irregular or nonexistent accounting.

#### **Taxpayer set-offs for other related-party transactions**

Transactions with the same controlled taxpayer in the same year are taken into account if there is a double tax treaty with the country of the related party, and if the other country's tax authorities performed a transfer pricing adjustment that results in a higher income than that obtained in the original intercompany transaction.

#### **Interest and penalties**

##### **Additional assessment payment deadline**

General Tax Code rules apply for assessments made by the tax authorities.

##### **Penalty on transfer pricing assessment**

The local regulations do not provide transfer pricing-specific penalties, but the general Tax Code provisions apply. Under those rules, the amount of the penalty varies depending on how long the assessment was overdue, the amount of the additional assessments, and other circumstances.

##### **Is interest charged on penalties?**

No.

##### **Reduction in transfer pricing penalties**

There are no specific transfer pricing rules, but under the Tax Code, if a new assessment is self-initiated before the tax authorities issue an official notification, a discount of up to 80 percent may be applicable.

##### **Is interest payable when a refund is due to the taxpayer?**

The provisions of the Tax Code allow the collection of interest on a refund for undue payments.

#### **Advance Pricing Agreements (APAs)**

##### **Are APAs available?**

Yes.

##### **APA filing fee**

The local regulations do not specify a filing fee.

##### **APA term of agreement**

Three years.

#### **Competent authority**

##### **When may taxpayer submit tax adjustment to competent authority (CA)?**

At any moment through the filing of an amendment to the D-101 (Income Tax) Form.

##### **May CA develop new settlement positions?**

There is no specific provision.

##### **May taxpayer go to CA before paying tax?**

Yes.



# Croatia

## What's new

Transfer pricing has been the focus of the Croatian tax authorities' audits, with special interest in loss-making companies and companies with significantly decreased profitability.

Croatia did not enact new transfer pricing legislation in 2014, but the Croatian tax authorities continue to expand their knowledge of transfer pricing. The Croatian tax authorities established an office for auditing large taxpayers, with a dedicated team for transfer pricing audits. An increasing number of transfer pricing audits have been initiated. The tax authorities frequently investigate not only a taxpayer's transfer pricing documentation, but also the actual conditions of transactions between related parties (including calculations of prices and the profitability of related parties). Benchmarking studies are also being requested by tax authorities during transfer pricing audits.

## General information

### Tax authority and law

Ministry of Finance; Croatian Corporate Income Tax Act, article 13, Croatian Corporate Income Tax Regulations, article 40; General Tax Act, article 41 paragraph 2.

### Regulations, rulings, guidelines

Guidelines for auditing transfer prices for tax inspectors, issued in 2009 in the tax authorities' gazette.

Guidelines for filing the corporate income tax return, which prescribe that large taxpayers that enter into transactions with related parties must provide transfer pricing documentation or a statement on the transfer pricing methods used to assess the arm's length character of the related-party transactions when filing their corporate income tax return.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

The Croatian transfer pricing regulations require that all transactions between related parties must be conducted at arm's length. According to article 13 of the Income Tax Act, parties are considered related if one of them participates, directly or indirectly, in the management, control, or capital of the other party, or if the same persons participate, directly or indirectly, in the company's management, control, or capital.

### Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a PE or branch?

The local transfer pricing rules prescribe that the transfer pricing regulations apply to PEs and branch offices.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price method, the resale price method, the cost plus method, the profit split method, and the transactional net margin method.

### Priority of methods

There is no hierarchy in the usage of transfer pricing methods. The taxpayer is allowed to use the most appropriate method for each transaction.

### Availability of benchmarking /comparative data

The tax authorities prefer benchmarks that include Croatian companies and companies from the CEE region. If there are not enough comparable entities in the CEE region, pan-European benchmarks may be used.

Usually, the Bureau Van Dijk's Amadeus database is used. However, if there are other ways to obtain relevant financial data available for comparable companies, that information may be used.

### Are foreign comparables acceptable to local tax authorities?

If there are not enough comparable companies from Croatia, the benchmark analysis may be broadened, first to the CEE region and then, if there are not enough comparable entities in the CEE region, pan-European benchmarks may be used.

## Services issues

### Are management fees deductible?

Management fees are tax deductible if the taxpayer has transfer pricing documentation that shows the arm's length character of the related-party transaction and documentation showing the economic benefit the Croatian taxpayer received from the services.

### Are management fees subject to withholding?

Management fees are not subject to withholding taxation if a relevant income treaty is in place and a valid certificate of tax residence is provided to the Croatian tax authorities.



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**May stock option costs be included in the cost base for intercompany services charges?**

Croatia has no official guidelines or ruling on this subject. Generally, all costs related to the provision of a service should be included in the cost base of that service.

**Commissionaire arrangements**

**Are commissionaire arrangements allowed?**

Yes, commissionaire arrangements are allowed.

**Cost sharing agreements**

**Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?**

CCAs and CSAs are accepted if the process of cost allocation is properly documented. Local transfer pricing documentation should illustrate how the Croatian company benefits from the services received and should provide details regarding the allocation keys used. The allocation keys used should demonstrate consistency in application. These types of arrangements are carefully scrutinized by the Croatian tax authorities.

**Are cost contribution or cost sharing payments deductible?**

Yes, provided there is transfer pricing documentation that thoroughly describes the CCA/CSA terms. Moreover, the financial reports of the related parties based on which the costs are allocated should be disclosed to verify the costs on which the agreements are based. The allocation keys used should demonstrate consistency in application.

**Are cost contribution or cost sharing payments subject to withholding tax?**

A case-by-case analysis is necessary. Article 31 of the Croatian Corporate Income Tax Regulations prescribes which payments are subject to withholding tax.

**What is the Payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?**

Payments are deductible or amortizable. Costs can be capitalized.

**Documentation and tax return disclosures**

**Tax return disclosures**

Taxpayers must maintain transfer pricing documentation and provide it to the tax authorities upon request. Large taxpayers must file the transfer pricing documentation or statement on transfer pricing methods used for related-party transactions together with their income tax returns.

Large taxpayers are defined as those that meet one of the following criteria:

- Revenue in excess of €19.646.000;
- Engaged in insurance, leasing, or telecommunications activities, with revenues in excess of €1,964,600;
- Banking institutions, regardless of their total revenue; and
- Large projects.

**Documentation requirements**

Transfer pricing documentation should follow the guidelines provided in the Croatian transfer pricing regulations, which follow the OECD transfer pricing guidelines. The required content of transfer pricing documentation is described in the guidelines on auditing transfer prices for tax inspectors, issued in 2009 in the tax authorities' gazette.

**Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

Taxpayers must update their transfer pricing documentation and benchmark analysis annually. Comparables should be refreshed every year, and after a three-year period a new benchmark analysis must be prepared.

**Deadline to prepare documentation**

Croatian legislation does not set a deadline for the preparation of transfer pricing documentation, but the documentation must be available at any time the tax authorities request it. Large taxpayers must disclose their transfer pricing documentation and/or their statements on the methods used to assess the arm's length character of related-party transactions when they file their corporate income tax return.

**Deadline to submit documentation**

Small and medium-sized taxpayers must submit their transfer pricing documentation upon request by the tax authorities. Large taxpayers must provide their transfer pricing documentation or statement on the transfer pricing methods used for related-party transactions by 30 April of the current year for the previous fiscal year, or no later than four months after the expiration of the period for which profit tax is assessed.

### **Deadline to file income tax return**

The corporate income tax return must be filed no later than four months after the expiration of the period for which the corporate income tax is assessed. Corporate income tax is normally assessed for a calendar year. However, the tax authorities may agree, at the taxpayer's request, that the tax period need not correspond with the calendar year, but the tax period may not exceed 12 months.

### **Acceptable languages for documentation**

The only acceptable language for transfer pricing documentation is Croatian.

### **Transfer pricing adjustments**

#### **Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

The tax return does not include any information related to transfer pricing transactions. However, information about intercompany transactions is included in the taxpayer's financial statements.

Thus, the values related to intercompany transactions are the same in the income tax return as in the financial statements.

### **Self-initiated adjustments**

Self-initiated adjustments are allowed. The procedure for such adjustments is regulated under the Croatian General Tax Act.

### **Statute of limitations on assessment for transfer pricing adjustments**

The general statute of limitations for the determination of tax liabilities and rights (including transfer pricing adjustments) in a particular tax period expires at the end of the third year following the year in which a corporate income tax return should have been filed. For example, because the 2014 corporate income tax return must be filed by 30 April 2015, filings for 2014 become statute-barred on 1 January 2019. However, the general statute of limitations may be extended, and restarts after each intervention by the tax authority concerning a corporate income tax return that had been filed. The absolute statute of limitations becomes effective within six years from the date on which the statute of limitations period first commenced.

### **Taxpayer set-offs for other related-party transactions**

Croatian legislation does not include guidance on the performance of set-offs. The tax authorities would look to the OECD transfer pricing guidelines for guidance.

### **Interest and penalties**

#### **Additional assessment payment deadline**

First-instance tax resolutions – an additionally established tax obligation must be paid within 30 days of receipt of the first-instance tax resolution issued by the tax authorities upon completion of an audit. Submission of an appeal suspends execution of the tax resolution until the case has been resolved by the second-instance body.

Second-instance tax resolution – an additionally established or confirmed tax obligation must be paid immediately upon receipt of the second-instance tax resolution

#### **Penalty on transfer pricing assessment**

Penalties ranging from €260 to €26,190 are prescribed for taxpayers that are legal or natural persons if the corporate income tax base is not defined in accordance with the Corporate Income Tax Act.

Penalties ranging from ca. €260 to €2,620 are prescribed for the responsible persons of the legal entity.

The standard corporate income tax rate of 20 percent is applicable on the difference between market prices, and thus charged in transactions between related parties.

Penalty interest is equal to 12 percent.

#### **Is interest charged on penalties?**

Interest is not charged on penalties.

#### **Is interest payable when a refund is due to the taxpayer?**

If a refund is paid after the period prescribed by law, the taxpayer may request the payment of interest; however, if the taxpayer does not file for a refund, interest will not be paid automatically.

#### **Reduction in transfer pricing penalties**

Transfer pricing penalties could be reduced to zero if documentation is complete and intercompany transaction prices are in compliance with the arm's length principle.

### Advance Pricing Agreements (APAs)

#### Are APAs available?

APAs are not available in Croatia.

#### APA filing fee

Not applicable.

#### APA term of agreement

Not applicable.

### Competent authority

#### When may taxpayer submit tax adjustment to competent authority (CA)?

Taxpayers may submit a tax adjustment to CA when the related party's tax authority performs adjustments on the transaction carried out with the Croatian taxpayer. There is no formal procedure as to the timing of the submission.

#### May CA develop new settlement positions?

The competent authority may reconsider and develop a new settlement position if the arm's length principle is not met.

#### May taxpayer go to CA before paying tax?

Yes, but the established tax obligation remains due.



# Czech Republic

## What's new

The Czech tax administration introduced a new attachment to the Corporate Income Tax Return in which corporations will be obligated to report their related-party transactions starting in fiscal year 2014. The entity will report details for each type of transaction, including the related party's country of residence, the nature of the transaction, the transaction volume (in terms of both cost and income), as well as a summary of the related-party receivables and liabilities.

The information on related-party transactions will be subject to a risk analysis performed by the tax authorities. While the tax authorities' existing approach is based on random selection of the entity whose main transactions are investigated, under the new regime there will be a focus on high-risk transactions and taxpayers, with an emphasis on demonstrating sufficient evidence.

The provisions in the Income Taxes Act regarding the arm's length principle has been changed effective January 1, 2014, to shift the responsibility for correct transfer price-setting from the tax authorities to the taxpayer.

## General information

### Tax authority and law

Ministry of Finance; Section 23 para. 7 of the Income Taxes Act (effective January 1, 1993).

### Regulations, rulings, guidelines

Decree D-332 on the application of international standards to the taxation of transactions between related persons; Decree D-333 on binding ruling over the transfer pricing policy used in related-party transactions (APAs); Decree D-334 on the recommended scope of transfer pricing documentation (in accordance with EU transfer pricing documentation).

Regarding intercompany services, new Decree D-10 on Low-Value-Adding Intragroup Services was adopted effective January 2013. Decree D-10 is based on the European Commission's communication endorsing the work of the EU Joint Transfer Pricing Forum on the subject.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

The Czech transfer pricing regulations require that all transactions between related parties must be effectuated at arm's length. According to section 23 para. 7 of the Income Taxes Act, parties are related if one party has direct or indirect ownership of more than 25 percent of the capital or voting rights of another party, or if it participates in the management or control of the other entity.

### Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

The Czech transfer pricing regulations require that all transactions between related parties must be effectuated at arm's length. According to section 23 para. 7 of the Income Taxes Act, parties are related if one party has direct or indirect ownership of more than 25 percent of the capital or voting rights of another party, or if it participates in the management or control of the other entity.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the profit split method (contribution analysis or residual analysis), and the transactional net margin method (TNMM).

### Priority of methods

The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the profit split method (contribution analysis or residual analysis), and the transactional net margin method (TNMM).

### Availability of benchmarking/comparative data

Pan-European database Amadeus is available to the Czech tax authorities. Companies are entitled to support their transfer pricing arrangements with benchmark analyses.

### Are foreign comparables acceptable to local tax authorities?

Czech comparables are preferred, but if not available, relevant foreign comparables may be considered. Pan-European benchmark searches are generally accepted by the Czech tax authorities.

## Services issues

### Are management fees deductible?

Generally, yes; however, tax deductibility is determined on a case-by-case basis.



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**Are management fees subject to withholding?**

It depends on the pertinent tax treaty. In most cases, there is no withholding tax on management fees.

**May stock option costs be included in the cost base for intercompany services charges?**

Generally, yes. However, Czech tax legislation does not provide any guidance on this subject, and the Czech tax authorities' position is unknown due to the lack of practical experience.

**Commissionaire arrangements****Are commissionaire arrangements allowed?**

Yes.

**Cost sharing agreements****Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?**

Yes. The Czech Republic follows Chapter VIII of the OECD transfer pricing guidelines.

**Are cost contribution or cost sharing payments deductible?**

Generally, yes; however, tax deductibility is determined on a case-by-case basis.

**Are cost contribution or cost sharing payments subject to withholding tax?**

No.

**What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?**

Payments are deductible or amortizable.

**Documentation and tax return disclosures****Tax return disclosures**

The Czech tax administration introduced a new attachment to the Corporate Income Tax Return in which corporations will be obligated to report their related-party transactions starting in fiscal year 2014. The entity will report details for each type of transaction, including the related party's country of residence, the nature of the transaction, the transaction volume (in terms of both cost and income), as well as a summary of the related-party receivables and liabilities.

The entities subject to this requirement are corporations that meet at least one of the criteria triggering compulsory statutory audit, and that also participated in cross-border related-party transactions, incurred losses, or received investment incentives in the form of tax relief.

**Documentation requirements**

There is no legally binding provision on the obligatory scope of transfer pricing documentation. However, the Ministry of Finance issued Decree No. D-334, effective 1 January 2011, on the recommended scope of transfer pricing documentation, which complies with the OECD transfer pricing guidelines and the EU TPD. The recommendations are not legally binding but are generally accepted.

**Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

There are no formal annual documentation requirements. However, transfer pricing documentation is usually requested during the course of a tax audit, and the number of tax audits addressing transfer pricing issues has increased dramatically.

**Deadline to prepare documentation**

There is no statutory deadline for the preparation of documentation.

**Deadline to submit documentation**

There is no statutory deadline for the submission of documentation. Documentation could be requested by the tax authorities during a tax audit.

**Deadline to file income tax return**

A corporate income tax return must be submitted at the latest by the end of the third month of the year following expiration of the annual tax period. If a taxpayer has a financial statement verified by an auditor, or the taxpayer's return is prepared and submitted by his tax advisor, the time limit for filing the tax return is extended to the end of the sixth month of the year following expiration of the tax period.

**Acceptable languages for documentation**

The tax administration officially accepts documentation in the Czech or Slovak languages; however, a particular tax office might accept documentation prepared in other commonly spoken languages the tax office is familiar with, such as English.

### Transfer pricing adjustments

**Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

The same transfer prices shall be used both for accounting and tax purposes. In case of any deviations, the tax base must be adjusted. Hence, book/tax differences are not directly allowed, but if necessary, the tax base can be adjusted to comply with the arm's length principle.

### Self-initiated adjustments

Upward adjustments are permitted; decreasing adjustments are generally available, but will be tested carefully.

### Statute of limitations on assessment for transfer pricing adjustments

The general provisions apply: the general statute of limitation is three years from the date when the deadline for submitting an ordinary tax return passed, or when a tax liability became due. In some cases, the period can be extended up to 17 years.

### Taxpayer set-offs for other related-party transactions

Set-offs are generally not permitted.

### Interest and penalties

#### Additional assessment payment deadline

Additional tax is payable within 15 days of receipt of an assessment.

#### Penalty on transfer pricing assessment

Ordinary penalties apply. Interest on late payments: the interest rate applies for each day of the tax arrears: repo rate of CNB p.a. + 14 percentage points (for a maximum five years of tax arrears). Penalty: if the discrepancy was discovered by the tax authorities, the taxpayer must pay a penalty of 20 percent on the additional tax assessed (1 percent if decreasing a tax loss).

#### Is interest charged on penalties?

No interest is charged on penalties.

#### Is interest payable when a refund is due to the taxpayer?

Yes, if the overpaid tax was caused by the tax administration, it will refund the overpaid tax, including interest determined as the repo rate of CNB p.a. + 14 percentage points.

### Reduction in transfer pricing penalties

There is no provision on this issue. Penalties may be reduced or waived through negotiation on a case-by-case basis.

### Advance Pricing Agreements (APAs)

#### Are APAs available?

APAs have been available since 1 January 2006.

#### APA filing fee

The APA filing fee is CZK 10,000 (approx. \$500, €365).

#### APA term of agreement

The maximum term of an APA is three years.

### Competent authority

#### When may taxpayer submit tax adjustment to Competent Authority (CA)?

There is no formal procedure. The Czech Republic follows the mutual agreement procedure for the pertinent treaty.

#### May CA develop new settlement positions?

Yes.

#### May taxpayer go to CA before paying tax?

Yes, but the liability to pay tax will not be avoided.



# Denmark

## What's new

As in previous years, transfer pricing continues to be one of the focus areas of the Danish tax authorities in 2015. Special attention is paid to consistent loss makers, intellectual property rights, tax havens, and intragroup financing.

## General information

### Tax authority and law

Ministry of Taxation (Skatteministeriet); Tax Assessment Act Section 2 and Tax Control Act Section 3B.

### Regulations, rulings, guidelines

Regulation no. 42 of January 24, 2006, on Transfer Pricing Documentation, Danish administrative guidelines 2014-1, section C.D.11 on Transfer Pricing; Danish guideline of 15 January 2013 on valuation.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

Transfer pricing legislation is applicable to transactions between companies that are under common control, that is, the same shareholder or group of shareholders, directly or indirectly, control more than 50 percent of the share capital or more than 50 percent of the voting power. Even if the "more than 50 percent" threshold is not met, companies are also deemed to be under common control if the shareholders have agreed to exercise common control or the companies in question have joint management.

### Do the local transfer pricing rules or tax authority allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

Yes.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the profit split method (contribution analysis or residual analysis), and the transactional net margin method (TNMM).

### Priority of methods

Denmark follows the 2010 OECD transfer pricing guidelines, whereby the selection of a transfer pricing method always aims to find the most appropriate method for a particular case. Rather than giving priority to the traditional transaction-based methods over transactional profit methods, the appropriateness of

intercompany pricing should be tested by applying the method that provides the most reliable arm's length measurement for a given transaction. .

### Availability of benchmarking/comparative data

Statutory financial results of Danish companies are publicly available, and can be found via Danish databases.

### Are foreign comparables acceptable to local tax authorities?

Yes, but Danish or Nordic comparables are preferred.

## Services issues

### Are management fees deductible?

Yes, but the payments must satisfy the arm's length principle and have a direct relation to the income generated; that is, no shareholder costs should be included in the management fee and the management services should provide an actual benefit to the recipient of the management services. Management fees related to an exit situation are not deductible unless the service provided is performed to acquire, secure, and maintain the operation of the company.

### Are management fees subject to withholding?

No. However, management fees that include a royalty component are subject to a withholding tax of 25 percent. Withholding tax may be reduced under income tax treaties.

### May stock option costs be included in the cost base for intercompany services charges?

No. Stock option costs must be allocated at market price on the date of the allocation.

## Commissionaire arrangements

### Are commissionaire arrangements allowed?

Yes.

## Cost sharing agreements

### Are cost contribution arrangements or cost sharing agreements accepted?

Yes. According to Danish administrative guidelines 2014-1, section C.D.11.4.3.5, Denmark follows Chapter VIII of the OECD transfer pricing guidelines.



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**Are cost contribution or cost sharing payments deductible?**

Yes, as long as the costs have a direct relation to the expected income/benefit.

**Are cost contribution or cost sharing payments subject to withholding tax?**

No. However, if payments can be considered royalty payments, they will be subject to withholding tax. The withholding tax may be reduced under income tax treaties, or provided the royalty falls within the scope of Directive 2003/49/EC.

**What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?**

Payments are deductible or amortizable.

**Documentation and tax return disclosures**

**Tax return disclosures**

Taxpayers must disclose information regarding all controlled transactions engaged in by the taxpayer. The requirement includes foreign citizens or foreign companies with permanent establishments in Denmark. Form 05.021 must be completed with the income tax return (the English version is Form 05.022).

**Documentation requirements**

According to Danish transfer pricing documentation requirements, a transfer pricing documentation report must include a number of elements (stipulated in Regulation no. 42 of 24 January 2006), including but not limited to:

- A description of the group's legal and organizational structure, including the primary business activities of the taxpayer and of the related parties with whom the taxpayer has entered into controlled transactions. The legal structure must comprise all affiliated entities the taxpayer has intercompany transactions with;
- A summary showing the last three years' revenue and earnings before interest and tax (EBIT) of the taxpayer and of the related parties with whom the taxpayer has entered into controlled transactions;
- Functional analysis (functions, assets, and risks);
- Choice of transfer pricing method(s);
- A description of comparable data relied on in applying the relevant transfer pricing method(s); and
- A list of any written intercompany agreements.

Exemption from the full documentation requirements is available for small and medium-sized enterprises.

**Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

Yes, the documentation requirements are annual. However, taxpayers can update previous documentations as long as the set-up and pricing policies have not changed significantly during the years in question. Comparables can be refreshed. However, the tax authorities might challenge studies, especially if the economic circumstances have changed.

**Deadline to prepare documentation**

Transfer pricing documentation should be prepared by the filing date of the income tax return.

**Deadline to submit documentation**

Transfer pricing documentation must be submitted, upon request from the Danish tax authorities, within 60 days of the official notification. The tax authorities do not grant extensions of the submission deadline.

**Deadline to file income tax return**

Given that the income tax year follows the calendar year, the deadline for submitting the income tax return is 30 June of the following year. There is no formal requirement regarding the submission of transfer pricing documentation by the income tax return filing date.

**Acceptable languages for documentation**

Documentation may be in Danish, English, Swedish, or Norwegian.

**Transfer pricing adjustments**

**Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

The transfer prices reflected in a financial statement can deviate from the transfer prices reflected on an income tax return of that income year. However, the financial statement is the basis for assessing arm's length transfer pricing.

**Self-initiated adjustments**

Adjustments are generally likely to be acceptable, if they are made pursuant to a prior agreement and they result in arm's length pricing.

### **Statute of limitations on assessment for transfer pricing adjustments**

Five years and four months from the tax year-end.

### **Taxpayer set-offs for other related-party transactions**

Denmark follows the OECD transfer pricing guidelines on this issue.

### **Interest and penalties**

#### **Additional assessment payment deadline**

Additional assessments are payable the first day of the month following the additional assessment (Corporate Tax Act, Section 30(2)).

#### **Penalty on transfer pricing assessment**

The Danish tax authorities may impose penalties on companies for not submitting sufficient transfer pricing documentation within the deadline. The initial penalty can amount to up to twice the cost saved by not preparing sufficient documentation, and will usually be determined as 250,000 DKK per income year per company not meeting the Danish documentation requirements. If an initial penalty is imposed and the outcome of the audit is a transfer pricing adjustment, a further penalty equal to 10 percent of the adjustment may be imposed.

Taxpayers must disclose information regarding all controlled transactions in Form 05.021 (05.022) together with the income tax return. As of 1 July 2012, the penalty for deliberately or neglectfully providing incorrect or misleading information will be the higher of two amounts:

- 0.5 percent of revenues up to DKK 500 million, 0.1 percent of the remainder up to DKK 1 billion, and 0.05 percent of revenues over DKK 1 billion (no cap).
- DKK 250,000 for companies with up to 50 employees, which increases by DKK 250,000 for every 50 employees in the company up to 500 employees. In companies with more than 500 employees the penalty will be DKK 2.5 million.

All penalties are cumulative and may be increased by 50 percent if the breach relates to a systematic breach of the taxation rules, which is the case if more than one of the above penalties are imposed.

#### **Is interest charged on penalties?**

Penalties that are not paid in due time will be transferred to collection by the Danish tax authorities.

#### **Is interest payable when a refund is due to the taxpayer?**

Yes, when a refund or payment is due the amount will be subject to interest.

#### **Reduction in transfer pricing penalties**

The initial penalty of DKK 250,000 for not submitting adequate documentation before the deadline may be reduced by half if sufficient documentation is subsequently prepared.

### **Advance Pricing Agreements**

#### **Are APAs available?**

Yes, unilateral and bilateral APAs are available.

#### **APA filing fee**

There is no filing fee for APAs.

#### **APA term of agreement**

There are no fixed terms. Actual terms are negotiated on a case-by-case basis.

### **Competent authority**

#### **When may taxpayer submit tax adjustment to Competent Authority (CA)?**

A request may be submitted after the final assessment by the tax authorities is communicated to the taxpayer. Different rules of limitation apply.

#### **May CA develop new settlement positions?**

Yes, unless a decision has been made by a higher entity than the competent authority.

#### **May taxpayer go to CA before paying tax?**

Yes. An extension to pay the tax may be obtained upon application. If an extension is granted, the taxpayer incurs variable nondeductible interest.



# Dominican Republic

## What's new

The Dominican Republic recently published Executive Decree 78-14 to establish norms for transfer pricing. Among the key provisions introduced are rules regarding authorization to allocate and deduct corporate expenses, and an exclusion from the obligation to submit a transfer pricing study or transaction valuation report for operations carried out with local related parties that do not exceed DOP 10,000,000.

## General information

### Tax authority and law

Dirección General de Impuestos Internos (DGII).  
Law 11-92, the Dominican Tax Code.

### Regulations, rulings, guidelines

Regulations set forth under Law 11-92, which contains the Dominican Tax Code (DTC), in the Transfer Pricing Regulations -- Decree 78-14 -- and Law 253-12 and its amendments.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

Relationships between two or more entities are defined by Decree 78-14 and Law 253-12. Transactions between related parties must be at arm's length.

### Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

Yes.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the profit split method (contribution analysis), and the transactional net margin method (TNMM).

### Priority of methods

The most appropriate method rule applies. Traditional transaction methods are preferred in practice to transactional profit methods.

### Availability of benchmarking/comparative data

Financial information from databases is available, and interest rates from the Central Bank.

### Are foreign comparables acceptable to local tax authorities?

Yes.

## Services issues

### Are management fees deductible?

Yes, but applicable withholding taxes must be paid during the year under review. Taxpayers must submit the agreements that support the service to the tax authorities, and demonstrate that the service is effectively rendered, generates an economic benefit, and the remuneration agreed upon is in accordance with the arm's length principle.

### Are management fees subject to withholding?

Yes. The rate is 27 percent under article 305 of the Dominican Tax Code.

### May stock option costs be included in the cost base for intercompany services charges?

No information is available on this subject.

## Commissionaire arrangements

### Are commissionaire arrangements allowed?

Yes. Commissionaire arrangements may be allowed and are subject to analysis.

## Cost sharing agreements

### Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?

Yes.

### Are cost contribution or cost sharing payments deductible?

Yes. When applicable, tax withholding must be paid.

### Are cost contribution or cost sharing payments subject to withholding tax?

Yes, under article 305 of the Dominican Tax Code.

### What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?

The expense must be incurred to maintain or create taxable income in the Dominican Republic; withholding tax must have been paid to deduct the expense.



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## Documentation and tax return disclosures

### Tax return disclosures

For income tax purposes only transfer pricing adjustments must be disclosed. However, Law 253-12 states that an informative return of transactions entered into with related parties should be filed annually.

### Documentation requirements

Taxpayers subject to the transfer pricing regime must file an annual informative return on transactions entered into with related parties (DIOR, from its Spanish acronym). Taxpayers should also perform a transfer pricing analysis of its transactions with related parties during the fiscal year.

**Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

Documentation requirements are annual. That applies to the transfer pricing report and the informative return.

### Deadline to prepare documentation

Documentation should be prepared contemporaneously each tax year. DIOR should be prepared during the 180-day period after the fiscal year-end.

### Deadline to submit documentation

The transfer pricing study is submitted to the tax authorities only upon request. The annual informative return on transactions entered into with related parties (DIOR) is due 60 days after the due date for filing the corporate tax return, which is 120 days after the fiscal year-end.

### Deadline to file income tax return

The income tax return is due 120 days after the fiscal year-end.

### Acceptable languages for documentation

All documentation must be in Spanish.

## Transfer pricing adjustments

**Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

Transfer pricing adjustments should be made to adjust the income tax paid, so it's not necessary or obligatory to modify the financial statements.

### Self-initiated adjustments

The statute of limitations on assessments for transfer pricing adjustments is three years. The period begins on the due date for compliance.

### Taxpayer set-offs for other related-party transactions

Set-off of other related-party transactions is not allowed.

## Interest and penalties

### Additional assessment payment deadline

No due date has been determined by law.

### Penalty on transfer pricing assessment

The Dominican Republic Tax Code provides for the imposition of surcharges (10 percent for the first month or fraction thereof, and 4 percent thereafter), and interest (1.73 percent for each month or fraction thereof) counting from the date when the corporate income tax was filed.

### Is interest charged on penalties?

Interest is charged on omitted tax, that is, on the tax resulting from the transfer pricing adjustment, but no interest is charged on penalties.

### Reduction in transfer pricing penalties

The law allows a 40 percent discount on surcharges when the taxpayer files a voluntary amended return.

**Is interest payable when a refund is due to the taxpayer?**

No.

### Advance Pricing Agreements (APAs)

Are APAs available?

Yes.

APA filing fee

There is no fee for filing an APA request

APA term of agreement

Three years forward.

### Competent authority

When may taxpayer submit tax adjustment to Competent Authority (CA)?

There is no formal procedure.

May CA develop new settlement positions?

There is no formal procedure.

May taxpayer go to CA before paying tax?

There is no formal procedure.



# Ecuador

## What's new

For 2015, Ecuadorian taxpayers must not consider third parties with whom they engage in transactions at a highly concentrated level (more than 50 percent) as related parties. This change benefits both taxpayers and the tax administration, because it avoids the need to prepare transfer pricing reports for transactions undertaken with third parties when performed at arm's length prices. Consequently, the reform reduces the burden of proof on the taxpayer and enables the tax administration to focus its efforts on real related-party transactions.

## General information

### Tax authority and law

Internal Revenue Service (Servicio de Rentas Internas, or SRI); Executive Decree No. 2430, published in the Official Gazette No. 494 of 31 December 2004.

### Regulations, rulings, guidelines

The transfer pricing regime has been applicable in Ecuador since fiscal year 2005, following a reform to the Regulation for Application of the Tax Law on December 31, 2004. That regulation was in effect from 2005 to 2007. On December 29, 2007, a reform to the tax law was issued, introducing the transfer pricing regime that has been in effect from 2008 to date.

An important change applicable since 2008 requires taxpayers domiciled in tax havens and jurisdictions with lower tax rates to be considered related parties.

Through Resolution No. NAC-DGER 2008-0182, the SRI issued a list of 89 countries considered tax havens and deemed preferential tax regimes, that is, those countries in which the income tax rate is 60 percent below the rate in Ecuador.

Another significant change effective from 2008 is that the Regulation for Application of the Tax Law establishes a precedent regarding application of transfer pricing methods, as well as providing for the possibility of taxpayers consulting the tax administration on assessments of operations undertaken with related parties.

On December 23, 2009, Ecuador approved a reform to the Tax Law (applicable for 2010 and thereafter) whereby related parties are deemed to include those individuals or companies with which an entity undertakes 50 percent or

more of its sales or purchases of goods, services, or any other type of operation.

Taxpayers that meet the following requirements are exempt from application of the transfer pricing regime:

- Tax liability exceeds 3 percent of taxable income;
- No transactions are entered into with residents in tax havens or preferential tax regimes; and
- No contracts for the exploration and exploitation of nonrenewable resources are entered into with the state.

On January 28, 2011, through Resolution No. NAC-DGERCGC11-00029, the SRI determined that taxpayers exempt from the transfer pricing regime that have entered into transactions with overseas related parties must file information returns concerning such operations.

The pertinent information must be filed with the SRI in a digital file (nonrecordable CD), using Microsoft Excel 97 or a subsequent format, attaching a letter signed by the taxpayer or responsible individual.

On July 16, 2012, the SRI issued Circular No. NAC-DGCCGC12-00013 whereby taxpayers are reminded that as of the publication of Resolution No. NAC-DGER 2008-0182 on February 29, 2008, domains, jurisdictions, territories, associated states or preferential tax regimes in which the income tax rate is less than 60 percent of the income tax rate in Ecuador must be considered tax havens.

In addition, in accordance with the resolution, as of 2008 the following countries are deemed tax havens:

- Estonia
- Bulgaria
- Macedonia (FYROM)
- Ireland
- Montenegro
- Serbia
- Legal entities constituted as limited liability companies (LLC) whose owners are not U.S. residents and when neither they, the company, nor its owners are subject to federal income tax
- The states of Delaware, Nevada, Wyoming, and Florida

On December 18, 2012, the SRI issued a new income tax form. This form includes boxes to report operations undertaken with local related parties during the fiscal year.

On December 1, 2014, the tax administration issued a resolution whereby Ecuadorian taxpayers may submit consultations to the SRI for a prior assessment of



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transactions between related parties for transfer pricing purposes, in accordance with the provisions of Ecuador's double tax agreements, the tax law, its regulations, and the resolution. Consultations submitted by taxpayers must include detailed information.

The prior assessment consultation will be resolved by the SRI Director General within two years from the submission date of the consultation.

#### **Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?**

Related parties are defined as follows:

- Individuals or legal entities, domiciled in Ecuador or overseas, when one party participates, either directly or indirectly, in the management, control, or capital of another; or when a third party participates, either directly or indirectly, in the management, control, or capital of the others.
- Entities domiciled, constituted, or located in a jurisdiction with lower tax rates (less than 15 percent) or in tax havens, and whose taxpayers engage in transactions with Ecuadorian taxpayers, are also considered related parties.

In December 2014, through an amendment to the Regulation to the Tax Law, the definition of related parties includes third parties by concentration of transactions (50 percent or more of sales, purchases, or other transactions). Taxpayers may demonstrate that there is no related-party relationship through management, administration, control, or capital.

#### **Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?**

Ecuadorian legislation states that transfer pricing rules apply to transactions entered into by Ecuadorian taxpayers with overseas or local related parties. Therefore, transfer pricing adjustments applicable to local taxpayers that understated their income tax can be determined.

Ecuadorian legislation does not make a distinction regarding the tax treatment applicable to a permanent establishment or a branch.

#### **Methods and comparables**

##### **Acceptable methods**

The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the profit

split method, the residual profit split method, and the transactional operating profit margins method.

##### **Priority of methods**

Art. 82 of the tax law establishes the following priority or hierarchy for selecting the most applicable method: (1) CUP; (2) resale price; (3) cost plus; (4) profit split; (5) residual profit split; and (6) transactional operating profit margins method.

##### **Availability of benchmarking/comparative data**

At the local level, there is no comparative data, because the number of companies listed in the Ecuadorian stock exchange is minimal, and the available information is also very limited (financial statements audited by Control Entity). The available information does not include details of the business activity, clients, or commercialization levels, which are needed to perform a functional analysis and the comparability required for a transfer pricing study.

##### **Are foreign comparables acceptable to local tax authorities?**

Yes.

##### **Services issues**

##### **Are management fees deductible?**

They are deductible up to established limits, and provided the corresponding withholding tax has been withheld.

In December 2014, the regulatory reform determined that total expenses for royalties, technical, administrative, consulting and similar services paid by Ecuadorian taxpayers to related parties cannot exceed 20 percent of taxable income plus the amount of the expenses. In the case of entities in the start-up phase, the amount is 10 percent of total assets.

For purpose of this article, royalties are deemed to be amounts paid for the right to use trademarks, patents, plant varieties, and other elements included in the intellectual property law.

Taxpayers may request a higher deductibility limit, provided that a prior assessment consultation is submitted on operations performed between related parties.

##### **Are management fees subject to withholding?**

Yes, the withholding tax rate is 24 percent for fiscal year 2011, 23 percent for fiscal year 2012, 22 percent for fiscal year 2013 and thereafter.

**May stock option costs be included in the cost base for intercompany services charges?**

There are no Ecuadorian tax regulations determining the treatment of stock option costs..

**Commissionaire arrangements**

**Are commissionaire arrangements allowed?**

Yes.

**Cost sharing agreements**

**Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?**

Yes.

**Are cost contribution or cost sharing payments deductible?**

Yes.

**Are cost contribution or cost sharing payments subject to withholding tax?**

Yes, the withholding tax rate is 24 percent for fiscal year 2011, 23 percent for fiscal year 2012, and 22 percent for fiscal year 2013 and thereafter.

**What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?**

Payments are deductible, provided the cost is related to the business activity of the Ecuadorian taxpayer, and provided the corresponding withholding tax has been withheld.

The withholding tax rate is 24 percent for fiscal year 2011, 23 percent for fiscal year 2012, and 22 percent for fiscal year 2013.

The total amount of royalties paid cannot be considered a deductible expense if the asset on which royalties are paid to related parties has been in the Ecuadorian taxpayer's possession during the last 20 years.

**Documentation and tax return disclosures**

**Tax return disclosures**

The income tax return must include the amount of the adjustment determined in the transfer pricing study to determine the taxable income and corresponding income tax. If no transfer pricing adjustment is included in the income tax return that must be filed in April, the taxpayer may subsequently file an amended return to pay income tax due plus the appropriate interest.

The income tax return also must include the total amount of transactions performed with local and overseas related parties during the tax year, disaggregated as follows: assets, liabilities, income, and expenses (informative data).

For 2012 and subsequent years, income tax returns must include the total amount of transactions performed with overseas and local related parties during the tax year, disaggregated as follows: assets; liabilities; income; and expenses (informative data).

**Documentation requirements**

On April 25, 2008, the SRI issued Resolution NAC-DGER 2008-0464 establishing the information to be included in the transfer pricing report. The report must include an index, must be bound and numbered, and must be signed by the taxpayer's legal representative.

On January 16 2013, the SRI issued Resolution NAC-DGERCGC 13-00011, which modifies Resolution NAC-DGER No. 2008-0464. The resolution changes the minimum values and the transactions types for the submission of the appendix and the transfer pricing report (IPT).

The transfer pricing appendix must be submitted by taxpayers who have entered into transactions with foreign and/or domestic related parties within the applicable period in excess of \$3,000,000.

The transfer pricing report must be submitted by taxpayers who have entered into transactions with foreign and/or domestic related parties within the applicable period in excess of \$6,000,000. The IPT must be submitted in hard copy and in magnetic form in PDF-Text.

On December 18 2013, the SRI issued resolution No. NAC-DGERCGC 13-00859, which also modifies Resolution NAC-DGER No. 2008-0464. Under the new rules, the transfer pricing report must include detailed information regarding searches in databases to find comparable companies. Specifically, the report must include each of the search screens used at each step of the process, followed sequentially from the beginning of the search process to the resulting comparable companies with which the analysis will be continued for the application of the method used.

**Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

The documentation requirements are annual; each year taxpayers who exceed the applicable transaction thresholds must file an appendix to the income tax return and a transfer pricing report. Taxpayers must perform a new comparables search for purposes of the transfer pricing report every year.

**Deadline to prepare documentation**

The appendix of operations with foreign and/or local related parties and the transfer pricing report must be prepared by March of the following fiscal year, to comply with tax obligations regarding transfer pricing on a timely basis.

**Deadline to submit documentation**

The appendix of operations with foreign and/or local related parties and the transfer pricing report must be submitted two months after filing the income tax return (June of the following fiscal year; the specific day will depend on the taxpayer's I.D. number).

**Deadline to file income tax return**

The income tax return must be filed by April of the following year. The appendix of operations with foreign and/or domestic related parties and the transfer pricing report must be filed by June of the following year.

In Ecuador, no extension to the filing date may be requested.

**Acceptable languages for documentation**

Documentation must be in Spanish.

**Transfer pricing adjustments**

**Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

Taxpayers engaged in transactions with related parties (foreign and/or domestic) at arm's length prices must reflect those prices in the accounting records and in documents supporting such records.

For taxpayers engaged in transactions with related parties (foreign and/or domestic) at prices other than arm's length prices, the difference between the agreed price and the arm's length price (transfer pricing adjustment) must be reflected in the income tax return.

**Self-initiated adjustments**

Not applicable.

**Statute of limitations on assessment for transfer pricing adjustments**

Tax liability prescribes in three years if the income tax return was filed accurately and on time, and in six years if the return was incomplete or filed late.

**Taxpayer set-offs for other related-party transactions**

Not applicable.

**Interest and penalties**

**Additional assessment payment deadline**

Not applicable.

**Penalty on transfer pricing assessment**

An unnumbered article following Art. 22 of the tax law states that the failure to file a transfer pricing appendix or transfer pricing report, or filing with errors or with differences with respect to the income tax return is subject to fines of up to US\$15,000.

The late submission of the transfer pricing report (IPT) and/or the annex (AOPR) qualifies as a regulatory type "C" offense, and carries a fine of \$166.50 to \$333.

**Is interest charged on penalties?**

No, interest is not charged on penalties.

**Is interest payable when a refund is due to the taxpayer?**

Yes, if the taxpayer files a request for reimbursement with the tax authorities.

**Reduction in transfer pricing penalties**

Not applicable.

### **Advance Pricing Agreements (APAs)**

#### **Are APAs available?**

Not applicable.

#### **APA filing fee**

Not applicable.

#### **APA term of agreement**

Not applicable.

### **Competent authority**

#### **When may taxpayer submit tax adjustment to Competent Authority (CA)?**

The procedure and timing will depend on the pertinent tax treaty.

#### **May CA develop new settlement positions?**

No clear guidance on this issue is available.

#### **May taxpayer go to CA before paying tax?**

No.



# Egypt

## What's new

At the end of 2010, the Egyptian Tax Authority issued the first general transfer pricing guidelines. These guidelines were prepared in part with the Organization for Economic Co-operation and Development and in accordance with the existing Article 30 of the Egyptian Tax Law No.91 (2005), as well as with Articles 38, 39, and 40 of the related Executive Regulation, which clarifies the arm's length principle along with the acceptable methods that could be used in calculating arm's length price in controlled transactions. To date, no transfer pricing practice nor transfer pricing audit has been undertaken by the Egyptian Tax Authority.

No further transfer pricing guidelines have been introduced since 2010. However, in 2013, Law No. 11 was issued to amend the corporate income tax rate to a flat rate of 25 percent of the taxable income base. Therefore, if there are any transfer pricing adjustments to the tax base to reflect the arm's length basis, the transfer pricing impact will now be greater. This represents the tax due calculated from the 25 percent CIT rate of the amended tax base.

## General information

### Tax authority and law

The Egyptian Tax Authority (ETA); Egyptian Corporate Income Tax Law 91 (2005) Article 30 and the law's accompanying executive regulations (Articles 38, 39, and 40).

### Regulations, rulings, guidelines

*Articles of Egyptian Income Tax Law No. 91 of 2005:*

Article 1 – Definitions

Article 23 – Applying the arm's length test on financial interest

Article 30 – General concepts concerning the operation of Egypt's transfer pricing rules

Article 90 – Documentation

Article 127 – Advance rulings

*Executive Regulations:*

Article 31 – Arm's length interest

Article 38 – Describing the ETA's scope to apply transfer pricing requirements

Article 39 – Pricing methods

Article 40 – Hierarchy of methods

### Guidelines:

Transfer pricing legislation was introduced in Egypt in 2005 by Law No. 91 (2005). The law, along with its Executive Regulations, details Egypt's transfer pricing legislation.

At the end of 2010, the ETA's Transfer Pricing Division issued its first general transfer pricing guidelines (a practical guide rather than prescriptive rules) for purposes of the application of Article 30. The ETA's intention is that this first volume will be followed by further volumes covering additional transfer pricing topics.

The OECD transfer pricing guidelines are also available domestically to provide transfer pricing guidance.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

In line with Law 91 (2005) Article 1, "General Definitions," a related party is defined as any person (natural or juridical) that has a relationship with a taxpayer that may affect the taxpayer's taxable profit. Such relationships include:

- Family members;
- Corporations in which the related party owns, directly or indirectly, at least 50 percent of the stock or voting power;
- Partnerships and their partners; and
- Parent companies and subsidiaries in which the parent company holds an ownership interest of at least 50 percent.

### Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a PE or branch?

There is nothing that prohibits the Egyptian Tax Authority using transfer pricing for calculating the profits attributable to a PE or branch. In practice, it may be used as additional supporting evidence of PE taxable profits. However, there is no clear guidance available in this regard.

## Methods and Comparables

### Acceptable methods

Traditional transaction methods: the comparable uncontrolled price (CUP) method; the resale price method; and the cost plus method. Transactional profit methods: the profit split method and the transactional net margin method.

### Priority of methods

According to Executive Regulations Article 40, the ETA would prefer the CUP method to be used when feasible and applicable. When the available data are not adequate



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for the use of this method, taxpayers are advised to use the resale price method or the cost plus method. When none of those three methods can be used, taxpayers may use any other method provided in the OECD transfer pricing guidelines, or any other method the taxpayer prefers and is able to use appropriately.

#### **Availability of benchmarking/comparative data**

There are no comprehensive databases currently available cataloguing local (or even regional) benchmarks or comparative data. Data availability remains one of the obstacles to implementing transfer pricing rules in Egypt.

Financial data is often published for companies listed on the Egyptian stock exchange; otherwise, detailed financial information is not publicly available.

#### **Are foreign comparables acceptable to local tax authorities?**

Although no detailed guidance has been issued to date on this specific issue, it is thought that insofar as such comparables are properly supported (and the comparability study otherwise meets all requirements) they would be accepted as suitable benchmarks in the absence of other local comparable data.

#### **Services Issues**

##### **Are management fees deductible?**

Yes, management fees are ordinarily considered deductible expenses. The fees charged should be adequately supported by intercompany agreements and documented by invoices that show that the management fees are directly relevant to the entity (i.e., not a shared expense).

##### **Are management fees subject to withholding?**

According to Article 56 of the domestic tax law, the (non-treaty) position is that withholding tax equal to 20 percent should be applied to management fees paid overseas.

Management fees paid inside Egypt should be subject to the local withholding tax regime, according to Article 59 of Law 91 (2005), which states that any amount paid out in Egypt that exceeds EGP 300 will be subject to withholding tax at a percentage to be determined by ministerial decree (normally 2 percent).

Withholding tax on management fees paid overseas may be mitigated under an applicable double tax treaty.

#### **May stock option costs be included in the cost base for intercompany services charges?**

Intercompany services and cost sharing concepts are not yet included in the Egyptian transfer pricing guidelines.

The basic tests applicable in determining tax deductibility of costs for corporate income tax purposes would apply, and whether such stock option costs are tax deductible would be determined on a case-by-case basis.

#### **Commissionaire Arrangements**

Are commissionaire arrangements allowed?

Commissionaire arrangements are not prohibited in Egypt. However, there is no clear guidance available regarding these kinds of arrangements.

#### **Cost sharing agreements**

##### **Are cost contribution arrangements or cost sharing agreements accepted?**

CCAs and CSAs are potential subjects of future volumes of the Egyptian transfer pricing guidelines. Currently, there is no specific guidance on this issue.

##### **Are cost contribution or cost sharing payments deductible?**

No guidance available.

##### **Are cost contribution or cost sharing payments subject to withholding tax?**

No guidance available. However, this is dependent on the nature of the expenses.

##### **What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?**

No guidance available.

#### **Documentation and Tax Return Disclosures**

##### **Tax return disclosures**

The Egyptian corporate income tax return includes a specific transfer pricing disclosure section that sets out the necessary information regarding transfer pricing, such as:

- Pricing method used and rationale behind the selection of this method;
- A chart showing the related parties and stockholdings;
- Detailed information concerning transactions with related parties; and
- Detailed documentation that supports the pricing of different related-party transactions.

### **Documentation requirements**

Article 30 of Law 91 (2005) states that the “ETA is entitled to determine taxable profits on the basis of arm’s length prices (having been applied).” Accordingly, in the event of an inquiry by the ETA, the taxpayer ought to be capable of defending the level of taxable profits as presented in its financial statements.

The law imposes no specific documentation requirements. However, Chapter 5 of the transfer pricing guidelines clarifies the types of documentation that may be applicable in different circumstances. It should be noted, however, that the guidelines are not prescriptive; thus, any list of potential documentary evidence is to be taken as a suggestion only, and does not supersede any legal requirements present in Law 91 (2005).

### **Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

The Egyptian Tax Authority does not require that taxpayers submit their transfer pricing records and documents at the time they file their income tax returns. Instead, such documents should be submitted by the taxpayers to the Egyptian Tax Authority upon request for tax audit purposes in a timely manner. Hence, to ensure preparing adequate documentation, taxpayers are advised to prepare and maintain their transfer pricing records and documents at the time the transaction occurs.

There is no comprehensive, predefined set of documentation requirements that meet the circumstances of all taxpayers. This is because appropriate documentation depends on each taxpayer’s specific circumstances.

In general, taxpayers are required by law to maintain records and documents supporting the amount of taxable income stated in their income tax returns. They are also required to prepare and maintain records and documents outlining the basis on which the prices of such intragroup transactions were established.

Moreover, documents and records should be prepared and maintained evidencing that controlled transactions were priced according to the arm’s length principle. These documents are expected to include an explanation of how the controlled transactions were established; this is

through outlining different issues, such as the processes followed, the analyses conducted, the methods used, the comparables selected, and so forth.

Documents relating to the Group of Associated Enterprises as a whole should be maintained, including the organizational structure, business activities, business relationships, annual report, and consolidated financial statements. Documents relating to the nature of the industry/market in which the taxpayer operates, along with documents relating to the taxpayer’s business policies, strategies, and controlled transactions under review should be maintained as well. In addition, documents identifying the pricing methods used, selected, and applied, along with documents determining the arm’s length amount may need to be provided.

### **Deadline to prepare documentation**

Transfer pricing documentation should be available on a “timely basis”; this is often requested by the taxpayer’s auditors and tax advisors in advance of submission of the annual corporate income tax return. However, there is no requirement to submit documentation with the return. Effectively, the documentation must be available in the event of an ETA tax inspection, or to evidence the fact that tax charges/provisions were calculated on an arm’s length basis.

### **Deadline to submit documentation**

No fixed transfer pricing documentation submission requirements currently exist; however, transfer pricing documentation must be submitted to the ETA, most likely within the framework of a corporate income tax inspection.

### **Deadline to file income tax return**

According to Article 83 of Law 91 (2005), the taxpayer’s corporate income tax return must be submitted within four months of the end of the previous financial year. However, as set out above, no requirement exists for transfer pricing documentation to be submitted.

### **Acceptable languages for documentation**

There is no clear guidance on this issue. Generally speaking, Arabic is preferable. However, if documents are prepared or maintained in other languages, the ETA may require the taxpayer, at its own expense, to submit an official translation of the required documents.

### Transfer Pricing Adjustments

**Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

There are no specific requirements on this topic. In theory, differences can exist, but other issues may need to be considered.

### Self-initiated adjustments

No specific guidelines.

### Statute of limitations on assessment for transfer pricing adjustments

Generally speaking, the statute of limitations in Egypt is five years. In the case of tax evasion, this period may be extended to six years.

### Taxpayer set-offs for other related-party transactions

No specific guidelines.

### Interest and Penalties

#### Additional assessment payment deadline

Payment is technically due upon assessment, and penalties on late payment are calculated from the date of the submission of the tax return to which the assessment relates.

#### Penalty on transfer pricing assessment

There is no specific transfer pricing penalty regime at present in Egypt. However, according to domestic corporate income tax law, taxpayers may be subject to penalties if their pricing of controlled transactions is not in line with the arm's length principle. It is thus in the taxpayer's best interest to prepare and maintain records and documents evidencing the proper application of transfer pricing policies. Delay fines are based on the credit and discount rate announced by the Central Bank of Egypt on 1 January plus 2 percent (roughly a total of 12 percent annually. Accordingly, the monthly delay fine rate is approximately 1 percent.

Any willful understatement of tax liabilities, due to transfer pricing policies or otherwise, could result in penalties ranging from 5 percent of the tax due up to 40 percent of the tax due, depending on the quantum of the understated liability.

#### Is interest charged on penalties?

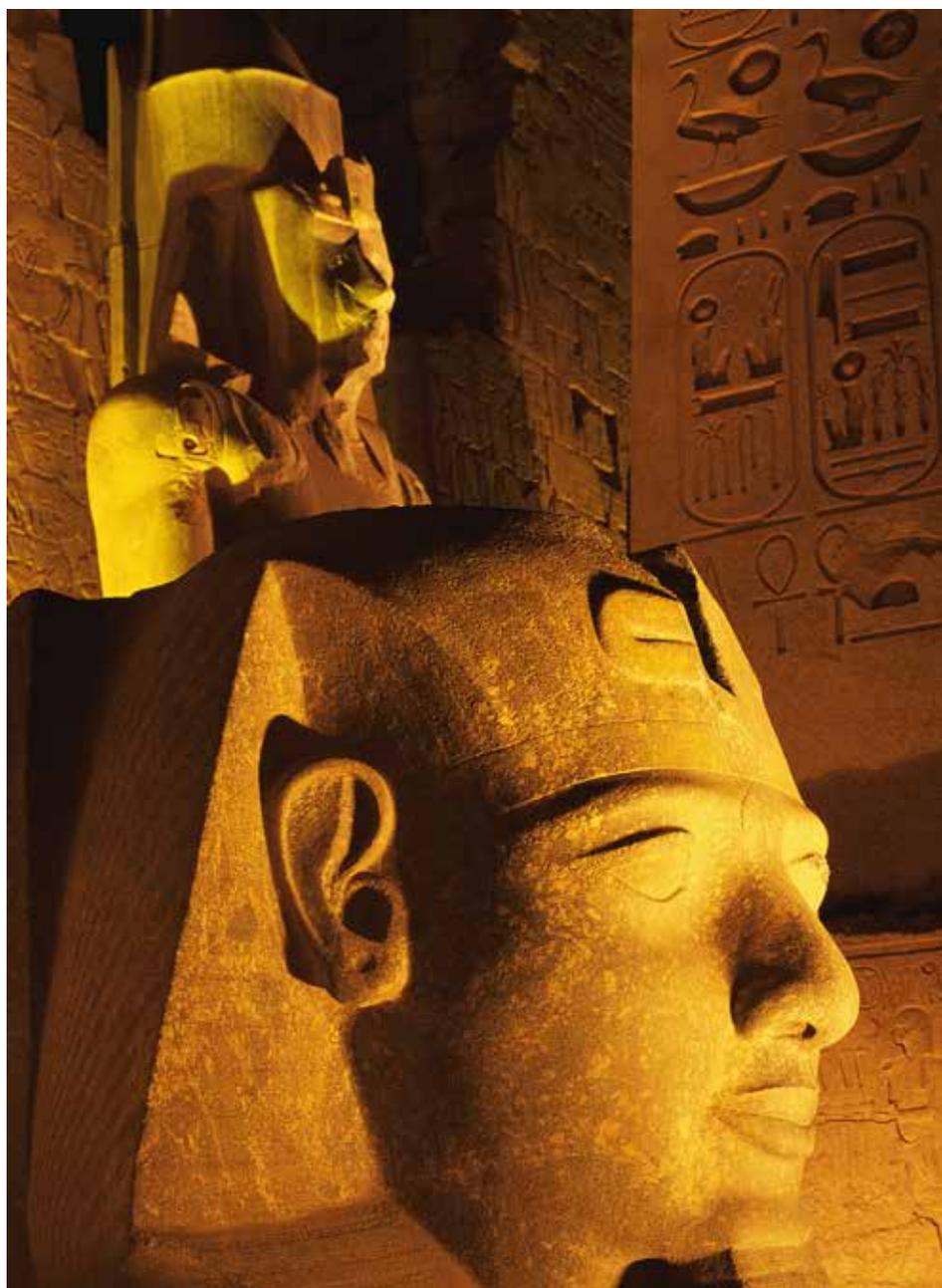
Not applicable.

#### Reduction in transfer pricing penalties

Not applicable.

#### Is interest payable when a refund is due to the taxpayer?

Refunds are provided in the form of future tax offsets and are not paid out to taxpayers. These refund offsets accrue interest at an annual rate equivalent to the interest rate set by the Central Bank of Egypt minus 2 percent.



## **Advance Pricing Agreements**

### **Are APAs Available?**

APAs are allowed under article 30 of Law 91 ( and article 40 of the executive regulations ) whereby the head of the ETA is entitled to agree in advance the use of a specific method or more in determining the fair price of a particular transaction. In addition, taxpayers may also resort to the general advance tax clearance framework, as set out in Article 127 of Law 91.

### **APA filing fee**

There is no filing fee for an APA application.

### **APA term of agreement**

There is no specific term for APAs.

## **Competent Authority**

### **When may taxpayer submit tax adjustment to competent authority (CA)?**

At present, no specific CA time frame is in place in relation to transfer pricing. To date, we are not aware of any taxpayers having initiated (or having tried to initiate) any CA procedures in Egypt.

Payment is technically due upon assessment, and penalties on late payment are calculated from the date of the submission of the tax return to which the assessment relates.

### **May CA develop new settlement positions?**

There is no formal provision.

### **May taxpayer go to CA before paying tax?**

There is no formal provision.

# El Salvador

## What's new

El Salvador in July 2014 approved tax reforms that include amendments to the Salvadoran Tax Code. Article 62-A was amended to make express reference to the OECD's transfer pricing guidelines. This change enables taxpayers and the Salvadorian Tax Administration to use the transfer pricing methods for the determination of market prices included in the OECD transfer pricing guidelines.

As in previous years, the Tax Administration intensified its oversight of transfer pricing matters, and filed final supplementary tax assessments, which has resulted in tax litigation in this area.

## General information

### Tax authority and law

The Salvadorian Tax Administration: Treasury Department (Ministerio de Hacienda) and the Directorate of Internal Taxes (Dirección General de Impuestos Internos); Salvadorian Tax Code and guidelines.

### Regulations, rulings, guidelines

The Tax Code was amended through Legislative Decree No. 233, including articles 62-A; 124-A; 135, section F; 147, section e; 199-B; 199-C; 199-D; 247, section I. Additionally, guidelines on the treatment of operations with related parties and tax havens were also issued.

The tax reforms of July 2014 amend article 62-A of the Tax Code through Legislative Decree No. 763.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

Related parties are defined as follows:

- A person or company with direct or indirect participation in at least 25 percent of the capital stock or voting rights of another;
- Corporations that belong to the same unit of a decision-making or business group;
- Salvadoran entities that have economic ties with a foreign supplier for exclusive distribution and/or purchases from the foreign entity that represent more than 50 percent of the Salvadoran entities total volume; and
- Salvadoran entities that enter into transactions with entities located in tax havens.

### Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a PE or branch?

There are no specific guidelines in the regulations that allow or disallow the use of transfer pricing analyses to calculate benefits attributable to a permanent establishment or branch.

However, the transfer pricing regulation considers a PE or branch in El Salvador and its foreign parent company (and its related entities) related parties. Thus, transactions between them should comply with the local transfer pricing regulations.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the profit split method, the transactional net margin method, and the market price method under article 199-B of the Tax Code (a specific method established by the Salvadorian Tax Code, not an OECD method).

### Priority of methods

The taxpayer must select the best method to be used from those included in the Tax Code and the transfer pricing methods accepted by the OECD.

### Availability of benchmarking/comparative data

Public information on companies and operations is very limited; thus, taxpayers generally use foreign comparables.

### Are foreign comparables acceptable to local tax authorities?

Yes.

## Services issues

### Are management fees deductible?

Yes, as long as the taxpayer is able to prove that the services were actually received, that they were necessary for the business, and that the amount agreed upon complies with the arm's length principle.

### Are management fees subject to withholding?

Yes. The withholding rate is 20 percent, except when the recipient persons/entities are domiciled, established, or located in countries of low or zero taxation, or tax havens, in which case the withholding rate is 25 percent.

### May stock option costs be included in the cost base for intercompany services charges?

No information is available on this matter.



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### Commissionaire arrangements

#### Are commissionaire arrangements allowed?

Not regulated.

### Cost sharing agreements

#### Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?

There are no specific regulations on CSAs or CCAs.

#### Are cost contribution or cost sharing payments deductible?

There are no specific regulations on CSAs or CCAs.

#### Are cost contribution or cost sharing payments subject to withholding tax?

There are no specific regulations on CSAs or CCAs.

#### What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?

There are no specific regulations on CSAs or CCAs.

### Documentation and tax return disclosures

#### Tax return disclosures

The income tax return must include the amount of the adjustments determined in the transfer pricing study.

In addition, taxpayers are required to file an annual information return on operations conducted with related parties (Form F982), provided the total amount of such operations exceeds \$571,000. The form must be filed no later than three months after the end of the tax period (March 31).

#### Documentation requirements

Taxpayers must document their operations with related parties, and that documentation must be available to the tax authorities in the event of an audit. The taxpayer must keep the documentation for a period of 10 years.

#### Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?

Transfer pricing documentation must be prepared annually.

#### Deadline to prepare documentation

There is no specific deadline for preparing the transfer pricing study, but ideally, documentation should be prepared before the deadline for filing the information return on operations with related parties (March 31).

In addition, the transfer pricing study must be presented to the external tax auditor, who should issue the corresponding report in May.

#### Deadline to submit documentation

Documentation must be presented to the tax authorities only when requested.

#### Deadline to file income tax return

The deadline for filing the income tax return is four months after the conclusion of the tax period (April).

#### Acceptable languages for documentation

All documentation must be in Spanish.

### Transfer pricing adjustments

#### Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?

The income tax return does not include specific disclosures on transfer pricing; however, the calculation for the determination of income tax due must consider the information regarding operations with related parties. That information must coincide with what is reflected in the company's audited financial statements, and with what is detailed in the information return, Form F982; the taxpayer should justify any differences in the event of an audit.

#### Self-initiated adjustments

It is possible to make voluntary adjustments, provided no notification regarding the commencement of an audit has been received. If voluntary adjustments decrease the amount payable or increase the balance in favor of the taxpayer, they must be made within two years following the filing deadline, again provided that no audit has commenced.

#### Statute of limitations on assessment for transfer pricing adjustments

The statute of limitations is three years.

#### Taxpayer set-offs for other related-party transactions

Not regulated.

### **Interest and penalties**

**Additional assessment payment deadline**  
There are no specific provisions in this regard.

**Penalty on transfer pricing assessment**  
There are no specific provisions in this regard.

**Is interest charged on penalties?**  
Yes.

**Is interest payable when a refund is due to the taxpayer?**  
There are no specific provisions in this regard.

**Reduction in transfer pricing penalties**  
There are no specific provisions in this regard.

### **Advance Pricing Agreements (APAs)**

**Are APAs available?**  
There are no specific provisions in this regard.

**APA filing fee**  
There are no specific provisions in this regard.

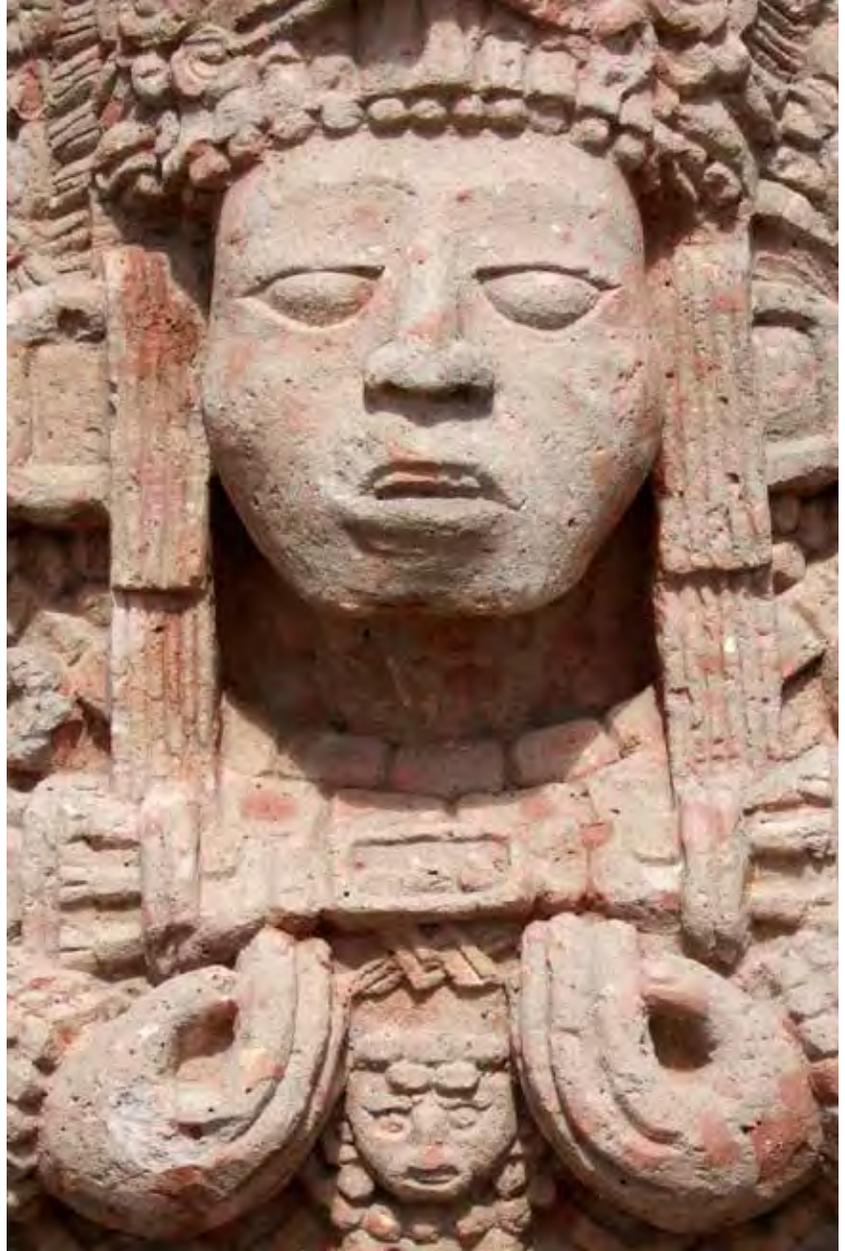
**APA term of agreement**  
There are no specific provisions in this regard.

### **Competent authority**

**When may taxpayer submit tax adjustment to Competent Authority (CA)?**  
There are no specific provisions in this regard.

**May CA develop new settlement positions?**  
There are no specific provisions in this regard.

**May taxpayer go to CA before paying tax?**  
There are no specific provisions in this regard.



# Estonia

## What's new

Estonia's transfer pricing regime did not experience any significant changes or developments during 2014. While transfer pricing issues fall within the scope of audits by the Estonian tax authorities, they do not seem to be a top priority for the tax authorities. Of continuing interest to the tax authorities are Estonian companies that engage in business with related parties from Nordic countries. Interest in Finnish, Latvian, and Lithuanian business partners is also high.

## General information

### Tax authority and law

Estonian Tax and Customs Board (Maksu- ja Tolliamet). Estonian Income Tax Act (Article 14 sections 7 and 8; Article 50 sections 4-8); Regulation No. 53 of the Minister of Finance of 10 November 2006, "Methods for determining values of transactions between related persons."

### Regulations, rulings, guidelines

The Tax and Customs Board has issued guidelines on its website on the determination of arm's length prices for related-party transactions, but those guidelines are not binding on taxpayers.

Regulation No. 53 of the Minister of Finance stipulates that it is recommended that taxpayers follow the OECD transfer pricing guidelines to the extent the guidelines do not contradict the Estonian regulation.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

Transfer pricing rules apply to transactions between related parties, as defined in Article 8 of the Income Tax Act. Persons are deemed to be related if they have common economic interests, or if one person has dominant influence over the other. The law also includes a list of situations whereby persons are always deemed to be related, for example, companies belonging to the same group.

### Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

Generally, arm's length pricing (including transfer pricing analyses) is applicable to permanent establishments.

However, the tax authority has explained in its guidelines that arm's length pricing should not be used in specific cases, because a permanent establishment is not an independent person and thus the foreign head office needs to support the start-up of the permanent establishment. For example, furniture or services required for a start-up permanent establishment should be priced at cost. However, this deviation is not allowed if the head office sells the same goods or services to unrelated parties (in which case arm's length pricing should be used).

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the profit split method, and the transactional net margin method (TNMM). Other methods could be used if the interested party (the taxpayer or the Tax and Customs Board) explains why those other methods are more appropriate.

### Priority of methods

None of the methods has priority over the others. Estonia follows the OECD transfer pricing guidelines' best method rule.

### Availability of benchmarking/comparative data

The annual reports of Estonian companies are publicly available, but usually there are not enough comparables in Estonia. Instead, pan-European comparables could be used.

### Are foreign comparables acceptable to local tax authorities?

Usually, pan-European comparables are acceptable. For certain types of transactions (such as royalty payments) the Tax and Customs Board also has accepted comparables from non-European countries. For interest rates, the Tax and Customs Board tends to prefer Estonian data.

## Services issues

### Are management fees deductible?

Yes, if the service has actually been received, it is related to the recipient's business, and the price is at arm's length.

Shareholders' costs should be excluded from the cost base.

### Are management fees subject to withholding?

Only if the service was rendered in Estonia and the service provider is a tax resident of a country that does not have a valid tax treaty with Estonia (10 percent) or is tax resident



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in a low-tax territory (21 percent). If the service provider is tax resident in a low-tax territory, it is irrelevant where the service was rendered or used.

Management fees are also subject to 10 percent withholding tax if the service was rendered in Estonia by a tax resident of a country that has a valid tax treaty with Estonia but no tax residence certificate is presented to the Estonian recipient of the service.

#### **May stock option costs be included in the cost base for intercompany services charges?**

Yes. A stock option program may be taxed as a fringe benefit (subject to income tax and social tax) if certain criteria are not met.

#### **Commissionaire arrangements**

##### **Are commissionaire arrangements allowed?**

Yes.

#### **Cost sharing agreements**

##### **Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?**

Yes.

##### **Are cost contribution or cost sharing payments deductible?**

Yes.

##### **Are cost contribution or cost sharing payments subject to withholding tax?**

Depends on the nature of the arrangement.

##### **What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?**

No guidance available.

#### **Documentation and tax return disclosures**

##### **Tax return disclosures**

It is not necessary to disclose any related-party transactions in the corporate income tax return. As an exception to this rule, companies can declare differences between prices used in related-party transactions and arm's length prices and pay corporate income tax on the difference.

##### **Documentation requirements**

An Estonian tax-resident company or Estonian permanent establishment of a nonresident is obligated to compile detailed documentation describing transactions entered into with its related parties if it meets at least one of the following criteria:

- It is an Estonian resident credit institution or insurance company;
- It is an Estonian resident company listed on a stock exchange;
- It is an Estonian resident company or a nonresident that has a permanent establishment in Estonia, which has, taking into account all Estonian and foreign related entities:
  - At least 250 employees;
  - Annual turnover of at least EUR 50 million; or
  - Consolidated assets with a value of at least EUR 43 million.

In addition, any other company that has entered into a transaction with a person located in a low-tax territory is also obligated to compile the documentation mentioned above.

For the structure of detailed documentation, Estonia has adopted the master file/local file approach. The master file comprises unified documentation for all companies in the group. The Estonian country-specific file is supplementary to the master file and comprises information related to the transactions entered into by the relevant company only.

##### **Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

Yes. Detailed transfer pricing documentation must be completed every financial year and must include any changes and updates applicable. If no other changes apart from transaction values are in place, then only the latter changes are expected. There is no need to update comparables annually if the terms of the transaction and the market situation have not changed (or the changes have been insignificant).

##### **Deadline to prepare documentation**

No deadline is stipulated in the law.

##### **Deadline to submit documentation**

Upon request, the tax authority will stipulate a deadline that cannot be shorter than 60 calendar days.

##### **Deadline to file income tax return**

In Estonia, the taxable period for corporate income tax is a calendar month. The deadline for corporate income

tax returns is the 10th day of the month following the taxable period. There is no need to submit transfer pricing documentation with the tax return.

#### **Acceptable languages for documentation**

The Tax and Customs Board may accept documentation in languages other than Estonian (for example, English is generally accepted). However, should a tax dispute result in litigation, translation into Estonian would likely be required.

#### **Transfer pricing adjustments**

##### **Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

Under the Estonian corporate income tax system, only profit distributions are taxable. Retained profits are not subject to corporate income tax in Estonia. Unlike other countries, Estonia's taxation period is a calendar month (instead of calendar or financial year). Due to the nature of the Estonian corporate income tax, Estonian companies (and Estonian permanent establishments of nonresidents) declare only profit distributions and deemed profit distributions (including nondeductible expenses, gifts made, etc). There is no need to declare profits or transfer prices. As an exception, companies can declare differences between prices used in related-party transactions and arm's length prices and pay corporate income tax on the difference.

#### **Self-initiated adjustments**

Self-initiated adjustments to transaction conditions are generally possible as long as the tax authority has not commenced an audit.

#### **Statute of limitations on assessment for transfer pricing adjustments**

The general statute of limitations is three years. However, in cases of intentional failure to pay tax, the period is five years. In the latter case the tax authority must prove the taxpayer's intent. The period begins to run on the due date for the submission of the tax return that was not submitted or that contained information which caused an amount of tax to be calculated incorrectly.

#### **Taxpayer set-offs for other related-party transactions**

There is no formal provision.

#### **Interest and penalties**

##### **Additional assessment payment deadline**

Additional payment is due when the assessment is issued.



#### **Penalty on transfer pricing assessment**

Penalties are not widely used in Estonia. Instead, additional corporate income tax plus interest on late tax payment (0.06 percent per calendar day, or 21.9 percent per annum) will be due.

Usually, penalties are imposed if a taxpayer repeatedly fails to present detailed transfer pricing documentation.

#### **Is interest charged on penalties?**

No.

#### **Is interest payable when a refund is due to the taxpayer?**

Yes, if the overpayment was caused by an incorrect tax assessment by the Tax and Customs Board. The interest rate is 0.06 percent per calendar day or 21.9 percent per annum.

#### **Reduction in transfer pricing penalties**

Not applicable.

#### **Advance Pricing Agreements (APAs)**

##### **Are APAs available?**

No.

##### **APA filing fee**

Not applicable.

##### **APA term of agreement**

Not applicable.

#### **Competent authority**

##### **When may taxpayer submit tax adjustment to Competent Authority (CA)?**

No formal rules, but generally within the general statute of limitations (three years).

##### **May CA develop new settlement positions?**

Yes.

##### **May taxpayer go to CA before paying tax?**

No formal rules. A dispute over a tax assessment does not stop the interest calculation. Immediate payment of tax would minimize the potential cost of interest for the taxpayer. If the taxpayer successfully defends its position and overpaid tax is refunded, the tax authority must pay interest (0.06 percent per calendar day or 21.9 percent per annum) to the taxpayer.

# Finland

## What's new

In 2014, the Finnish tax administration imposed record-high adjustments following transfer pricing audits. The cases concerned business model conversions, valuations of intangible rights, and recharacterizations of finance companies. For example, in December 2014, a chemical industry company received a back-tax bill of EUR 282 million for tax year 2008.

In July 2014, the Finnish Supreme Administrative Court rendered a decision on a hybrid (IFRS) loan issued by a Finnish limited liability company to its Luxembourg-based shareholder. Contrary to the views of the tax authorities, the loan could not be deemed to be equity and the interest paid on the loan was deductible by the Finnish subsidiary. The case confirmed several important points. First, reclassification can be made under Section 28 of the Finnish Taxation Procedure Act only (anti-avoidance), not based on Section 31 (the arm's length principle). Second, the sovereignty of the Finnish tax law vis-à-vis international guidelines was maintained. The OECD transfer pricing guidelines may be used as indicative guidance, but not as decisive grounds for reclassification. In December 2014, the Ministry of Finance introduced a proposal to change the law allowing reclassification and fully incorporate paragraph 1.65 of the OECD's transfer pricing guidelines into domestic Finnish law.

## General information

### Tax authority and law

The Finnish Tax Administration (Verohallinto). Sections 14 a-c and 31 Tax Procedure Act.

### Regulations, rulings, guidelines

The Finnish Tax Administration issued a guidance letter on documentation on 19 October 2007. The English version, Transfer Pricing Documentation Requirements, was issued on 16 April 2009.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

The control test requires a company to have direct or indirect ownership of more than 50 percent of the capital or voting power, the right to appoint more than half the members of the board of directors, or other means of control of another company.

### Do the local transfer pricing rules or tax authority allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

Yes. A transfer pricing analysis may be used to calculate profits attributable to a permanent establishment or branch located in Finland. Under the Finnish transfer pricing rules, the taxable income of the Finnish permanent establishment is calculated in accordance with the arm's length principle as if the permanent establishment were a stand-alone and distinct entity.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price method (CUP), the resale price method, the cost plus method, the profit split method, and the transactional net margin method (TNMM).

### Priority of methods

No priority of methods is established under domestic law. Finland follows the OECD transfer pricing guidelines regarding the selection and use of transfer pricing methods.

### Availability of benchmarking/comparative data

Comparative data is available; Finnish companies must file their financial statements with the public trade register annually.

### Are foreign comparables acceptable to local tax authorities?

Yes. Pan-European comparables are accepted, but comparability is analyzed on a case-by-case basis, depending on the location of the tested party, for example.

## Services issues

### Are management fees deductible?

Yes, provided the services benefit the company and the pricing of the services meets the arm's length pricing requirements. Proper documentation should be in place to support the arm's length nature of the management fees.

### Are management fees subject to withholding?

No.

### May stock option costs be included in the cost base for intercompany services charges?

An award settled using newly issued shares does not give rise to a deductible cost for the company. However, if an award is settled using shares purchased from a common



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stock exchange by the company, the amount paid for the shares will be deductible, provided some requirements for tax deductibility are met.

### Commissionaire arrangements

#### Are commissionaire arrangements allowed?

Yes.

### Cost sharing agreements

#### Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?

Yes.

#### Are cost contribution or cost sharing payments deductible?

Yes.

#### Are cost contribution or cost sharing payments subject to withholding tax?

It depends on the nature of the arrangement.

#### What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?

Payments are deductible directly or amortizable over the useful life of the intangible, over a maximum of 10 years.

### Documentation and tax return disclosures

#### Tax return disclosures

A taxpayer must state in its tax return whether it engaged in related-party transactions and whether it was required to prepare transfer pricing documentation. Information on the taxpayer's main functions at a high level, profitability, and related-party transactions is requested in Form 78, to be appended to the tax return. Form 78 is used for risk analysis and is not, strictly speaking, part of the tax return; inaccuracies in the information provided in the form do not generate any penalties.

#### Documentation requirements

The documentation requirements are applicable to accounting periods starting on or after 1 January 2007. Documentation requirements are in line with the OECD transfer pricing guidelines. Documentation drafted in accordance with the EU Code of Conduct is acceptable.

Documentation must include:

- A description of the taxpayer's business activities;
- A description of the connection between associated companies;
- Information on transactions undertaken with associated companies;

- A functional analysis of the transactions undertaken with associated companies, providing information on functions performed and risks assumed;
- A comparability analysis, including information on comparable transactions or companies, validating the arm's length nature of the applied transfer pricing; and
- A description of the selected pricing method and its application.

#### Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?

It is recommended that transfer pricing documentation be prepared on an annual basis, but it should be provided to the Finnish tax authorities upon request only. As a rule, searches on an annual basis are not required, and as a rule of thumb, depending on the case, a search might be applicable for three years.

#### Deadline to prepare documentation

It is recommended that transfer pricing documentation be prepared annually and submitted to the Finnish tax authorities upon request. There is no specific filing deadline for documentation or disclosure obligations with the tax return.

#### Deadline to submit documentation

Documentation must be provided within 60 days from a request by the tax authorities, but the tax authorities cannot request the documentation earlier than four months after the end of the fiscal year. If additional requests are made, 90 days' response time is allowed. Discretionary extensions may be possible.

#### Deadline to file income tax return

Income tax returns must be filed within four months from the end of the accounting period. Transfer pricing documentation need not be filed with the tax return, but a specific transfer pricing form (Form 78) must be attached to the tax return if certain conditions are met.

#### Acceptable languages for documentation

According to the Finnish Tax Administration's Guidance Letter, documentation drafted in Finnish, Swedish, or English is acceptable. If English is used, a translation of key points into either of the official languages — Finnish or Swedish — may be requested.

### Transfer pricing adjustments

**Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

In general, the transfer prices reflected on an income tax return must be the same as those reflected in financial statements. Book/tax differences may be allowed in exceptional adjustment cases.

### Self-initiated adjustments

Through standard tax assessment and appeal mechanisms.

### Statute of limitations on assessment for transfer pricing adjustments

General rules apply; five years from finalization of the actual assessment of the filed tax return (in practice, six years from tax year-end).

### Taxpayer set-offs for other related-party transactions

There is no formal provision.

### Interest and penalties

#### Additional assessment payment deadline

General rules apply. Penalties and interest may also be applicable.

#### Penalty on transfer pricing assessment

Under 31 Tax Procedure Act, a punitive tax increase applies, at a maximum rate of 30 percent, on the reassessed amount of income. The increase is payable in all cases, whether or not actual tax for the reassessed amount of income is payable (for instance, if the taxpayer is still in a loss-making position after the adjustment). In court ruling KHO 2013:36, the court adopted a significantly lower punitive tax increase based on a different section, 32 Tax Procedure Act.

The maximum penalty for noncompliance with documentation requirements is €25,000 per request. In practice, penalties related to noncompliance with documentation requirements have been imposed only rarely.

#### Is interest charged on penalties?

Yes. Penalty interest on overdue payments is the reference rate based on the Interest Act (633/1982) plus 7 percent.

#### Reduction in transfer pricing penalties

Reductions are possible at different phases of the litigation process.



#### Is interest payable when a refund is due to the taxpayer?

Interest payable on refunds is determined annually; in 2014 and 2015, the rate is 0.5 percent.

### Advance Pricing Agreements (APAs)

#### Are APAs available?

No formal APA legislation is in place, but the tax authorities have indicated that taxpayers have the ability to obtain a MAP APA under a treaty's mutual agreement procedure. Taxpayers may also apply for a general advance ruling on transfer pricing issues

#### APA filing fee

There is no filing fee for an APA application. A fee for an advance ruling is payable upon receipt of the ruling and depends on the complexity of the ruling.

#### APA term of agreement

An advance ruling is granted for the period ending at the end of the tax year following the year the ruling was granted in. There is no formal legislation on the term of a MAP APA.

### Competent authority

#### When may taxpayer submit tax adjustment to competent authority (CA)?

The provisions of pertinent tax treaties, the European Union's Arbitration Convention, and the domestic statute of limitation must be observed. Taxpayers may submit a tax adjustment request to CA after the final tax assessment. If the taxpayer has made an application to an appeals body, Finland will not start negotiations until that body has issued its decision.

#### May CA develop new settlement positions?

Yes.

#### May taxpayer go to CA before paying tax?

Generally, tax must be paid. Limited options for postponing/delaying the tax payment exist, subject to a decision by the tax authorities or the Ministry of Finance.

# France

## What's new

The highlights of France's transfer pricing developments for 2014 included the issuance of a specific form to comply with the annual "light" transfer pricing documentation requirement, which going forward, will have to be filed electronically, and an increase in the penalties imposed for failure to comply with the general transfer pricing documentation requirements. In essence, situations may now arise whereby a company could receive a significant penalty even if no transfer pricing adjustment is made, only because of the omission of documentation or lack of compliance.

France has clearly stated its great interest in the current BEPS work carried out by the OECD, and is ahead of some of the changes promoted by the OECD, for example, regarding hybrids.

## General information

### Tax authority and law

French Tax Administration; General Tax Code Article 57 (transfer of profits), Articles 238 A and 209 B (CFC rules), Article 223 quinquies B (transfer pricing form to be filed annually) and Article 1735 ter (penalties for lack of compliance); Tax Procedure Book: Article L.13 B for specific transfer pricing questions from the tax authorities, Article L.13 AA for general contemporaneous transfer pricing documentation requirements and Article L.13AB for additional requirements for transactions with "uncooperative tax havens" as defined in Article 238-0-A of the French Tax Code; Article L.80 B 7 (APAs) and Supreme Tax Court case law on Abnormal Act of Management, L.188 A (extension of statute of limitations when the FTA makes request from foreign tax authorities).

### Regulations, rulings, guidelines

Administrative Doctrine on Article 57 (BOI-BIC-BASE-80-20), Adopted Procedures L.13 AA and L.13 AB (22 December 2009), Administrative Instruction on the Mutual Agreement Procedure (BOI-INT-DG-20-30), Administrative Instructions on APAs (BOI-SJ-RES-20), OECD Transfer Pricing Guidelines (generally accepted in practice).

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

Direct or indirect dependence link; dependence can be de jure or de facto.

### Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

France's position is in line with the OECD transfer pricing guidelines.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled profits (CUP) method, the resale price method, the cost plus method, the profit split method, and the transactional net margin method (TNMM).

### Priority of methods

No priority of methods, in accordance with the revised OECD transfer pricing guidelines issued July 2010. However, in case of equal reliability, the CUP prevails over other traditional methods, and traditional methods over the other profit-based methods.

### Availability of benchmarking/comparative data

French comparables information is readily available through an authoritative local database (Diane).

### Are foreign comparables acceptable to local tax authorities?

No, except pan-European benchmarks, and only to the extent they include a meaningful sub-set of French entities and taxpayers demonstrate that carrying out a pan-European analysis is relevant to their cases. A recent court case stated that the use of pan-European comparables must be justified.

## Services issues

### Are management fees deductible?

Yes, provided they meet the arm's length standard (benefits test and mark-up).

### Are management fees subject to withholding?

No, except for any portion rejected as not meeting the arm's length standard (deemed dividend).

### May stock option costs be included in the cost base for intercompany services charges?

Administrative costs related to stock option plans could be recharged in the framework of a management fees agreement. General rules of deductibility apply for French tax purposes.



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### Commissionaire arrangements

#### Are commissionaire arrangements allowed?

Yes, but such arrangements are heavily targeted for tax audits.

### Cost sharing agreements

#### Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?

Yes. France follows Chapter VIII of the OECD transfer pricing guidelines.

#### Are cost contribution or cost sharing payments deductible?

Yes. General Tax Code, CGI, ART; 38 and 39-1-1.

#### Are cost contribution or cost sharing payments subject to withholding tax?

No.

#### What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?

If a deemed acquisition, no current-year deduction is available, but the payments are amortizable over the useful life of the intangible asset (General Tax Code, art. 39, 1-2). If the payment is a deemed royalty payment, a current deduction is permitted.

### Documentation and tax return disclosures

#### Tax return disclosures

Companies with fiscal year-ends after September 8, 2013, must file a specific transfer pricing form (CERFA 2257-SD) with the French tax authorities on an annual basis within six months following the filing of their annual tax return (under article 223 quinquies B of the French Tax Code). The form must include a description of the taxpayer's transfer pricing method, as well as details regarding the cash flows per type of transactions (for aggregate amounts of more than €100,000 per type of transactions).

#### Documentation requirements

Yes, dynamic and contemporaneous documentation requirements are in place as of January 2010 following the adoption of procedures under articles L.13 AA and L.13 AB. Article L.13 AA also requires that rulings granted to related parties by foreign tax authorities must be disclosed to the FTA.

#### Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?

Contemporaneous documentation requirements have been in place since January 2010, and a specific transfer pricing form now must be submitted to the French tax authorities within six months following the filing of the annual tax return. Thus, this information must be updated annually. Comparables data should also be refreshed, given that a new analysis should be prepared from time to time (for example, every three years) to ensure that the results and conclusions remain valid.

#### Deadline to prepare documentation

As of fiscal year 2010, contemporaneous transfer pricing documentation must be made available to the tax inspector as of the first day of a tax audit. Starting from FY 2013 (for companies whose fiscal year ends on or after September 8, 2013), companies must submit annually a specific transfer pricing form (CERFA 2257-SD) to the French tax authorities within six months of filing the income tax return.

#### Deadline to submit documentation

Documentation must be provided to the French tax authorities the day a tax audit begins. If documentation is not available, the tax authorities will send an official enforcement notice to provide the documentation within the next 30 days. Failure to do so will trigger a penalty (Article 1735 ter of the French Tax Code).

#### Deadline to file corporate tax return

The corporate tax return must be filed by the 1st day of the fourth month after the closing of the books, with an exception for companies that have a December 31 year-end, which must file by the 1st day of the fifth month (that is, a May 1 deadline for Dec. 31 year-end closing). One to two additional weeks are usually granted for electronic filing.

#### Acceptable languages for documentation

If documentation is not in French, the tax authorities are entitled to request a translation into French. The annual transfer pricing form (CERFA 2257-SD) must be in French.

### Transfer pricing adjustments

**Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

The transfer prices reflected on a tax return must be the same as those reflected in the financial statements. Thus, book/tax differences are not allowed.

### Self-initiated adjustments

Self-initiated adjustments are permitted if substantially justified.

### Statute of limitations on assessment for transfer pricing adjustments

Three years plus the current year, but the period can be extended if tax losses are imputed or carried forward. An extension is possible in case foreign tax authorities' assistance is required (Tax Procedure Book, L.188 A). For undisclosed activities, the statute is extended to 10 years.

### Taxpayer set-offs for other related-party transactions

There is no formal provision; France follows the OECD transfer pricing guidelines.

### Interest and penalties

#### Additional assessment payment deadline

The general tax assessment rules apply.

#### Penalty on transfer pricing assessment

As of 1 January 2010, companies subject to the transfer pricing documentation requirements are subject to a penalty (Article 1735 ter of the French Tax Code), per audited year, up to the highest amount between (i) 0.5 percent of the amount of the transactions that have been omitted or incompletely documented or (ii) 5 percent of the reassessed basis in relation to those same transactions, with a minimum of €10,000 in case of failure to provide information on time or providing only partial information. Bad faith penalties amounting to 40 percent of the tax reassessment may also apply, and can amount to 80 percent in case of fraud or 150 percent in specific cases.

#### Is interest charged on penalties?

No.

#### Is interest payable when a refund is due to the taxpayer?

Yes.



### Reduction in transfer pricing penalties

There is no provision in this regard.

### Advance Pricing Agreements (APAs)

#### Are APAs available?

Bilateral and unilateral agreements are available (in specific cases). Multilateral agreements may be possible.

#### APA filing fee

There is no fee for filing an APA request.

#### APA term of agreement

Three to five years forward. The APA request should be filed at least six months before the beginning of the first year that would be covered by the APA.

### Competent authority

#### When may taxpayer submit tax adjustment to competent authority (CA)?

In most cases, from six months to three years following receipt of a notice of tax reassessment (depending on the relevant tax treaty).

#### May CA develop new settlement positions?

Yes, unless the taxpayer has entered into a closing agreement or received a court decision.

#### May taxpayer go to CA before paying tax?

As of January 2014, a CA procedure does not defer payment.

# Germany

## What's new

In 2014, Germany implemented the Authorized OECD Approach (AOA) in domestic law. In this regard, Germany followed for the most part the recommendations published by the OECD in the OECD's 2010 Report on the Attribution of Profits to Permanent Establishments, and even focused more closely on particular facts, such as the determination of donation capital and – deviating from the standards set by the OECD – the rebuttable presumptions set forth in the German law on the profit allocation to permanent establishments, as well as specific arrangements for permanent establishments for construction, assembling, and mining.

## General information

### Tax authority and law

Federal Ministry of Finance; Section 8 para. 1 and 3 Corporate Income Tax Act (KStG); Section 4 para. 1 Income Tax Act (EStG); Section 1 Foreign Tax Code (AStG); Section 90 para. 3 and section 162 para. 3 and 4 General Tax Code (AO). Decree-law on the manner, content, and extent of documentation in the sense of section 90 para. 3 of the General Tax Code (GAufzV), decree-law on the relocation of business functions (FVerlV), decree-law on the profit allocation to permanent establishments (BsGav).

### Regulations, rulings, guidelines

Principles for the Examination of Income Allocation in the Case of Internationally Related Enterprises of Feb. 23, 1983; Principles for the Examination of Income Allocation by Cost Sharing Arrangements between Internationally Related Enterprises of Dec. 30, 1999; Principles for the Audit of Income Allocation between Internationally Affiliated Enterprises in Cases of Employee Secondments of November 9, 2001; Principles for the Audit of the Income Allocation Between Related Parties with Cross-Border Business Relations in Respect of the Duty of Determination, the Duty of Cooperation, Adjustments, Mutual Agreement Procedures, and EU Arbitration Procedures of April 12, 2005; Principles for the Examination of Income Allocation between Affiliated Companies in the Case of International Relocation of Functions, dated October 13, 2010; Principles for the Application of Section 1 Foreign Tax Code to Cases of Marginal Amortizations and other Depreciations on Loans Issued to Foreign Related Entities, dated March 29, 2011.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

The "related parties" doctrine under sec. 1 para. 2 of the Foreign Tax Code applies. A person is related to the taxpayer: (1) if that person holds, directly or indirectly, a participation of at least ¼ in the taxpayer's capital, or if that person is able to exercise, directly or indirectly, a controlling influence or vice versa, if the taxpayer holds a substantial participation in that person's capital or is able to exercise, directly or indirectly, a controlling influence on that person; (2) if a third person holds a substantial participation both in that person's and the taxpayer's capital, or is able to exercise, directly or indirectly, a controlling influence on both of them; or 3) if that person or the taxpayer is able, in agreeing on the terms and conditions of a business relationship, to exercise influence on the taxpayer or on the person based on facts beyond the business relationship, or if one of them is personally interested in the other party's earning of such income.

### Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

Germany has implemented the Authorized OECD Approach (AOA, as set out in article 7 of the 2010 OECD model treaty and commentary) in its domestic law. The new law applies for business years beginning after 31 December 2014. Under the AOA, the arm's length principle must be applied to the cross-border profit allocation between a permanent establishment (PE) and the enterprise of which it is a part; for this purpose, the PE must be treated as a separate and independent entity. The allocation of profits is determined in a two-step approach. In the first step, the people functions of local employees are determined. Based on those people functions the related assets and risks are allocated to the separate entities of the enterprise. Finally, the capital necessary for the functions performed and risks assumed is allocated to the permanent establishment. The second step comprises the characterization of the business relationship and the determination of an arm's length remuneration for the respective dealing under application of the appropriate transfer pricing method. Both domestic enterprises that maintain a foreign PE and foreign businesses with a German PE are subject to the decree.



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## Methods and comparables

### Acceptable methods

The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the transactional net margin method (TNMM), and profit split methods. There is a hypothetical arm's length test in case the other methods do not apply. The hypothetical arm's length test must be observed, especially in the case of transactions involving intangibles.

### Priority of methods

According to Sec. 1 para. 3 sentence 1 Foreign Tax Code, the CUP, resale price, and cost plus methods are the preferred methods if fully comparable arm's length prices can be determined. If fully comparable arm's length data cannot be determined, limited comparable data may be used after making appropriate adjustments under the application of an appropriate transfer pricing method (CUP, resale price, cost plus, profit split, TNMM). If even limited comparable arm's length data cannot be determined, the taxpayer must perform a hypothetical arm's length test.

### Availability of benchmarking/comparative data

External comparable data on German comparables is rarely available.

### Are foreign comparables acceptable to local tax authorities?

Pan-European benchmarks are often accepted by the German tax authorities.

## Services issues

### Are management fees deductible?

Generally, yes. However, if shareholder costs are included in management fees, the German tax authorities generally refuse tax deductibility. The German tax authorities use a very broad definition of the term "shareholder costs" that is not in line with the OECD approach (cf. Sec. 7.9 of the OECD transfer pricing guidelines).

### Are management fees subject to withholding?

Generally, no. Withholding taxes may be triggered if management activities also involve the transfer of intellectual property.

### May stock option costs be included in the cost base for intercompany services charges?

No specific rules; according to the general rules for the cost plus method, the service charge is based on the appropriate costs related to the provision of intercompany

services plus an appropriate mark-up. Generally, service costs are based on the costs as shown in the statutory accounting of the service provider (cf. Sec. 2.1, Principles for the Examination of Income Allocation by Cost Sharing Arrangements). Consequently, as long as the salary including the stock option costs of the employee providing the intercompany services is appropriate and a cost item for the service provider, the service charges should be deductible in Germany. However, depending on the structure of the individual stock option plan, it may be the case that the costs for the stock options are economically not borne by the service provider but by its shareholders; for example, in the case of new shares (Federal Tax Court 25.8.2010 - I R 103/09). In such cases, the German tax authorities may partially deny the tax deductibility of the service costs if they include that kind of stock option costs.

## Commissionaire Arrangements

### Are commissionaire arrangements allowed?

Yes.

## Cost sharing agreements

### Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?

Yes, see Principles for the Examination of Income Allocation by Cost Sharing Arrangements between Internationally Related Enterprises, dated December 30, 1999 (the Cost Sharing Principles).

### Are cost contribution or cost sharing payments deductible?

Yes, see Chapter 2 of the Cost Sharing Principles.

### Are cost contribution or cost sharing payments subject to withholding tax?

Generally, no. Withholding taxes may be triggered if cost contribution or cost sharing activities also involve the transfer of intellectual property.

### What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?

For the payer, buy-in payments are deductible or amortizable over the useful life of the intangible. Buy-in payments may result in taxable gains for the recipient.

## Documentation and tax return disclosures

### Tax return disclosures

No specific disclosures are required.

### **Documentation requirements**

The economic and legal basis for arm's length prices and conditions in cross-border transactions with related parties must be documented. Details are set out in the decree-law on the manner, content, and extent of documentation in the sense of section 90 para. 3 of the General Tax Code (GAufzV). Further details on documentation requirements are outlined in the administrative principles of April 12, 2005, issued by the Federal Ministry of Finance.

### **Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

There is no specific requirement to prepare annual transfer pricing reports (except for extraordinary transactions). Regarding the update of benchmarking studies there is no strict rule in the law, decree-law, or administrative principles, so the general principles for a reasonable economic analysis apply. In practice, benchmarking studies are often fully updated every three years (basically, a new search is performed) with only financial updates being run in the interim periods.

### **Deadline to prepare documentation**

Documentation must be prepared contemporaneously for extraordinary business transactions, that is, within six months after the end of the fiscal year when the extraordinary transaction took place. Extraordinary business transactions are transactions that have a substantial impact on the amount of the taxpayer's income, such as business restructurings. For regular business transactions, there is no deadline to prepare documentation.

### **Deadline to submit documentation**

Within 60 days of auditor's request for regular business transactions, and within 30 days for extraordinary business transactions.

### **Deadline to file income tax return**

The tax return generally must be filed by May 31 of the year following the tax year. German tax authorities usually accept a tax return filed by December 31 of the year following the tax year if the taxpayer is represented by a tax advisor.

### **Acceptable languages for documentation**

Documentation must be in German; however, taxpayers may ask for approval to prepare English documentation. In practice, taxpayers mostly use English documentation and provide translations upon request from the tax auditors.

### **Transfer pricing adjustments**

#### **Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

Generally, income tax returns are based on the taxpayer's financial statements, with certain modifications required by tax law (for example, different rules for depreciation/amortization if items are capitalized, or limitation of the deductibility of certain costs). If the financial statements do not correctly reflect the arm's length standard, and German taxable income is therefore too low, German tax law requires that this be reflected in the tax return.

### **Self-initiated adjustments**

Year-end adjustments are generally expected to be based on agreements concluded in advance. However, a decision of Germany's Federal Tax Court (BFH), dated 11 October 2012, should provide more flexibility in this respect. Upward adjustments are required by law if German taxable income is too low due to non-arm's-length transfer prices.

### **Statute of limitations on assessment for transfer pricing adjustments**

Four years from the end of the year within which the return is filed; 10 years in case of tax evasion or fraud.

### **Taxpayer set-offs for other related-party transactions**

Set-offs are permissible only if: (a) unrelated parties would also agree to such balancing; (b) the benefits provided/received may be quantified for each transaction; and (c) the set-off arrangement was made in advance (this requirement may be applied in a more flexible manner, following the BFH decision of October 11, 2012) and was conducted at arm's length.

### **Interest and penalties**

#### **Additional assessment payment deadline**

Payment is due one month after the assessment, if no suspension is granted.

### **Penalty on transfer pricing assessment**

If documentation is not submitted, if the documentation is essentially unusable, or if there are doubts as to the appropriateness of the transfer prices and the foreign transaction partner does not cooperate in clarifying the doubts, the tax authorities can make an adjustment. In that case, the German tax authorities are entitled to adjust to the most unfavorable point of the arm's length range. A penalty of 5 percent to 10 percent of the income adjustment will be assessed, with a minimum surcharge of €5,000 if documentation is not provided or if the documentation is essentially unusable. In case of delayed submission of documentation, the surcharge may be up to €1 million, with a minimum of €100 per day. Penalty payments are not deductible (sec. 162 para. 4 General Tax Code).

### **Is interest charged on penalties?**

No (sec. 233, sec. 3 para. 4 General Tax Code).

### **Is interest payable when a refund is due to the taxpayer?**

Yes, 0.5 percent interest per month is payable in case of both a tax refund and an additional tax payment. The interest begins to run 15 months after the end of the calendar year in which the tax becomes due (for example, April 1, 2013, for fiscal year ending December 31, 2011) and ends on the day the (modified) tax assessment is issued.

### **Reduction in transfer pricing penalties**

If the failure to fulfill documentation requirements is excusable, the tax authorities may refrain from imposing a penalty.

### **Advance Pricing Agreements (APAs)**

#### **Are APAs available?**

APAs are available; details on the implementation of APAs are outlined in the Federal Ministry of Finance's ordinance of October 5, 2006.

#### **APA filing fee**

There is a €20,000 APA application fee, a €15,000 fee for renewal, and a €10,000 fee for modification during the term of the APA. For small taxpayers (those with intercompany tangible goods transactions below €5,000,000 and other intercompany transactions below €500,000) the filing fee is half of the above amounts.

### **APA term of agreement**

The Federal Ministry of Finance ordinance states that the APA term should be no less than three years, but should not exceed five years.

### **Competent authority**

#### **When may taxpayer submit tax adjustment to competent authority (CA)?**

In principle, taxpayers may submit applications during a tax audit if the proposed adjustment is communicated to the taxpayer. Specific timelines may vary according to the pertinent tax treaty.

#### **May CA develop new settlement positions?**

Yes, but the taxpayer is asked for approval before settlement.

#### **May taxpayer go to CA before paying tax?**

Yes. Taxpayers may go to CA after the amount of the proposed adjustment is communicated to the taxpayer, before paying the tax. After the tax assessment, payment could be suspended.



# Greece

## What's new

Greece's transfer pricing environment continued to evolve in 2014. It has become increasingly clear that transfer pricing is a priority area for the Greek tax authorities, which have issued additional guidance on the application of transfer pricing documentation rules, the implementation of the new advance pricing agreement (APA) program, and the authority of tax auditors during audits of past fiscal years.

An important development is the repeal of the minimum threshold for the application of transfer pricing documentation rules as of 1 January 2014. Now, all intragroup transactions, even those of an immaterial nature, are subject to documentation requirements. Also, serious penalties are triggered for the first time in cases of filing inaccurate Summary Information Tables. The table is an informational document for reporting the basic aspects of a company's transfer pricing file (including the company's functional and risk profile, its intragroup transactions, and the relevant documentation method) submitted annually to the Ministry of Finance. Inaccurate submission of the Summary Information Table is equated to non-submission in terms of the penalties provided for by law, which amount to 1 percent of the company's revenues, and cannot be less than €10,000 or exceed €100,000.

## General information

### Tax authority and law

- Tax authority: Ministry of Finance (MoF). Applicable laws:
- Law 4172/2013 (new Income Tax Code applicable from 1 January 2014), Law 4174/2013 (Tax Procedures Code, also applicable from 1 January 2014);
  - Law 2238/2013, as amended by L.3775/2009, L.3842/2010 and L.4110/2013 for transactions entered into up until FY 2013;
  - Law 3728/2008 for transactions entered into in FYs 2008, 2009, and 2010.

### Regulations, rulings, guidelines

Ministerial Circular 1097/2014, amended by POL. 1144/2014 and 1284/2013, as well as the relevant guidelines released by the General Secretariat of Public Revenue with regard to APAs.

The guidelines, rulings, and regulations contained in this legislation apply to intercompany transactions that take place from FY2014 onwards.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

Under recently amended provisions, two entities are considered related in the following cases:

- Participation of one person in another person's share capital through direct or indirect ownership of stock, shares, or any other participation rights of at least 33 percent in terms of value or number;
- Relation to any other person that directly or indirectly owns stock, shares, voting rights, or any other participation rights of at least 33 percent in terms of value or number of any of the related entities; and
- Relation to any other party with which a substantial direct or indirect administrative dependence or control exists, or any other party that exercises or is capable of exercising decisive influence in relation to an entity's decision-making, as well as common control or dependence or influence by a third party.

### Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

Transfer pricing regulations apply to branches and permanent establishments.

## Methods and comparables

### Acceptable methods

L. 4172/2013 explicitly states that the tax authorities should take the OECD transfer pricing guidelines regarding transfer pricing methods into consideration.

### Priority of methods

According to Ministerial Decision 1097/2014, as amended by Ministerial Decision 1144/2014, the traditional methods are preferred, because they offer a more direct measure for assessing whether intercompany transactions follow the arm's length principle. If traditional methods are not applicable (justification should be provided for this), the taxpayer may apply the transactional methods.

### Availability of benchmarking/comparative data

Financial data from published accounts is available via numerous databases.



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### **Are foreign comparables acceptable to local tax authorities?**

No specific provisions exist on this issue. European comparables are expected to be acceptable. Recently, tax auditors have shown their preference for Greek comparables, and at least for now have not been challenged in this respect.

### **Services issues**

#### **Are management fees deductible?**

Management fees are deductible, subject to general deductibility conditions:

- All expenses must be incurred in the interest of or during the company's ordinary course of business;
- The expenses must correspond to an actual transaction and the value of the transaction cannot be higher or lower than the arm's length price; and
- The expenses must be reported in the accounting books for the relevant period in which they were incurred, and they must be supported by proper documentation. Based on tax authority requirements and common practice, the taxpayer should provide a comprehensive analysis of said charges, including a description of the methodology used in the calculation of the cost base, the allocation keys used, as well as documentation of the arm's length nature of any markup applied on the relevant costs.

Written agreements are strongly recommended; the nature of the expense must be described in detail in the relevant invoice.

#### **Are management fees subject to withholding?**

In principle, management fees are treated as services; in fact, every legal person or legal entity not tax resident in Greece that receives management fees is subject to withholding tax. Thus, a 20 percent withholding tax rate applies, unless an income tax treaty exists and the recipient does not have a permanent establishment in Greece, in which case no withholding tax is due. In practice, there is a risk that management fees would be treated as royalties, in which case they would be subject to withholding tax at a rate of 20 percent, subject to override by income tax treaties and the EU royalties directive.

#### **May stock option costs be included in the cost base for intercompany services charges?**

There are no specific provisions on this issue.

### **Commissionaire arrangements**

#### **Are commissionaire arrangements allowed?**

While Greek tax law does not explicitly prohibit the use of commissionaire arrangements, they are generally discouraged because they give rise to permanent establishment issues.

### **Cost sharing agreements**

#### **Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?**

Yes.

#### **Are cost contribution or cost sharing payments deductible?**

Yes, they are deductible, subject to general deductibility conditions as described above regarding management fees..

#### **Are cost contribution or cost sharing payments subject to withholding tax?**

Yes. If payments are considered royalties, they are subject to withholding tax at a rate of 20 percent, subject to override by income tax treaties and the EU royalties directive. If they are considered services, again the 20 percent withholding tax rate applies, unless an income tax treaty exists and the recipient does not have a permanent establishment in Greece, in which case no withholding tax is due.

#### **What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?**

There are no specific provisions in this regard.

### **Documentation and tax return disclosures**

#### **Tax return disclosures**

Greek companies and branches of foreign MNEs are required to submit annually a Summary Information Table (SIT). This table is electronically submitted to the Ministry of Finance no later than four months after the end of each fiscal year. The SIT should provide quantitative and qualitative information for all intercompany transactions per category of transaction and related party.

#### **Documentation requirements**

Companies operating in Greece are obligated to prepare a Transfer Pricing Documentation File for their transactions both with domestic and foreign affiliated entities.

Transactions between related entities that do not exceed €100,000 annually and in total are exempted from the documentation obligation, provided the domestic entity's turnover does not exceed €5,000,000. Conversely, if the domestic entity's turnover exceeds €5,000,000, the pertinent threshold is €200,000 annually and in total.

If the above thresholds are triggered, the transfer pricing documentation obligation applies for every single intercompany transaction, irrespective of its value.

**Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

As stated in Circular 1097/2014, issued on April 9, 2014, as amended by Circular 1144/2014, the Transfer Pricing Documentation File must be prepared on an annual basis (that is, for every fiscal year). The documentation file should include the following information:

- A general description of the taxpayer's group;
- A general description of the group's business activities and business strategy, including any changes to the business strategy in comparison with the previous fiscal year;
- A general description and implementation of the group's transfer pricing policy;
- A general presentation of transactions concluded between the Greek subsidiary and its associated parties;
- A general description of the functions performed and the risks assumed by the associated parties, including any changes in comparison with the previous fiscal year;
- Ownership of intangible assets that belong to the group, and royalties paid or received for such assets;
- A list of APAs concluded between group entities and foreign tax authorities, if any;
- Detailed information regarding the Greek taxpayer;
- A description of the transactions that were concluded between the Greek subsidiary and the associated parties, and for which a documentation obligation exists;
- A comparative analysis (including functional analysis, economic circumstances, etc.); and
- A description of the transfer pricing method adopted and argumentation for that selection.

Financial data of the comparable companies used in benchmarking studies should be updated annually to be included in the relevant Transfer Pricing Documentation File. According to Ministerial Circular 1097/2014, as amended by Circular 1144/2014, there is a possibility of updating only the financial data of an initial benchmarking study; in practice, such an update would be acceptable for two years, at most, following the initial study. The purpose of this requirement is to ensure that at least one year of financial data from the initial study is included in the updated version.

As stated in Circular 1097/2014, as amended by Circular 1144/2014, the Greek tax authorities expect a new benchmarking study to be conducted at least every three years (following older guidance issued by the Ministry of Development as part of the first Greek transfer pricing regulations).

**Deadline to prepare documentation**

The Transfer Pricing Documentation File should be prepared before the issuance of the Tax Compliance Report (Tax Certificate) by the company's certified auditors and, in any case, no later than four months after the end of each fiscal year.

**Deadline to submit documentation**

The Transfer Pricing Documentation File should be made available to the tax authorities within 30 days of a request.

**Deadline to file income tax return**

The corporate income tax return must be filed by the sixth month following the end of the company's fiscal year.

**Acceptable languages for documentation**

According to Ministerial Circular 1097/2014, as amended by Circular 1144/2014, in the case of foreign group entities, the sections of the Transfer Pricing Documentation File that refer to group-related information (industry analysis, pricing policy, etc.), may be written in an internationally acceptable language, preferable in English, with the obligation to translate into Greek within 30 days after a request by the tax authorities. The sections of the file that refer to the Greek entity's information (functions, risks, assets used, etc.), as well as the financial analysis of the intercompany transactions should be in Greek.

## Transfer pricing adjustments

**Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

Book/tax differences are generally allowed.

## Self-initiated adjustments

No specific provisions exist. Self-initiated adjustments on the corporate income tax return should be acceptable if they increase taxable income. Greek tax auditors tend to view adjustments via credit/debit notes issued by group companies negatively, especially if issued at year-end and if they lead to a reduction of the Greek taxpayer's profits.

## Statute of limitations on assessment for transfer pricing adjustments

Five years (under the generally applicable statute of limitations for corporate income tax). However, there are several exemptions whereby that period could be extended when a particular fiscal year is nearly subject to limitation.

## Taxpayer set-offs for other related-party transactions

There are no specific provisions in this regard.

## Interest and penalties

### Additional assessment payment deadline

Additional assessments are paid within 30 days from notification of the assessment act.

### Penalty on transfer pricing assessment

If a transfer pricing assessment results in additional tax for the taxpayer, the following penalties are triggered:

- 10 percent on the difference, when the additional tax is between 5 percent and 20 percent of the tax amount resulting from the initial tax return;
- 30 percent on the difference, when the additional tax is greater than 20 percent and less than 50 percent of the tax resulting from the initial tax return; or
- 100 percent on the difference, when the additional tax amount is greater than 50 percent of the tax resulting from the initial tax return, and that inaccuracy is proved to be intentional by the taxpayer.

In the case of late filing of the Summary Information Table (SIT), or nonsubmission of the Transfer Pricing Documentation File to the tax authorities within the

provided deadline of 30 days, a one-off penalty calculated at 0.1 percent of the taxpayer's revenue is imposed. However, the penalty cannot be less than €1,000 and cannot exceed €10,000. According to a recent interpretative circular issued by the General Secretariat of Public Revenue, in case of late filing of the SIT for fiscal years up to 31 December 2013, the penalty imposed amounts to €100, whereas for late filing of the SIT for fiscal years commencing on 1 January 2014 onwards, the one-off penalty of 0.1 percent of the taxpayer's revenue is imposed, ranging from €1,000 to €10,000.

In cases of nonfiling or inaccurate/incomplete filing of the SIT or the Transfer Pricing Documentation File, the one-off penalty is calculated at 1 percent of the company's revenues, and it cannot be less than €10,000 or exceed €100,000.

In case of a second instance of noncompliance with the filing obligations within five years from the first infringement, the penalties imposed are doubled. In case of a third instance within those five years, the penalties are quadrupled.

### Is interest charged on penalties?

Yes, interest begins to accrue on a monthly basis from the day when the additional tax amount should have been paid (i.e., from the filing due date of the tax return) until the day of the actual payment. The relevant interest rate will be defined in a Ministerial Decision to be issued by the Minister of Finance.

### Is interest payable when a refund is due to the taxpayer?

In case of undue payment of taxes, interest begins to accrue from the day of filing the relevant tax refund claim with the tax authorities, unless the refund is completed within 90 days from the filing of the tax refund claim with the competent authorities, in which case no interest is calculated.

The relative interest rate is defined in a Ministerial Decision issued by the Minister of Finance.

### Reduction in transfer pricing penalties

No reduction in transfer pricing penalties is possible.

## Advance Pricing Agreements (APAs)

### Are APAs available?

Yes. The provisions regarding APAs are effective 1 January 2014.

### APA filing fee

The APA filing fees are as follows:

- €1,000, payable with the submission of an application for preliminary consultation; and
- €5,000, payable with the submission of an APA application.

If a request for consultation with foreign tax authorities is made within the framework of a bilateral or multilateral APA, a fee of €10,000 must be paid for each of the countries involved in the APA application.

### APA term of agreement

The term of the agreement may not exceed four years, nor may the agreement apply to a fiscal year preceding the date of the application.

## Competent authority

### When may taxpayer submit tax adjustment to Competent Authority (CA)?

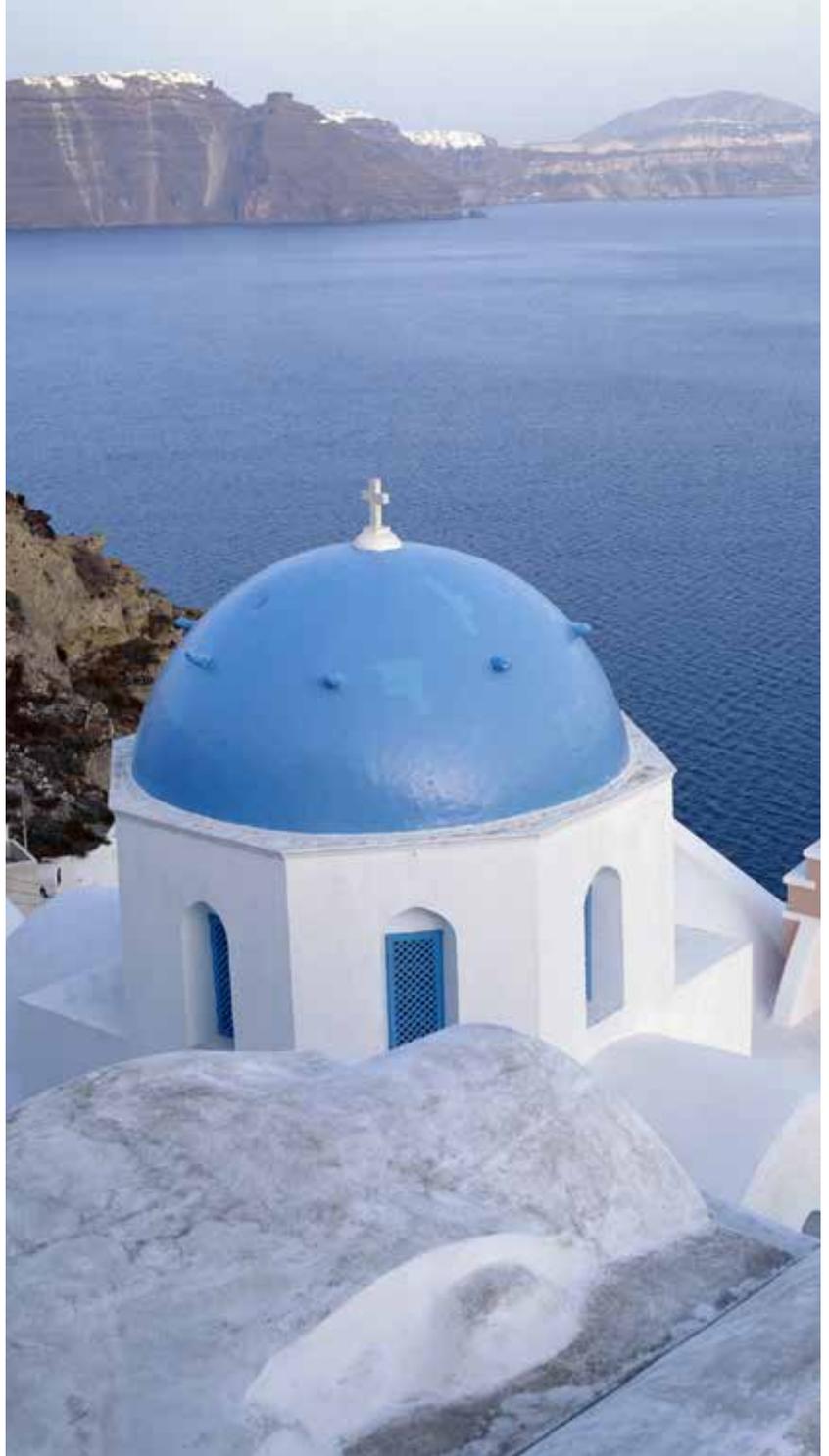
A CA request may be submitted after the tax adjustment is notified to the taxpayer in writing, and within a period of three years from that notification.

### May CA develop new settlement positions?

Yes.

### May taxpayer go to CA before paying tax?

Yes; however the CA request will not suspend the payment of the tax amount.



# Guatemala

## What's new

Guatemala's transfer pricing rules, which became effective on 1 January 2013, were not in force and application in 2014 because of a waiver passed by Congress for that year. Thus, Guatemalan taxpayers, including local subsidiaries and branches of multinational enterprises, with cross-border related-party transactions were subject to the transfer pricing rules in 2013, were not subject to them in 2014, and will become subject to the rules again from 2015 forward.

## General information

### Tax authority and law

Superintendence of Tax Administration — SAT. Decree 10-2012, Book I, Income Tax, Chapter VI, Special Valuation Rules Between Related Parties.

### Regulations, rulings, guidelines

Government Agreement 213-2013 Chapter III, Special Valuation Rules Between Related Parties.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

The scope of application of Guatemala's transfer pricing rules includes any transaction between a taxpayer that is a resident in Guatemala and a nonresident related party when it affects the determination of the tax basis for the period in which the operation is conducted and subsequent periods.

The following are considered related parties subject to the transfer pricing rules:

- A person resident in Guatemala and its permanent establishments abroad; and
- A permanent establishment located in Guatemala and its parent company that is a nonresident, another permanent establishment of the same entity, or a person related to it.

### Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

Yes.

## Methods and comparables

### Acceptable methods

Guatemala has six acceptable methods. The first five are found in the OECD transfer pricing guidelines: the comparable uncontrolled price (CUP) method, the cost plus method, the resale price method, the profit split method, and the transactional net margin method (TNMM). The sixth method is the valuation method for imports and exports of goods.

### Priority of methods

Traditional methods are preferred over transactional profit methods. If the transaction involves commodities, the sixth method applies.

### Availability of benchmarking /comparative data

Internal and external benchmarking are acceptable. If external, databases should be well known.

### Are foreign comparables acceptable to local tax authorities?

Because local comparables are scarce, foreign comparables are expected to be acceptable to the local tax authorities.

## Services issues

### Are management fees deductible?

To consider management fees deductible, the company must meet two transfer pricing conditions: (a) demonstrate how much an independent party would have paid for this service; and (b) specify the benefits obtained by the taxpayer as a result of the service.

In addition, the fees must meet the standard requirements for deductible expenses.

### Are management fees subject to withholding?

Management fees are subject to 15 percent withholding tax.

### May stock option costs be included in the cost base for intercompany services charges?

There is no reference in the law or the regulations on this matter; consequently, such costs could be included, as long as the relevant contract mentions them as costs to be transferred.



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### Commissionaire arrangements

#### Are commissionaire arrangements allowed?

Yes.

### Cost sharing agreements

#### Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?

These kinds of agreements are not specifically provided for under local law; thus, they would likely not be accepted by the tax authorities.

#### Are Cost Contribution or Cost Sharing Payments deductible?

These kinds of agreements are not specifically provided for under local law; thus, they would likely not be accepted by the tax authorities.

#### Are Cost Contribution or Cost Sharing Payments subject to withholding tax?

These kinds of agreements are not specifically provided for under local law; thus, they would likely not be accepted by the tax authorities. In any case, any remittance to a nonresident would be subject to 15 percent withholding tax (for fees or royalty payments) or 25 percent withholding tax (for all other payments).

#### What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?

These kinds of agreements are not specifically provided for under local law; thus, they would likely not be accepted by the tax authorities. In any case, any remittance to a nonresident would be subject to 15 percent withholding tax (for fees or royalty payments) or 25 percent withholding tax (for all other payments).

### Documentation and tax return disclosures

#### Tax return disclosures

Transfer pricing information may be required by the tax authorities as an annex to be filed jointly with the annual income tax return, or separately, at the discretion of the Superintendent of Tax Administration.

#### Documentation requirements

The transfer pricing report should have information regarding the taxpayer and the corporate group the taxpayer belongs to. This may include:

- A general description of the organizational, legal, and operational structure of the group, as well as any relevant change in the group, including the identification of the persons who, within the group, conduct

operations that affect the taxpayer's operations.

- A general description of the nature and amount of the operations between companies of the group, insofar as they affect the operations the taxpayer participates in.
- A general description of the functions and risks of the group companies, insofar as they are affected by the operations conducted by the taxpayer, including any change with respect to the previous period.
- A description of the ownership of patents, brands, commercial names, and other intangible assets, insofar as they affect the taxpayer and its related operations, as well as details on the consideration derived from their use.
- A description of the group's transfer pricing policy, if any, or in its absence, a description of the method or methods used in the different operations.
- A description of the contracts for the provision of services between related parties and any others that the taxpayer is a party to, or if the taxpayer is not a party to them, that directly affect the taxpayer.
- A description of advance pricing agreements that affect the members of the group with respect to the operations described.
- A group report or equivalent annual report.
- Complete identification of the taxpayer and the different parties related to the taxpayer.
- A detailed description of the nature, characteristics, and amount of the taxpayer's operations with related parties, indicating the method or methods of valuation used. In the case of services, it should include a description of the services, their nature, the benefit or profit they produce for the taxpayer, the method of valuation agreed upon and its quantification, and if applicable, the form of distribution between the parties.
- A detailed comparability analysis.
- Reasons for the selection of the method or methods used, as well as the procedure for its application and the specification of the value or interval of values the taxpayer used for determining the price or amount of its operations.

#### Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?

Yes. Each year a complete annual report is required, including a new comparables search.

**Deadline to prepare documentation**

The law does not establish a specific deadline. Documentation should be prepared contemporaneously with the filing of the annual income tax return, which is due March 31 of each immediately following year.

**Deadline to submit documentation**

The law establishes that documentation should be available to the tax authorities within 20 business days from the date of notification of the request.

**Deadline to file income tax return**

March 31 of each year.

**Acceptable languages for documentation**

Documentation must be in Spanish.

**Transfer pricing adjustments**

**Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

Yes. Adjustments should be reflected on both the income tax return and the financial statements.

**Self-initiated adjustments**

These adjustments are allowed, if made before filling the annual income tax return.

**Statute of limitations on assessment for transfer pricing adjustments**

Guatemala has a four-year statute of limitations that would also cover assessments for transfer pricing adjustments.

**Taxpayer set-offs for other related-party transactions**

Set-offs are not permitted.

**Interest and penalties****Additional assessment payment deadline**

Assessments are notified for the taxpayer to file its arguments in an administrative hearing that is followed by a number of administrative and judicial appeals. Consequently, the additional assessment payment deadline would vary depending on the taxpayer's defense strategy.

**Penalty on transfer pricing assessment**

A 100 percent penalty would be applicable on the amount of excess tax liability determined by the tax administration. Interest is charged on the amount of excess tax liability at an annual rate of approximately 13 percent.

**Is interest charged on penalties?**

No.

**Reduction in transfer pricing penalties**

Reductions are available at the different stages of the administrative and judicial processes; consequently, the final net amount payable would vary depending on the taxpayer's defense strategy.

**Is interest payable when a refund is due to the taxpayer?**

Interest may be payable to the taxpayer on income tax excess payments from the refund date established by the tax administration.

**Advance Pricing Agreements (APAs)****Are APAs available?**

Yes.

**APA filing fee**

The law and regulations do not specify a filing fee.

**APA term of agreement**

Four years following the date on which the agreement was approved.

**Competent authority****When may taxpayer submit tax adjustment to Competent Authority (CA)?**

After filing its annual income tax return, which is due March 31.

**May CA develop new settlement positions?**

Yes. The competent authority will notify the taxpayer of the new settlement positions.

**May taxpayer go to CA before paying tax?**

Yes, but it is not recommended.



# Hong Kong

## What's new

In recent years, Hong Kong has been rapidly expanding its treaty network, and has signed double tax agreements with 32 countries as of 31 January 2015. The expanded treaty network offers Hong Kong taxpayers more opportunities to enter into bilateral/multilateral APAs to secure certainty on their transfer pricing positions. In 2014, Hong Kong concluded two bilateral APAs, one with Japan and one with the Netherlands, and the IRD has expressed interest for more APA applications from taxpayers. In addition, Hong Kong in September 2014 pledged its support for the Automatic Exchange of Information (AEOI), and it is anticipated that the relevant legislation will be implemented by 2017-18.

## General information

### Tax authority and law

Inland Revenue Department; Inland Revenue Ordinance.

### Regulations, rulings, guidelines

Departmental Interpretation and Practice Notes No. 45, No. 46, and No. 48.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

Both domestic and cross-border transactions could be under attack if they do not comply with the arm's length principle and result in a tax benefit obtained.

### Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

Yes, but only when it does not contradict the sourcing rule under the Inland Revenue Ordinance.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the profit split method, the transactional net margin method (TNMM), and other methods if sufficiently supported.

### Priority of methods

The most appropriate method is required. Transaction-based methods are preferred over profit-based methods.

## Availability of benchmarking/comparative data

Financial data from published accounts of Hong Kong listed companies is available via numerous databases. Taxpayers generally will rely on common databases provided by vendors (such as BVD's Osiris).

## Are foreign comparables acceptable to local tax authorities?

In the absence of local comparables, yes, as long as they can be proved to be comparable to the tested party.

## Services issues

### Are management fees deductible?

Generally yes, but subject to the general deductibility condition under Section 16(1) of the Inland Revenue Ordinance, as well as the arm's length principle.

### Are management fees subject to withholding?

Management fees are not subject to withholding tax, but if the foreign company renders the services in Hong Kong, the fees may be subject to tax if the foreign company carries on a business in Hong Kong.

### May stock option costs be included in the cost base for intercompany services charges?

Hong Kong does not have specific guidelines on this issue. Relevant factors may include the definition of the cost base in the service agreement and the accounting treatment. Yet, the Inland Revenue Department issued guidelines on the deductibility of share-based payments under group recharge arrangement.

## Commissionaire arrangements

### Are commissionaire arrangements allowed?

Yes. However, the use of commissionaire arrangements is generally ineffective, because they give rise to significant permanent establishment issues in Hong Kong for the foreign principal.

## Cost sharing agreements

### Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?

Hong Kong does not have specific guidelines on this issue.

### Are cost contribution or cost sharing payments deductible?

Hong Kong does not have specific guidelines on this issue; taxpayers must rely on the general deduction rule, Section 16(1) of the Inland Revenue Ordinance.



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### **Are cost contribution or cost sharing payments subject to withholding tax?**

Hong Kong does not have specific guidelines on this issue; withholding will apply if the payment is for the use of intangibles specified in Section 15(1)(a), (b), (ba) of the Inland Revenue Ordinance.

### **What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?**

Hong Kong does not have specific guidelines on this issue; taxpayers must rely on the general deduction rule, Section 16(1) of the Inland Revenue Ordinance.

## **Documentation and tax return disclosures**

### **Tax return disclosures**

Taxpayers are required to disclose the countries of incorporation of related parties that entered into transactions with the Hong Kong taxpayer.

### **Documentation requirements**

Hong Kong does not have a contemporaneous documentation requirement, but the tax authorities encourage preparation of appropriate transfer pricing documentation as part of good business practices. The tax authorities can ask a taxpayer to submit documentation to prove its compliance with the transfer pricing rules and the arm's length principle.

### **Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

There is no specific guidance.

### **Deadline to prepare documentation**

Not applicable.

### **Deadline to submit documentation**

Not applicable.

### **Deadline to file income tax return**

Tax returns are normally due for filing within one month from issuance, but an extension of time may be granted if a reasonable request is filed with the Inland Revenue Department. In Hong Kong, the IRD would generally issue the tax returns in early April; hence, the standard filing date would be the end of April.

Tax representatives who handle the tax returns of clients in bulk may apply for block extension as follows:

- For businesses with accounting periods ending in December, the due date is extended to 15 August;
- For businesses with accounting periods ending between 1 January and 31 March, the due date is extended to 15 November;
- For businesses with accounting periods ending between 1 April and 30 November, no extension is granted and tax returns are due for submission at the end of April.

### **Acceptable languages for documentation**

English and Chinese.

## **Transfer pricing adjustments**

### **Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

Hong Kong allows book/tax differences.

### **Self-initiated adjustments**

Adjustments are permitted after year-end if the net effect is to increase taxable income. If the net effect is to decrease taxable income, the adjustment (true-down) must be done before closing the accounts for the current financial year, and the taxpayer must demonstrate that there was a binding agreement with its related supplier obligating a retroactive true-down/up to ensure that profits comply with the arm's length requirement. However, if transfer pricing adjustments are made by the tax authorities of a jurisdiction that has entered into a double tax agreement with Hong Kong, so that double taxation arises, the taxpayer may apply to the Inland Revenue Department for a tax refund within six years.

### **Statute of limitations on assessment for transfer pricing adjustments**

Six years after the year of assessment in which the transaction took place.

### **Taxpayer set-offs for other related-party transactions**

Set-off of transactions is subject to the Inland Revenue Department's agreement, and taxpayers are required to explain and support the set-off, upon query by the IRD.

## Interest and penalties

### Additional assessment payment deadline

Generally 40 to 50 days from the date of assessment.

### Penalty on transfer pricing assessment

No transfer-pricing-specific penalty is applicable. However, if there are tax evasion or tax avoidance motives, a maximum penalty of 300 percent of the tax underpaid due to the non-arm's-length transfer pricing arrangement may be imposed.

### Is interest charged on penalties?

Not applicable.

### Reduction in transfer pricing penalties

Taxpayers can make representations that there were no tax evasion or avoidance motives, or that a reasonable attempt was made to comply with the arm's length principle, for the tax authorities' consideration.

### Is interest payable when a refund is due to the taxpayer?

No.

## Advance Pricing Agreements (APAs)

### Are APAs available?

The Inland Revenue Department issued a new Departmental Interpretation and Practice Note (DIPN) in April 2012 that allows Hong Kong to enter into bilateral/multilateral APAs with countries that have double tax arrangements with Hong Kong.

DIPN 48 sets out different thresholds based on the nature of the related-party transaction to be covered by the APA, as follows:

- HKD 80 million per year for the purchase and sale of goods
- HKD 40 million per year for the provision of services
- HKD 20 million per year for the use of intangible assets (for instance, a royalty).

A taxpayer's related-party transactions must meet the relevant threshold for the category of transaction for each year covered by the APA. The IRD may consider a lower threshold in cases involving complex transactions with high transfer pricing risk.

### APA filing fee

There is no filing fee for an APA request.

### APA term of agreement

An APA in Hong Kong will cover a period of three to five years, and the taxpayer may request a renewal for another three to five years, but at least six months before expiration of the original APA.

## Competent authority

### When may taxpayer submit tax adjustment to Competent Authority (CA)?

MAP requests will be entertained after a taxpayer receives in writing a transfer pricing adjustment proposed by the tax authority of the other contracting state.

### May CA develop new settlement positions?

It is possible.

### May taxpayer go to CA before paying tax?

Yes. A taxpayer may go to MAP after the amount of the proposed adjustment is communicated in writing to the taxpayer; this may be before the tax is paid.



# Hungary

## What's new

Hungary added the concept of common directorship to the definition of related parties as of 1 January 2015. As a result, when the ownership (voting) rights of one entity in another entity do not exceed 50 percent, but the entities share a common directorship, the entities may be subject to the administrative and legal obligations relating to transfer pricing.

Furthermore, Section 18 of the Corporate Income Tax Act was modified as of 1 January 2015, to make the interquartile range applicable when determining the arm's length price range in certain (reasonable) cases.

## General information

### Tax authority and law

Hungarian Tax Authority (HTA); Corporate Income Tax Act Article 18 (transfer pricing rules), Article 4/23 (definition of related parties) and Article 31/2 (reference to OECD transfer pricing guidelines); Tax Procedures Act Article 1 (8) on arm's length principle, Article 132/B-C on APAs, Article 176/A on the application of the Arbitration Convention. The Hungarian Ministry of Finance issued Decree no. 22/2009 on transfer pricing documentation requirements. These transfer pricing documentation requirements were modified on the following dates:

- 1 January, 2012;
- 18 June, 2013;
- 30 December, 2014.

The Hungarian Ministry of Finance issued Decree no. 38/2006 on advance pricing agreements (also modified as of 1 January, 2012, by Ministry of National Economy Decree no. 54/2011); VAT Act Article 67 (determination of tax base if consideration is not arm's length); modification of the Act on Accounting Article 47, 73, and 78, as of 30 June 2013.

### Regulations, rulings, guidelines

Ruling 1999/103 on the possibility of unilateral adjustments performed by the tax authorities; rulings on several transfer pricing documentation-related issues, for example, 2004/37, 2005/55, 2007/49, 2007/77, 2007/97, 2007/133, 2007/139, 2008/13, 2008/32, and 2010/21, 2012/2, 2013/3.

## Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

If a company owns directly or indirectly more than 50 percent of the voting rights in another company, or holds by way of any agreement with another member of the company more than 50 percent of the voting rights in the company, or is entitled to appoint/dismiss the majority of the executive officers or the supervisory board members of another company, the companies will be deemed related. Foreign head offices and Hungarian branches, or Hungarian head offices and foreign branches are also deemed to be related parties.

The definition of related parties was amended as of 1 January 2015. As a result of the changes in the Corporate Income Tax Act, the concept of common directorship was added to the definition. Thus, when the ownership (voting) rights of one entity in another entity do not exceed 50 percent, but the entities in question have the same director, the two entities may be subject to the administrative and other legal obligations relating to transfer pricing.

## Do the local transfer pricing rules or tax authority allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

According to the related-party definition in the Corporate Income Tax Act, both Hungarian head office and foreign PEs/branches, as well as Hungarian PEs/branches and the foreign head office qualify as related parties; thus, the transfer pricing rules also apply to these enterprises. Therefore, transfer pricing documentation (including transfer pricing analyses) must be prepared for transactions between a nonresident entrepreneur and its Hungarian branch, or between a taxpayer and its foreign branch. However, in practice the application of the pertinent rules could trigger several issues.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the transactional net margin method (TNMM), and the profit split method are the designated methods. Other methods may be applied if the arm's length price cannot be supported by these methods.



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Section 18 of the Corporate Income Tax Act was modified as of 1 January 2015, to make the interquartile range applicable when determining the arm's length price range in certain (reasonable) cases. The new decree sets forth those cases in which the interquartile range is applicable (for example, application of a profitability-based method or another method for determining the arm's length price range, or preparation of a database-based benchmark analysis). However, the new legislation also includes some cases in which the interquartile range is not applicable (for example, if a functional analysis is available in a properly documented format).

#### **Priority of methods**

Hungary establishes no priority of methods. Other methods may be used after the listed ones have been eliminated.

#### **Availability of benchmarking/comparative data**

Limited local data is available; however, pan-European data may be used for transfer pricing purposes.

#### **Are foreign comparables acceptable to local tax authorities?**

Yes.

#### **Services issues**

##### **Are management fees deductible?**

Yes, if they are business-related expenses. Service fees are deductible if the taxpayer can prove that they have a business purpose, which generally means that (i) the management services were actually rendered, (ii) they were incurred in the company's business interest, and (iii) the fees paid are at arm's length.

##### **Are management fees subject to withholding?**

Withholding taxation has been abolished in Hungary as of 1 January 2011.

##### **May stock option costs be included in the cost base for intercompany services charges?**

Hungary has no formal guidelines or rulings on this subject. Generally, all costs related to the provision of a service should be included in the cost base of that service.

#### **Commissionaire arrangements**

##### **Are commissionaire arrangements allowed?**

Yes.

#### **Cost sharing agreements**

##### **Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?**

There are no specific regulations or guidelines on the acceptance of such agreements. The Hungarian tax authorities would likely take into consideration the OECD transfer pricing guidelines.

##### **Are cost contribution or cost sharing payments deductible?**

No formal guidelines or rulings exist, but these costs should be deductible in accordance with standard deductibility rules.

##### **Are cost contribution or cost sharing payments subject to withholding tax?**

Withholding taxation has been abolished in Hungary as of 1 January 2011.

##### **What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?**

Payments are deductible or amortizable. Costs can be capitalized.

#### **Documentation and tax return disclosures**

##### **Tax return disclosures**

As of 1 January 2010, taxpayers may choose to prepare documentation based on the "stand-alone" Hungarian documentation requirements or follow the EU master file concept (centrally prepared master file and country-specific documentation). The taxpayer's choice to follow the master file concept must be indicated in the corporate income tax return submitted for the respective year. The relevant rules are incorporated in Decree no. 22/2009 on transfer pricing documentation requirements.

##### **Documentation requirements**

As of 2012, transfer pricing documentation must be prepared for all related-party transactions (with the exception of transactions covered by a valid APA ruling, third-party cost recharges in unchanged amounts in certain cases, and minor transactions). For low value adding services, simplified documentation may be prepared if certain conditions are met. These exceptions could be applied also for 2011 if documentation did not have to be prepared by Dec. 31, 2011. Different documentation requirements could be applicable for previous years.

**Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

There are no specific rules under the Hungarian regulations regarding the annual updates; however, based on the general rules, the transfer pricing report must be updated if certain conditions have changed in the tested financial year, and those changes have an effect on the pricing mechanism. Furthermore, in a recent change, the Hungarian tax authorities prefer benchmark updates on a yearly basis.

**Deadline to prepare documentation**

The statutory deadline for the preparation of documentation is the filing date of the corresponding year's income tax return.

**Deadline to submit documentation**

Documentation does not have to be submitted to the tax authorities; however, it should be provided immediately upon request.

**Deadline to file income tax return**

The deadline for filing the corporate income tax return is 31 May for calendar year taxpayers. For non-calendar year taxpayers, the filing deadline is the last day of the fifth month following the last day of the financial year.

**Acceptable languages for documentation**

Transfer pricing documentation and supporting documentation may be compiled in languages other than Hungarian, but the taxpayer is liable to present a Hungarian translation of documentation prepared in languages other than English, French, and German, at the tax authorities' request, by the deadline specified.

**Transfer pricing adjustments**

**Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

Book/tax differences are allowed. Transfer pricing adjustments are allowed for corporate income tax purposes (for example, in the case of deemed interest on a non-interest bearing loan).

The Accounting Act was modified in June 2013, followed by an amendment that became effective 1 January, 2014. Based on these modifications, if there is a difference between the applied price and the arm's length price, related parties (defined in Section 18 of the Corporate Income Tax Act) may account for the difference in their books rather than modifying the corporate income tax base, if certain conditions are met.

**Self-initiated adjustments**

Taxpayers may initiate adjustments. Reduction of the tax base is possible (except if the related party is a controlled foreign corporation) if a document signed by both parties declaring the difference between the arm's length price and the price used is available and the other party is subject to Hungarian corporate tax or a similar tax abroad.

**Statute of limitations on assessment for transfer pricing adjustments**

Five years from the last day of the year when the pertinent tax return is due.

**Taxpayer set-offs for other related-party transactions**

There is no formal provision in this regard.

**Interest and penalties**

**Additional assessment payment deadline**

Generally, 15 days from the date of enforcement of the document establishing the additional payment.

**Penalty on transfer pricing assessment**

If tax base adjustments result in a tax default, the standard assessments — tax penalty and late payment interest — will be due in accordance with the general rules. Furthermore, if the taxpayer fails to present appropriate transfer pricing documentation at the request of the tax authorities, it may be fined up to HUF 2 million per related-party transaction. In case of repeated violations of the documentation obligation, the taxpayer may be fined up to HUF 4 million, and in case of repeated default related to the same transfer pricing report, the taxpayer may be fined up to HUF 16 million per related-party transaction.

**Is interest charged on penalties?**

Late payment interest is levied based on the tax assessed. No late payment interest should be paid on default penalties levied for not having appropriate transfer pricing documentation.

**Is interest payable when a refund is due to the taxpayer?**

Yes, if the tax authorities fail to meet the deadlines set forth in the law for specific refunds.

**Reduction in transfer pricing penalties**

There is no specific provision in this regard.

**Advance Pricing Agreements**

**Are APAs available?**

APAs have been available since 1 January 2007.

**APA filing fee**

The official filing fees for an APA, payable to the Hungarian Tax Authority, are as follows:

- A minimum of HUF 500,000 (EUR 1,750) and a maximum of HUF 5,000,000 (EUR 17,500) for domestic APA procedures if the arm's length price can be determined through the use of the CUP method, the resale price method, or the cost plus method;
- A minimum of HUF 2,000,000 (EUR 7,100) and a maximum of HUF 7,000,000 (EUR 24,700) for domestic APAs if the arm's length price can be determined through the use of any other method;
- A minimum of HUF 3,000,000 (EUR 10,600) and a maximum of HUF 8,000,000 (EUR 28,200) for bilateral APA procedures; and
- A minimum of HUF 5,000,000 (EUR 17,500) and a maximum of HUF 10,000,000 (EUR 35,300) for multilateral APA procedures.

If the arm's length price (range) cannot be determined as a specific sum, the minimum of the above fees applies. However, if the tax authorities determine the arm's length value of the transaction during the procedure, the fee is 1 percent of the transaction value. Nevertheless, the fee may not be lower than the above-mentioned minimum values, and may not exceed the maximum values.

**APA term of agreement**

The term is three to five years, but it could be extended by an additional three years.

**Competent authority**

**When may taxpayer submit tax adjustment to Competent Authority (CA)?**

There is no formal procedure. Hungary will follow the mutual agreement procedure for the pertinent income tax treaty.

**May CA develop new settlement positions?**

Hungary has no practice relating to CA settlements.

**May taxpayer go to CA before paying tax?**

Penalties determined in the resolution issued by the second instance tax authority must be paid. However, a request could be filed to the court for suspension of the execution, and suspension is automatic as of 2008 in case the EU Arbitration Convention is applied.



# Iceland

## What's new

Iceland's Parliament on January 1, 2014 adopted the OECD's Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations into Iceland's Income Tax Act. A regulation on transfer pricing documentation was introduced in December 2014, and took effect as of January 1, 2015. Prior to these changes the Icelandic Directorate of Internal Revenue addressed transfer pricing issues on the basis of a general arm's length principle in the Income Tax Act. It is thus expected that transfer pricing procedures in Iceland will make significant strides toward more alignment with international norms.

The new law and regulation are largely in accordance with the OECD transfer pricing guidelines, with several differences. One important deviation concerns additional requirements regarding intangibles: information must be provided, as part of the transfer pricing documentation, on the likely resale price and net present value of expected future earnings of intangibles used in controlled transactions. Another important difference regards expected BEPS requirements concerning country-by-country reporting.

## General information

### Tax authority and law

Directorate of Internal Revenue (RSK); Income Tax Act no. 90/2003.

### Regulations, rulings, guidelines

Art. 57. ph. 3-6 of the Income Tax Act (entry into force January 1, 2014), regulation no. 1180/2014 on documentation and transfer pricing in transactions between related entities (entry into force January 1, 2015).

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

Entities are considered related when:

- They are part of a consolidation according to art. 2 of law nr. 3/2006 of annual accounts, or are under direct or indirect majority ownership or managerial control of two or more entities within a consolidation;
- majority ownership of one entity over another, aggregating both direct and indirect ownership, is in place; or

- The entities are directly or indirectly under majority ownership or managerial control of individuals related through marriage or confirmed association, siblings, and direct descent. The same applies to individuals connected through financial ties through mutual business and investments. Under a bill before Parliament at the time of this writing, the preceding sentence regarding financial ties would be deleted.

### Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a PE or branch?

Yes.

## Methods and comparables

### Acceptable methods

Iceland follows the OECD transfer pricing guidelines whereby the selection of a transfer pricing method should aim to find the most appropriate method for each particular case. Regulation no. 1180/2014 states that the five OECD transfer pricing methods may be used when determining pricing between related entities.

### Priority of methods

No specific priority of transfer pricing methods is established. However, taxpayers should explain in their transfer pricing documentation why a specific method was chosen and how the method leads to pricing in accordance with the arm's length principle. Furthermore, information must be provided detailing to what extent pricing is in accordance with the selected method.

### Availability of benchmarking/comparative data

Icelandic companies must submit their financial results annually, which are then made available publicly through Icelandic databases.

### Are foreign comparables acceptable to local tax authorities?

Legal requirements do not entail an obligation to provide benchmarking based on databases in transfer pricing documentation. Based on the limited practice in Iceland, it is not clear whether and to what extent the Directorate of Internal Revenue will accept foreign comparables. However, it can be assumed that foreign comparables will be accepted if the economic conditions of the comparables are substantially the same as those of the taxpayer. Icelandic or Nordic comparables will most likely be preferred.



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## Services issues

### Are management fees deductible?

Yes, management fees paid by Icelandic entities are deductible under Art. 31 of the Income Tax Act no. 90/2003.

### Are management fees subject to withholding?

Yes, all foreign individuals who derive income from Icelandic entities from management services, and all foreign entities that derive income from Icelandic entities from services are subject to limited tax liability in Iceland. Withholding tax may be reduced under double taxation treaties.

### May stock option costs be included in the cost base for intercompany services charges?

There is no formal guidance or case law currently available on this issue.

## Commissionaire arrangements

### Are commissionaire arrangements allowed?

There is no regulation or practice on this issue.

## Cost sharing agreements

### Are cost contribution arrangements or cost sharing agreements accepted?

Yes, cf. regulation no. 1180/2014, Art. 7, ph. 1 (services); Regulation no. 1180/2014, Art. 7, ph. 2 (R&D).

### Are cost contribution or cost sharing payments deductible?

Whether such payments are deductible or capitalized is determined under Icelandic domestic tax rules.

### Are cost contribution or cost sharing payments subject to withholding tax?

No.

### What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?

Whether such payments are deductible or capitalized is determined under Icelandic domestic tax rules.

## Documentation and tax return disclosures

### Tax return disclosures

Upon submission of tax returns, all entities subject to documentation requirements that have conducted transactions with related entities must submit to the Directorate of Internal Revenue information on related entities they have entered into transactions with,

the nature of the relationship between entities, the type and amount of transactions, and confirmation that the documentation requirements have been fulfilled. The form of the submission has not yet been determined by the Director of Internal Revenue.

### Documentation requirements

If an entity's turnover in one fiscal year, or total assets at the beginning or end of the fiscal year are over ISK 1 billion, the entity has an obligation to document all transactions with related entities. If an entity exceeds this threshold, it is required to prepare documentation as of the next fiscal year. Both entities that conduct transactions with foreign related entities and those that conduct transactions only with domestic related entities are subject to the documentation requirements.

According to regulation no. 1180/2014, the documentation must include:

- Information about the group, individual legal entities, and operations
  - A brief historical overview of the group and its individual legal entities
  - A general description of the ownership and legal form of legal entities within the group, and where they are domiciled
  - A description of the operations of the individual legal entities and their role within the group. A general description and organizational chart where there is a formal management system
  - Information on the key markets, main competitors, and the competitive products of the group and of the entity subject to documentation requirements
  - A description of any key changes in the group and within the entity subject to documentation requirements during the fiscal year, including information on restructuring and changes in operations, changes in the assets employed in the operations, and alterations of the risks assumed by the relevant legal entity in the transactions.
- Financial information
  - Financial statements for the last three years for all related entities that the entity subject to the documentation requirements enters into transactions with. If the financial statements are not accessible or do not contain information on earnings before depreciation, interest, or earnings before valuation changes and taxes, such information must be specifically provided.

- If an entity subject to the documentation requirements incurs a loss, that loss must be explained, along with information about how the loss came about, in what segments of the operations the loss occurred, and the main reasons behind the loss
- Nature and scope of transactions
  - Documentation must include a general description of all the transactions the legal entity subject to the documentation requirements enters into with related entities, including a description of the nature and scope of the transactions
- Services
  - In the event that a cost pool must be allocated between related entities, it must be adequately demonstrated that the entity subject to the documentation requirements that is charged for such services has received services that reflect the charge made
  - The basis of allocation must be available and transparent, and the costs must fulfill the arm's length principle of the OECD transfer pricing guidelines
- Intangible assets
  - An entity subject to documentation requirements must describe any intangible assets within the group that have an effect on documented transactions
  - The description must contain information on the ownership, use, development, and maintenance of the intangible assets
  - In addition, information must be provided on the probable resale price and net present value of expected future earnings of the intangible assets

In addition, information must be provided on the transfer pricing methods, comparability analysis, and contracts that affect the pricing in controlled transactions, such as advance pricing agreements.

**Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

Transfer pricing documentation must be prepared, in accordance with regulation no. 1180/2014, on a

contemporaneous basis for each fiscal year the entity is subject to the documentation requirements. The format of the documentation is not specified in legislation, and it is normally recommended that a complete report be prepared for each fiscal year to ensure that all requirements are fulfilled. Concerning comparables, it must be assumed that the Directorate of Internal Revenue will follow the OECD transfer pricing guidelines and the BEPS initiative, but there is no practice that can be referred to, given that the legislation has been implemented recently.

#### **Deadline to prepare documentation**

Transfer pricing documentation must be prepared for each fiscal year, if an entity is above the documentation obligation threshold, by the filing date of the annual income tax return.

#### **Deadline to submit documentation**

Documentation must be submitted to the tax authorities within 45 days after a request is put forth by the Directorate of Internal Revenue. Documentation may not be requested before the deadline to submit tax returns has expired.

#### **Deadline to file income tax return**

If an entity's fiscal year is the calendar year, the deadline for submitting income tax returns is 31 May 2015. If the fiscal year is other than the calendar year, tax returns usually must be submitted within five months of the end of the fiscal year.

#### **Acceptable languages for documentation**

Documentation must be available in Icelandic or English.

#### **Transfer pricing adjustments**

**Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

This issue is not regulated and has not been dealt with in practice.

#### **Self-initiated adjustments**

There are no specific legal requirements on this issue. Based on Iceland's limited practice with transfer pricing, it must be assumed that the Directorate of Internal Revenue will follow the OECD transfer pricing guidelines on this issue. Thus, adjustments are likely to be accepted if they are made pursuant to a prior agreement and they result in arm's length pricing.

**Statute of limitations on assessment for transfer pricing adjustments**

In general, authorization to reassess taxes covers tax levied on income and assets for the six years prior to the year of reassessment.

**Taxpayer set-offs for other related-party transactions**

No taxpayer set-offs for other related-party transactions are allowed.

**Interest and penalties**

**Additional assessment payment deadline**

The general rule for assessment applies, that is, if a taxpayer's tax liability increases after a tax assessment, the additional amount falls due 10 days after the taxpayer was informed of the increase.

**Penalty on transfer pricing assessment**

If a tax return is considered faulty, or specific items are wrongfully declared, the Directorate of Internal Revenue may add a 25 percent charge to the estimated or wrongly declared tax bases.

**Is interest charged on penalties?**

Yes, the general rule on interest applies. If tax is not paid within one month from the due date, then a late payment penalty of the amount due is to be paid to the Treasury.

**Reduction in transfer pricing penalties**

There are no specific transfer pricing penalties, but the general rules apply. An additional charge of 25 percent to the estimated or wrongly declared tax bases will be cancelled if a taxpayer can demonstrate that it is not responsible for the errors in the tax return, or the inaccuracies are due to force majeure.

**Is interest payable when a refund is due to the taxpayer?**

Yes.

**Advance Pricing Agreements (APAs)**

**Are APAs available?**

No, there is no special provision regarding APAs in Iceland.

**APA filing fee**

Not applicable.

**APA term of agreement**

Not applicable.

**Competent authority**

**When may taxpayer submit tax adjustment to Competent Authority (CA)?**

Due to limited practice, it is not clear if a request may first be submitted after the amount of the proposed adjustment is communicated to the taxpayer in writing or if it may be submitted before such communication.

**May CA develop new settlement positions?**

There is no formal procedure.

**May taxpayer go to CA before paying tax?**

Yes. The taxpayer may at least go to CA after the amount of the proposed adjustment is communicated in writing to the taxpayer, before paying the tax.



# India

## What's new

India has witnessed some interesting transfer pricing developments in the past 12 months. A major controversy around 'Issue of shares' – whether an international transaction was covered under India's transfer pricing regulations - has finally been settled. The government has decided to accept the Mumbai High Court decision in favor of the taxpayer.

India has also concluded its first bilateral advance pricing agreement with Japan in a record period of one and a half years. The introduction of rollback provisions in APAs has been a welcome step toward reducing litigation.

The use of multiple-year data and the range concept were introduced (rules are expected soon) in line with global leading practices. The government also has announced a risk-based approach, rather than a transaction-value-based methodology for the selection of transfer pricing cases for audit.

It will be interesting to see how legislators, pursuant to their commitment under the G20 summit, modify the Indian transfer pricing regulations in line with the BEPS initiatives.

## General information

### Tax authority and law

Ministry of Finance- CBDT; Income Tax Act 1961, Sections 92 to 92F of Income Tax Act. The CBDT has set up a separate Transfer Pricing Cell for conducting transfer pricing audits.

### Regulations, rulings, guidelines

Rules 10A to 10TG of the Income Tax Rules 1962; Circular No.12 of August 23, 2001; Circular No. 14 of December 24, 2001; Circular No. 06/2013 dated June 29, 2013; Administrative Guidelines of May 20, 2003.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

The regulation requires direct or indirect participation in the management, control, or capital of the other enterprise, or participation of the other enterprise or by the same person in such enterprise. The regulation provides an illustrative list of relationships to which transfer pricing rules apply: equity holdings of 26 percent or more; control of board of directors; loans/guarantees; dependence on

the use of specified intangibles of the other enterprise; and influence over the supply of raw materials/finished products.

If a taxpayer enters into a transaction with a person located in a notified jurisdictional area (defined as foreign jurisdictions that have not entered into an arrangement for the exchange of information with India), the transfer pricing regulations will apply to those cross-border transactions.

The transfer pricing provisions are also applicable to specified domestic transactions with an aggregate value exceeding INR 50 million.

The regulation provides a list of specific domestic transactions for purposes of the application of the transfer pricing provisions, including expenses/payment transactions between related persons and transfers of goods/services/business from one unit/undertaking of the taxpayer to another unit/undertaking of the same taxpayer.

### Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

CBDT Circular No. 05/2004, which deals with taxation of IT-enabled business process outsourcing (BPO) units in India, states that profits attributable to an IT-enabled BPO unit constituting a permanent establishment should comply with the arm's length principle.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the profit split method (contribution analysis or residual analysis), the transactional net margin method (TNMM), or such other method as may be prescribed.

The CBDT has prescribed the application of a sixth method – the "Other Method" -- for the computation of arm's length prices. The sixth method could be used for unique transactions, such as intangibles or business transfers, transfer of unlisted shares, sales of fixed assets, revenue allocation/splitting, or the provision or receipt of guarantees.

The CBDT issued safe harbor rules for international transactions in categories/sectors including information technology, IT-enabled services, knowledge process



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outsourcing services, contract research & development in the IT and pharmaceutical sectors, financial transactions (outbound loans and corporate guarantees) and auto ancillary manufacturing. If the taxpayer opts for the safe harbor, then the arm's length principle is subject to prescribed rules.

#### **Priority of methods**

There is no hierarchy of methods. Taxpayers must use the most appropriate method.

#### **Availability of benchmarking/comparative data**

The available databases provide financial statements and related profitability of external comparables. However, the databases are not comprehensive.

#### **Are foreign comparables acceptable to local tax authorities?**

There is no specific prohibition against the use of foreign comparables.

#### **Services issues**

##### **Are management fees deductible?**

There are no formal guidelines, but payments for management fees may be deductible. The tax authorities require satisfaction of the "benefit test."

##### **Are management fees subject to withholding?**

Normally yes, subject to reduction pursuant to a tax treaty.

##### **May stock option costs be included in the cost base for intercompany services charges?**

No formal guidelines, but stock options may be included in the cost base for intercompany service charges.

#### **Commissionaire arrangements**

##### **Are commissionaire arrangements allowed?**

There is no specific statutory authorization for commissionaire structures.

#### **Cost sharing agreements**

##### **Are cost contribution arrangements or cost sharing agreements accepted?**

Yes.

##### **Are cost contribution or cost sharing payments deductible?**

There are no formal guidelines, but payments for shared research and development costs may be deductible.

##### **Are cost contribution or cost sharing payments subject to withholding tax?**

Arguably, no.

##### **What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?**

There are no formal guidelines. Payers can consider such payments as for the acquisition of intangible depreciable assets, i.e., a capital expenditure.

#### **Documentation and tax return disclosures**

##### **Tax return disclosures**

A report providing the particulars of associated enterprises, international transactions, specified domestic transactions, arm's length price, and method used for determining the arm's length price must be submitted to the Tax Office. The report must be signed by an independent practicing chartered accountant.

##### **Documentation requirements**

There are detailed requirements on the maintenance of prescribed information and documentation.

##### **Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

The maintenance of documentation is an annual requirement if the value of international transactions exceeds INR 10 million, and/or the value of specified domestic transactions exceeds INR 50 million during the year under consideration. Rule 10D of the Income Tax Rules, 1962, prescribes that the information and documents specified should be contemporaneous. Thus, documentation for each year involves a complete report with a new search performed for identifying and selecting comparable companies.

##### **Deadline to prepare documentation**

Documentation must be prepared by the due date for filing the annual income tax return.

##### **Deadline to submit documentation**

Documentation must be submitted within 30 days of a request (a one-time extension of 30 days is available upon request).

##### **Deadline to file income tax return**

In India, the financial year of every taxpayer commences on 1 April and ends on 31 March. Taxpayers must submit

an Accountants' Report (for transfer pricing) along with the tax return. The deadline for the same is 30 November following the end of the financial year. Documentation is not required to be submitted with the tax return.

#### **Acceptable languages for documentation**

Documentation in English is accepted, and in practice preferred.

#### **Transfer pricing adjustments**

##### **Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

The transfer prices on the income tax return may not be the same as those in the financial statements. The difference between transfer prices as per the financial statements and the arm's length price may be offered to tax in the tax return by the taxpayer.

#### **Self-initiated adjustments**

There are no formal procedures for self-initiated adjustments.

#### **Statute of limitations on assessment for transfer pricing adjustments**

Forty-eight months from tax year-end.

#### **Taxpayer set-offs for other related-party transactions**

There are no formal guidelines on set-offs.

#### **Interest and penalties**

##### **Additional assessment payment deadline**

Generally, 30 days from the date of service of notice of demand. An extension of time may be requested, but interest must be paid.

##### **Penalty on transfer pricing assessment**

Penalties range between 100 percent and 300 percent of additional tax. The penalty for failure to maintain or furnish prescribed information and documentation, or failure to report a transaction or maintain or furnish incorrect information or document is 2 percent of the value of the international transaction or specified domestic transaction. The penalty for failure to furnish a report from an accountant with the return is INR 0.1 million.

##### **Is interest charged on penalties?**

Yes, interest is chargeable on penalties, if they are not paid within the time frame provided by the tax department.



##### **Is interest payable when a refund is due to the taxpayer?**

Yes, interest is payable at 6 percent per annum when a refund is due to the taxpayer.

##### **Reduction in transfer pricing penalties**

A penalty is not leviable if transfer prices were computed using the most appropriate method, in good faith, and with due diligence. For other penalties, reasonable cause must be proven. Penalties may be contested on appeal.

A taxpayer aggrieved by a transfer pricing adjustment has the option to appeal to either the Dispute Resolution Panel or the Commissioner of Income Tax (Appeals) against the order. Taxpayers may also file an appeal before the Tax Tribunal against a DRP/CIT(A) order.

#### **Advance Pricing Agreements (APAs)**

##### **Are APAs available?**

Yes, unilateral, bilateral, and multilateral APAs are available. An anonymous pre-filing consultation is allowed.

##### **APA filing fee**

The fees for filing an APA application are based on the aggregate transaction value proposed to be covered in the APA. The fee for transaction values up to INR 1 billion is INR 1 million; for transaction values up to INR 2 billion, it's INR 1.5 million, and for transaction values exceeding INR 2 billion, the fee is INR 2 million.

##### **APA term of agreement**

The term of an APA cannot exceed five consecutive years. Rollback is permissible for four prior years.

#### **Competent authority**

##### **When may taxpayer submit tax adjustment to Competent Authority (CA)?**

An application for mutual agreement procedure may be filed after notification of the tax assessment, and must be filed normally within three years of notification, unless modified by a treaty.

##### **May CA develop new settlement positions?**

There is no formal procedure.

##### **May taxpayer go to CA before paying tax?**

Yes, payment may be suspended by the tax authority at taxpayer's request.

# Indonesia

## What's new

Indonesia's transfer pricing landscape continues to evolve at a rapid rate. The plethora of regulations issued in the past couple of years is testimony to the efforts of the Director General of Tax (DGT) to align Indonesian transfer pricing practices with international standards and keep up to date with the latest developments, including the OECD's BEPS initiative. Recent regulations issued by the Ministry of Finance on 22 December 2014 and 12 January 2015 pertain to updates to the existing regulations regarding implementation of the Mutual Agreement Procedure and advance pricing agreements, respectively. New regulations regarding the application of the arm's length standard and documentation rules are being drafted, and slated for release in the first half of 2015.

## General information

### Tax authority and law

Directorate General of Taxation. Article 18 (3) of Income Tax Law No. 36 of 2008 stipulates that the tax office is authorized to redetermine non-arm's-length related-party transactions using acceptable transfer pricing methodologies. Article 2 of Value Added Tax Law No. 42 of 2009 stipulates that market price applies to related-party transactions.

### Regulations, rulings, guidelines

Article 10 (2) and (3) of Government Regulation (GR) No. 74/2011 stipulates that supporting documents for related-party transactions are required in the event of a tax audit. Transfer pricing is regulated through Directorate General of Taxation Regulation (DGT) No. PER 43/PJ/2010 (PER-43) and amended through DGT Regulation No. PER 32/PJ/2011 (PER-32). PER-43 provides the steps to be performed by taxpayers who have transactions with related parties to examine the arm's length nature of their transactions. This includes a comparability analysis, selection of transfer pricing methods, determination of the arm's length price/profit, and the format of transfer pricing documentation, among other topics.

PER-32 amended PER-43 through additional guidance on comparability analysis, replacing the hierarchical method for selecting the transfer pricing method with the most appropriate method, and increasing the threshold for transactions that require transfer pricing documentation to IDR 10 billion (approximately USD 800,000) with each related party. Further, domestic related-party transactions were exempted from the transfer pricing requirements in PER-32, except in when the counterparties are subject to different tax rates.

The Guidelines for Transfer Pricing Audit were updated through PER 22/PJ/2013 (PER-22), issued 30 May 2013. The regulation is effective 1 July 2013, and is also applicable to ongoing tax audits (i.e., audits that were initiated before the issuance of this regulation but have not been completed). This regulation revokes KEP-01/PJ 07/1993, which provided guidelines for audits of taxpayers with special relationships.

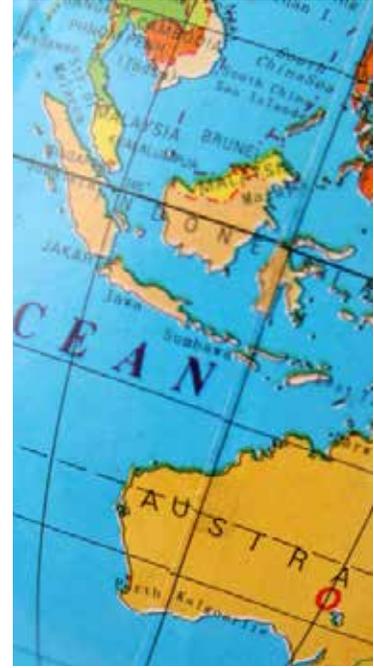
Circular Letter No. SE-50/PJ/2013 (SE-50) was issued 24 October 2013 to provide clarity and expand on the guidelines provided in PER-22. SE-50 is effective 24 October 2013 and officially revokes SE-04/PJ.7/1993.

Guidance for Advance Pricing Agreements (PER-69/2010, dated 31 December 2010) and Mutual Agreement Procedures (PER-48/2010, dated 3 November 2010) were released by DGT during 2010 and are available to taxpayers as alternative dispute resolution mechanisms.

More recently, the Indonesian Ministry of Finance issued a new regulation (No.240/PMK.03/2014 ("PMK-240") on 22 December 2014), which updates the existing regulation on the implementation of the Mutual Agreement Procedure. The new regulation is effective 22 December 2014, and is applicable to any ongoing MAP requests that were submitted prior to the issuance of this regulation but have not yet concluded.

The Ministry of Finance also issued regulation No.7/PMK.03/2015 on 12 January 2015 to update to the existing regulation on the procedure and implementation of APA.

Although Indonesia is not a member of the OECD, the OECD transfer pricing guidelines are generally accepted in practice.



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### **Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?**

Under the Indonesian Tax Regulation, the concept of a special relationship is stipulated in Article 18, paragraph (4) of the Income Tax Law and Article 2, paragraph (2) of the Value Added Tax law, which state that a special relationship is deemed to exist in the following cases:

- A taxpayer has direct or indirect equity participation of at least 25 percent in another taxpayer; the relationship between taxpayers with participation of at least 25 percent in two or more taxpayers; or the relationship among the two or more taxpayers last mentioned; or
- A taxpayer controls another taxpayer, or two or more taxpayers are under the same control, whether directly or indirectly.
- A family relationship, either through blood or through marriage, within one degree of direct or indirect lineage.

The elucidation of Article 18, paragraph (4), letter b of the Income Tax law states that:

- A special relationship between taxpayers can also occur from control through management or the use of technology, even though there is no ownership relationship;
- A special relationship is deemed to exist if one or more companies are under the same control. Likewise, a special relationship is deemed to exist among several companies that are under common control.

### **Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?**

Yes, the Indonesian transfer pricing regulations allow transfer pricing analyses to be used to determine profits attributable to a permanent establishment or branch.

### **Methods and comparables**

#### **Acceptable methods**

The comparable uncontrolled price (CUP) method, the resale price method (RPM), the cost plus method (CPM), the profit split method (PSM), and the transactional net margin method (TNMM).

#### **Priority of methods**

Effective November 11, 2011, transfer pricing Regulation No. PER-32/PJ/2011 adopts the use of the most appropriate transfer pricing method in selecting a transfer pricing method.

### **Availability of benchmarking/comparative data**

PER-22 authorizes the use of public data (either foreign or domestic) commercial databases, the London Metal Exchange, and other databases as sources of external comparables. In practice, the Indonesian tax authorities generally use the BvD database, primarily Osiris and Oriana.

Earlier, the DGT through SE-96/2009 (October 2009), SE-11/2010 (Feb 2010), and SE-68/2010 (May 2010), issued several benchmarking ratios for different types of industries as a supporting tool to evaluate the arm's length nature of a taxpayer's financial performance.

### **Are foreign comparables acceptable to local tax authorities?**

No formal provisions or guidelines exist on this issue. In practice, ASEAN or Pan-Asian comparable companies are acceptable, if it is proved that domestic comparables are not available.

### **Services issues**

#### **Are management fees deductible?**

Article 6 of the Income Tax Law provides that taxpayers are entitled to claim deductions if the expenses are related to activities of the Indonesian operations to earn, collect, and secure income. Supporting documents evidencing the existence of services, a detailed utilization and benefits analysis, and evidence of the arm's length nature of the payments are required to support deductibility.

#### **Are management fees subject to withholding?**

It depends on the relevant income tax treaty and the availability of supporting documents, such as a certificate of domicile from the tax authorities of the counterpart in the form of DGT – I Form.

#### **May stock option costs be included in the cost base for intercompany services charges?**

There is no specific regulation on this. The tax authorities are likely to refer to international guidance, including the OECD transfer pricing guidelines, to evaluate the treatment of stock options.

### **Commissionaire arrangements**

#### **Are commissionaire arrangements allowed?**

Yes, but these arrangements give rise to significant risk of creating a permanent establishment.

## Cost sharing agreements

### Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?

PER-32 briefly touches upon cost contribution arrangements, stating that such arrangements should be based on the arm's length principle. Because the regulation does not provide much detail, Indonesia will most likely follow the OECD transfer pricing guidelines and review on a case-by-case basis. A benefits analysis is likely to be requested.

### Are cost contribution or cost sharing payments deductible?

Yes, to the extent payments relate to taxable income and not capital, and are reflective of an arm's length arrangement.

### Are cost contribution or cost sharing payments subject to withholding tax?

It depends on the relevant income tax treaty and the availability of supporting documents, such as a certificate of domicile from the tax authority of the counterpart in the form of DGT – I Form.

### What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?

Payments may be deductible depending on the specific facts. Payments must relate directly to the taxpayer's taxable income.

## Documentation and tax return disclosures

### Tax return disclosures

PER-19 (the second amendment to regulation PER-34 issued in 2014) deals with the annual corporate income tax return, and requires detailed disclosure of related-party transactions, consisting of two forms: (1) details of related-party transactions; and (2) notes on transfer pricing documentation.

### Documentation requirements

Transfer pricing guidelines (PER 43/PJ/2010), as recently amended by PER 32/PJ/2011, provide that documents for the determination of a fair price or fair profit must be made available by the taxpayer. Those documents should provide at a minimum a detailed description of the company, such as the structure of the group's business, ownership structure, organizational structure, operational aspects of business activities, a list of competitors, and descriptions of the business environment, the taxpayer's policies on setting of prices and/or cost allocation, the

results of the comparability analysis, selected comparable companies, and notes on the application of the selected transfer pricing method.

Documentation must be prepared for cross-border transactions with a total value exceeding IDR 10 billion per counterparty within one fiscal year. Domestic related-party transactions would come under the purview of transfer pricing when availing tax tariff differences such as:

- Taxpayers are subject to different tax systems (for instance, final or non-final income tax in certain business sectors);
- Transactions are subject to the imposition of luxury goods sales tax (LGST); or
- Transactions with contractors in the oil and gas industry.

Currently, transfer pricing documentation is not required to be submitted concurrently with corporate income tax returns. In case of a tax audit, taxpayers are required to present their transfer pricing documentation within 30 days of a request from the Indonesian tax authorities. However, based on PER-22 and SE-50, 10 different forms have been recommended in the conduct of audit, and such forms are required to be submitted by the taxpayer within seven days from the date of request. Most of these forms incorporate the requirement in a transfer pricing documentation.

### Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?

Article 18 (3) of PER 32/PJ/2011 requires taxpayers to submit documentation to report related-party transactions, which is done at the time of filing the corporate income tax return, implying that documentation is an annual requirement. However, this rule was relaxed by a subsequent circular letter (S-479/PJ.033/2012, dated 27 April 2012) which provides that documentation should be made available upon request by the DGT.

Because of some annual compliance and transfer pricing audit requirements, the updating of the transfer pricing report on an annual basis has become almost mandatory. For instance, the regulations require the disclosure of the transfer pricing method used in an annual disclosure form that is submitted together with the corporate income tax

return. These forms cannot be completed without the most recently updated transfer pricing report. Moreover, in case of an audit, the DGT uses data from the tested year and the preceding years' data, thereby requiring taxpayers to update the benchmarking analysis on an annual basis using the comparable companies' current year's financial data.

Therefore, updating the transfer pricing reports also generally requires new searches to be performed to capture the current years' comparable companies and their financial results.

#### **Deadline to prepare documentation**

There is no statutory deadline for preparation, but the documentation must be available when requested by the tax office.

#### **Deadline to submit documentation**

There is no statutory deadline for submission, but disclosure and detailed information of related-party transactions are required in the corporate income tax return. However, in case of a tax audit, taxpayers are required to present their transfer pricing documentation and it would be part of the required documents to be submitted within a one-month period or within seven days pursuant to PER/22/2013.

#### **Deadline to file income tax return**

End of the fourth month after the tax year end.

#### **Acceptable languages for documentation**

There are no statutory acceptable languages to be used in documentation. However, the languages accepted for bookkeeping purposes are Indonesian and English.

#### **Transfer pricing adjustments**

##### **Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

There are no specific transfer pricing rules stating that the transfer prices reflected on an income tax return must be the same as those reflected in financial statements. Nonetheless, it is generally expected that the transfer prices stated in the income tax return would be the same as those reflected in the financial statement. In certain instances, taxpayers have made transfer pricing adjustments in their corporate income tax returns that are not permitted to be reflected in the audited financial

statements, causing the transfer prices to vary in the tax return and financial statements.

#### **Self-initiated adjustments**

In general, taxpayers may perform self-initiated adjustments, although there is no specific guidance on these adjustments.

#### **Statute of limitations on assessment for transfer pricing adjustments**

The general rule applies. Starting with the 2008 tax year, the statute of limitations is five years under the tax laws.

#### **Taxpayer set-offs for other related-party transactions**

There is no specific tax regulation on set-offs between transactions. In practice, set-offs between related-party transactions are not allowed.

#### **Interest and penalties**

##### **Additional assessment payment deadline**

A tax assessment with penalties should be settled within one month after the date of issuance of the tax assessment. An assessment that has been objected to or appealed must be settled within one month after the final decision on the objection and/or appeal.

##### **Penalty on transfer pricing assessment**

Ordinary penalties apply - interest of 2 percent per month for a maximum 24 months for tax audit assessments. For criminal acts, three months to six years of imprisonment and/or tax penalties of a maximum of 400 percent may be imposed.

##### **Is interest charged on penalties?**

There is no interest on penalties, but there is interest on late payment of a tax assessment/tax collection notice.

##### **Is interest payable when a refund is due to the taxpayer?**

If the refund is due as a result of the tax audit process, no interest is payable. If the refund is due as a result of the tax objection and/or tax appeal processes, generally the taxpayer will be entitled to interest compensation, subject to specific rules.

##### **Reduction in transfer pricing penalties**

There is no specific provision. Ordinary rules apply; thus, application for a reduction may be made to the Indonesian tax authorities.

### Advance Pricing Agreements (APAs)

#### Are APAs available?

Yes. Regulation DGT No. PER 69/PJ/2010 regarding APAs was issued on 31 December 2010.

#### APA filing fee

The guidelines do not specify a filing fee for APA applications.

#### APA term of agreement

An APA may be entered into for a maximum of three years, starting from the tax year in which the APA is agreed. An APA may also cover the year before the APA is agreed, as long as the annual income tax return for that tax year has not been audited, no objection or appeal on it has been filed, and there is no indication of criminal conduct in taxation.

### Competent authority

#### When may taxpayer submit tax adjustment to Competent Authority (CA)?

There is no formal procedure.

#### May CA develop new settlement positions?

There is no experience or precedent on this issue.

#### May taxpayer go to CA before paying tax?

There is no specific regulation on this. It would depend on the specific facts of the case.



# Ireland

## What's new

There were no significant changes to the operation of the Irish transfer pricing regime in 2014. During 2014, it was announced that the Irish Revenue would commence formal transfer pricing audits of selected taxpayers during 2015. In late 2014/early 2015, the Irish Revenue hired external transfer pricing resources to undertake the audits.

On the international front, because Ireland's transfer pricing regime is aligned with the OECD transfer pricing guidelines, changes to the guidelines as a result of the OECD's BEPS project are expected to be incorporated into domestic law in the future.

## General information

### Tax authority and law

The Revenue Commissioners. Taxes Consolidation Act 1997 Section 835A -835H. Transfer pricing rules included in Finance Act 2010 for trading transactions between associated persons. Effective for chargeable periods beginning on or after 1 January 2011.

### Regulations, rulings, guidelines

The law is to be interpreted in accordance with the OECD's transfer pricing guidelines.

The Revenue Commissioners have issued Guidance Notes in relation to documentation obligations.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

The associated test is met if there is more than a 50 percent shareholding connection (broadly defined) between the parties, either directly or indirectly, subject to the exclusion for certain small and medium-sized entities, as laid out in the EU Commission Recommendation of 6 May 2003 (2003/361/EC).

### Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

The Irish Revenue accept the calculation of profits in accordance with OECD principles in relation to permanent establishments.

## Methods and comparables

### Acceptable methods

Ireland follows the OECD transfer pricing guidelines in this regard. Thus, the acceptable methods include the comparable uncontrolled price (CUP), the resale price method, the cost plus method, the profit split method, and the transactional net margin method (TNMM).

### Priority of methods

Ireland follows the OECD transfer pricing guidelines, as updated in 2010, in this regard.

### Availability of benchmarking/comparative data

Limited local data is available. However, Pan-European data is typically used for transfer pricing purposes.

### Are foreign comparables acceptable to local tax authorities?

Yes.

## Services issues

### Are management fees deductible?

There is no specific legislation on this issue. General rules on deductible expenses apply, that is, fees are deductible provided they are connected with the company's trade and on an arm's length basis.

### Are management fees subject to withholding?

No.

### May stock option costs be included in the cost base for intercompany services charges?

Not specified in Irish legislation. The Irish Revenue are likely to follow the OECD transfer pricing guidelines. The tax deductibility of amounts associated with stock option costs depends on the specific costs and timing of taxation of the options. There is a requirement to account for the costs under Irish GAAP/IFRS.

## Commissionaire arrangements

### Are commissionaire arrangements allowed?

Yes.

## Cost sharing agreements

### Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?

Yes.



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**Are cost contribution or cost sharing payments deductible?**

Yes.

**Are cost contribution or cost sharing payments subject to withholding tax?**

No.

**What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?**

Deduction is not permitted if buy-in payments are capital in nature. Buy-ins would generally be treated as revenue, in which case they would be deductible.

**Documentation and tax return disclosures**

**Tax return disclosures**

No specific disclosure required.

**Documentation requirements**

The Revenue Commissioners have issued Guidance Notes in relation to documentation obligations. The guidance states that it is best practice for documentation to be prepared at the time the terms of the transaction are agreed. The guidance also states that for a company to be in a position to file a complete and correct tax return for an accounting period in which there are trading transactions with associates, the documentation should exist at the time the tax return is due (normally eight months and 23 days after the end of an accounting period for returns filed electronically).

Documentation prepared in accordance with the OECD transfer pricing guidelines or EU TPD will be acceptable.

**Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

Relevant documentation should be maintained annually and updated thereafter on a periodic basis, in line with any changes in functions and risks of the Irish company. Typically, comparables can be refreshed annually with a new search performed every three years (or earlier if there are changes in the functional and risk profile of the relevant entities).

**Deadline to prepare documentation**

Documentation should be available by the due date for filing the income tax return.

**Deadline to submit documentation**

Records are to be made available for inspection within a period of not less than 21 days from the request. In practice, the Irish Revenue will seek documentation under the Transfer Pricing Compliance Review program. Under this program, a period of three months is granted to taxpayers to self-review their transfer pricing and report back to the Irish Revenue with findings and relevant supporting documentation.

**Deadline to file income tax return (for countries that require filing of documentation by the return filing date)**

Approximately nine months after year end. For example, for a 31 December year end, the tax filing date is the following 23 September for returns filed electronically. At present, there is no requirement to submit transfer pricing documentation at the time the income tax return is filed.

**Acceptable languages for documentation**

Records are required to be kept in an official state language — Irish or English.

**Transfer pricing adjustments**

**Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

In general, the statutory accounts form the basis for the Irish income tax return. However, in practice, book/tax differences are allowable.

**Self-initiated adjustments**

Self-initiated adjustments that have the effect of increasing taxable income are acceptable. An adjustment that has the effect of decreasing taxable income is permitted only when an adjustment arises by virtue of a transfer pricing adjustment made by the counterparty company. Such adjustments may be agreed by the Irish Revenue under the relevant MAP article in a tax treaty or under the EU Arbitration Convention.

**Statute of limitations on assessment for transfer pricing adjustments**

General rules of assessment apply. Effective 1 January 2005, the time limit is four years from the end of the accounting period in which the return is filed, but the Irish Revenue have in the past agreed to a more generous time

limit on a case-by-case basis. The prior time limit (until 31 December 2004) was six years. Domestic time limits are overridden by the terms of any applicable tax treaty and the EU Arbitration Convention..

**Taxpayer set-offs for other related-party transactions**  
Ireland follows the OECD transfer pricing guidelines in this regard. Benefits exchanged should be examined closely to determine if each satisfies the arm's length principle.

### Interest and penalties

#### Additional assessment payment deadline

General rules of assessment apply; the tax paid on account must be at least 90 percent of the final liability to avoid interest charges.

#### Penalty on transfer pricing assessment

There is no specific transfer pricing penalty. Existing penalties under tax legislation may apply.

#### Is interest charged on penalties?

Given that there is no specific transfer pricing penalty regime, interest is not charged on penalties. Interest is charged on underpayment or late payment of tax.

#### Is interest payable when a refund is due to the taxpayer?

Yes, in certain circumstances when the tax to be repaid has been paid as appropriate preliminary tax for the year in question.

#### Reduction in transfer pricing penalties

Not applicable.

### Advance Pricing Agreements (APAs)

#### Are APAs available?

The Irish Revenue will facilitate bilateral APAs by virtue of the network of double taxation agreements in place.

#### APA filing fee

Not applicable.

#### APA term of agreement

Not applicable.



### Competent authority

#### When may taxpayer submit tax adjustment to Competent Authority (CA)?

There is no formal procedure in place. It is recommended that details of the tax adjustment be submitted as early as possible to ensure that the applicable time limits under Irish domestic law, when relevant, are met.

#### May CA develop new settlement positions?

Yes.

#### May taxpayer go to CA before paying tax?

There is no formal process in place — would need to be considered on a case-by-case basis.

# Israel

## What's new

In recent years, the Israeli Tax Authority has increasingly scrutinized transfer-pricing-related tax issues. It has become common practice for tax auditors, including regional representatives, to request transfer pricing documentation in compliance with Israeli legislation. Similarly, interactions between taxpayers and the tax authorities regarding other tax issues may trigger transfer pricing scrutiny. For example, taxpayers often have encountered difficulties attaining an interim withholding tax approval due to the lack of transfer pricing documentation in place. This may pose a critical obstacle when a foreign related entity is dependent on the outbound transfer. In this regard, it has proven prudent for taxpayers to prepare compliant documentation in advance.

Given that the Israeli economy is characterized by the moniker "Start-up Nation," the ITA is particularly sensitive to any business restructuring activities involving the transfer, migration and/or use of intellectual property rights and/or the transfer of operational functions or risks, and has thereby initiated multiple high-profile disputes focused on these matters. The ITA issued a directive addressing business restructurings in 2010 that enforces the arm's length principle, and is aligned with the OECD transfer pricing guidelines on the same.

Although the ITA has historically concluded only a limited number of APAs, APA requests have recently increased and the general expectation is that this trend will continue into the foreseeable future.

## General information

### Tax authority and law

The Israeli Tax Authority. Income Tax Ordinance, Article 85a, which deals with transfer pricing in international intercompany transactions, was enacted as part of the 2003 Israeli tax reform.

### Regulations, rulings, guidelines

Transfer pricing regulations under Article 85a, approved and effective as of 29 November 2006.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

Transfer pricing rules apply when a "special relationship" exists between parties to a transaction, which includes the

relationship between an individual and his/her relatives, control by one party to the transaction over the other, or control by one individual over the other parties to the transaction, whether direct or indirect, individually or together with other individuals.

### Do the local transfer pricing rules or tax authority allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

Yes.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price (CUP) method, the cost plus method, the resale price method, the transactional net margin method (TNMM), the profit split method, the residual profit split method, and other unspecified methods.

### Priority of methods

Transaction-based methods are preferred over profit-based methods.

### Availability of benchmarking/comparative data

Limited local data are available.

### Are foreign comparables acceptable to local tax authorities?

Israeli comparables are preferred, but if not available, relevant foreign comparables may be considered.

An effort should be made to seek local comparables; if Israeli comparables cannot be found, the Israeli Tax Authority would look for a set of comparables that will satisfy the comparison criteria specified in the regulations. In such a case, there is no strict rule as to what would be preferable — a set of European comparables, a set of U.S. comparables, or a combined set of each or both with Israeli comparables. The decision should be made on a case-by-case basis, as long the comparables meet the comparability standards set by the Israeli Tax Authority in the regulations.

## Services issues

### Are management fees deductible?

Yes, provided the fees are at arm's length.

### Are management fees subject to withholding?

Generally, no.



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**May stock option costs be included in the cost base for intercompany services charges?**

There are no formal provisions in this regard.

**Commissionaire arrangements**

**Are commissionaire arrangements allowed?**

Yes.

**Cost sharing agreements**

**Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?**

There is no specific statutory authority; however, cost contribution arrangements and cost sharing agreements are recognized and accepted by the Israeli tax authority.

**Are cost contribution or cost sharing payments deductible?**

Generally, yes, as long as the payments satisfy the arm's length standard and are not capital in nature.

**Are cost contribution or cost sharing payments subject to withholding tax?**

There are no formal guidelines.

**What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?**

There are no formal guidelines; however, in most cases, payments are treated as royalty payments.

**Documentation and tax return disclosures**

**Tax return disclosures**

An annual declaration form (Form 1385) of all controlled transactions, prices, transfer pricing methodology, and terms must be filed on an entity-by-entity basis with the annual income tax return, including a corporate officer's declaration that such transactions are conducted at arm's length prices and terms.

**Documentation requirements**

Documentation should include: (1) a description of all entities involved in cross-border transactions and their relationship to the taxpayer; (2) an industry description and market trends; (3) functional and risk analysis; (4) holding and ownership structures; (5) intellectual property ownership and/or employment; (6) primary contracts and contractual terms; (7) description of the intragroup transactions; (8) selection of method; (9) selection of profit level indicator; (10) description of comparable transactions/companies; (11) economic results; (12) adjustments performed; and (13) opinions provided.

**Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

Form 1385 must be filed annually. The arm's length nature of the annual declaration form is to be founded on a complete transfer pricing report for a given year. Although the regulations do not specify this, it is common practice to conduct a new search every two years and to refresh the financial data of a given set of comparables every other year. A refresh is acceptable only if there has been no material change to the facts and circumstances surrounding the intercompany transaction or the acceptability of the selected companies.

**Deadline to prepare documentation**

There is no statutory deadline for the preparation of documentation. However, an appropriate arm's length analysis is required prior to the submission of Form 1385.

**Deadline to submit documentation**

Documentation must be submitted within 60 days of a request from the Israeli Tax Authority.

**Deadline to file income tax return**

The deadline to file the income tax return is determined in accordance with section 132 of the Israeli Tax Ordinance. However, there is no statutory requirement to file documentation by the tax return filing date, except for the annual declaration, Form 1385.

**Acceptable languages for documentation**

Generally, documentation may be submitted in English or in Hebrew. The Israeli Tax Authority may require, in certain circumstances, the submission of documentation in Hebrew, the official language of Israel.

**Transfer pricing adjustments**

**Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

Book/tax differences are usually not recommended and are not considered a best practice, but they may be allowed if necessary.

**Self-initiated adjustments**

There is no formal procedure.

### **Statute of limitations on assessment for transfer pricing adjustments**

The standard statute of limitations in Israel is three years from the end of the tax year for which a return is filed. The ITA even may have the authority to review previously approved assessments or to reopen final assessments within that time period. The Israeli Tax Authority reserves the right to request a one-year extension to the standard statute of limitations.

### **Taxpayer set-offs for other related-party transactions**

There is no formal provision.

### **Interest and penalties**

#### **Additional assessment payment deadline**

The general tax assessment rules apply.

#### **Penalty on transfer pricing assessment**

In accordance with the Israeli Tax Ordinance, standard tax penalties apply: 4 percent + Consumer Price Index + 15 percent penalties, under certain conditions.

#### **Is interest charged on penalties?**

Yes

#### **Is interest payable when a refund is due to the taxpayer?**

Yes. In accordance with the Israeli Tax Ordinance, taxpayers are entitled to interest of 4 percent + Consumer Price Index, as of the relevant tax year and until the actual date of the refund.

#### **Reduction in transfer pricing penalties**

There is no provision on this issue.

### **Advance Pricing Agreements**

#### **Are APAs available?**

According to Article 85a, APAs are available.

#### **APA filing fee**

No APA filing fee is specified. In practice, the ITA does not charge any fees for reviewing an APA application.

#### **APA term of agreement**

Not specified.

### **Competent authority**

#### **When may taxpayer submit tax adjustment to Competent Authority (CA)?**

There is no formal procedure.

#### **May CA develop new settlement positions?**

There is no formal procedure.

#### **May taxpayer go to CA before paying tax?**

There is no formal procedure, but the ITA may be approached.



# Italy

## What's new

In 2014, the tax authorities issued Circular Letter n. 25/E to clarify some transfer pricing issues:

- Large taxpayers, as well as small and medium-sized enterprises, that have properly communicated the availability of transfer pricing documentation may still be subject to a tax audit. However, tax offices should proceed with the investigation of those taxpayers only on specific grounds, and not because they have prepared transfer pricing documentation.
- A tax assessment may not involve issues covered by an advance pricing agreement binding enterprises with international activity and the Italian tax authorities.
- Before planning or starting an audit, local Italian tax offices should verify whether a taxpayer has concluded an APA, is in the process of negotiating such an agreement, or even has applied for it, to avoid any overlapping tax investigations. In other words, should an APA be in the course of being negotiated, or even if an APA application has been filed, taxpayers should not be reasonably targeted for an audit, at least on transfer pricing issues.
- Transfer pricing assessments should always be founded on in-depth analysis of the facts and circumstances underlying each case.

## General information

### Tax authority and law

Italian Ministry of Economy and Finance; Article 110 (7) of Presidential Decree n. 917/1986 (for corporate tax purposes – IRES); Legislative Decree n. 446/1997 (for regional tax purposes – IRAP); article 1, § 2-ter of Legislative Decree n.471/1997.

### Regulations, rulings, guidelines

Circular Letter nos. 32/9/2267 (September 22, 1980), 42/12/1587 (December 12, 1981) and 271/E/1059 (October 21, 1997). Circular Letter nos. 141/E/86270 (June 4, 1998), 98/E/107570 (May 17, 2000) and 148/E/139500 (July 26, 2000) for IRAP purposes only; decision of the Commissioner of Italy Revenue Agency dated September 29, 2010; Circular Letter no. 58/E (December 15, 2010); Circular no. 21/E (June 5, 2012).

## Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

In addition to the control relationships considered in article 2359 of the Civil Code, transfer pricing rules apply to any kind of relationship determining actual or potential economic influence on business decisions, by means of a combination of, but not limited to, exclusive agreements, joint ventures, the presence of common members on the boards of directors, family relationships, financial relationships, participation in trusts, etc. (Circular Letter No. 32/9/2267, September 22, 1980, chapter I, par. 4).

## Do the local transfer pricing rules or tax authority allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

Italian tax law does not provide specific rules for the determination of profits attributable to a permanent establishment. Therefore, reference must be made to the provisions found in double tax treaties, most of which reflect Article 7 of the OECD model convention (although in its earlier version, prior to the 2010 revision), and the relevant commentary, as applicable.

The relevant provision reflects the so-called “functionally separate entity approach” that has been adopted by OECD member states as the “authorized OECD approach” or as the “preferred interpretation.”

The profit to be attributed to the permanent establishment should be determined by applying the arm’s length principle and the OECD transfer pricing guidelines.

Practical guidance on the attribution of profits to a permanent establishment and the related transfer pricing methods are included in the OECD’s 2010 Report on the Attribution of Profits to Permanent Establishments, issued July 22, 2010. From an Italian point of view, the OECD report is valid, but just as an important reference for both taxpayers and the tax administration.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the profit comparison method, the profit split method, the invested capital profitability method, and the economic sector gross margin method.



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### **Priority of methods**

Transaction-based methods are preferred over profit-based methods. The CUP method is preferred over the resale price and the cost plus methods.

### **Availability of benchmarking/comparative data**

Comparative data is not generally available.

### **Are foreign comparables acceptable to local tax authorities?**

Yes, provided local comparables are not available and foreign markets are deemed sufficiently similar.

### **Services issues**

#### **Are management fees deductible?**

Yes, provided the fees are at arm's length, are adequately supported/documented, refer to services inherent to the taxpayer's business activity, and benefits are proved/documented. Stewardship costs, as well as costs for "duplicated" services, are not deductible.

#### **Are management fees subject to withholding?**

No, unless paid in the form of a royalty for the use of some intangible assets (for instance, business know-how and global customers lists).

#### **May stock option costs be included in the cost base for intercompany services charges?**

The Italian tax authorities have not taken an official position on this topic. In principle, a tax deduction might be allowed, provided the total intercompany stock option costs recharged are arm's length, and the provisions in the intercompany services agreement are consistent with those that would have been agreed upon by two independent parties.

### **Commissionaire arrangements**

#### **Are commissionaire arrangements allowed?**

Yes.

### **Cost sharing agreements**

#### **Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?**

Yes. Circular Letter no. 32/9/2267, September 22, 1980, chapter VI, par. 6.

#### **Are cost contribution or cost sharing payments deductible?**

Yes, but payments must satisfy the arm's length standard and have sufficient nexus with the taxpayer's income production.

#### **Are cost contribution or cost sharing payments subject to withholding tax?**

No.

#### **What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?**

Payments for patents, processes, and formulas can be depreciated over two years, trademarks over 18 years. Other rights are deductible or amortizable over the useful life or agreed upon period (Presidential Decree No. 917/86, article 103).

### **Documentation and tax return disclosures**

#### **Tax return disclosures**

The tax return (form "UNICO" – RF section) requires disclosure of direct/indirect control by/of nonresident entities and relationships with nonresident entities under common control. In addition, the total value of positive and negative income items derived from intercompany transactions subject to the arm's length standard must also be disclosed.

To take advantage of the penalty protection regime, a box must be checked in the income tax return, to communicate to the tax agency that "proper" documentation has been prepared.

#### **Documentation requirements**

Italy does not have a statutory requirement, but documentation is recommended to avoid shifting the burden of proof regarding arm's length pricing to the taxpayer. In addition, documentation that complies with specific regulations is necessary to obtain penalty protection.

#### **Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

According to the Italian regulations, documentation for penalty protection purposes must be updated annually, including the economic analyses (that is, the benchmark studies). Only small and medium-sized enterprises (defined as enterprises with an annual turnover of less than €50 million) are free to update the economic analyses included in documentation every three years, if no significant modifications have occurred in the relevant scenarios.

### **Deadline to prepare documentation**

Documentation for penalty protection purposes must be prepared by the tax return filing date relevant to the fiscal year being covered.

### **Deadline to submit documentation**

In case of a tax audit, tax inspectors may ask to be provided with transfer pricing documentation, if available. Normally, the request should be satisfied within no more than 15 days (the term may be extended, but only at the tax authorities' discretion). If the taxpayer communicated the availability of proper documentation for purposes of penalty protection, the term is 10 days.

### **Deadline to file income tax return**

Taxpayers must file their annual tax return with the tax authorities by the end of the ninth month following the end of the fiscal year (for companies with a calendar fiscal year, the deadline is the end of September of the following year). Italy does not require that documentation be filed with the tax return; however, taxpayers must check a box to inform the tax authorities whether the taxpayer has opted to prepare transfer pricing documentation for penalty protection purposes. The documentation itself must be kept at the taxpayer's premises and handed over to the tax auditors upon request.

### **Acceptable languages for documentation**

The Italian tax authorities have the right to require that all documentation submitted be in Italian, or translated into Italian before submission. They may accept documentation in other languages (a frequent occurrence) but there is no guarantee that they will. The tax authorities are not obligated to accept documentation in foreign languages. Documentation prepared for penalty protection purposes must be in Italian.

### **Transfer pricing adjustments**

#### **Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

Yes, book/tax differences are allowed. In general, taxable income is computed starting from the results reflected in the financial statements, to which upward or downward changes are made as required by tax law (for example, some costs may not be deductible in full and certain revenues may be spread over a multiple-year period).

Those changes include increases in taxable income to bring revenues or costs in line with the arm's length standard, even though the financial statements are not modified accordingly.

### **Self-initiated adjustments**

Italy permits adjustments in filing both original and amended returns after the close of book year-end, as long as the adjustment does not provide for a decrease in income. Adjustments may trigger penalties, on an increasing scale, the later they are made after the deadline for filing the income tax return they refer to.

### **Statute of limitations on assessment for transfer pricing adjustments**

Four calendar years from the end of the calendar year in which the tax return was filed. The term is extended to eight years in cases of assessment of criminal infringements.

### **Taxpayer set-offs for other related-party transactions**

Italy has no formal provision on this subject. In general, set-offs must be separately booked, both for civil and tax regulation purposes.

### **Interest and penalties**

#### **Additional assessment payment deadline**

General assessment rules are applicable. The deadline is 60 days after notification of an assessment notice. In case of appeal, the tax authorities are entitled to require payment of one-third of the tax and interest, even if the court decision is pending.

#### **Penalty on transfer pricing assessment**

Ordinary penalties apply — 100 percent to 200 percent of additional tax, increased by one-third of the unpaid tax and applicable interest if taxable income is derived from foreign sources. Beginning April 15, 2000, criminal penalties (one to six years' imprisonment) may apply in some circumstances (tax fraud, significant tax evasion, or failure to disclose significant income).

Taxpayers may avoid the application of administrative penalties in the case of transfer pricing adjustments, provided that proper documentation has been prepared and promptly handed over to the tax auditors. Moreover, the taxpayer must have communicated in advance to the Revenue Agency (by a specific electronic form for fiscal years prior to that including May 31, 2010, and by checking a box in the income tax return for

subsequent fiscal years) the availability of such “proper” documentation relevant to the intercompany transactions carried out in each fiscal year.

#### **Is interest charged on penalties?**

No, interest is charged only on the additional taxes connected with the transfer pricing adjustments.

#### **Is interest payable when a refund is due to the taxpayer?**

Taxpayers are entitled to receive interest if a tax refund is due by the tax authorities. Interest is determined on the basis of the legal tax rate established annually by ministerial decree.

#### **Reduction in transfer pricing penalties**

Penalties may be reduced to one-third if paid, without appealing to the Tax Court, within 60 days from notification of the tax assessment by the tax office.

Recently introduced rules provide for the possibility that the taxpayer may accept the transfer pricing adjustment claimed in the tax auditors’ report by amending the original tax return (filing an integrative tax return), provided a tax assessment has not yet been issued by the tax authorities. In that case, the taxpayer would waive the right to file an appeal and the penalties would be reduced to one-fifth of the original penalty.

Moreover, effective January 1, 2016, the special reduction (to one-sixth) of the original penalty if the taxpayer accepts the tax adjustment claimed in the tax auditors’ report will no longer be applicable.

#### **Advance Pricing Agreements (APAs)**

##### **Are APAs available?**

According to Article 8 of Law Decree n. 269/2003, effective January 1, 2004, taxpayers with international business activities may apply for an “International Tax Ruling,” whose contents and effect are similar to those of a unilateral APA, regarding transfer prices, interest, dividends, and royalties. International Tax Rulings may also determine the presence of a permanent establishment, and the relevant profit attribution. The Revenue Agency issued instructions for the application of the ruling procedure in July 2004.

##### **APA filing fee**

Not applicable.

#### **APA term of agreement**

Once signed, an International Tax Ruling would remain in force for five years (including the year in which it is signed), unless new facts emerge that would change the conditions regarding the transactions covered by the agreement.

An amendment to the rules that would extend the three-year term to five years is currently awaiting final approval.

#### **Competent authority**

##### **When may taxpayer submit tax adjustment to Competent Authority (CA)?**

Italy follows the mutual agreement procedure for the pertinent treaty, or the Arbitration Convention procedure if the related party is located in an EU member state (pursuant to EU Arbitration Convention 90/436/CEE). Circular 21/E (June 5, 2012) provides clarifications to the mutual agreement procedures and Arbitration Convention procedures.

##### **May CA develop new settlement positions?**

Yes.

##### **May taxpayer go to CA before paying tax?**

Yes. If certain circumstances are met (for instance, if payment would imply severe and irreparable damage to the taxpayer), the tax authorities, at the taxpayer’s request, may temporarily suspend recovery of tax and interest assessed if a mutual agreement/arbitration procedure is started.



# Japan

## What's new

Under the tax reform approved by Japan's Diet in March 2014, the country has changed its general tax rules applicable to foreign corporations that have a permanent establishment in Japan (FCPEs). Under the new Japanese tax law, income attributable to an FCPE will be taxable regardless of the source, and income attributed to an FCPE will be calculated using arm's length principle, in line with the Authorized OECD Approach. This change may make a significant impact, especially on foreign corporations who establish their business presence in Japan in the branch form. However, please note that this tax reform will be applied to fiscal years commencing April 1, 2016. No major other major changes were made during 2014 in relation to the Japanese transfer pricing laws.

## General information

### Tax authority and law

National Tax Agency (NTA); Special Taxation Measures Law (STML), Article 66-4 and Article 68-88 for companies filing consolidated tax returns.

### Regulations, rulings, guidelines

Enforcement Order 39-12 and 39-112 (for companies filing consolidated tax returns). Enforcement Ordinance 22-10, and 22-10(2), 22-74, and 22-75. Transfer pricing commissioner's directive (guideline) issued June 1, 2001, partially amended several times. Reference Case Studies on Application of Transfer Pricing Taxation issued on June 25, 2007.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

Transfer pricing rules apply to transactions between a Japanese taxpayer corporation and a foreign related party. "Related parties" are defined as entities with a "special relationship" because of direct or indirect legal control (through shareholding) or control-in-substance (personnel dependence, transactional dependence, financial dependence, or similar dependence factors).

### Do the local transfer pricing rules or tax authority allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

There is no specific guidance, but in the event it is determined there is a permanent establishment issue, the tax authorities are likely to take an approach consistent with a transfer pricing analysis.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the profit split method, the transactional net margin method (TNMM), and similar methods.

### Priority of methods

Three basic methods (CUP, resale price, and cost plus) had priority over TNMM and profit split until September 2011. The 2011 Tax Reform introduced the "best method" rule, which applies to fiscal years beginning after October 1, 2011.

### Availability of benchmarking/comparative data

Comparable data are obtained using several public databases with SIC codes and keywords. Information from public databases in English, including Bureau van Dijk's databases, is used by the Japanese tax authorities, as well as those available only in Japanese.

### Are foreign comparables acceptable to local tax authorities?

No.

## Services issues

### Are management fees deductible?

Arm's length charges for intragroup management and similar services are deductible (in accordance with the OECD transfer pricing guidelines and Japan's transfer pricing guidelines).

### Are management fees subject to withholding?

No withholding tax is imposed if the services are performed outside of Japan. Withholding taxes may be applicable if the services are performed in Japan.

### May stock option costs be included in the cost base for intercompany services charges?

There is no specific statutory authorization.



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### **Commissionaire arrangements**

#### **Are commissionaire arrangements allowed?**

There is no specific statutory authorization.

### **Cost sharing agreements**

#### **Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?**

Yes. Japan follows the rules adopted in the transfer pricing commissioner's directive (guideline) issued March 20, 2006.

#### **Are cost contribution or cost sharing payments deductible?**

Yes, as long as the payments satisfy the arm's length standard.

#### **Are cost contribution or cost sharing payments subject to withholding tax?**

There is no specific statutory authorization.

#### **What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?**

Payments are deductible or amortizable over their useful life.

### **Documentation and tax return disclosures**

#### **Tax return disclosures**

Schedule 17(4): Detailed Statement Concerning Foreign Affiliated Persons and Applied Transfer Pricing Methods.

#### **Documentation requirements**

Enforcement Ordinance 22-10 lists 14 items of information/documents that must be presented to the tax authorities during a tax audit without delay.

The 14 requested information items/documents are divided into two categories: (1) nine items that show that controlled transactions were conducted under conditions similar to those of uncontrolled transactions, such as pricing policies used in business, intercompany agreements, and negotiation processes with affiliated companies on pricing; and (2) five items such as comparables and transfer pricing methods used for sanity-check purposes with respect to the controlled transactions conducted with the items listed in the first category.

#### **Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

Japan looks at individual tax years in terms of documentation. Thus, the relevant documentation cited by Enforcement Ordinance 22-10 pertinent to the tax year in question should be available. For example, it is possible that the functional analysis may not have changed, but headcount, organizational charts, and financial analyses relevant to the year in question must be available without delay for the year(s) under audit.

#### **Deadline to prepare documentation**

If a taxpayer is not equipped with the above information before it enters into any controlled transaction, it could be subject to the presumptive taxation rule whereby the tax authorities are allowed to use secret comparables.

#### **Deadline to submit documentation**

Documentation must be submitted without delay upon request.

#### **Deadline to file income tax return**

The income tax return must be filed within two months after the end of the fiscal year end, unless an extension has been approved by a local tax office.

#### **Acceptable languages for documentation**

Documentation may be prepared in the taxpayer's common company language, but the taxpayer will likely be required to translate key sections upon audit.

### **Transfer pricing adjustments**

#### **Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

Under Japanese tax law, taxable income should be determined based on the shareholder-approved financial statement. Thus, book/tax differences are not allowed.

#### **Self-initiated adjustments**

Written guidelines for self-initiated adjustments were issued on October 22, 2008.

### **Taxpayer set-offs for other related-party transactions**

Set-off is permitted if: (1) an adjustment has been made with the same related party during the same tax year; and (2) after set-off, the two transactions are considered conducted at arm's length.

### **Statute of limitations on assessment for transfer pricing adjustments**

Six years from the due date for filing the income tax return.

### **Interest and penalties**

#### **Additional assessment payment deadline**

Generally within 30 days from a notice of deficiency. Interest on a deficiency is imposed from the date of the statutory notice, in addition to interest for the shorter period of: (a) the number of days between the date the original return was filed and the notice of deficiency, or (b) 12 months.

#### **Penalty on transfer pricing assessment**

Japan does not have specific transfer pricing penalties. The ordinary penalty is 10 percent to 15 percent of the additional tax (35 percent for concealment of facts). The delinquency tax rate is the lower of 7.3 percent and 4 percent plus the special discount rate for commercial bills at the central bank.

#### **Is interest charged on penalties?**

No.

#### **Is interest payable when a refund is due to the taxpayer?**

Yes. The same rate as used for delinquent tax is applied.

#### **Reduction in transfer pricing penalties**

There is no provision on this subject.

### **Advance Pricing Agreements (APAs)**

#### **Are APAs available?**

Both unilateral and bilateral APAs are available. The NTA prefers bilateral APAs. The transfer pricing commissioner's directive (guideline) was issued June 1, 2001.

#### **APA filing fee**

There is no filing fee for an APA application.

#### **APA term of agreement**

Generally, three to five years forward; rollback is available on bilateral APAs. In practice, APA terms vary.



### **Competent authority**

#### **When may taxpayer submit tax adjustment to Competent Authority (CA)?**

In practice, following receipt of the formal deficiency notice; however, there is no specific requirement with regard to the point at which the taxpayer may submit a request. More than half of the treaties Japan has entered into impose limitations as to the deadline for filing an application.

#### **May CA develop new settlement positions?**

Yes. Japan follows the OECD transfer pricing guidelines.

#### **May taxpayer go to CA before paying tax?**

Yes. Under the 2007 tax reform, applicable from April 1, 2007, payment of tax and penalties may be postponed, and delinquent tax may be exempt during a CA procedure if the taxpayer applies for this.

# Kazakhstan

## What's new

2014 saw relatively few significant transfer pricing reforms, legislative changes, or new directions of tax authority compliance and enforcement action in Kazakhstan. However, it is worth mentioning a major change in the structure of the governmental system. A new reform/reorganization was implemented whereby the tax and customs authorities were combined into a single State Revenue Committee.

Discussions took place between the authorities and various associations of taxpayers and industry-specific bodies regarding potential future reforms in relation to:

- Cancellation of the mandatory requirement for submission of the annual monitoring report by large taxpayers to the authorities. Instead, the monitoring report would be provided to the authorities upon specific request.
- A change in the hierarchy of the pricing methods, so that if the first-priority CUP method is not applicable, taxpayers would be allowed to use any of the other four methods that is best suited for a particular case.
- The introduction of more stringent requirements in relation to transfers/receipts of funds for transactions via offshore bank accounts.
- An amendment of the list of countries with concessional tax regimes adopted by government regulation, in particular to exclude Luxembourg from the list.

The discussions are still in progress and the results are expected to be released in the course of 2015.

It should also be noted that, on 22 January 2015, Kazakhstan and the OECD signed a two-year memorandum of understanding in the form of an OECD "Country Program." This bilateral work program covers various areas, including taxation. Accordingly, there is possible scope for closer alignment in the coming year between Kazakh tax legislation and OECD programs, frameworks, and principles.

## General information

### Tax authority and law

State Revenue Committee. The Law "On Transfer Pricing" dated 5 July 2008; the Code of the Republic of Kazakhstan, "On taxes and other obligatory payments to the budget" (the Tax Code).

### Regulations, rulings, guidelines

- Resolution of the Government (dated 12 March 2009) #292 "On approval of the list of officially recognized sources of information on market prices"
- Resolution of the Government (dated 12 March 2009) #293 "On approval of the list of goods (works, services) international transactions that are subject to monitoring"
- Resolution of the Government (dated 24 October 2011) #1197 "On approval of the rules for concluding an agreement on application of transfer prices"
- List of exchange goods adopted by government regulation (dated 6 May 2009) #638
- List of countries with concessional tax regime adopted by government regulation (dated 31 December 2008) #1318
- Resolution of the Government (dated 11 November 2011) #1324 "On approval of the reporting forms for monitoring of transactions and rules for conducting monitoring of transactions"
- Order of the Minister of Finance (dated 26 March 2009) #129 "On approval of the regulation on the procedure of interaction of the authorized bodies during transfer pricing control"
- Law of the Republic of Kazakhstan (dated 6 January 2011) #377-IV "On State Control and Supervision in the Republic of Kazakhstan"
- Resolution of the Government (dated 3 February 2011) #74 "Concerning the approval of Regulations (methodology) on pricing of natural uranium concentrate"
- Resolution of the Government (dated 30 June 2011) # 741 "Concerning the approval of Regulations (methodology) on pricing of sponge titanium, titanium ingots and elementary magnesium ingots"

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

Local transfer pricing rules apply to both related and unrelated parties in respect of international business operations and operations performed in Kazakhstan that are linked to and subsequently become classified as international business operations.



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For these purposes, the term “international business operations” is defined as including:

- Export and/or import transactions for the purchase and sale of goods;
- Transactions for the execution of works and rendering services, when one of the parties is a nonresident carrying out activities in Kazakhstan without a permanent establishment; and,
- Transactions undertaken by residents of Kazakhstan that are executed outside Kazakhstan for the purchase and sale of goods, the execution of works, and delivery of services.

**Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?**

Yes, Kazakh legislation provides for the determination of income attributable to a permanent establishment based on transfer pricing rules and bases in certain cases:

- If a nonresident carries out business activity both in Kazakhstan and beyond its boundaries within the framework of a single project implemented through a permanent establishment in Kazakhstan; or
- If goods manufactured by a permanent establishment of a nonresident in Kazakhstan are sold by another structural unit of the nonresident that is situated beyond the boundaries of Kazakhstan.

**Methods and comparables**

**Acceptable methods**

The comparable uncontrolled price (CUP) method, the cost plus method, the resale price method, the profit split method, and the net profit method.

**Priority of methods**

The CUP has first priority. If it is impossible to apply the CUP, other methods may be used, following this hierarchy: (1) the cost plus method; (2) the resale price method; (3) the profit split method; and (4) the net profit method.

**Availability of benchmarking/comparative data**

A list of international bulletins, magazines, and other sources of information was established by Resolution of the Government dated 12 March 2009. The list of officially recognized sources of information on market prices has first priority. Other sources of data may be used in the following order:

- Officially recognized sources of information;
- Information on stock exchange quotations;

- Data of state bodies, authorized bodies of other states and organizations;
- Information programs used for purposes of transfer pricing, information submitted by the transaction parties, and other sources of information.

**Are foreign comparables acceptable to local tax authorities?**

Yes, to the extent that those comparables reflect comparable economic conditions.

**Services issues**

**Are management fees deductible?**

Yes, in accordance with general tax legislation (the Tax Code), if related to the generation of taxable income and documented justifiably.

Those fees are not deductible by nonresident companies if not associated with a permanent establishment in Kazakhstan.

**Are management fees subject to withholding?**

Yes, in accordance with general tax legislation (the Tax Code), if received by a nonresident company from Kazakh sources and not attributable to that nonresident company’s permanent establishment in Kazakhstan.

Exemption from Kazakhstan withholding tax may be available under an applicable tax treaty.

**May stock option costs be included in the cost base for intercompany services charges?**

Losses arising from derivative financial instruments that are subject to special considerations other than in hedging transactions and in implementation by way of delivery of a base asset will be offset against income from derivative financial instruments.

If those losses cannot be compensated in the period in which they actually incurred, the losses can be carried forward up to 10 years and compensated with income from such derivative financial instruments, but not the aggregate annual income.

**Commissionaire arrangements**

**Are commissionaire arrangements allowed?**

There are no specific provisions on this topic.

## Cost sharing agreements

### Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?

No specific provisions are set out in local legislation to address such arrangements.

### Are cost contribution or cost sharing payments deductible?

There are no specific provisions in local legislation that govern the taxation and tax deductibility of such structures.

However, in line with general principles set out in local tax legislation (the Tax Code), nonresident companies operating in Kazakhstan through permanent establishments are allowed to deduct general and administrative expenses if stipulated by the relevant income tax treaty.

The methodology and procedure of such deductibility is regulated by provisions of the Tax Code.

### Are cost contribution or cost sharing payments subject to withholding tax?

As noted above, there are no specific provisions addressing the withholding tax treatment of such arrangements. However, depending on the precise nature of the agreements in question, it is possible that such arrangements may be subject to withholding tax.

### What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?

There are no specific provisions addressing this issue in the Kazakh Tax Code.

## Documentation and tax return disclosures

### Tax return disclosures

There are no specific provisions in this regard.

### Documentation requirements

Transaction parties (when transactions are within the scope of the Law on Transfer Pricing) are obligated to maintain suitable documentation to justify the reasonableness of transaction prices used.

Kazakhstan's transfer pricing regulations also introduced annual reporting requirements in the form of monitoring of international transactions for a specified list of goods and services that is approved by the government of Kazakhstan.

Reporting includes:

- Documentation confirming the justification of prices used;
- The method used to determine the market price and the source of information used;
- A description of the goods (work, services), contractual terms, and business strategy, and information on the trade broker's margin; and
- Other documents and data proving the consistency of the prices applied with market prices.

### Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?

Yes, documentation must be submitted to the tax authorities in the form of a report on monitoring of transactions (submitted electronically) on an annual basis.

The report contains information about all cross-border transactions during the reporting year, including:

- Type of commodity;
- Date, place, and terms of shipment;
- Transaction price;
- Market price;
- Differentials (i.e., an adjustment amount that applies to adjust transaction prices (or prices from sources of information) to those that would be equivalent to goods, services available in comparable economic conditions, including shipment, insurance, customs, and other costs incurred); and
- Other information.

The report on monitoring of transactions must be submitted only by large taxpayers. The list of companies classified as "large taxpayers" is approved and issued annually by the government. However, other taxpayers (i.e., not large taxpayers) are required to maintain suitable documentation to justify the reasonableness of transaction prices used, and must submit such documentation to the authorities upon request.

There are no specific requirements regarding new searches or refreshment of comparables.

### Deadline to prepare documentation

Documentation must be prepared by 15 May of the year following the reporting year for transactions in goods (works, services) subject to monitoring.

Additional supporting documents for purposes of monitoring may be requested and must be submitted within 30 calendar days after receipt of the request.

Otherwise, in general cases, supporting information and documents must be prepared and submitted within 90 days upon request by the authorities.

#### **Deadline to submit documentation**

By 15 May of the year following the reporting year for transactions of goods (works, services) that are subject to monitoring.

Additional supporting documents for purposes of monitoring may be requested and must be submitted within 30 calendar days after receipt of the request.

Otherwise, in general cases, supporting information and documents must be submitted within 90 days upon request from the authorities.

#### **Deadline to file income tax return**

The corporate income tax return must be filed by 31 March of the year following the reporting tax year.

#### **Acceptable languages for documentation**

Documentation in Russian and Kazakh is generally acceptable. However, the reporting form for transfer pricing monitoring must be in Russian.

#### **Transfer pricing adjustments**

**Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

For tax purposes, prices may be adjusted in accordance with transfer pricing legislation, and therefore could be different from income and expenses recognized for accounting purposes.

#### **Self-initiated adjustments**

Self-initiated adjustments are allowed. The procedure for such adjustments is regulated under general tax legislation (the Tax Code).

#### **Statute of limitations on assessment for transfer pricing adjustments**

Five years, as stipulated by general tax legislation (the Tax Code).

#### **Taxpayer set-offs for other related-party transactions**

There are no specific provisions addressing this issue in local legislation.

#### **Interest and penalties**

##### **Additional assessment payment deadline**

Additional tax assessments must be fulfilled within 30 working days from the tax authorities' request.

##### **Penalty on transfer pricing assessment**

A penalty of up to 50 percent of additionally accrued tax, and interest on underpaid tax of 2.5 times the refinancing rate established by the National Bank for each day the tax obligation remains overdue will be imposed.

The taxpayer's failure to provide the tax authorities with the reporting form for monitoring transactions is subject to a fine up to 70 MCI (1 MCI=USD 12).

Failure to submit documents within the period prescribed by the authorized government body, or refusal to provide documents, is subject to a fine up to 350 MCI.

##### **Is interest charged on penalties?**

No.

##### **Is interest payable when a refund is due to the taxpayer?**

If the tax authorities miss the deadline for making a credit against a tax credit application for an excess amount of tax or charge paid, the tax authorities will pay late payment interest to the taxpayer for each day the credit remains unpaid.

Late payment interest accrues at 2.5 times the official National Bank of the Kazakhstan refinancing rate (currently 5.5 percent) for each day of delay, beginning from the day following the credit deadline, including the day the credit is made.

##### **Reduction in transfer pricing penalties**

Penalties may be avoided in case of self-initiated adjustments as stipulated by general tax legislation.

### **Advance Pricing Agreements (APAs)**

#### **Are APAs available?**

Yes. From a legislative point of view, APAs are possible and are regulated by the government.

Experience to date reveals that in practical terms the use of APAs in Kazakhstan is nonexistent.

Based on informal discussions with the tax authorities, we understand they have received numerous APA applications. However, none have been approved, principally due to difficulties complying with all the terms outlined in the decree governing APAs.

#### **APA filing fee**

There is no fee for an APA application.

#### **APA term of agreement**

Up to three years from the signing date.

### **Competent authority**

#### **When may taxpayer submit tax adjustment to Competent Authority (CA)?**

There are no specific provisions on this topic.

#### **May CA develop new settlement positions?**

There are no specific provisions on this topic.

#### **May taxpayer go to CA before paying tax?**

There are no specific provisions on this topic.



# Kenya

## What's new

Transfer pricing continues to be a major area of focus for revenue authorities around the world, and Kenya is no exception. The Kenya Revenue Authority (KRA) is part of the Africa Tax Administrators Forum (ATAF), which has identified transfer pricing as a key focus area.

The KRA has carried out many transfer pricing audits since the transfer pricing rules entered into effect in 2006. Based on their experience so far, the KRA recently issued detailed draft guidelines for comment by stakeholders. The guidelines specify the conditions and procedures to be followed in the application of the transfer pricing methods as stipulated by the current transfer pricing rules.

## General information

### Tax authority and law

Kenya Revenue Authority; Section 18(3) of the Income Tax Act, which deals with transfer pricing legislation. This section requires that transactions between related parties be conducted at arm's length, and empowers the KRA commissioner to make adjustments as necessary to achieve an arm's length result.

### Regulations, rulings, guidelines

The Kenya Income Tax (Transfer Pricing) Rules, 2006, Legal Notice 67 of 2006 issued by the Minister for Finance on 15 June 2006.

The revenue authority has issued detailed draft guidelines for comment, but these have not yet been officially published.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

The rules define related parties as one or more enterprises whereby:

- One of the enterprises participates directly or indirectly in the management, control, or capital of the other;
- A third person participates directly or indirectly in the management, control, or capital of both; or
- An individual who participates in the management, control, or capital of the business of one entity is associated by marriage, consanguinity, or affinity to an individual who participates in the management, control, or capital of the business of the other.

The minimum threshold for control in the case of a body corporate is 25 percent shareholding or voting power, unless specifically provided for by the company's constitution. Note, however, that even in the absence of control, entities may still be deemed related, because control is not the only criterion.

### Do the local transfer pricing rules or the tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

The rules apply to permanent establishments, which are treated as distinct and separate entities from their head offices or other branches. Therefore, the permanent establishment or branch should use transfer pricing analyses for profit attribution.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the profit split method (contribution analysis or residual analysis), and the transactional net margin method (TNMM). The KRA commissioner may approve another method when, in his or her opinion, the arm's length price cannot be determined using any of the methods contained in the guidelines.

### Priority of methods

The rules do not give preference to any of the methods, but require the taxpayer to apply the "most appropriate" method.

### Availability of benchmarking/comparative data

Due to lack of a database with financial information on local comparables, most taxpayers rely on commercial databases such as Amadeus and Orbis for benchmarking studies. The KRA subscribes to the Orbis database, which contains global comparables.

### Are foreign comparables acceptable to local tax authorities?

Although the KRA has indicated that it prefers local comparables, in practice they accept foreign comparables because of the lack of public databases with local comparables. However, the KRA occasionally challenges the use of foreign comparables on the basis of non-inclusion of country adjustments, but it has not rejected those comparables. It is expected that



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the anticipated guidelines will contain guidance on the adjustments that should be made when foreign comparables are used.

### Services issues

#### Are management fees deductible?

Generally, yes. However, in practice, the revenue authority requires taxpayers to demonstrate the nature and extent of services provided, and may ask for detailed supporting documentation that may be difficult to provide.

#### Are management fees subject to withholding?

Yes, subject to withholding tax at a default rate of 20 percent for nonresidents (subject to income tax treaties).

#### May stock option costs be included in the cost base for intercompany services charges?

Yes, the total costs pertaining to employing certain individuals should be included in the cost base.

### Commissionaire arrangements

#### Are commissionaire arrangements allowed?

No guidelines provided. The principle will have to be tested with the KRA.

### Cost sharing agreements

#### Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?

No guidelines provided.

#### Are cost contribution or cost sharing payments deductible?

No guidelines provided.

#### Are cost contribution or cost sharing payments subject to withholding tax?

No guidelines provided. The principle will have to be tested with the KRA.

#### What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?

No guidelines provided.

### Documentation and tax return disclosures

#### Tax return disclosures

The tax return form requires disclosure of the names of foreign related parties, whereas the online return form also includes disclosure of raw materials and trading stock sold to or purchased from related parties.

### Documentation requirements

When a person avers the application of arm's length pricing, the transfer pricing rules require that person to develop an appropriate transfer pricing policy and provide documentation, upon request by the KRA, to evidence their analysis.

The list of prescribed documentation required is exhaustive, with details relating to the selection of the transfer pricing method and the reasons for the selection, the application of the method, the global organization's structure, details of the transaction under consideration, the assumptions, strategies, and policies applied in selecting the method, and such other background information as may be necessary..

#### Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?

There is no express requirement to prepare annual documentation. However, it is imperative that contemporaneous documentation be maintained, so that the taxpayer's true and accurate business reality is reflected in the documentation.

The Kenyan Income Tax Act was amended through the Finance Act 2014, and corporate taxpayers are required to notify the KRA within 30 days of any changes in their business structure, specifically changes in shareholding, including nominee shareholders or beneficial ownership, as well as cessation or sale of the business.

#### Deadline to prepare documentation

There is no statutory deadline for the preparation of documentation.

#### Deadline to submit documentation

Documentation must be submitted upon request.

#### Deadline to file income tax return

Income tax returns are due on the last day of the sixth month following the end of the year of income. Currently, there is no requirement to file transfer pricing documentation with the tax return.

#### Acceptable languages for documentation

Documentation must be in English.

### Transfer pricing adjustments

**Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

There are no guidelines on this issue. However, in practice a transfer pricing adjustment could be passed through the financial statements, or through the income tax computation.

### Self-initiated adjustments

The revenue authority requires that the taxpayer file an application under section 90 of the Income Tax Act for amendment of self-assessment returns. This usually triggers a tax audit.

### Statute of limitations on assessment for transfer pricing adjustments

As with other income tax assessments, the Revenue Authority has the power to make assessments for up to seven years back. However, when there is evidence of fraud, there is no time limit for making assessments.

### Taxpayer set-offs for other related-party transactions

There is no formal provision on this topic.

### Interest and penalties

#### Additional assessment payment deadline

The due date is that which applies to the balance of tax for the year to which the self-assessment relates. Therefore, the additional assessment will incur interest from the date on which the tax for the year in question should have been paid (four months after the year-end).

#### Penalty on transfer pricing assessment

Penalties will apply for transfer pricing purposes under the ordinary penalty sections of the Kenyan Income Tax Act – generally a 20 percent penalty on additional tax assessed, plus interest at 2 percent per month from the due date.

#### Is interest charged on penalties?

Effective June 2010, interest is not charged on penalties.

#### Is interest payable when a refund is due to the taxpayer?

Interest is currently not payable on tax refunds.

#### Reduction in transfer pricing penalties

There is no provision for a reduction in penalties.

### Advance Pricing Agreements (APAs)

**Are APAs available?**

No.

**APA filing fee**

Not applicable.

**APA term of agreement**

Not applicable.

### Competent authority

**When may taxpayer submit tax adjustment to Competent Authority (CA)?**

There is no formal procedure in this regard.

**May CA develop new settlement positions?**

There is no formal procedure in this regard.

**May taxpayer go to CA before paying tax?**

No guidelines are provided.



# Korea

## What's new

Korea did not enact any major changes to its transfer pricing regime in 2014, but several administrative and procedural revisions were released and will be effective January 1, 2015. For example, a revision regarding the annual tax return disclosures provides that taxpayers will now be penalized for failing to file or providing false information in the Summary of Overseas Related-Party Transaction form. The exemption threshold for the Report of Transfer Pricing Method, another annual tax return disclosure, will be increased. Unilateral APAs may be requested simultaneously with Advance Customs Valuation Arrangements. Amended tax returns for downward transfer pricing adjustment resulting from customs audits may be acceptable when the adjustments are calculated in a consistent manner with the transfer pricing methods stimulated under LCITA.

The transfer pricing methods for guarantee fee computations on intercompany loan transactions were previously incorporated into LCITA in 2013. The NTS retroactively applied this newly adopted methodology, and made assessments on guarantee fee transactions on past years for which the statute of limitation had not expired. The controversy about those tax assessments continued through 2014, and tax appeals on this issue sharply increased in 2014. So far, most of the National Tax Tribunal's decisions have been in favor of the NTS, with a few cases sent back for reinvestigation.

## General information

### Tax authority and law

National Tax Service (NTS); Law for the Coordination of International Tax Affairs (LCITA) (effective January 1, 1996).

### Regulations, rulings, guidelines

Presidential Enforcement Decree, Ministerial Enforcement Decree, basic rulings for LCITA. Basic rulings were released in June 2004 to provide clear-cut guidelines.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

A special relationship exists if one party (i) owns directly or indirectly 50 percent or more of the total shares of another party; or (ii) has substantial control, and common interests exist between both parties.

### Do the local transfer pricing rules or tax authority allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

Yes.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the transactional net margin method (TNMM), the profit split method, and other reasonable methods.

### Priority of methods

There is no hierarchy of methods; taxpayers must use the most appropriate method (amended as of 27 December 2010).

### Availability of benchmarking/comparative data

Several databases are available to the public.

### Are foreign comparables acceptable to local tax authorities?

Yes, but they are subject to aggressive scrutiny. Local comparables are often preferred.

## Services issues

### Are management fees deductible?

Management fees paid to overseas related parties, including a parent company, for services can be deductible for Korean tax purposes only if the following conditions are met: (i) a service agreement is signed prior to the provision of the service, and the service must be actually rendered in accordance with the service agreement; (ii) the domestic company expects an increase in profit or a decrease in cost from the service provided by the foreign related party; (iii) payments for the services must be at arm's length; and (iv) the actual performance of services is verified by relevant documents, such as a service performance schedule, a progress report, information on the service provider, email correspondence, or expense reports.

### Are management fees subject to withholding?

No withholding tax applies if the related services are performed outside Korea. However, if the relevant services are performed in Korea, withholding tax can be imposed in accordance with tax treaties or local tax law.



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**May stock option costs be included in the cost base for intercompany services charges?**

The NTS might include stock option costs in the cost base for intercompany service charges if the costs are closely related with the business of the Korean entity.

**Commissionaire arrangements**

**Are commissionaire arrangements allowed?**

Yes.

**Cost sharing agreements**

**Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?**

Yes.

**Are cost contribution or cost sharing payments deductible?**

Yes.

**Are cost contribution or cost sharing payments subject to withholding tax?**

No, subject to certain exceptions.

**What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?**

Payments are deductible or amortizable over the useful life of the intangible.

**Documentation and tax return disclosures**

**Tax return disclosures**

Taxpayers are required to submit (1) a Report of Transfer Pricing Method; (2) a Summary of Overseas Related-Party Transactions; and (3) a Summary of Income Statement for Overseas Related Parties. However, taxpayers will not be required to file (1) or (3) if certain conditions are met.

**Documentation requirements**

Korea does not impose a documentation requirement. However, a 10 percent underreported tax penalty in case of a transfer pricing income adjustment as a result of a tax audit may be waived by preparing contemporaneous documentation by the tax return filing due date.

**Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

Korea does not impose an annual documentation requirement. To qualify for the penalty waiver granted for the preparation of contemporaneous documentation, taxpayers must include the following information:

- An overview of the business, including an analysis of the facts affecting the price of assets and/or services;
- Information on the organizational structure that explains the relationship between the taxpayer and related parties engaged in cross-border related-party transactions;
- Information that explains the selection of the transfer pricing method in the tax return, including
  - Economic analyses and forecasts that provide the basis for the selection of the transfer pricing method;
  - Comparable data used to compute the arm's length price, and an explanation of adjustments made in the comparability analysis;
  - Information regarding alternative transfer pricing methods and the reason for not selecting those methods; and
  - Information added after the tax year-end until the filing of the income tax return.

Korean transfer pricing rules do not provide any guidance on how the required information should be submitted as annual contemporaneous documentation. As for the timing of comparable data collection, the regulation specifies that the taxpayer's transfer pricing analysis must be based on a comprehensive group of representative comparable data that is collected as of taxable year-end.

**Deadline to prepare documentation**

There is no deadline to prepare documentation. However, the contemporaneous documentation preparation deadline is the tax return filing due date.

**Deadline to submit documentation**

Transfer pricing documentation must be submitted within 60 days of a request for transfer pricing documentation (a one-time extension of 60 days may be allowed by the tax authorities for justifiable reason). Contemporaneous documentation must be submitted within 30 days of a request.

#### **Deadline to file income tax return**

An income tax return must be filed within three months from the last day of the business year.

#### **Acceptable languages for documentation**

Documentation must be submitted in Korean. Documentation in English may be acceptable upon approval from the NTS.

#### **Transfer pricing adjustments**

##### **Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

The transfer prices reflected on an income tax return must also be reflected in financial statements. However, in certain cases — such as when a transfer pricing adjustment is required for the purpose of tax risk management — the transfer pricing adjustment as a tax adjustment item is allowed to be made on an income tax return, while the adjustment is not reflected in the books.

#### **Self-initiated adjustments**

An adjustment is permitted in filing the original return and amended tax return. In case of decreasing taxable income, an amended tax return must be filed within three years of filing the original return; this period is extended to five years, effective for taxable years starting on or after 1 January 2015). In case of an upward adjustment, the taxpayer may amend its tax return for the taxable year for which the statute of limitation has not yet expired.

#### **Statute of limitations on assessment for transfer pricing adjustments**

Five years from the day after the due date for filing the income tax return; seven years for nonfilers; 10 years in case of fraud. For cross-border transactions, the statute of limitations has been extended to 15 years in case of fraud, effective for taxable years starting on or after 1 January 2015.

#### **Taxpayer set-offs for other related-party transactions**

Offsetting is permitted with proof that such differences are effectively offset against the price applied to another transaction between the same related parties during the same taxable year. The existence of a prior agreement between the parties is a precondition to allow the set-off of transactions.

#### **Interest and penalties**

##### **Additional assessment payment deadline**

Normally 30 days from the date of issuance of the tax assessment bill by the tax authorities.

##### **Penalty on transfer pricing assessment**

A penalty of up to KRW 100 million may be imposed for failure to provide documents within 60 days (one 60-day extension allowed) upon request from the NTS. The NTS may disregard the documents presented as supporting documents for tax appeal or Competent Authority procedures if the documents were not submitted within 60 days (or 120 days) upon request from the NTS without justifiable reason. Underreported tax penalty is 10 percent (40 percent in cases of fraud) of the additional corporate income tax amount. Effective 1 January 2015, a penalty rate of 60 percent will be applied to the additional corporate income tax amount in cases of fraudulent acts involving cross-border transactions.

##### **Is interest charged on penalties?**

No.

##### **Is interest payable when a refund is due to the taxpayer?**

Yes, interest on excess tax payments is calculated from the original date of payment to the date of refund. The interest rate is set by presidential enforcement decree. The interest rate applied in 2014 was 29/1,000 per year.

##### **Reduction in transfer pricing penalties**

The 10 percent underreported tax penalty may be waived in a mutual agreement procedure if (1) supporting documentation is presented and the Competent Authority confirms a justifiable position; (2) the NTS accepts a unilateral APA; or (3) contemporaneous documentation is prepared and maintained when the tax return is filed, and submitted within 30 days of request.

## **Advance Pricing Agreements (APAs)**

### **Are APAs available?**

Both unilateral and bilateral APAs are available. Effective from 2015, unilateral APAs may be requested with Advance Customs Valuation Arrangements (ACVAs).

### **APA filing fee**

There is no filing fee for an APA application.

### **APA term of agreement**

There is no limitation on APA period. The taxpayer shall specify the fiscal years for which the APA would apply.

## **Competent authority**

### **When may taxpayer submit tax adjustment to Competent Authority (CA)?**

There is no limitation on the term of an APA. The taxpayer will specify the fiscal years for which the APA would apply.

### **May CA develop new settlement positions?**

Yes.

### **May taxpayer go to CA before paying tax?**

Yes, by submitting an application before receiving a tax assessment bill. Payment will be deferred only if the other contracting state allows it reciprocally.



# Latvia

## What's new

In September 2014, Latvia's Supreme Court reviewed a case that dealt with the application of the resale price method (RPM) for determining the arm's length price for controlled transactions. In this case, a company applied the RPM and determined that its gross margin was at arm's length, while the company was in a loss position at the operating margin level.

The State Revenue Service (SRS) argued that it is not enough that a company's gross profit margin is in line with the arm's length principle; they insisted that the gross profit margin also must be sufficient to cover operating expenses and achieve an arm's length operating margin. Thus, when the RPM is applied and the gross profit margin is in line with the arm's length principle, but does not generate sufficient operating profit level, the SRS will try to adjust the prices in the controlled transactions to an arm's length operating margin level.

The Court agreed with the SRS's position and ruled that, if the RPM is applied for determining arm's length prices in controlled transactions, both gross level and operating level profit indicators can be used. In other words, not only the gross profit margin, but also the operating profit margin can be analyzed when applying the RPM. Even though this approach goes against the generally accepted transfer pricing practice of using the operating profit margin when RPM is applied, the Court's decision should be taken into account to manage transfer pricing risk in the future.

## General information

### Tax authority and law

State Revenue Service (SRS); Taxes and Duties Act, articles 15.2, 16.1 (from 1 January 2013); Taxes and Duties Act, articles 23.2; Income Tax Act, article 12.

### Regulations, rulings, guidelines

Cabinet of Ministers Regulations No. 556, articles 83.-94; Cabinet of Ministers Regulations No. 981.

## Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

Transfer pricing rules apply to transactions with:

- Foreign entities with at least a 20 percent relationship;
- Local entities with at least a 90 percent relationship;
- Local entities benefiting from corporate income tax relief or other types of tax relief provided in Latvian legislation; and
- Entities established in black-listed territories.

## Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

Yes. Transfer pricing rules apply to all Latvian corporate taxpayers — residents and permanent establishments.

## Methods and comparables

### Acceptable methods

Latvian transfer pricing legislation is generally in line with the OECD transfer pricing guidelines. The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the profit split method, and the transactional net margin method (TNMM) are acceptable.

### Priority of methods

Subject to the availability of reliable comparables data, traditional transaction methods are preferred to transactional profit methods. In practice, however, transactional profit methods are preferred by the SRS.

### Availability of benchmarking /comparative data

Financial data from published accounts are available via local database.

## Are foreign comparables acceptable to local tax authorities?

The SRS requires the use of the most reliable available comparables data. Therefore, the SRS accepts foreign comparables when reliable local comparables are not available.

## Services issues

### Are management fees deductible?

Management fees are deductible provided there is sufficient substance and sufficient evidence that services were actually received and that they benefited the Latvian taxpayer's business.



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#### **Are management fees subject to withholding?**

Yes. Generally, withholding tax of 10 percent applies to management fees. If the payment is made to a resident established in a country with which Latvia has entered into a double tax treaty, an exemption would apply if the payer holds a valid residence certificate of the recipient.

All payments made to persons in black-listed territories are subject to 15 percent withholding tax.

#### **May stock option costs be included in the cost base for intercompany services charges?**

There is no special treatment for stock options in relation to transfer pricing legislation. Therefore, stock option costs potentially might be included in the cost base.

#### **Commissionaire arrangements**

##### **Are commissionaire arrangements allowed?**

Yes, commissionaire arrangements are allowed.

#### **Cost sharing agreements**

##### **Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?**

CCAs are not regulated in the legislation, but are accepted provided permission from the SRS is received.

CSAs are not regulated in the legislation, but could be accepted provided permission from the SRS is received, although in practice no taxpayer has succeeded in obtaining such permission.

##### **Are cost contribution or cost sharing payments deductible?**

There is no specific regulation, but generally all business expenses are deductible.

##### **Are cost contribution or cost sharing payments subject to withholding tax?**

No.

##### **What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?**

Practice has not been established; thus, each case should be evaluated separately.

#### **Documentation and tax return disclosures**

##### **Tax return disclosures**

Cabinet of Ministers Regulations No. 981, article 4.19.-4.21, obligates taxpayers to disclose related-party transactions in the corporate income tax return.

Specifically, taxpayers are obligated to disclose information on the related party, the type of transaction, the amount and the applied transfer pricing method.

##### **Documentation requirements**

As of 1 January 2013, mandatory transfer pricing documentation requirements apply to Latvian corporate taxpayers – residents and permanent establishments – whose annual turnover exceeds €1.43 million, and whose related-party transaction value exceeds €14,300. Article 15.2 of the Taxes and Duties Act regulates the content of transfer pricing documentation, which in general is in line with the requirements of the OECD transfer pricing guidelines.

Before 1 January 2013, transfer pricing rules applied, but there was no formal requirement to prepare transfer pricing documentation.

##### **Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

There is no requirement to prepare transfer pricing documentation on an annual basis. However, documentation should be amended if there are changes in the conduct of related parties or the economic circumstances surrounding the transaction. The SRS accepts comparable data no older than three years; therefore, comparables should be refreshed or a new search performed every two to three years.

##### **Deadline to prepare documentation**

The transfer pricing documentation requirements are in force effective 1 January 2013. There is no deadline set for preparation of the documentation.

##### **Deadline to submit documentation**

Taxpayers are obligated to keep transfer pricing documentation for five years, and to provide the SRS the documentation within a month of receiving a request for the same.

##### **Deadline to file income tax return**

One month after approval of the annual accounts, but no later than four months after the taxation year's end (seven months for large companies).

### Acceptable languages for documentation

All documents submitted to the SRS, including transfer pricing documentation, must be in Latvian. In practice, some taxpayers keep transfer pricing documentation in English and prepare translations once the documentation is requested by the SRS.

### Transfer pricing adjustments

#### Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?

If the prices reflected in financial statements are not at arm's length, the taxpayer may increase the taxable income in its corporate income tax return. The taxpayer may decrease taxable income in the corporate income tax return if a related party has increased its taxable income (the related party must be resident in the European Economic Zone (EEZ) or resident of a country with which Latvia has entered into a double tax treaty).

### Self-initiated adjustments

Adjustments after year-end are accepted if necessary to arrive at arm's length prices.

### Statute of limitations on assessment for transfer pricing adjustments

Foreign related-party transactions may be audited for five years, for local transactions the statute of limitation is three years.

### Taxpayer set-offs for other related-party transactions

There are no specific guidelines on the treatment of set-offs. However, set-offs would be generally allowed if on arm's length terms and conditions.

### Interest and penalties

#### Additional assessment payment deadline

Generally 30 days from the date of receiving the assessment results. A further extension of time for payment may be negotiated.

### Penalty on transfer pricing assessment

A penalty fee of 10 percent to 30 percent will apply for reducing taxable income.

### Is interest charged on penalties?

No interest is charged on penalties; however, late interest payments will apply at a 0.05 percent rate for each overdue day on the amount of reduced tax liability.

### Is interest payable when a refund is due to the taxpayer?

No.

### Reduction in transfer pricing penalties

Yes, if the taxpayer agrees to the assessment, the penalty fees and late interest payments may be reduced.

### Advance Pricing Agreements (APAs)

#### Are APAs available?

Yes, APAs are available effective 1 January 2013.

#### APA filing fee

The fee for filing an APA request is €7114. Twenty percent of the fee must be paid before filing the application, and the other 80 percent is payable after the SRS issues a positive decision to initiate the APA process. In case of a negative decision from the SRS, the initial 20 percent paid is not refundable.

#### APA term of agreement

An APA will be in force for three years upon its conclusion.

### Competent authority

#### When may taxpayer submit tax adjustment to Competent Authority (CA)?

After the proposed adjustment is communicated to the taxpayer and before the issue of a formal notice of assessment, a final meeting with the SRS could be held to negotiate the assessment (both parties would argue their position).

#### May CA develop new settlement positions?

No information is available on this issue.

#### May taxpayer go to CA before paying tax?

No information is available on this issue.



# Lithuania

## What's new

Although there were no changes in Lithuania's transfer pricing legislation in 2014, transfer pricing remained one of the top priorities for the Lithuanian tax authorities. The tax authorities chose to initiate tax investigation procedures more often than transfer pricing audits, because investigation procedures are simpler, and the outcome provides recommendations for the taxpayer. No penalties are imposed on taxpayers during tax investigation procedures.

However, when the tax authorities have any evidence or suspicion that the taxpayer's transfer pricing is not in line with the arm's length principle, they tend to approach directly with a transfer pricing audit.

There is a team of analysts within the tax authorities that monitor financial data of companies operating in Lithuania. Therefore, a drop in a company's profitability is a common reason to assess the company's transfer prices.

In 2014, the first applications for APAs were submitted to the Lithuanian tax authorities.

## General information

### Tax authority and law

State Tax Inspectorate under the Ministry of Finance.

### Regulations, rulings, guidelines

- Order No. 1K-123 of the Minister of Finance (transfer pricing rules), dated 9 April 2004;
- Law on corporate income tax (No. IX-675), dated 20 December 2001;
- Law on Tax Administration (No. IX-2112), dated 13 April 2004;
- Order No. VA-27 of the head of STI regarding submission of the report on transactions and operations with associated parties, dated 22 March 2005;
- Order No. VA-105 of the head of STI regarding APAs, dated 19 October 2011;
- Order No. VA-49 of the head of STI regarding the recovery of tax overpayments by taxpayer, dated 30 June 2009;
- Order No. VA-25 of the head of STI regarding the method of imposing penalties and the calculation of late payment interest, dated 28 March 2007.

## Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

The transfer pricing rules apply to associated parties as established in Article 2 of the Law on Corporate Income Tax. Specifically, the rules apply to:

- Related parties (as established in the same article); and
- Entities that may have influence over each other resulting in the conditions of their mutual or economic operations being other than those where maximum economic benefit is sought by each of said persons.

## Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

Profits attributable to a permanent establishment or branch are subject to transfer pricing analysis. The provisions establishing the obligation of a permanent establishment or branch to comply with transfer pricing regulations are set out in Order No. 1K-123. However, there is little guidance in Lithuania regarding the calculation of profits attributable to a permanent establishment or branch.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the profit split method (contribution analysis or residual analysis), and the transactional net margin (TNMM) method.

### Priority of methods

The most appropriate method rule applies. However, if conditions allow, the CUP method should be used. If application of the CUP method is not feasible because of unreliable or insufficient data, the resale price or cost plus method should be applied. If those methods are not applicable, an analysis using the profit split method or TNMM should be performed.

### Availability of benchmarking/comparative data

Companies are entitled to support their transfer pricing agreements with benchmark analysis. Priority is given to internal comparables, if any exist. The Amadeus Bureau van Dijk database is available to the Lithuanian tax authorities.

### Are foreign comparables acceptable to local tax authorities?

The STI requires the use of the most reliable comparable data. Therefore, if the data used for determination of an arm's length price range are comparable to the



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analyzed transaction with respect to its functional and economic profile, foreign comparable data might be used. However, if available, local comparables are preferred over foreign ones.

### Services issues

#### Are management fees deductible?

In accordance with Article 17 of the Law on Corporate Income Tax, all usual costs that an entity incurs for the purpose of earning income or deriving economic benefits are deductible for corporate income tax purposes in Lithuania. Therefore, management fees generally are treated as deductible.

#### Are management fees subject to withholding?

Management fees generally are not subject to withholding tax.

#### May stock option costs be included in the cost base for intercompany services charges?

Lithuanian tax legislation does not provide any guidance on this subject.

### Commissionaire arrangements

#### Are commissionaire arrangements allowed?

Yes.

### Cost sharing agreements

#### Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?

Generally, yes. However, it should be noted that parties taking part in such arrangements should have documents describing the principles of cost attribution to the other entities.

#### Are cost contribution or cost sharing payments deductible?

Generally, yes. However, tax deductibility is determined on a case-by-case basis.

#### Are cost contribution or cost sharing payments subject to withholding tax?

Generally no. However, it should be determined on a case-by-case basis.

#### What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?

There is no specific provision in this regard.

### Documentation and tax return disclosures

#### Tax return disclosures

Lithuanian entities and foreign entities operating through a permanent establishment must submit a report on the transactions or operations entered into with associated parties to the local STI annually when submitting their annual corporate income tax return. The following entities are exempt from this obligation:

- Entities whose total value of a single type of transactions entered into with associated parties during the tax period is less than EUR 90,000; or
- Entities whose total value of the different types of transactions entered into with associated parties during the tax period is less than EUR 90,000.

The rules for completing and submitting the report — Form FR0528 — are established by Order No. VA-27.

#### Documentation requirements

A requirement to prepare and maintain transfer pricing documentation exists for the following entities:

- Lithuanian entities and the permanent establishments of foreign entities, if their revenue for the tax period during which the controlled transaction was rendered exceeds EUR 2,896,200;
- Financial and credit institutions that perform activities regulated under the Law on Financial Institutions; and
- Insurance companies whose activities are regulated by the Law on Insurance.

Documentation must include information relevant to the pricing of controlled transactions. In addition, documentation must provide information on compliance with the arm's length principle established in the OECD transfer pricing guidelines. The requirements for transfer pricing documentation generally are in line with the OECD transfer pricing guidelines.

#### Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?

There is no guidance on how often transfer pricing documentation must be updated.

#### Deadline to prepare documentation

There is no specific deadline for the preparation of documentation. However, submission deadlines should be taken into account.

### **Deadline to submit documentation**

Transfer pricing documentation must be submitted to the tax authorities within 30 days of a request.

### **Deadline to file income tax return**

According to Article 51 of the Law on Corporate Income Tax, the income tax return, together with the financial reports (when such financial reports are drawn up in accordance with the procedure prescribed by law) must be filed after the end of the tax period and before the first day of the sixth month of the next tax period.

### **Acceptable languages for documentation**

Transfer pricing documents may be held by the taxpayer and submitted to the tax authorities in an optional form and language. However, the tax authorities may request the translation of documents provided in a foreign language, and may set a deadline for submission of the translation. Transfer pricing documentations in English is usually accepted by the Lithuanian tax authorities.

### **Transfer pricing adjustments**

**Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

Book and tax differences are allowed.

### **Self-initiated adjustments**

The taxpayer may adjust its transfer prices and, accordingly, calculate a new amount of taxable income and tax to be paid. Tax returns for the current calendar year and the five preceding calendar years, counting back from January 1 of the year when the tax was calculated, can be amended.

### **Statute of limitations on assessment for transfer pricing adjustments**

The statute of limitations of five previous years applies, in line with Article 68 of the Law on Corporate Income Tax.

### **Taxpayer set-offs for other related-party transactions**

There is no formal provision or guidance in this regard.

### **Interest and penalties**

#### **Additional assessment payment deadline**

According to the Law on Tax Administration, the tax authorities have the right to recover a taxpayer's tax underpayments on the day after the 20th day since the approval of the tax inspection report.



### **Penalty on transfer pricing assessment**

If transfer pricing adjustments are performed by the Lithuanian tax authorities, and the corporate income tax assessment increases, the taxpayer may be required to pay the tax deficiency, a penalty of 10 percent to 50 percent of that amount, and daily late charges.

### **Is interest charged on penalties?**

No.

### **Is interest payable when a refund is due to the taxpayer?**

Generally, interest is not payable when a refund is due to the taxpayer.

### **Reduction in transfer pricing penalties**

According to the Law on Tax Administration, the specific rate of the penalty imposed depends on the nature of the violation, on the taxpayer's cooperation with the tax authorities, and other circumstances that might be relevant for the determination of the penalty.

### **Advance Pricing Agreements (APAs)**

#### **Are APAs available?**

Yes. APAs are regulated under Article 37(1) of the Law on Tax Administration and Order No. VA-105.

#### **APA filing fee**

There is no filing fee for an APA request.

#### **APA term of agreement**

The binding order becomes valid upon the decision of the tax authorities, and is effective for the period indicated in the APA request, but may not exceed the current year and the five calendar years after the decision.

### **Competent authority**

#### **When may taxpayer submit tax adjustment to Competent Authority (CA)?**

No information is available on this subject.

#### **May CA develop new settlement positions?**

No information is available on this subject.

#### **May taxpayer go to CA before paying tax?**

No information is available on this subject.

# Luxembourg

## What's new

As part of the 2015 budget's tax package, the Luxembourg parliament approved new transfer pricing legislation intended to clarify the current transfer pricing provisions of the Luxembourg Income tax law. This law applies effective 1 January 2015. The tax authorities were expected to issue additional transfer pricing guidance in early 2015.

## General information

### Tax authority and law

Luxembourg Tax Administration. Article 56 of the Income Tax Law.

### Regulations, rulings, guidelines

Grand-Ducal Decree of 23 December 2014 – defining the process for advance tax agreements;  
Circular ITL NS No.164/1 dated 9 June 1993; Circular ITL No.164/1 dated 23 March 1998;  
Circular L.I.R. 164/2 dated 28 January 2010; and Circular 164/2 bis LITL issued April 8, 2011.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

Luxembourg legislation -- the new article 56 of the LITL -- provides a definition of related parties that follows the definition in Article 9 of the OECD model tax treaty: "Two enterprises are associated enterprises when one enterprise participates directly or indirectly in the management, control, or capital of the other, or if the same persons participate directly or indirectly in the management, control, or capital of both enterprises."

Circular 164/2 states: "Two enterprises are associated enterprises when one enterprise participates directly or indirectly in the management, control, or capital of the other or if the same persons participate directly or indirectly in the management, control, or capital of both enterprises."

### Do the local transfer pricing rules or tax authority allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

Yes.

## Methods and comparables

### Acceptable methods

Luxembourg legislation does not prescribe the use of any specific transfer pricing methods. Circular 164/2 and comments on the new article 56 of the LITL explicitly refer to the OECD transfer pricing guidelines to ensure the application of the arm's length principle.

### Priority of methods

Luxembourg imposes no priority of methods.

### Availability of benchmarking/comparative data

Limited Luxembourg comparables data are available. Pan-European benchmark studies are usually accepted.

### Are foreign comparables acceptable to local tax authorities?

There are no specific regulations. Pan-European benchmark studies are usually accepted.

## Services issues

### Are management fees deductible?

Yes, provided the fees are at arm's length.

### Are management fees subject to withholding?

No.

### May stock option costs be included in the cost base for intercompany services charges?

Yes.

## Commissionaire arrangements

### Are commissionaire arrangements allowed?

Yes.

## Cost sharing agreements

### Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?

Yes. Luxembourg follows Chapter VIII of the OECD transfer pricing guidelines.

### Are cost contribution or cost sharing payments deductible?

Yes, as long as the payments satisfy the arm's length standard.

### Are cost contribution or cost sharing payments subject to withholding tax?

No, but if the payment can be characterized as a disguised profit distribution it may be subject to withholding tax.



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### **What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?**

Luxembourg follows Chapter VIII of the OECD transfer pricing guidelines in this regard.

### **Documentation and tax return disclosures**

#### **Tax return disclosures**

No specific disclosure is required.

#### **Documentation requirements**

Luxembourg imposes no general documentation requirements. However, transfer pricing documentation could be requested by the tax authorities in some instances.

#### **Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

Luxembourg imposes no general documentation requirements. However, the tax authorities could request transfer pricing documentation as part of the review process of the annual tax return and will be requested in all cases (i) from 2011, when the taxpayer seeks an upfront direct tax agreement with the tax authorities on remuneration to be left on its intragroup financing activities (the APA process), and (ii) generally when the taxpayer seeks an advance tax agreement on the direct treatment of group transactions.

There are no formal requirements on how to prepare transfer pricing documentation yet. Nevertheless, Luxembourg follows the OECD transfer pricing guidelines on this matter.

Intragroup financing transactions, defined under the circular as "any activity consisting of the granting of loans or advancing money to associated enterprises, refinanced by funds and financial instruments such as public offerings, private loans, advanced money or bank loans," are within the scope of the circular on intragroup financing. A transfer pricing report is expected to be attached to an advance pricing agreement submission. The documentation and comparables enclosed with an APA submission will remain acceptable through the five-year term of the APA. There is no need for a new search or refreshing of comparables during this time frame, except if material changes are observed in the structure. In general,

a material change is one that has a direct impact on the functional and risk profile of the investment/structure. Whether a change constitutes a material change must be assessed on a case-by-case basis.

#### **Deadline to prepare documentation**

There is no statutory deadline for the preparation of documentation.

#### **Deadline to submit documentation**

For the advance pricing agreement process, documentation must be attached to an APA application at the time of submission. Legal documentation (for example, loan contract), must be attached to the APA request, must be in a draft form upon submission, and the final and executed documentation must be sent to the authorities once the transactions are carried out.

#### **Deadline to file income tax return**

The corporate income tax return must be submitted by 31 May of the following tax year. This date may be extended upon request.

#### **Acceptable languages for documentation**

The official languages are Luxembourgish, French, and German. English is generally accepted.

### **Transfer pricing adjustments**

#### **Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

Book/tax differences are allowed.

#### **Self-initiated adjustments**

In principle, adjustments are permitted in filing the original tax return before an assessment becomes final.

#### **Statute of limitations on assessment for transfer pricing adjustments**

Generally, five years from tax year-end; in case of tax evasion, the period is 10 years.

#### **Taxpayer set-offs for other related-party transactions**

There is no formal provision.

### **Interest and penalties**

#### **Additional assessment payment deadline**

General rules apply. Payment is due one month after the assessment, if no suspension is granted.

### **Penalty on transfer pricing assessment**

Ordinary penalties apply, up to four times the amount of tax evaded in case of tax evasion and 10 times in case of tax fraud.

### **Is interest charged on penalties?**

Interest is charged on late tax payments, starting from the determination of the (reassessed) tax charge by the tax authorities ("bulletin d'imposition") but not on penalties. An interest charge of 0.6 percent per month accrues on the total tax due. The month in which the tax is due is excluded, and the month in which payment occurs is counted as a full month.

### **Is interest payable when a refund is due to the taxpayer?**

No.

### **Reduction in transfer pricing penalties**

There is no provision.

### **Advance Pricing Agreements**

#### **Are APAs available?**

There is a regulated APA procedure effective 1 January 2015. Taxpayers may request a unilateral tax clearance from the Luxembourg Tax Authority for guidance on the application of Luxembourg tax law.

Documentation must be attached to an APA application at the time of submission. Legal documentation (for instance, loan contract), are to be attached to the APA request, must be in draft form upon submission, and the final and executed documentation must be sent to the authorities once the depicted transactions are carried out.

#### **APA filing fee**

Effective 1 January 2015, there is a filing fee that ranges from €3,000 to €10,000, depending on the complexity of the case and the work load required to review the request..

#### **APA term of agreement**

Five years.

### **Competent authority**

#### **When may taxpayer submit tax adjustment to Competent Authority (CA)?**

In most cases, within three years from the first notification of proposed adjustment (depending on the relevant tax treaty).

#### **May CA develop new settlement positions?**

There is no formal procedure.

#### **May taxpayer go to CA before paying tax?**

There is no formal procedure. Tax to be paid may be suspended.



# Malaysia

## What's new

Effective for year of assessment 2014, Malaysian taxpayers must declare on their income tax return whether they have prepared a transfer pricing report for the period for which the return is made. This introduces a regulatory check on whether taxpayers with related-party transactions are indeed preparing transfer pricing reports on a contemporaneous basis and adhering to the deadline (the return filing date is seven months from the end of the financial year). Furthermore, the statute of limitation for transfer pricing audits has been increased to seven years from five years previously.

## General information

### Tax authority and law

The Inland Revenue Board; specific provisions relating to transfer pricing and thin capitalization have been enacted under section 140A of the Income Tax Act. These provisions are effective 1 January 2009. Prior years are covered under general anti-avoidance legislation (section 140) and record-keeping provisions (section 82).

The Tax Analysis Division of the Ministry of Finance, through a letter dated 11 December 2012, has deferred the implementation of the thin capitalization provisions until 31 December 2015.

### Regulations, rulings, guidelines

Transfer Pricing Guidelines were issued on 2 July 2003, essentially following the OECD transfer pricing guidelines. The revised Transfer Pricing Guidelines 2012, read in conjunction with the Income Tax (Transfer Pricing) Rules 2012, replaced the Transfer Pricing Guidelines 2003.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

Under section 140A(5), the transfer pricing law applies when transactions or financial assistance arrangements are entered into between:

- Two persons, one of whom has control over the other;
- Individuals who are relatives of each other; or
- Two persons, both of whom are controlled by another person.

Under Section 139 of the Income Tax Act, control encompasses within its broad ambit both direct and indirect control. Under the Transfer Pricing Guidelines, two companies are associated companies with respect to

each other if one of the companies participates directly or indirectly in the management, control, or capital of the other company, or the same persons participate directly or indirectly in the management, control, or capital of both companies.

The Transfer Pricing Guidelines also provide a framework detailing the applicability of the guidelines to the following categories of taxpayers:

- For taxpayers engaged in business, the guidelines apply to entities with gross income in excess of RM25 million and total related-party transactions in excess of RM15 million.
- When a person provides financial assistance, the guidelines on financial assistance are applicable only if that financial assistance exceeds RM50 million. The guidelines do not apply to transactions involving financial institutions.

Any taxpayer that falls below the aforementioned thresholds may opt to comply voluntarily with the guidelines in full; alternatively, the taxpayer may opt to comply with the documentation requirements under paragraph 25.4(a), (d), and (e) of the guidelines.

### Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

The Transfer Pricing Guidelines extend their applicability to transactions between a permanent establishment and its head office or other branches. For purposes of the guidelines, the permanent establishment will be treated as a (hypothetically) distinct and separate enterprise from its head office or other related branches.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price method (CUP), the resale price method, the cost plus method, the transactional net margin method (TNMM), and the profit split method are acceptable under the existing regulations.

### Priority of methods

The Transfer Pricing Guidelines provide that although taxpayers are bestowed the right to choose any method, the emphasis ought to be on arriving at an arm's length price. In the same breath, the guidelines propound that transactional profit methods (the transactional net margin method and the profit split method) should be employed only when traditional transactional methods (the



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comparable uncontrolled price method, the resale price method, and the cost plus method) are not amenable for easy application or are completely precluded from such an application.

#### **Availability of benchmarking/comparative data**

The general practice is to refer to local trade directories of companies operating in Malaysia. Financial data of potentially comparable companies are obtained manually from the Companies Commission of Malaysia.

#### **Are foreign comparables acceptable to local tax authorities?**

No, especially if the transactional net margin method is the selected methodology. However, if it can be demonstrated that no or insufficient local comparables are available, recourse may be had to ASEAN or Asia Pacific comparables.

#### **Services issues**

##### **Are management fees deductible?**

The Transfer Pricing Guidelines provide for the deductibility of management fees to the extent the fees are revenue in nature and directly related to services provided to the Malaysian entity, and provided the management fee transaction is in compliance with the withholding tax provisions. Benefits analysis, evidence of services received, and proof of the arm's length nature of the payment are required.

##### **Are management fees subject to withholding?**

Yes, when the services are provided in Malaysia.

##### **May stock option costs be included in the cost base for intercompany services charges?**

There are no transfer pricing rules in Malaysia on the treatment of stock options. Therefore, general deductibility rules and the arm's length principle apply, specifically, the benefits test. In practice, the IRB refers to the OECD transfer pricing guidelines and guidance papers in the absence of specific regulations.

#### **Commissionaire arrangements**

##### **Are commissionaire arrangements allowed?**

Yes, but such arrangements give rise to significant risk of creating a permanent establishment.

#### **Cost sharing agreements**

##### **Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?**

The Transfer Pricing Guidelines provide a short framework for the acceptance of cost contribution arrangements. When a taxpayer enters into a cost contribution arrangement with an associated enterprise, the arrangement should be reflective of an arm's length arrangement.

##### **Are cost contribution or cost sharing payments deductible?**

The Transfer Pricing Guidelines provide that a CCA should be entered into with prudent and practical business judgment, and with a reasonable expectation of receiving a benefit. The guidelines also infer that an independent party would not enter into a CCA when the value of the contribution exceeds the expected benefit. Hence, to the extent a CCA arrangement is reflective of arm's length pricing, the payments would be deductible.

##### **Are cost contribution or cost sharing payments subject to withholding tax?**

Payments may be subject to withholding tax, depending on the context of the payments, the nature of the payments (capital or revenue), and the location where the services are provided.

##### **What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?**

There is no substantial guidance regarding the tax treatments of payments to a contributor of preexisting intangibles to a CCA or CSA.

#### **Documentation and tax return disclosures**

##### **Tax return disclosures**

All related-party transactions, including gross margin and profit before tax, must be disclosed in the annual tax return.

The main disclosures required to be set out in a tax return are:

- Intragroup sales;
- Intragroup purchases;
- All related-party transactions;
- Loans received from or provided to related parties; and
- Other receipts and expenses arising on account of related-party relationships.

The IRB may issue Form MNE to the taxpayer to gather additional information on cross-border related-party transactions, characterization of the taxpayer, and whether contemporaneous transfer pricing documentation has been prepared.

Recently, the IRB has started issuing requests to submit template tables depicting the global value chain, with functions, risks, and assets categorized in terms of intensity as “high,” “medium,” or “low.”

Effective for year of assessment 2014, taxpayers must declare on the income tax return whether they have prepared a transfer pricing report for the period for which the return is made.

#### **Documentation requirements**

The Transfer Pricing Rules and the Transfer Pricing Guidelines require the preparation and maintenance of contemporaneous transfer pricing documentation.

**Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

Technically, the documentation requirement is an annual requirement, because documentation must be contemporaneous and must pertain to the period for which the return is made. A financial update of comparables and transaction data may suffice, provided there are no material changes in the other factors relevant for determining the arm’s length price. A refreshing of the comparables search every three years is recommended.

#### **Deadline to prepare documentation**

Documentation should be prepared by the return filing due date.

#### **Deadline to submit documentation**

There is no statutory requirement to submit documentation. Documentation must be submitted within 30 days upon request by the IRB. Failure to do so, or any request for extension will result in the documentation being deemed non-contemporaneous, thereby having a bearing on the extent of the penalty imposed.

#### **Deadline to file income tax return**

Seven months from the end of the financial year.

#### **Acceptable languages for documentation**

Documentation in English and Malay is accepted.

#### **Transfer pricing adjustments**

**Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

Ideally, the transfer prices reflected in an income tax return filed by the taxpayer should be identical to those in the financial statements. However, if as a result of a genuine or inadvertent application (or misapplication) of a transfer pricing policy, a prior period adjustment is needed, the income tax returns for the pertinent years may be amended. Post-audit downward adjustments – adjustments that would reduce taxable profits – are generally not accepted by the IRB.

Effective for year of assessment 2014, the income tax return must be completed based on signed, audited financial statements.

#### **Self-initiated adjustments**

Upward adjustments are permitted (and may or may not be subject to audit) but downward adjustments may not be acceptable, and would most likely trigger a transfer pricing audit.

#### **Statute of limitations on assessment for transfer pricing adjustments**

Seven years from the end of the year of assessment to which the income or expenditure relates. This period is unlimited in cases of negligence, willful default, or fraud.

#### **Taxpayer set-offs for other related-party transactions**

Generally not permitted.

#### **Interest and penalties**

##### **Additional assessment payment deadline**

Within 30 days from the date of notice of additional assessment.

##### **Penalty on transfer pricing assessment**

Penalties are imposed at a rate that ranges from 25 percent to 35 percent of the amount of tax undercharged. The penalty rate will be increased by 20 percent compared to the last penalty rate imposed for a previous offense, but limited to a sum not exceeding 100 percent of the amount of tax undercharged, when the taxpayer obstructs or interferes with a transfer pricing audit or fails to comply

with the arm's length principle subsequent to undergoing a transfer pricing audit in the past.

#### **Is interest charged on penalties?**

No interest is charged with reference to penalties. However, sections 103(3) and 103(4) provide for "late payment penalty clauses." When any tax due and payable has not been paid by the due date, the unpaid tax amount would be increased by 10 percent of the unpaid tax. When this procedure has been initiated, any tax remaining unpaid at the expiration of a 60-day period from the due date will be further increased by a sum equal to 5 percent of the unpaid balance.

#### **Is interest payable when a refund is due to the taxpayer?**

Yes, in certain circumstances.

#### **Reduction in transfer pricing penalties**

According to the Transfer Pricing Audit Framework, if a taxpayer prepares comprehensive, good quality contemporaneous transfer pricing documentation in accordance with the local regulations, penalties can be mitigated in full.

### **Advance Pricing Agreements (APAs)**

#### **Are APAs available?**

Yes, both unilateral and bilateral/multilateral APAs are available.

An APA application will be accepted if the taxpayer fulfills the following conditions:

- The taxpayer (including permanent establishments) must be a company assessable and chargeable under the Income Tax Act;
- The value of turnover must be over RM100 million;
- The value of the proposed covered transaction:
  - For sales, must exceed 50 percent of turnover;
  - For purchases, must exceed 50 percent of total purchases;
  - For transactions involving financial assistance, the assistance must exceed RM 50 million;
  - For other transactions, total value must exceed RM 25 million; and
- All covered transactions must relate to income chargeable to tax and must not pertain to exempt income.

#### **APA filing fee**

There is no filing fee for an APA application.

#### **APA term of agreement**

The minimum term of an APA is three years, and the maximum term is five years. The roll-back option is available, and renewal/revision is possible.

### **Competent authority**

#### **When may taxpayer submit tax adjustment to Competent Authority (CA)?**

There are no formal procedures. Malaysia generally follows MAP procedures for the pertinent treaty provisions. The taxpayer can submit a tax adjustment to CA after accepting the tax adjustment and paying the additional tax due.

#### **May CA develop new settlement positions?**

Yes.

#### **May taxpayer go to CA before paying tax?**

No. The taxpayer can approach CA after accepting the tax adjustment and paying the additional tax due.



# Mexico

## What's new

Mexico's State Administration of Taxation (SAT) published regulations on 16 October 2014 that allow expenses incurred on a pro rata basis with nonresidents to be deductible if certain requirements are met, despite a specific provision to the contrary in the Income Tax Law (ITL). These regulations put into effect the decision issued by the second chamber of the Supreme Court on 19 March 2014, in which the court held that the provision in the ITL could not be justified because Mexico's transfer pricing rules require taxpayers to adjust their transactions with related nonresident parties to arm's length terms.

Under the new regulations, the ITL provision disallowing the deduction of shared expenses with nonresidents will not apply if a Mexican company complies with the requirements in the regulations.

The regulations should be welcomed by international groups, because historically they have been unable to deduct an allocation of shared expenses that benefit their Mexican operations, and they may have been discouraged from challenging this treatment through the Mexican tax court system due to the time and cost involved in litigation. Under the new regulations, these groups will be able deduct an appropriate allocation of expenses benefiting their Mexican operations, provided they comply with other detailed tax and transfer pricing formal requirements.

## General information

### Tax authority and law

Servicio de Administración Tributaria (SAT); Mexican Income Tax Law Articles 2 (Sec VI and last two paragraphs), 4, 5, 11, 15, 21, 27 (Sec I, V, XIII, XVIII), 28 (Sec XI, XIV, XVII, XIX, XXIII, XXIV, XXVII, XXIX, XXXI), 42, 70 (Sec VI), 76 (Sec IX, X, XII), 82, 90, 94 (Sec VII), 101, 110 (Sec IX, X, XI), 111, 140, 147 (Sec X), 148 (Sec XIV), 149, 151, (Sec III), 156, 159, 161, 176, 177, 179, 180, 181, 182, 183, 184, 187 (Sec V). Mexican Income Tax Law transitional dispositions 9 (applicable rules Sec XVI). Mexican Income Tax Law Regulations – Article 260, 276. Mexican Federal Fiscal Code – Articles 21, 26 (Sec XV), 31-A, 34-A, 81 (Sec XVII), 82 (Sec XVII), 84 (Sec XIII), 146-B (Sec I).

## Regulations, rulings, guidelines

Annual Miscellaneous Tax Provisions for Maquiladora companies, APA filing, Informative Return for Export-Oriented Manufacturing Companies (IMMEX), Informative Transfer Pricing Return, Informative Relevant Operations Return, Statutory Tax Report Filing System (SIPRED), Tax Report Filing System (SIPIAD), and Transfer Pricing Questionnaire. Articles 276 and 260 of the Income Tax Law Regulations, and rules I.2.8.1.14, I.2.8.1.16, I.3.3.1.41 and I.3.8.3 of Miscellaneous Tax Rules.

## Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

Direct or indirect participation in management, supervision, control, or capital/ownership. The parent company of a permanent establishment and all other permanent establishments of that company are also considered related parties.

## Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

Yes, under certain circumstances.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the profit split method, the residual profit split method, and the transactional operating profit margin method (TOPMM).

### Priority of methods

The CUP is considered the preferred method, followed by the cost plus and resale price methods. Profit-based methods are to be applied if the CUP, cost plus, and resale price methods are not applicable. The profit split and the residual profit split methods, and TOPMM, are not applicable in specific circumstances.

### Availability of benchmarking/comparative data

Very limited local comparable transactions and companies information is available; generally, taxpayers and the tax administration have used foreign comparables data for benchmarking purposes.

## Are foreign comparables acceptable to local tax authorities?

Yes.



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## Services issues

### Are management fees deductible?

Yes, provided information is available to demonstrate the service was actually provided, the services provide are strictly necessary, and they provide a benefit to the Mexican taxpayer.

### Are management fees subject to withholding?

No, if the service is provided by a resident in a treaty country. Otherwise, companies are subject to 25 percent withholding tax if the services are provided in Mexico.

### May stock option costs be included in the cost base for intercompany services charges?

There is no specific regulation or audit experience on this issue. It may be possible to deduct if the costs are considered strictly necessary for the Mexican entity's business purpose.

## Commissionaire arrangements

### Are commissionaire arrangements allowed?

Yes, although they may be subject to increased scrutiny from the tax authorities.

## Cost sharing agreements

### Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?

Domestic law prohibits the deduction of costs charged by a nonresident on an allocation basis. However, for residents of treaty countries, such prorated expenses are allowed to be deducted if in addition to the general deductibility requirements included in the published regulations (e.g., the expenses must be necessary for the company to carry out its activities; there must be a justifiable connection between the expenses incurred and the benefit received, or expected to be received, by the company; the expenses were incurred between related parties; the taxpayer must demonstrate that the allocation was agreed on at arm's length terms, etc.), certain transfer pricing documentation must be maintained for prorated expense transactions between related parties.

The following requirements in the published regulations must be met to certify there is a reasonable relationship between the expenses incurred and the benefit received, or expected to be received, by the taxpayer that incurred the expenses:

- Each party to the shared expense agreement must have access to the details of the transaction, how the anticipated profits will be determined, the prorated expenses incurred, and the profits received.

- The participants must be companies that will mutually benefit from the agreement.
- The agreement must specify the nature and scope of the benefits that will be available at a global and an individual company level with respect to the expenses incurred and prorated among the members of the group.
- The agreement must provide for prorated expenses using an allocation method that reflects the expenses in relation to the anticipated profits.
- The agreement must specify the scope of the transactions covered and the term of the agreement.

The following transfer pricing documentation must be retained for each transaction; otherwise, the expenses will not be deductible:

- Name, country of incorporation and tax residence, country where the company has its management headquarters, tax domicile, and tax ID number of each related party involved in the prorating of global expenses or that will benefit from the prorating;
- Description of the transactions and the terms of the agreement;
- Functions and activities performed by each party, as well as the risks assumed and assets used by each party;
- Documentation supporting the global expenses incurred;
- Details and documentary evidence that the expenses were paid and prorated per the agreement;
- Documentation demonstrating that the transactions were carried out on arm's length terms and the transfer pricing method used;
- Documentation showing how comparables were determined for each transaction; and
- Supporting documentation regarding future transactions, projections used as a basis for calculating pro rata expenses and expected benefits, as well as pro rata expenses effectively incurred and benefits effectively received.

### Are cost contribution or cost sharing payments deductible?

Yes, for residents of tax treaty countries, subject to compliance with certain requirements (see previous answer).

### Are cost contribution or cost sharing payments subject to withholding tax?

These decisions would be made on a case-by-case basis.

### What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?

These decisions would be made on a case-by-case basis.

## Documentation and tax return disclosures

### Tax return disclosures

The following items are required: annual tax return; Informative Transfer Pricing Return; Informative Return on Relevant Operations, Informative Return for Export-Oriented Manufacturing Companies (IMMEX); Tax Certificate or Statutory Filing System (SIPRED); Tax Report Filing System (SIPIAD); questionnaires in the SIPRED and SIPIAD; Relevant Operations Disclosure Return (for transfer pricing adjustments over MXN 5 million or 20 percent of the arm's length value).

A transfer-pricing-specific information return must be filed annually disclosing related parties and their corresponding transactions, including the method applied for analysis, whether the entity has a transfer pricing study, and whether it is applying any regulation or treaty. Two annual questionnaires must be completed regarding intercompany transactions and documentation. Additionally, any transfer pricing adjustment over MXN 5 million or 20 percent of the arm's length value should be disclosed in Form 76. Finally, an appendix with details of the intercompany transactions should be presented, including the conclusion of the intercompany transactions, whether the transactions comply with the arm's length principle, and the amount of any adjustment.

### Documentation requirements

Contemporaneous documentation must show that prices for transactions with each domestic and foreign related party set on a transaction-by-transaction basis are at arm's length. The documentation requirement is effective as of 1997, the transactional analysis as of 2000.

**Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

Yes, the transfer pricing study must be prepared annually on a transaction per transaction basis. Because the annual income and deductions should comply with the arm's length principle, an analysis should be made with details of the transactions and functional analysis. In practice, a complete study is required. Comparable transactions should at least be refreshed, although there is a strong preference for new searches on an annual basis.

### Deadline to prepare documentation

Documentation must be prepared by the due date for filing the income tax return.

### Deadline to submit documentation

Upon request from the SAT. The taxpayer has 15 business days to submit documentation, with the possibility of an additional 10 business days upon request to the tax authorities.

### Deadline to file income tax return

In Mexico, all fiscal years are calendar years; therefore, the deadline is March 31.

### Acceptable languages for documentation

Documentation must be in Spanish.

## Transfer pricing adjustments

**Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

Transfer prices must be registered in the taxpayer's accounting records. Some transfer pricing adjustments are performed after the fiscal year-end; thus, they would not be in the books for that fiscal year, although they must be reflected in the financial statements and other formal requirements must be met (amended tax returns, informative returns, transfer pricing documentation, etc.).

### Self-initiated adjustments

Self-initiated adjustments may be made only if they do not derive from a primary adjustment proposed by the competent authority of a treaty partner.

### Statute of limitations on assessment for transfer pricing adjustments

Generally, five years from the date of filing the income tax return. If an amended return is filed, the statute is extended five years after the date of the amendment filing.

### Taxpayer set-offs for other related-party transactions

Only intentional set-offs are permitted under the OECD transfer pricing guidelines.

## Interest and penalties

### Additional assessment payment deadline

Forty-five days from notification of the assessment in writing.

### Penalty on transfer pricing assessment

Ordinary penalties apply – 30 percent to 40 percent of the tax deficiency if paid before the notice of deficiency is issued, 55 percent to 75 percent in other cases, adjusted for inflation and interest. Reduction of penalties is possible on a case-by-case basis.

### Is interest charged on penalties?

No, although the penalties are actualized through inflation. Penalty interest is applied to the amount of unpaid tax.

### Is interest payable when a refund is due to the taxpayer?

Typically, for income tax purposes, interest is payable only if the refund is not made within 40 working days from the filing date of the refund claim. This term can be extended twice by the tax authorities, up to a combined period of 30 working days if the tax authorities require additional information from the taxpayer.

### Reduction in transfer pricing penalties

Fifty percent reduction is available if transfer prices are documented, 20 percent if payment is made before the final notice is issued, and 30 percent penalty if paid after the issuance of the final notice and before the assessment.

## Advance Pricing Agreements (APAs)

### Are APAs available?

Federal Fiscal Code Article 34-A provides for unilateral and bilateral APAs. The 2012 Miscellaneous Tax Rules also provide for APAs regarding intra-Mexico related-party transactions.

Mexican maquiladoras can elect to request an APA to comply with transfer pricing and permanent establishment exemption requirements.

### APA filing fee

APA fees are approximately US \$865 for filing the request, and US \$173 for submission of the annual report during the APA term. The amount is periodically updated for inflation.

### APA term of agreement

Up to three years forward, one year back, and the year of issuance. The term can be longer if negotiated under the mutual agreement procedure in accordance with a tax treaty.

### Competent authority

#### When may taxpayer submit tax adjustment to competent authority (CA)?

Mexico would follow the mutual agreement procedure of the pertinent tax treaty.

#### May CA develop new settlement positions?

Yes.

#### May taxpayer go to CA before paying tax?

Generally, tax must be paid.



# Netherlands

## What's new

In 2014, the Dutch government updated and replaced previous guidance on advance pricing agreements (APAs) and advance tax rulings (ATRs) by publishing five new decrees that update and clarify the organizational and procedural aspects of the APA and ATR processes. The decrees also contain specific guidance on substance requirements for holding companies and intragroup financing, licensing, and leasing companies, and introduced a new Foreign Investors Desk.

## General information

### Tax authority and law

Netherlands Revenue. Corporate Income Tax Act Article 8b and 8c.

### Regulations, rulings, guidelines

- Transfer Pricing Decree, November 26, 2013, IFZ 2013/184M
- Decree on APAs, ATRs, Financial Service Entities, June 26, 2014, DGB 2014/296M
- Decree on TP Coordination Group, August 11, 2004, DGB 2004/1339
- APA Decree, June 26, 2014, DGB 2014/3098
- ATR Decree, June 26, 2014, DGB 2014/3099
- Decree on Financial service companies, June 26, 2014, DGB 2014/3101
- Q&A Decree re financial service companies, June 26, 2014, DGB 2014/3102
- Decree on Attribution of Profits to Permanent Establishments, January 15, 2011 IFZ2010/457M

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

The definition of “associated enterprises” in article 8b Corporate Income Tax Act follows the wording of article 9 of the OECD Model Tax Convention. Companies are considered to be associated if one company has an equity participation in, or management control over another enterprise, which provides the company sufficient control to influence relationships that may give rise to non-arm's-length arrangements. A ruling from the Dutch tax authorities can provide certainty on this topic.

### Do the local transfer pricing rules or tax authority allow the use of transfer pricing analyses to calculate profits attributable to

### a permanent establishment or branch?

Yes, the Dutch regulation advocates the use of the authorized OECD approach for all its tax treaties. The authorized OECD approach as stipulated by the OECD is that the profits to be attributed to a permanent establishment are the profits the permanent establishment would have earned at arm's length (“functionally separate entity approach”) and is thus based on transfer pricing. Further specific guidance on the profits attributable to PEs can be found in the Decree of January 15, 2012, IFZ2010/457M.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the profit split method, and the transactional net margin method (TNMM).

### Priority of methods

Taxpayers are free to choose a method; however, the method chosen should lead to an arm's length result.

### Availability of benchmarking/comparative data

Yes, comparative data is available.

### Are foreign comparables acceptable to local tax authorities?

Generally, yes, as long as the markets are similar.

## Services issues

### Are management fees deductible?

Yes. Specific guidance on management fees is included in the Decree of November 26, 2013, nr. IFZ 2013/184.

### Are management fees subject to withholding?

No.

### May stock option costs be included in the cost base for intercompany services charges?

Certain stock option costs might be included in the cost base for intercompany services. The Dutch Corporate Income Tax Act, under some circumstances, excludes stock option costs from the tax base, making them nondeductible.

## Commissionaire arrangements

### Are commissionaire arrangements allowed?

Yes.



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## Cost sharing agreements

### Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?

Yes. Netherlands follows Chapter VIII of the OECD Transfer Pricing Guidelines. Specific guidance on the relative contribution of CCA participants and their respective share in the benefit is included in the Decree of November 16, 2013, nr IFZ 2013/184.

### Are cost contribution or cost sharing payments deductible?

Yes, unless an asset is capitalized. The company may choose to deduct or to capitalize the development costs of an intangible asset that is expected to generate benefits in other years.

### Are cost contribution or cost sharing payments subject to withholding tax?

No.

### What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?

Generally, capitalization of payments and amortization over the economic life of the intangible. The maximum amortization for goodwill is 10 percent of the value per year.

## Documentation and tax return disclosures

### Tax return disclosures

There is an obligation to identify intragroup transactions.

### Documentation requirements

There are statutory requirements for entities subject to the Corporate Income Tax Act. Documentation should be part of the taxpayer's general books and records.

### Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?

No. In practice, an update is expected every few years to account for normal business and market developments, or when there is a significant change in facts and circumstances.

### Deadline to prepare documentation

For entities subject to the Corporate Income Tax Act, documentation should be in place at the time the intercompany transaction takes place.

### Deadline to submit documentation

Upon request. If the documentation cannot be presented upon request, a reasonable time (one to three months) will be granted to prepare the documentation.

### Deadline to file income tax return

Regardless of whether activities are performed through a legal entity or a branch, the tax return should be filed within five months after the preceding financial year is closed; for example, taxpayers with a calendar financial year must file the return before the first of June the following year. Usually, an extension for filing the tax return can be obtained, with a maximum of nine months (again, for a calendar financial year, the return must be filed before the first of March on the second year). To obtain a second period of extension to file the tax return, a preliminary tax return must be filed.

There is no obligation to file transfer pricing documentation together with the corporate income tax return.

### Acceptable languages for documentation

Dutch law does not require that documentation be in a specific language, but it does require that the information included in documentation be accessible to the tax authorities. It is possible to have documentation in various languages, in addition to Dutch and English. If the documentation is not in Dutch, the tax inspector can require a translation.

## Transfer pricing adjustments

### Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?

The commercially applied transfer prices/transfer pricing methods lead income tax return reporting. Commercial and tax figures should be aligned eventually if book/tax differences result in a given year. Under some circumstances, book/tax differences may become permanent, depending on the case.

### Self-initiated adjustments

Adjustments are permitted in filing of original return after the closing of the book year-end, as long as the adjustment relates to a fact that existed at book year-end and the assessment has not become final.

### **Statute of limitations on assessment for transfer pricing adjustments**

Generally, five years from tax year-end. Twelve years if the adjustment relates to income from a foreign country.

### **Taxpayer set-offs for other related-party transactions**

Set-offs are generally not permitted. Set-offs may be considered if the benefits of the transactions are balanced to some extent. The taxpayer must prove that set-off leads to an arm's length result.

### **Interest and penalties**

#### **Additional assessment payment deadline**

The general rules apply. Interest accrues from the end of the tax year in which the assessment is made to the final assessment date.

#### **Penalty on transfer pricing assessment**

No transfer-pricing-specific penalty charges exist. The general penalties apply – maximum of 100 percent in case of malicious intent.

#### **Is interest charged on penalties?**

No.

#### **Is interest payable when a refund is due to the taxpayer?**

Yes.

#### **Reduction in transfer pricing penalties**

Penalties may be reduced or forgiven if documentation reflects a justifiable position.

### **Advance Pricing Agreements**

#### **Are APAs available?**

Yes. The Dutch APA program is described in the APA Decree, June 26, 2014, DGB 2014/3098. One key objective is to provide taxpayers with a uniform and predictable APA/ATR practice with easy access, clear conditions, streamlined procedures, and minimal processing time.

The Netherlands provides taxpayers advance certainty only if either:

- The company or its affiliates conduct operational activities in the Netherlands (including concrete plans to do so); or
- The company meets specified minimum substance requirements for (intermediary) holding companies and intragroup financing, licensing, and leasing companies.

To simplify the process for small taxpayers, a small-business taxpayer APA is available; in such cases, the tax authorities assist the taxpayer to find comparables.

#### **APA filing fee**

There is no fee for filing an APA application.

#### **APA term of agreement**

Four to five years. Longer terms may be possible in case of long-term contracts. Rollbacks are possible, if the relevant facts and circumstances have not changed, or if accurate adjustments can be made.

### **Competent authority**

#### **When may taxpayer submit tax adjustment to Competent Authority (CA)?**

An application for mutual agreement procedure may be filed after notification of the tax assessment, and must be filed within three years of notification, unless modified by a treaty.

#### **May CA develop new settlement positions?**

Yes, unless the taxpayer has entered into a closing agreement or received a court decision.

#### **May taxpayer go to CA before paying tax?**

Yes. The taxpayer may go to CA after receiving a final tax assessment; accelerated CA is available upon request.



# New Zealand

## What's new

New Zealand's Inland Revenue (IR) continued to increase its scrutiny of finance transactions in 2014, particularly those greater than NZD 10 million in value. Simultaneously, the IR revised its guidance on small loans to raise the safe harbor amount for small-value loans to NZD 10 million. Small loans may be priced at an appropriate base rate plus 200 basis points.

The IR is active in the OECD BEPS project, and is monitoring developments at the OECD for potential implications for New Zealand legislation rather than changing legislation or guidelines prior to the completion of the OECD's work.

## General information

### Tax authority and law

Inland Revenue; sections YD 5, GB 2, and GC 6 – 14 of the Income Tax Act 2007.

### Regulations, rulings, guidelines

The IR fully endorses and follows the OECD transfer pricing guidelines in administering New Zealand's transfer pricing rules. The IR published transfer pricing guidelines in 2000; however, the regulations were intended only to supplement the OECD guidelines, and are unlikely to be updated in the future.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

Any two companies are associated persons when there is a group of persons that have a 50 percent or greater voting, market value, or income interest in the two companies, or control of the two companies by any other means (section YB 2(1)). There are also definitions of associated persons for persons, partnerships, and trusts. An anti-avoidance provision (section GB 2) requires compliance with the transfer pricing rules in case of an arrangement that has a purpose or effect of defeating the intent and application of the transfer pricing rules.

### Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

New Zealand's domestic legislation (section YD 5 of the Income Tax Act) provides little guidance as to how gross income and expenditure should be apportioned to a permanent establishment or branch. The transfer pricing guidelines state that the IR follows the position established by the OECD for permanent establishments, which at the time of writing of the New Zealand transfer pricing guidelines was the OECD's Model Tax Convention on Income and on Capital (November 1997). However, a new Article 7, along with new commentary, has been included in the 2010 update of the OECD Model Tax Convention, and the IR has made an explicit reservation on the new article 7 of the Model Tax Convention, because it does not agree with the approach reflected. Thus, the IR follows the position outlined in the previous version of Article 7 and its commentary.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the profit split method (contribution analysis or residual analysis), and the comparable profits method (CPM).

### Priority of methods

taxpayers must use the most reliable method. Transaction-based methods are generally preferred over profit-based methods if sufficient information is available. The CPM is in practice the most commonly applied method in New Zealand.

### Availability of benchmarking/comparative data

Limited public New Zealand comparable data are available regarding companies and certain transaction types.

### Are foreign comparables acceptable to local tax authorities?

The use of foreign comparable companies is permitted in cases in which there are no sufficiently comparable New Zealand companies and the foreign comparable companies are resident in markets similar to New Zealand.

## Services issues

### Are management fees deductible?

Yes, to the extent the fees are incurred by the taxpayer and are consistent with the arm's length principle.



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#### **Are management fees subject to withholding?**

Withholding tax obligations arise to the extent the fees constitute royalties in accordance with Income Tax Act 2007 and the applicable income tax treaty. The fees will also be subject to withholding tax if the services are physically performed in New Zealand. To the extent the charge is not arm's length, a deemed dividend will arise that will be subject to withholding tax.

#### **May stock option costs be included in the cost base for intercompany services charges?**

The IR has no specific provisions on this issue. However, it is expected that general principles will apply and stock option costs can form part of the cost base if they represent a cost of providing services. The cost of performing "shareholder services" should not form part of the cost base.

#### **Commissionaire arrangements**

##### **Are commissionaire arrangements allowed?**

Undisclosed principal arrangements may be achieved. Care must be taken when drafting the legal agreements to achieve the desired result.

#### **Cost sharing agreements**

##### **Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?**

There is no specific statutory authority on this issue. The IR guidelines endorse Chapter VIII of the OECD transfer pricing guidelines.

##### **Are cost contribution or cost sharing payments deductible?**

There is no specific statutory authority on this issue. To the extent payments are arm's length, amounts are deductible if related to revenue items and not capital.

##### **Are cost contribution or cost sharing payments subject to withholding tax?**

Generally, no, but the nature of the underlying costs must be considered.

##### **What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?**

Payments are amortizable over the useful life of the intangible, provided the asset satisfies the definition of depreciable intangible property (generally fixed-life intangible property).

#### **Documentation and tax return disclosures**

##### **Tax return disclosures**

No specific disclosure is required.

##### **Documentation requirements**

There is no specific statutory requirement in New Zealand that taxpayers prepare transfer pricing documentation. However, the legislation does require taxpayers to determine their transfer prices in accordance with the arm's length principle, and the IR has stated that transfer pricing documentation is central to the process of justifying and explaining pricing of cross-border transactions. New Zealand is unique in that the burden of proof (that prices are not arm's length) initially rests with the IR. Accordingly, while there is no explicit requirement to prepare transfer pricing documentation, taxpayers who prepare and maintain transfer pricing documentation are more likely to ensure that the burden of proof remains with the IR, thus mitigating their transfer pricing risk in New Zealand. Lack of documentation may also result in the application of shortfall penalties to any transfer pricing adjustment proposed by the IR.

##### **Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

There is no specific statutory requirement in New Zealand requiring the completion of transfer pricing documentation. However, as stated, the completion of transfer pricing documentation is now considered by IR as essential to showing compliance with the arm's length principle as contained in the tax legislation. The IR will look to the OECD transfer pricing guidelines when considering matters such as frequency of updates for transfer pricing documentation.

##### **Deadline to prepare documentation**

There is no statutory deadline for preparation of documentation.

##### **Deadline to submit documentation**

Documentation must be submitted upon request, typically within a 30-day response period.

### **Deadline to file income tax return**

The due date for filing an income tax return depends on the balance date (year-end) of the taxpayer. Additionally, if a tax agent completes the tax return, there may be an extension of time for filing the return.

### **Acceptable languages for documentation**

Business records must be maintained in English, although approval can be obtained to maintain these records in another language. To the extent transfer pricing documentation does not fall within the definition of business records (economic analysis is unlikely to be deemed "business records") this section does not apply. Accordingly, documentation can be maintained in a language other than English. However, if the documentation is to be provided to the IR to support a taxpayer's position, the IR would expect taxpayers to translate it into English.

### **Transfer pricing adjustments**

#### **Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

The transfer prices reflected on an income tax return can be different from those reflected in the financial statements, assuming the transfer prices are consistent with the arm's length principle.

### **Self-initiated adjustments**

An adjustment may be made by filing a notice of proposed adjustment within four months of the self-assessment date of filing the income tax return or the issue of an assessment by the IR (section 89D and 89DA of the Tax Administration Act). This may not be necessary if the IR agrees that an adjustment should be made (section 113).

### **Statute of limitations on assessment for transfer pricing adjustments**

Four years from the end of the income tax year (31 March) in which the income tax return is filed.

### **Taxpayer set-offs for other related-party transactions**

Set-offs are allowed in relation to amounts arising in the same income year, or the immediately preceding or succeeding income year, and the set-off relates to the same class of transaction, or if the two transactions are linked.

### **Interest and penalties**

#### **Additional assessment payment deadline**

General tax rules apply. Half the tax is payable a month after the new assessment date, the remainder on settlement. Interest is applicable from the date tax would have been payable.

#### **Penalty on transfer pricing assessment**

Ordinary penalties apply — 220 percent for not taking reasonable care, or for taking an unacceptable tax position (Section 141A and 141B). A 40 percent penalty is charged for gross carelessness (Section 141C). Interest is charged on any outstanding tax at the prevailing interest rate (as established by the IR).

#### **Is interest charged on penalties?**

Interest is charged on penalties in respect of late payment penalties. Late payment penalties are added to the unpaid tax and included in the calculation of future late payment penalties incurred on unpaid tax.

When a taxpayer has been assessed for tax and the Commissioner of Inland Revenue increases the amount of the assessment after the due date for payment of the assessed tax, the Commissioner must fix a new date for the payment of the increase in tax. If payment is not made by the new due date, late payment penalties are charged on the unpaid tax and any shortfall penalty due (subject to some exceptions).

#### **Is interest payable when a refund is due to the taxpayer?**

Yes. Use-of-money interest is payable to the taxpayer on overpayments of tax. The current overpayment rate is 1.75 percent (which has been the rate since 8 May 2012). Conversely, the IR charges 8.40 percent on underpayments of tax. It should be noted that there are mechanisms available to taxpayers to reduce the interest costs through the use of tax pooling service providers.

#### **Reduction in transfer pricing penalties**

Penalties may be reduced if documentation shows that the taxpayer: (1) exercised reasonable care or (2) adopted an acceptable interpretation of the law. Penalties may also be reduced by up to 100 percent for disclosures made before audit.

## Advance Pricing Agreements (APAs)

### Are APAs available?

APAs are available under Section 91E of the Tax Administration Act of 1994 or under the mutual agreement procedure (unilateral and bilateral) when an income tax treaty applies.

### APA filing fee

There is no filing fee for a bilateral APA request, and a minimal application fee for a unilateral APA request.

### APA term of agreement

There is no fee for a bilateral APA and a minimal application fee for a unilateral APA. .

## Competent authority

### When may taxpayer submit tax adjustment to Competent Authority (CA)?

There are no specific provisions in place. It is generally expected that a taxpayer can request competent authority assistance once the proposed adjustment has been communicated in writing. There are also specific notification deadlines included in a number of New Zealand's income tax treaties.

### May CA develop new settlement positions?

Yes.

### May taxpayer go to CA before paying tax?

Yes, but liability to pay tax will not be avoided.



# Norway

## What's new

Norway reduced the corporate income tax rate from 28 percent to 27 percent, and issued interest deduction limitation regulations, both with effect from fiscal year 2014. The main features of the interest deduction limitation rules are as follows:

- Interest deductibility on related-party debt is nondeductible in a year, to the extent the net interest expense exceeds 30 percent of tax EBITDA (earnings before interest, tax, depreciation, and amortization), subject to certain adjustments.
- "Related party" for purposes of the rules means direct or indirect ownership or control of at least 50 percent of a debtor. Related parties may be resident in Norway or abroad.
- The limitation rules apply once the net interest expense exceeds a threshold of NOK 5 million.
- The limitation is calculated on an entity-by-entity basis, so a consolidated group approach is not available.
- Net interest expense in excess of the limitation may be carried forward for 10 years, provided the expense falls within the 30 percent limitation for the relevant years.
- External loans that are guaranteed by a related party will be considered internal debt and, therefore, will fall within the scope of the rules, except security provided by a company or entity that is at least 50 percent owned or controlled directly or indirectly by the borrower, and security in the form of a pledge of shares or loan notes issued by the borrower.
- Tax losses carried forward and group contributions are not deductible if the tax base before the limitation for deducting the net interest expense is negative or zero. If an interest deduction is disallowed, the taxpayer could have a positive tax base and tax payable even though it has tax losses carried forward.
- Even if the deduction of interest is limited at the level of the borrower, the interest is taxable for the related-party lender.

## General information

### Tax authority and law

Tax Directorate (Skattedirektoratet). The General Tax Act section 13-1.

## Regulations, rulings, guidelines

The arm's length principle is incorporated in the General Tax Act section 13-1. Generally, the OECD transfer pricing guidelines apply.

## Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

Transfer pricing rules apply when there is community of interest between parties. Filing and documentation rules apply if there is at least 50 percent direct or indirect joint ownership. The tax authorities will most likely continue to focus on transactions when there is direct or indirect ownership of more than 50 percent.

## Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

Yes, the Norwegian tax authorities broadly follow the OECD transfer pricing guidelines and the Report on the Attribution of Profits to Permanent Establishments.

## Methods and comparables

### Acceptable methods

Norway follows the OECD transfer pricing guidelines in this regard.

### Priority of methods

Norway follows the OECD transfer pricing guidelines in this regard.

### Availability of benchmarking/comparative data

Yes, comparables data are available.

## Are foreign comparables acceptable to local tax authorities?

There is no specific regulation on this issue. Pan-European comparables will normally be accepted if the OECD transfer pricing guidelines' comparability factors are met.

## Services issues

### Are management fees deductible?

Yes.

### Are management fees subject to withholding?

No.

### May stock option costs be included in the cost base for intercompany services charges?

There are no specific regulations on this issue.



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## Commissionaire arrangements

### Are commissionaire arrangements allowed?

Yes. The Norwegian tax authorities argued in the Dell case that a commissionaire company constituted a permanent establishment of the principal company, but lost the case in the Supreme Court. This issue may be revisited in light of Action 7 of the OECD's Base Erosion and Profit Shifting (BEPS) Plan.

## Cost sharing agreements

### Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?

Yes. There are no specific statutory requirements. The Norwegian tax authorities are likely to follow the OECD transfer pricing guidelines.

### Are cost contribution or cost sharing payments deductible?

Yes. However, in some cases payments must be capitalized and amortized according to the rules that apply for the asset to be developed.

### Are cost contribution or cost sharing payments subject to withholding tax?

No.

### What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?

Payments are normally capitalized and amortized to the extent that the decline in value is obvious.

## Documentation and tax return disclosures

### Tax return disclosures

A specific form must be filed with the tax return that details the nature and extent of transactions with related parties. This applies only if the total amount of such transactions in an income tax year exceeds NOK 10 million, or if the gross intercompany balances at the income tax year-end exceeds NOK 25 million.

### Documentation requirements

Contemporaneous transfer pricing documentation is required. The documentation must include:

- A description of the group's legal ownership structure and the geographical affiliation of the various entities;
- A description of the group's operational structure;
- A brief historic description of the group, its business activities, and any previously implemented reorganizations;
- A description of the industry;

- A description of material changes to the enterprise or group in the year;
- Financial information for the last three years, including an explanation for any loss;
- A description of the nature and scope of controlled transactions in the year, including details of any aggregated transactions. This description should also relate to the five comparability factors contained in the OECD transfer pricing guidelines and hence contain a full functional analysis;
- An explanation of any cost contribution arrangements;
- Additional information regarding any centralized services or intangible property;
- Information concerning the selection and application of the price-setting method;
- A comparability analysis;
- Copies of agreements relevant to the controlled transactions, including any tax authority rulings or other agreements regarding the same reached in any tax jurisdiction; and
- A description of any immaterial transactions.

Small and medium-sized enterprises are exempt from the documentation requirement. An enterprise is exempt if, together with related companies and entities, it has less than 250 employees and either annual revenue of NOK 400 million or less, or a balance sheet value of NOK 350 million or less.

### Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?

Norwegian transfer pricing documentation must be made available on a contemporaneous basis for each year the company is subject to the documentation requirements. The format of the documentation is not specified in the legislation. It is normally recommended that a complete report be prepared to ensure that the Norwegian transfer pricing documentation requirements are met in full.

Norway's transfer pricing documentation regulations state that "the documentation shall include a comparability analysis that can, together with the information provided pursuant to Section 4-10 and Section 12, form the basis for an evaluation as to whether the prices and terms of controlled transactions are in conformity with the arm's length principle . . . unless it is unreasonably difficult

or costly to gather and process information concerning external comparables.” In addition, the Norwegian Tax Authority published general guidance in December 2007 on the preparation of TNMM benchmarking analyses for transfer pricing purposes. This guidance states that the years selected in the comparability analysis should be close in time to the tested transaction so that the economic cycle, inflation, and market conditions are taken into account. The guidance also calls for the use of a multiple-year range when there are large variations in rates and conditions for a period.

#### **Deadline to prepare documentation**

Transfer pricing documentation must be prepared for each fiscal year.

#### **Deadline to submit documentation**

Within 45 days upon request from the tax authorities. The tax authorities can request the transfer pricing documentation at the earliest after the expiration of the deadline for filing the income tax return.

#### **Deadline to file income tax return**

The deadline to file the income tax return is 30 April. However, the deadline is 31 May if the income tax return is submitted electronically. In Norway, taxpayers are not required to file documentation by the tax return filing date, but must submit it upon request from the Norwegian tax authorities.

#### **Acceptable languages for documentation**

Norwegian, Swedish, Danish, and English.

#### **Transfer pricing adjustments**

**Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

No, tax/book differences are not allowed.

#### **Self-initiated adjustments**

Self-initiated adjustments are not allowed for prior income years. There is no formal procedure for self-initiated adjustments within the same income year.

#### **Statute of limitations on assessment for transfer pricing adjustments**

Generally, 10 years from tax year-end, but limited to two years if the taxpayer has provided all relevant information at the time of filing.

#### **Taxpayer set-offs for other related-party transactions**

There is no formal provision in this regard.

#### **Interest and penalties**

##### **Additional assessment payment deadline**

The general rules for assessments apply (normally, payment must be made some weeks after the reassessment is made).

##### **Penalty on transfer pricing assessment**

A penalty is levied if the taxpayer has provided incorrect or insufficient information for the tax authorities to determine whether the pricing is at arm's length. The penalty rate is up to 60 percent (normally 30 percent) of the additional tax.

##### **Is interest charged on penalties?**

Yes.

##### **Reduction in transfer pricing penalties**

There is no provision.

##### **Is interest payable when a refund is due to the taxpayer?**

Yes.

#### **Advance Pricing Agreements (APAs)**

##### **Are APAs available?**

APAs are available only for the pricing of natural gas. However, the Norwegian tax authorities are currently running a pilot scheme whereby APAs may be obtained for other transfer pricing matters.

##### **APA filing fee**

Not applicable.

##### **APA term of agreement**

Not applicable.

#### **Competent authority**

##### **When may taxpayer submit tax adjustment to Competent Authority (CA)?**

There is no formal procedure.

##### **May CA develop new settlement positions?**

There is no formal procedure.

##### **May taxpayer go to CA before paying tax?**

No.



## What's new

The OECD continues to lead the way in the BEPS project, with OECD member states looking to tighten the rules for taxation of intercompany transactions. Country-by-country reporting requirements will affect many multinational enterprises, as will new rules for the tax treatment of intangibles, transfer pricing in general, and permanent establishments. The balance of power is likely to change to favor tax authorities in their fight against what they perceive as tax avoidance.

Once new changes at the OECD level are adopted into local laws, MNEs may see a significant increase in their compliance burden. An increased number of disputes between taxpayers and governments, and between governments themselves when it comes to double taxation arising from the new rules have also focused the OECD on how dispute prevention mechanisms (advance pricing agreements) and dispute resolution mechanisms (mutual agreement procedures) can be made more effective.

## General information

### Tax authority and law

Council of Organization for Economic Cooperation and Development (OECD); Articles 9 and 25 of the OECD Model Tax Convention.

### Regulations, rulings, guidelines

Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (as amended). The OECD transfer pricing guidelines do not always have a legally binding effect in domestic law, but carry considerable weight and govern the application of Article 9 of the OECD Model Tax Convention in international law.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

Two enterprises are associated if one participates directly or indirectly in the management, control, or capital of the other, or if both are under common control. However, domestic transfer pricing rules must operate to bring a taxpayer into a charging situation. For instance, the OECD transfer pricing guidelines do not specify a control relationship and are thus very widely drawn: domestic rules may mean that enterprises who are associated but not under control may be outside the scope of domestic transfer pricing rules.

### Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

The OECD transfer pricing guidelines recommend that the same principles apply to the attribution of profit to permanent establishments and to transfer pricing between legal entities. Furthermore, the OECD Model Tax commentary to Article 7 — currently being updated — provides more guidance on this issue.

## Methods and comparables

### Acceptable methods

Traditional transaction methods (the comparable uncontrolled price (CUP) method, the resale price method, and the cost plus method) and transactional profit methods (the profit split method — contribution analysis or residual analysis, and the transactional net margin method (TNMM)).

### Priority of methods

As a result of the July 2010 update to the OECD's transfer pricing guidelines, profits methods are now on a par with traditional methods, but a CUP is still preferable. However, the OECD now recommends that a two-sided analysis be conducted, regardless of the method applied.

### Availability of benchmarking/comparative data

The OECD transfer pricing guidelines set the standard for comparability.

### Are foreign comparables acceptable to local tax authorities?

Geographic location is one factor that determines whether markets in which the independent and associated enterprises operate are comparable. Ch. I, 1.55. If these differences have a material effect on price, adjustments must be made. Generally, OECD member countries expect comparables to be selected from the same or the most similar market as the market in which the tested party operates. But this is not restricted to purely geographic market differences; that is, if there are no comparability differences between geographic markets, then comparable companies should not be rejected merely because they are resident in a different country.

## Services issues

### Are management fees deductible?

Determined under local law. The value of management charges is being looked at as part of the BEPS project.

**Are management fees subject to withholding?**

Determined under local law.

**May stock option costs be included in the cost base for intercompany services charges?**

There is no bar to this in the OECD transfer pricing guidelines. It is a question of what would have been agreed to and charged between the parties involved had they been independent enterprises.

**Commissionaire arrangements****Are commissionaire arrangements allowed?**

Determined under local law. Chapter IX of the OECD transfer pricing guidelines analyzes business restructuring situations in which commissionaire structures are frequently seen. Commissionaire structures are being looked at as part of the BEPS project.

**Cost sharing agreements****Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?**

Yes. OECD transfer pricing guidelines Chapter VIII.

**Are cost contribution or cost sharing payments deductible?**

Deductibility is determined under the laws of the applicable country, based on the nature of the activity undertaken in the arrangement. OECD transfer pricing guidelines, Chapter VIII, 8.23.

**Are cost contribution or cost sharing payments subject to withholding tax?**

Generally, no. However, tax treatment should be determined under the laws of the applicable country. OECD transfer pricing guidelines Chapter VIII, 8.23.

**What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?**

CCA rules state that the costs of any CCA should be judged by reference to the benefits derived or expected. Balancing payments on entry and/or exit may well be on point.

**Documentation and tax return disclosures****Tax return disclosures**

Depends on local law. Generally, disclosures should be limited to information sufficient to allow tax administrations to determine which taxpayers need further examination.

**Documentation requirements**

Depends on local law. The OECD transfer pricing guidelines do not provide relief from documentation requirements imposed under local laws. It is reasonable for tax authorities to expect taxpayers to prepare and maintain such material. As part of the BEPS project, the OECD is establishing preferred documentation requirements that OECD member states will be encouraged to incorporate into domestic law.

**Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

Depends on local law.

**Deadline to prepare documentation**

Depends on local law. Taxpayers should make reasonable efforts to document transfer prices and maintain documentation prepared in this process. There is more than one view on whether documentation needs to be in force when a transaction takes place.

**Deadline to submit documentation**

Depends on local law. Documentation should be submitted in a timely manner when requested.

**Deadline to file income tax return**

Not applicable.

**Acceptable languages for documentation**

Local languages are preferred, but there is a growing acknowledgement that English may also be appropriate.

**Transfer pricing adjustments****Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

The OECD recognizes that book/tax differences may be warranted. Importantly, under OECD rules, taxpayers do not have to transact at the arm's length price. However, some jurisdictions have this preference. In most countries, it is sufficient to make adjustments to actual prices to return the arm's length price for tax purposes.

### **Self-initiated adjustments**

Depends on local law. Self-initiated adjustments are not accepted by many OECD member countries without considerable scrutiny. There is an acknowledgment that self-initiated adjustments may lead to some countries denying the availability of a Mutual Agreement Procedure to resolve any double taxation, though the OECD does not recommend this.

### **Statute of limitations on assessment for transfer pricing adjustments**

Determined under local law.

### **Taxpayer set-offs for other related-party transactions**

Depends on local law. Intentional set-offs should be assessed in accordance with the arm's length principle to quantify the values claimed as set-offs. Tax administrators have discretion to grant or deny a taxpayer's request for reduction in an adjustment based on unintentional overreporting of taxable income. Documentation should establish that the set-offs were intentional and would have affected the pricing between the parties at arm's length.

### **Interest and penalties**

#### **Additional assessment payment deadline**

Depends on local law.

#### **Penalty on transfer pricing assessment**

Depends on local law. However, the OECD transfer pricing guidelines recognize that promoting compliance should be the primary objective of civil tax penalties.

#### **Is interest charged on penalties?**

Depends on local law. The OECD is silent on this matter.

#### **Is interest payable when a refund is due to the taxpayer?**

The OECD transfer pricing guidelines make no recommendation in this regard, but there is an acknowledged international consensus that, just as late payment of tax attracts an interest charge, then any refund of tax should also carry interest.

#### **Reduction in transfer pricing penalties**

Depends on local law. Reduction is not specified. However, imposition of sizeable penalties is deemed unfair if taxpayers make reasonable efforts in good faith.

### **Advance Pricing Agreements (APAs)**

#### **Are APAs available?**

The OECD promotes APAs as an effective dispute resolution tool. Chapter IV.F (multilateral, bilateral, and unilateral APAs); Annex "Guidelines for Conducting Advance Pricing Arrangements under the Mutual Agreement Procedure."

#### **APA filing fee**

Depends on local law. The OECD transfer pricing guidelines recognize that APA user fees may be charged, but do not have to be.

#### **APA term of agreement**

Depends on local law. Typically five years.

### **Competent authority**

#### **When may taxpayer submit tax adjustment to Competent Authority (CA)?**

The OECD actively promotes dispute resolution through mutual agreement procedures (MAPs).

The timing of the taxpayer's submission depends on the applicable double tax treaty between the countries involved. A notification requirement and/or the time limit for notification or filing of a competent authority request may apply. Under the Model Tax Convention, requests can be made to competent authorities when double taxation has become a possibility, that is, sooner than when the double taxation has actually happened.

#### **May CA develop new settlement positions?**

CAs should endeavor to reach agreement acceptable to the taxpayer. CAs' power to compromise an adjustment depends on the provisions of domestic law. Increasingly, arbitration clauses in tax treaties compel competent authorities to reach an agreement to eliminate the double tax. This must be done in accordance with the arm's length principle.

#### **May taxpayer go to CA before paying tax?**

Countries are encouraged to suspend collection of tax and interest until mutual agreement procedures are completed.

# Peru

## What's new

During 2014 the Peruvian tax authorities (SUNAT) were even more active than in previous years on transfer pricing issues. The number of transfer pricing audits increased significantly, together with the number of information requirements related to transfer pricing technical studies from prior years.

## General information

### Tax authority and law

National Superintendence of Tax Administration (SUNAT). Articles 32 and 32-A of the Income Tax Law. Effective for transactions from January 1, 2001.

### Regulations, rulings, guidelines

Articles 24 and 108-118 of the Income Tax Regulations (Supreme Decree 122-94-EF, modified by Supreme Decree 190-2005-EF and Supreme Decree No 258-2012-EF) and Resolution 167-2006-EF. Supreme Decree 258-2012-EF, published December 18, 2012, amends the income tax regulations, including the transfer pricing provisions. Resolution 175-2013-EF, published May 30, 2013, sets forth guidance on the obligation to submit a transfer pricing technical study. Resolution 377-2013-EF provides guidance on advance pricing agreements.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

Related parties are those that share (1) partners or common stockholders representing over 30 percent of the capital, directly or indirectly; (2) common directors, managers, or other executives with decision-making power in financial and commercial agreements; (3) consolidation of financial statements; (4) sales of assets and/or services equal to, or higher than, 80 percent of the total annual income in favor of one unrelated company or of companies related between themselves and a 30 percent of total annual cost for the buying party (both requirements must be met to be economically related); (5) joint venture contracts with independent accounting, in transactions with their contracting parties; (6) permanent establishments in Peru in respect to the corresponding company abroad; and (7) natural persons are included among subjects under analysis, if applicable.

### Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

No. From a Peruvian tax perspective, permanent establishments or branches are independent taxpayers from parent companies, and thus should register their costs and expenses independently for tax purposes.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the profit split method, the residual profit split method, and the transactional net margin method (TNMM).

### Priority of methods

Taxpayers must choose the best method.

According to changes made by Supreme Decree No 258-2012-EF on December 2012, the CUP method will be applicable to the analysis of transactions involving goods with international prices, or whose prices are set based on international quotes. A subsequent ruling by the tax authorities will define the goods subject to this formal obligation and the conditions for submitting the documents required for application of the CUP under this provision.

### Availability of benchmarking/comparative data

Available local data is very limited.

### Are foreign comparables acceptable to local tax authorities?

Yes, the law expressly states that foreign comparables are acceptable.

## Services issues

### Are management fees deductible?

Yes, they are deductible, except if the fees are paid to a resident in a tax haven.

### Are management fees subject to withholding?

Management fees are not deductible if the management services are rendered abroad, but if rendered in Peru the fees are subject to 30 percent withholding; if the service qualifies as technical assistance, the withholding tax rate would be 15 percent.



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**May stock option costs be included in the cost base for intercompany services charges?**

Yes.

**Commissionaire arrangements**

**Are commissionaire arrangements allowed?**

Yes.

**Cost sharing agreements**

**Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?**

Yes.

**Are cost contribution or cost sharing payments deductible?**

Yes, if the cost portion corresponding to the Peruvian taxpayer relates to actual services rendered in connection with the generation of taxable income in Peru and the amount is reasonable in relation to such income.

**Are cost contribution or cost sharing payments subject to withholding tax?**

es, depending on the nature of the payment. For instance, royalties for the use of, or license to use, trademarks, patents, and know-how are subject to income tax withholding.

**What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?**

Any payment abroad for the use or the right to use intangibles is subject to income tax withholding, but is deductible as an expense if it relates to the generation of taxable income in Peru, and the amount is reasonable.

**Documentation and tax return disclosures**

**Tax return disclosures**

Taxpayers must file a transfer pricing tax return in June of every year that includes a transfer pricing study and information regarding the transactions subject to the transfer pricing regime.

**Documentation requirements**

Taxpayers must have a technical study that supports their transfer pricing calculations, and that also indicates the transfer pricing method applied. Detailed documentation and information for each transaction and the technical study must be made available to SUNAT during the established period. In 2013 the filing of the transfer pricing technical study with the transfer pricing return became

mandatory; thus, from fiscal year 2012 onward, the technical study must be submitted annually.

**Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

Yes, the transfer pricing technical study must be submitted each year. This report must contain a functional analysis of the taxpayer and its transactions under study, an economic and transfer pricing analysis, and other information specified in Article 117 of Chapter XIX of the regulations under the Income Tax Law.

**Deadline to prepare documentation**

The tax authorities do not indicate when documentation must be prepared; however, the deadline for submission is June of the following year, together with the transfer pricing return.

**Deadline to submit documentation**

Since 2013 (fiscal year 2012) Peruvian transfer pricing rules have required taxpayers to submit a technical transfer pricing study. Peruvian taxpayers must submit a transfer pricing tax return including the technical study. The deadline for filing this transfer pricing tax return is June of each year.

**Deadline to file income tax return**

The deadline for filing the income tax return is between March and April of each year. However, there is no specific requirement to file transfer pricing documentation on that date.

**Acceptable languages for documentation**

Documentation must be in Spanish.

**Transfer pricing adjustments**

**Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

Differences between the income tax return and the financial statements are allowed. Thus, book/tax differences are allowed.

**Self-initiated adjustments**

Adjustments are permitted.

**Statute of limitations on assessment for transfer pricing adjustments**

Four years, extended to six years if a return was not filed. This period is computed from January 1 of the calendar year following the date when the tax return should have been filed (income tax returns must be filed during the three calendar months following the end of the corresponding fiscal year).

**Taxpayer set-offs for other related-party transactions**

Set-offs are permitted if the related parties are local companies, or if the transactions are with companies domiciled in countries with which Peru has signed income tax treaties.

**Interest and penalties**

**Additional assessment payment deadline**

Not specified.

**Penalty on transfer pricing assessment**

Specific infractions (and the corresponding penalty) are established for transfer pricing.

**Is interest charged on penalties?**

Yes, a penalty interest rate of 1.20 percent per month on the unpaid fines.

**Is interest payable when a refund is due to the taxpayer?**

Yes, there is a minimum interest payable. The rate is even lower than a passive interest rate.

**Reduction in transfer pricing penalties**

A 20 percent, 30 percent, or 50 percent discount is available if the taxpayer meets certain conditions.

**Advance Pricing Agreements (APAs)**

**Are APAs available?**

The Income Tax Law establishes the possibility for taxpayers and the tax authorities to enter into APAs. The objective of an APA is to determine the transfer pricing method or the price that will be charged in transactions the taxpayer engages in with related parties (both in international and local operations) and with tax havens.

Supreme Decree 258-2012-EF, published December 18, 2012, amended the regulations regarding APAs, and provided additional guidance on the negotiation of agreements. Resolution 377-2013, published December 27, 2013, provided additional guidance on pre-filing documents, pre-filing meetings, documentation, and negotiation procedures.

**APA filing fee**

No filing fee for APA applications is specified.

**APA term of agreement**

The term includes the agreement's year of approval and the following three years. However, it is unclear whether the years during which the taxpayer and the tax authorities negotiated the agreement will be counted as part of the agreement's term.

**Competent authority**

**When may taxpayer submit tax adjustment to Competent Authority (CA)?**

At any time after filing the original annual income tax return, but before the beginning of a tax audit.

**May CA develop new settlement positions?**

CA may modify or supplement an assessment already notified to the taxpayer only in some cases, such as when irregularities are detected in the taxpayer's documentation or accounting records that could have led to errors on the part of the authorities.

**May taxpayer go to CA before paying tax?**

Yes, the taxpayer may file a sustained claim with the CA within 20 working days after notification of a tax assessment.



# Philippines

## What's new

Revenue Regulations (RR) No. 2-2013, otherwise known as the Philippine Transfer Pricing Regulations, were issued on January 23, 2013. The regulations provide guidelines on the arm's length principle for transfer pricing, which apply to both cross-border and domestic transactions between associated enterprises.

More recently, in September 2014, the Philippine tax authorities released draft regulations that prescribe the guidelines and procedures for administering the proposed advance pricing agreement (APA) program. A roundtable discussion was held allowing various sectors to comment on the draft regulations. To date, the final APA regulations have yet to be issued.

## General information

### Tax authority and law

Bureau of Internal Revenue. Section 50 of the National Internal Revenue Code.

### Regulations, rulings, guidelines

Revenue Regulations No. 2-2013 provide guidelines on the arm's length principle for transfer pricing, which apply to both cross-border and domestic transactions between associated enterprises. The guidelines are largely based on the arm's length methods set out under the OECD transfer pricing guidelines.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

A controlled taxpayer is covered by the transfer pricing rules. Any two or more organizations or trades, or businesses owned or controlled directly or indirectly by the same interests are covered.

### Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

Yes. The Philippines transfer pricing regulations apply to:

- Cross-border transactions between associated enterprises; and
- Domestic transactions between associated enterprises.

## Methods and comparables

### Acceptable methods

The transfer pricing regulations adhere to the methods provided under the OECD transfer pricing guidelines, such as the comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the profit split method, and the transactional net margin method (TNMM).

### Priority of methods

The Bureau of Internal Revenue does not have a specific preference for any method. Instead, the transfer pricing method that produces the most reliable results, taking into account the quality of available data and the degree of accuracy of adjustments, should be utilized.

### Availability of benchmarking/comparative data

There is no readily available data. Benchmarking and selection of comparative data for local comparables may be done manually by accessing the Philippine Securities and Exchange Commission portal.

### Are foreign comparables acceptable to local tax authorities?

The Philippine transfer pricing regulations are silent in this regard. The tax authorities prefer local sets of comparables, but in the absence of good quality local comparables, foreign comparables are acceptable.

## Services issues

### Are management fees deductible?

Yes.

### Are management fees subject to withholding?

Generally, yes.

### May stock option costs be included in the cost base for intercompany services charges?

Yes.

## Commissionaire arrangements

### Are commissionaire arrangements allowed?

Yes.

## Cost sharing agreements

### Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?

Yes.



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**Are cost contribution or cost sharing payments deductible?**

Yes.

**Are cost contribution or cost sharing payments subject to withholding tax?**

It depends on the nature of the cost.

**What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?**

Not applicable.

**Documentation and tax return disclosures**

**Tax return disclosures**

There is no provision in this regard.

**Documentation requirements**

Adequate documentation must be maintained to enable the taxpayer to defend its transfer pricing analysis, prevent transfer pricing adjustments arising from tax examinations, and support an application for MAP relief. While transfer pricing documentation is not required to be submitted upon filing of the income tax return, it should be retained for the period provided under the Tax Code and submitted to the BIR upon request.

Transfer pricing documentation should include, but is not limited to:

- Organizational structure
- Nature of the business/industry and market conditions
- Controlled transactions
- Assumptions, strategies, policies
- Cost contribution arrangements
- Comparability and functional and risk analyses
- Selection of the transfer pricing method
- Application of the transfer pricing method
- Background documents
- Index to documents

**Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

A fresh benchmarking every year is not required under the Philippine transfer pricing guidelines, although it is generally advisable. At a minimum, the transfer pricing study and benchmarking should be updated every three years.

**Deadline to prepare documentation**

Transfer pricing documentation must be contemporaneous. Intercompany agreements must be prepared prior to the related-party transactions they document. The Bureau of Internal Revenue does not require documentation to be submitted when the tax returns are filed. Documentation should be kept by taxpayers, and is required to be submitted upon the BIR's request.

**Deadline to submit documentation**

Documentation must be available at any time during an investigation.

**Deadline to file income tax return**

Taxpayers must file an income tax return on or before the 15th day of the fourth month after the close of the firm's taxable year.

**Acceptable languages for documentation**

Section 234 states that books and records must be kept in Pilipino, English, or Spanish; documents kept in other languages must be translated.

**Transfer pricing adjustments**

**Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

Ideally, the transfer prices reflected on the income tax return should be similar to those reflected in the financial statements. However, differences may be allowed as long as there is a reasonable basis for such disparity. The usual book/tax differences can be classified as temporary or permanent differences. The former are differences in timing/recording, whereas the latter pertain to differences in accounting treatment/taxability.

**Self-initiated adjustments**

Self-initiated adjustments may be made through an amendment of tax returns.

**Statute of limitations on assessment for transfer pricing adjustments**

Three years after the last day prescribed by law for the filing the pertinent tax return. If the tax return is filed after the period prescribed by law, the three-year period will be counted from the day the return was filed.

**Taxpayer set-offs for other related-party transactions**

Not applicable.

### Interest and penalties

#### Additional assessment payment deadline

Normally, 30 days from receipt of the assessment.

#### Penalty on transfer pricing assessment

In case of a deficiency income tax assessment arising from a transfer pricing adjustment, the penalties under the Philippine Tax Code, such as the 25 percent surcharge (50 percent in case of fraud) and the 20 percent interest per annum on the basic deficiency tax due apply.

#### Is interest charged on penalties?

Interest at 20 percent per annum may apply.

#### Is interest payable when a refund is due to the taxpayer?

It is a general rule that no interest on a tax refund can be awarded unless authorized by law, or if the collection of the tax involved arbitrariness.

#### Reduction in transfer pricing penalties

Not applicable.

### Advance Pricing Agreements (APAs)

#### Are APAs available?

APAs are available under the new Philippine transfer pricing rules. However, while draft guidelines on the application for APAs have been presented in the second half of 2014, the final guidelines had yet to be issued as of this writing.

#### APA filing fee

The filing fee for an APA has not yet been determined.

#### APA term of agreement

The pending draft regulations do not limit the application of APAs to a specified number of prospective years. However, the previous draft regulations provided that the term of an APA should not exceed three years from the date of conclusion of the APA.

### Competent authority

#### When may taxpayer submit tax adjustment to Competent Authority (CA)?

Any time before the issuance of a Letter of Authority (LOA), and within three years from the filing of the tax return.

#### May CA develop new settlement positions?

Yes, if it determines that the correct amount of tax was not paid.

#### May taxpayer go to CA before paying tax?

Yes.



# Poland

## What's new

Effective 1 January 2015, some provisions of the Corporate and Personal Income Tax Acts related to transfer pricing regulations have been significantly amended, including:

- Broadening the documentation requirements — partnerships and joint ventures between related parties are now subject to documentation requirements
- Implementation of income adjustments -- dealings between a Polish taxpayer and its PE abroad must be at arm's-length;
- Implementation of documentation requirements regarding dealings between a Polish taxpayer and its foreign PE;
- Introduction of an exemption to income adjustments and documentation requirements for: agricultural producers groups, fruit and vegetable producers groups;
- Organization units with no legal personality are subject to arm's length requirements; and
- Introduction of procedure for elimination of double taxation in domestic transactions.

Furthermore, in 2014 the Polish Ministry of Finance issued explanations clarifying the existing provisions relating to business restructurings. The ministry's explanations generally follow the OECD transfer pricing guidelines in this respect. Further, the explanations provide a definition of business restructuring, deal with various elements of the restructuring process, exit fee issues, and clearly state that the terms of restructuring processes should be compliant with the arm's length principle. The explanations underscore the role of substance and require that the tax authorities examine the actual conditions of the intercompany transactions.

In 2014, the tax authorities conducted an increasing number of transfer pricing audits. The tax authorities are frequently investigating not only the taxpayer's transfer pricing documentation, but also the actual terms of the intercompany transaction, including the calculation of prices and the profitability of the related parties. Moreover, several court rulings issued in 2014 indicate that the analysis justifying the arm's length character of prices applied is essential as a formal part of the transfer pricing documentation.

## General information

### Tax authority and law

Inland Revenue; articles 9a, 11, 19, and 27 of Corporate Income Tax Act; articles 25, 25a, and 45 of Personal Income Tax Act; section IIa of Tax Ordinance of 29 August 1997 (APAs), Convention on the Elimination of Double Taxation in Connection with the Adjustment of Profits of Associated Enterprises (23 August 2007).

### Regulations, rulings, guidelines

Transfer Pricing Decree of 10 September 2009 (with further amendments), Decree on Tax Havens of 23 June 2013, Ordinance on APA Realization of 31 May 2006. Also, amendment to the Accounting Act of 18 March 2008, which requires entities to disclose in their financial statements information on significant transactions with related entities that are not at arm's length.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

Five percent direct or indirect share in capital. Other types of relationship including effective management or control, family relationships, and relationships resulting from employment or property are also taken into account. The rules apply to both Polish and foreign parties, and to both domestic and cross-border transactions. The transfer pricing restrictions apply also to foreign entrepreneurs operating through a permanent establishment in Poland, and to Polish companies dealing with their foreign permanent establishments, as well as to transactions with entities domiciled in tax havens (regardless of the existence of a relationship), to partnerships and joint ventures between related parties.

### Do the local transfer pricing rules or tax authority allow the use of transfer pricing analyses to calculate profits attributable to a PE or branch?

Yes. Based on Article 11 of the Corporate Income Tax Law and Article 25 of the Personal Income Tax Act, transfer pricing analyses may be applied to determine the portion of a taxpayer's income on the activity of a permanent establishment located in the territory of the Republic of Poland that is attributable to the permanent establishment.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the profit split method (contribution analysis or residual analysis), and the transactional net margin method (TNMM).



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### Priority of methods

The tax authorities make a decision on the choice of method taking into account criteria such as the course of the transaction (including the functional analysis), the availability of reliable information on comparable transactions or entities. Transaction-based methods (the CUP method, the cost plus method, and the resale price method) are still preferred; if those methods are inappropriate, profit-based methods are applied.

### Availability of benchmarking/comparative data

Comparable data from commercial databases are available and usually accepted in practice. Tax authorities use the Amadeus database in the APA process. Other sources of data are also used (such as data from the Polish Central Statistical Office).

### Are foreign comparables acceptable to local tax authorities?

Local comparables are usually preferred over pan-European or global ones, if available.

### Services issues

#### Are management fees deductible?

Yes, provided the benefit test is met and the taxpayer has extensive documentation evidencing the provision of the services. The costs of shareholders' activities are not deductible.

#### Are management fees subject to withholding?

Not in the case of tax treaty partner countries, provided the Polish entity presents a tax residence certificate of payment prior to the payment, and there is tax treaty protection.

#### May stock option costs be included in the cost base for intercompany services charges?

The issue is not addressed in Polish transfer pricing regulations. The costs of stock-based compensation are not listed in Art. 16 of the Corporate Income Tax Act or Art. 23 of the Personal Income Tax Act, that is, they are not directly excluded from tax-deductible costs. Therefore, the provisions of Art. 15 of the CIT Act and Art. 22 of the PIT Act should apply, so if the taxpayer is able to prove that the specific persons whose stock-option plan costs are included in the cost base are engaged in the provision of services for the Polish entity, and those services pass the general benefit test, stock-option costs (a part of the charge-out) may be treated as tax-deductible costs.

The issue has not been raised in an audit yet, so there is no precedent or case law. The fact that stock-option costs are not "cash expenses" may trigger challenges related to their tax deductibility.

### Commissionaire arrangements

#### Are commissionaire arrangements allowed?

Yes.

### Cost sharing agreements

#### Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?

CCAs and CSA are generally accepted, but CCAs are rarely entered into in practice.

#### Are cost contribution or cost sharing payments deductible?

Yes, provided the benefit test is met. A detailed cost breakdown and transfer pricing documentation are usually required.

#### Are cost contribution or cost sharing payments subject to withholding tax?

Not in the case of tax treaty partner countries, provided the Polish entity presents a tax residence certificate of payment prior to the payment, and there is income tax treaty protection.

#### What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?

There is no specific provision in this regard.

### Documentation and tax return disclosures

#### Tax return disclosures

Taxpayers must disclose in their annual corporate income tax return whether they are obligated to prepare transfer pricing documentation. In addition, transactions with foreign related entities exceeding €300,000 during the tax year must be disclosed on the appropriate form. Other transactions may have to be disclosed at the tax authorities' request.

#### Documentation requirements

Documentation must be prepared for:

- All domestic and cross-border transactions if their total annual value exceeds the following thresholds:
  - Companies covered by the Corporate Income Tax Act – generally €100,000 for tangible transactions, €30,000 for services and intangible transactions, and €20,000 for transactions with entities in tax havens;

- Persons/companies covered by the Personal Income Tax Act – generally €30,000 for services and intangible assets, €50,000 for other transactions, and €20,000 for transactions with entities in tax havens;
- Partnership deeds or joint venture contracts in which the total value of the contributions made by the partners exceeds the equivalent of €50,000, and €20,000 if one of parties is located in a tax haven.

Documentation requirements apply to foreign entrepreneurs operating through a permanent establishment in Poland and Polish taxpayers operating through a permanent establishment abroad.

In practice, transfer pricing documentation should be prepared/reviewed and updated annually if the annual values of the transactions exceed the thresholds listed above.

Transfer pricing documentation should contain the following mandatory elements (specified in Art. 9a of the CIT Act and Art. 25 of the PIT Act):

- Identification of the functions to be performed by the subjects participating in the transaction (taking into account the assets used and the risks taken);
- Specification of all anticipated costs associated with the transaction, and the form and time frame for payment;
- Method and manner of calculating profits, and specification of the transaction price;
- Determination of the economic strategy and other actions within its framework, when the strategy adopted by the subject has influenced the value of the transaction;
- Other factors, when the parties to the transaction took such factors into account to determine the value of the object of the transaction; and
- Determination of the benefits expected by the party obligated to prepare the documentation in relation to the performance, in the case of contracts relating to intangible performances (including services).

The method and manner of calculating profits and specification of the price of the object of transaction used does not mean that benchmarking analysis is required to receive penalty protection related to documentation.

Recent court cases have provided new interpretations of the documentation requirements. A few transfer pricing court verdicts indicated that transfer pricing documentation must demonstrate the arm's length

character of the intercompany dealings. This means that the importance of comparable benchmarks verifying the level of transfer prices is increasing, and they are more frequently required by tax auditors.

There are no specific regulations in Poland regarding benchmarking updates. The preferred approach is to update the searches every two to three years.

The documentation requirements are based on the separate transaction rule, meaning that for all intercompany transactions subject to the documentation requirements, full transfer pricing documentation must be prepared.

**Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

In practice, transfer pricing documentation should be prepared/reviewed and updated annually if the annual values of the transactions exceed the thresholds listed above.

**Deadline to prepare documentation**

There is no statutory deadline for preparation of documentation; however, case law indicates that documentation should be prepared on an ongoing basis no later than the transaction is concluded, and updated subsequently.

**Deadline to submit documentation**

Seven days from the tax authorities' request.

**Deadline to file income tax return**

The deadline for filing the income tax return is up to three months after the end of the taxpayer's tax year.

**Acceptable languages for documentation**

Documentation must be in Polish.

**Transfer pricing adjustments**

**Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

As a rule, transfer pricing adjustments reflected in the tax return should follow adjustments made in the financial statements.

### Self-initiated adjustments

Theoretically, self-initiated adjustments are not disallowed; however, there is no formal procedure to address this issue. In practice, self-initiated adjustments are very rare.

### Statute of limitations on assessment for transfer pricing adjustments

Five years from the end of the year in which the tax return is filed. In case of utilization of tax losses from previous years, the statute of limitation may be prolonged.

### Taxpayer set-offs for other related-party transactions

Set-offs are permitted for transactions with the same related party.

### Interest and penalties

#### Additional assessment payment deadline

In general, additional corporate/personal income tax assessments relate to tax liabilities that arose in the past; therefore, the additional tax assessed, together with penalty interest, is payable at the latest on the day of receipt of the Tax Chamber assessment decision, that is, prior to litigation, and irrespective of the initiation of a mutual agreement procedure.

#### Penalty on transfer pricing assessment

For transactions below the threshold for mandatory documentation, or above the threshold when documentation is presented and accepted, the tax on the assessment is 19 percent. For transactions above the threshold when documentation is not presented or accepted by the tax auditors as correct and complete, the increased tax rate is 50 percent. Potentially, personal sanctions based on the Penal Fiscal Code – criminal sanctions, including imprisonment – could be imposed.

Any additional assessed income is taxed at the appropriate tax rate (19 percent or 50 percent) and late-payment interest on the additional tax due applies.

#### Is interest charged on penalties?

Interest is charged on late payments including any additional assessed income taxed at the appropriate tax rate (19 percent or 50 percent). Interest rate is 2 percent plus 200 percent of the Lombard rate published by the Central Bank (approximately 10 percent p.a. as of January 2014). Interest on late payments cannot be less than 8 percent.

#### Is interest payable when a refund is due to the taxpayer?

Interest on a tax refund is payable only if the refund is overdue (that is, the tax authorities are late with the payment of the refund).

#### Reduction in transfer pricing penalties

There is no provision in this regard.

### Advance Pricing Agreements (APAs)

#### Are APAs available?

APAs are available, including for foreign entrepreneurs operating through a permanent establishment in Poland.

#### APA filing fee

In general, based on Article 20m of the Tax Ordinance, the filing fee for an APA application is 1 percent of the transaction value, with the following thresholds:

- Domestic unilateral agreement: PLN 5,000-50,000 (approx. €1,250-€12,500);
- Foreign unilateral agreement: PLN 20,000-100,000 (approx. €5,000-€25,000); and
- Bilateral/multilateral foreign agreements: PLN 50,000-200,000 (approx. €12,500-€50,000).

The fee for renewal of an APA amounts to half the fee for an APA application.

The fee for renewal of an APA amounts to half of the fee for an APA application.

#### APA term of agreement

Up to five years; however, the term may be extended for additional unlimited five-year periods.

### Competent authority

#### When may taxpayer submit tax adjustment to Competent Authority (CA)?

An application for a mutual agreement procedure (based both on the EU Arbitration Convention and a double tax treaty) may be filed after notification of the tax assessment, and must be filed within three years of the notification.

#### May CA develop new settlement positions?

Yes, unless the taxpayer has received a court decision.

#### May taxpayer go to CA before paying tax?

Yes; however, liability to pay the tax will not be avoided.



# Portugal

## What's new

Portugal's budget law for 2014 introduced some changes in the special relationship criteria, namely increasing the 10 percent limit to a 20 percent limit and further clarifying how permanent establishments must be addressed.

The 2014 budget law also broadened the possibility of taxpayers entering into unilateral advance pricing agreements (APAs) with the Portuguese tax authorities (in the past, that was only possible in some specific cases).

Finally, a patent box tax incentive scheme was also launched, and the limit on the deductibility of interest expense was adjusted.

## General information

### Tax authority and law

Tax and Customs Authority (Autoridade Tributária e Aduaneira) (A.T.); Article 63 and Article 138 of the Corporate Income Tax Code, applicable for tax years beginning after December 31, 2001.

### Regulations, rulings, guidelines

General guidance on transfer pricing - Ministerial Order (Portaria) #1446-C/2001; advance pricing agreements - Ministerial Order (Portaria) #620-A/2008.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

Under the provisions of the Portuguese Corporate Income Tax, effective for tax year 2013 (2014), any of the following conditions would define the relationship as one between related parties: (i) one entity participates directly or indirectly in at least 20 percent of the share capital or voting rights of another entity; (ii) both entities are at least 20 percent owned, directly or indirectly, by the same legal entity; (iii) an entity and the members of its corporate bodies, or any administration, direction, management, or supervising boards; (iv) entities in which the majority of the Board of Directors are constituted by the same persons; (v) entities related under a subordination agreement or any other agreement of a similar nature; (vi) holding companies as stated in applicable document for the obligation to obtain consolidated accounts (holding company as stated in the Portuguese Commercial Companies Code); (vii) economic, commercial, financial, professional, or

legal dependence; and (viii) a resident entity and entities resident in clearly more favorable tax regimes (as listed in Ministerial Order #292/2011).

Foreign head offices and Portuguese branches (or Portuguese head offices and foreign branches) are also deemed to be related parties.

### Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

The Portuguese rules are not explicit on this issue, but the Portuguese tax authorities seem to accept and in fact insist on the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the profit split method (contribution analysis or residual analysis), the transactional net margin method (TNMM), and any other method appropriate to the specific facts and circumstances of each transaction.

### Priority of methods

There is a hierarchy of methods. Transaction-based methods are preferred over profit-based methods, so that the use of an indirect profit-based method must include a justification demonstrating the impossibility of using a transaction-based method.

### Availability of benchmarking/comparative data

The tax authorities show a preference for local comparables, and despite the fact that Portugal has a relatively small economy, local comparable data for independent companies is usually available through the SABI database covering Portuguese companies. However, in the absence of adequate data, Spanish comparables may be used.

### Are foreign comparables acceptable to local tax authorities?

Local comparables are preferred, but others may be permitted if it can be demonstrated that Iberian comparables are not available.



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## Services issues

### Are management fees deductible?

Yes. However, the management fees must reflect the economic benefit and the arm's length principle. Specific rules apply to intragroup services, as defined in the applicable transfer pricing ministerial order.

### Are management fees subject to withholding?

Yes. However, if a double taxation agreement is available, the management fees will not be subject to withholding tax, provided procedures are followed.

### May stock option costs be included in the cost base for intercompany services charges?

Yes, provided the company receives an economic benefit.

## Commissionaire arrangements

### Are commissionaire arrangements allowed?

Yes.

## Cost sharing agreements

### Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?

Yes. Specific documentation requirements are set out for cost contribution arrangements.

### Are cost contribution or cost sharing payments deductible?

Portugal has no formal guidelines on this issue. Payments will be deemed deductible provided they comply with the domestic general deduction provision.

### Are cost contribution or cost sharing payments subject to withholding tax?

Yes. However, if payments are structured as services, there is no withholding tax under income tax treaties, if certain procedures are followed.

### What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?

Payments are deductible and amortizable over the period of use of the intangible, if applicable.

## Documentation and tax return disclosures

### Tax return disclosures

In an annual declaration, the taxpayer must (i) specify the amount and nature of each transaction; (ii) list the methods used; (iii) identify related parties with which it entered into transactions (in case of domestic transactions) and (iv) declare if contemporaneous documentation is available.

## Documentation requirements

Taxpayers with net sales and other operating income exceeding €3 million in the previous year must maintain a wide range of contemporaneous documentation. The Portuguese transfer pricing regime determines two types of requirements, namely (i) a declarative requirement of filing an Annual Tax and Accounting Statement and (ii) a documentation requirement (preparation of the annual transfer pricing documentation file).

### Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?

The transfer pricing documentation file should be prepared annually, and should consist of a complete report encompassing all relevant information. However, if there are no major changes in the taxpayer's business functions and risks compared with the preceding year, it is acceptable (within a three-year period) to limit the economic study to updating the comparables, in line with the OECD transfer pricing guidelines' approach.

### Deadline to prepare documentation

Documentation must be prepared by the 15th day of the seventh month following the tax year-end.

### Deadline to submit documentation

Documentation must be submitted upon request.

### Deadline to file income tax return

The Annual Tax and Accounting Statement must be filed by the 15th day of the seventh month following the tax year-end.

### Acceptable languages for documentation

Portuguese legislation requires documentation to be submitted in Portuguese. In practice, the Portuguese authorities accept documentation submitted in English, provided the taxpayer seeks prior approval.

## Transfer pricing adjustments

### Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?

No, book/tax differences are not allowed. The transfer prices reflected on an income tax return must be the same as those reflected in the financial statements.

### Self-initiated adjustments

Adjustments in both original and amended returns after year-end are permitted as long as the transaction takes place with a foreign related party and there is no decrease in taxable income. Adjustments to decrease taxable income require an administrative appeal and a decision from the tax authorities (although in practice the Portuguese tax authorities seem to consistently reject requests for negative transfer pricing adjustments).

### Statute of limitations on assessment for transfer pricing adjustments

General tax law provisions apply. Tax assessments may be issued only within a four-year period following the last day of the tax year concerned, but an exception is made for undeclared income obtained from countries or territories with clearly more favorable tax regimes, in which case the statute of limitations is 12 years.

### Taxpayer set-offs for other related-party transactions

There is no formal provision on this issue.

### Interest and penalties

#### Additional assessment payment deadline

Taxes are payable within 30 days from the date of assessment, on the combined amount of the defaulted tax and the appropriate compensatory interest.

#### Penalty on transfer pricing assessment

Specific transfer pricing penalties (from €500 up to €10,000) apply for failure to present transfer pricing documentation within the time frame determined by the tax authorities. Should the taxpayer be subject to a transfer pricing adjustment, no specific penalties apply.

In addition, depending on the circumstances, general tax penalties of up to €150,000 apply for refusal to provide information, or for providing incorrect or incomplete information.

#### Is interest charged on penalties?

No.

#### Is interest payable when a refund is due to the taxpayer?

Yes, compensatory interest applies if a refund is due to the taxpayer and the legal deadline for payment of the refund is not met.



### Reduction in transfer pricing penalties

Penalties may be reduced, depending on the circumstances.

### Advance Pricing Agreements (APAs)

#### Are APAs available?

APAs have been available since July 2008 through Ministerial Order #620-A/2008. Article 138 of the Portuguese Corporate Income Tax, effective 1 January 2014, allows taxpayers to enter into unilateral APAs even when they involve entities resident in countries that have concluded a tax treaty with Portugal.

#### APA filing fee

The filing fee for an APA application is between €3,150 and €35,000, depending on taxpayer turnover. These fees are reduced by 50 percent for renewals or revisions of existing APAs.

#### APA term of agreement

Maximum term of three years. Taxpayers may seek renewal.

### Competent authority

#### When may taxpayer submit tax adjustment to Competent Authority (CA)?

After notification of the tax assessment, or when any action that gives rise to, or is likely to give rise to, double taxation not in accordance with a double tax treaty has occurred.

#### May CA develop new settlement positions?

CA may issue a new position after administrative and/or judicial review. However, if a court decision is available, it must be reflected in the CA's position.

#### May taxpayer go to CA before paying tax?

Yes. A taxpayer may appeal the assessment or file for judicial review. Deferral of payment is subject to further conditions.

# Romania

## What's new

2014 saw an increased focus on transfer pricing audits in Romania, and a series of talks at the competent authorities level regarding potential amendments to transfer pricing documentation requirements, which are expected to enter into force in 2016.

## General information

### Tax authority and law

National Agency for Fiscal Administration and Ministry of Public Finance, Romanian Fiscal Code.

### Regulations, rulings, guidelines

Methodological norms of the Romanian Fiscal Code; Order 222/2008 regarding the content of the transfer pricing file issued by the National Agency for Fiscal Administration; Government Decision no. 529/2007 regarding the approval of advance pricing agreements (APAs) and advance fiscal solutions; the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations and the EU Code of Conduct on transfer pricing documentation.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

According to Romanian transfer pricing legislation, two legal entities are related parties if:

- One entity holds, directly or indirectly (through the shareholding of related entities) a minimum of 25 percent of the number/value of shares or voting rights in the other entity, or it effectively controls the other entity; or
- One entity holds, directly or indirectly (through the shareholding of related entities) a minimum of 25 percent of the number/value of shares or voting rights in the two entities.

An individual is a related party to a legal entity if she/he holds, directly or indirectly, including the shareholding of related entities, a minimum of 25 percent of the number/value of shares or voting rights in the legal entity, or she/he effectively controls the legal entity. Two individuals are related parties if they are spouses or relatives up to the third degree.

**Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to**

### a permanent establishment or branch?

The Romanian transfer pricing legislation provides for the use of transfer pricing analyses to determine the profits attributable to a permanent establishment or branch. In practice, however, the Romanian tax authorities may challenge this approach and try to perform different analyses to attribute profits to the permanent establishments. A binding ruling or advance pricing agreement (APA) is highly recommended.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price (CUP) method, the cost plus method, the resale price minus method, the profit split method, and the transactional net margin method (TNMM).

### Priority of methods

The method that yields the most accurate results has priority. However, transaction-based methods are preferred over profit-based methods. Furthermore, whenever the CUP method is not applied, this choice must be specifically supported.

### Availability of benchmarking/comparative data

Usually, the Amadeus Bureau van Dijk database is used. However, if there are other ways to obtain relevant financial data available for comparable companies, that information may be used.

### Are foreign comparables acceptable to local tax authorities?

Yes. When a benchmark study is performed, it is recommended that Romanian comparables be used. However, if there is not enough information within the Romanian market, comparable companies from the European Union or the international level are accepted.

## Services issues

### Are management fees deductible?

Yes, if certain conditions are met (the management services were actually rendered, there is evidence regarding the benefit obtained from the management services, and supporting documentation for those services is provided).

### Are management fees subject to withholding?

Yes, at a 16 percent rate. However, this is not applicable if a relevant income tax treaty is in place and a valid certificate of fiscal residence is made available.



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**May stock option costs be included in the cost base for intercompany services charges?**

There are specific rules in Romania regarding the treatment of stock options costs; generally, they are deductible if subject to individual income tax. A case-by-case analysis is necessary.

**Commissionaire arrangements**

**Are commissionaire arrangements allowed?**

Yes, commissionaire arrangements are allowed.

**Cost sharing agreements**

**Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?**

Yes, but these types of agreements are carefully scrutinized by the Romanian tax authorities. The allocation key used should demonstrate consistency in its application. The use of allocation keys should be clearly described, not only for the Romanian taxpayer, but for all entities to which the allocation key is applied. Local transfer pricing documentation should illustrate how the Romanian company benefits from the services received, and should provide details regarding the allocation key (and must demonstrate, with supporting documentation, that the services were actually provided).

**Are cost contribution or cost sharing payments deductible?**

Yes, but they must comply with certain domestic deductibility rules.

**Are cost contribution or cost sharing payments subject to withholding tax?**

Generally, no. A case-by-case analysis is necessary if no transfer of know-how is performed.

**What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?**

Romanian legislation does not include any requirements in this regard. Romania generally follows the OECD transfer pricing guidelines; however, those guidelines are not binding on the tax authorities.

**Documentation and tax return disclosures**

**Tax return disclosures**

The tax return does not include any information related to transactions concluded with affiliated parties; however, this information is included in the financial statements. Also, according to Order 222/2008 regarding transfer prices, transfer pricing documentation should disclose information regarding the industry, group, economic environment, type

of transactions, amounts relevant to those transactions, countries involved, number of related parties involved, functions performed, assets employed, risks undertaken, methods used, and benchmark analysis.

**Documentation requirements**

Taxpayers must prepare a transfer pricing documentation file in compliance with domestic legislative requirements, to demonstrate the extent to which intragroup transactions meet the arm's length principle.

**Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

No. Transfer pricing documentation must be submitted by the taxpayer only upon written request by the Romanian tax authorities. Also, it would be recommended that new benchmark studies be performed during the updating process.

**Deadline to prepare documentation**

During a tax audit, the tax authorities may request transfer pricing documentation, and the taxpayer would have up to three months to prepare the documentation. If the transfer pricing file is not prepared during the period granted by the tax authorities, the company may obtain an extension equal to the first period of time. However, given the fact that the terms for submitting the transfer pricing documentation tend to be around one month, it would be recommended to periodically update the documentation (preferably annually).

**Deadline to submit documentation**

Upon written request issued by the Romanian tax authorities.

**Deadline to file income tax return**

Starting with 2012, the deadline for submitting the annual tax return is March 25 of the year following the reporting year.

**Acceptable languages for documentation**

Documentation must be prepared in the Romanian language.

## Transfer pricing adjustments

**Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

The tax return does not include any information related to transfer pricing transactions. However, information about intercompany transactions is included in the financial statements of a company. As such, the value of intercompany transactions is the same in the income tax return as the one reflected in the financial statements. However, the transfer pricing adjustments performed by the Romanian tax authorities are made exclusively for fiscal purposes, without affecting the financial statements of the affiliated entity.

## Self-initiated adjustments

Year-end adjustments are not covered by the Romanian legislation on transfer pricing, and to what extent the Romanian tax authorities will accept such adjustments cannot be determined. In practice, the tax authorities analyze carefully year-end transfer pricing adjustments received by Romanian entities from related parties, and these adjustments should always be supported by a transfer pricing file. Otherwise, the transfer pricing adjustment will not be allowed by the tax authorities. For certainty, obtaining an advance pricing agreement is highly advisable.

## Statute of limitations on assessment for transfer pricing adjustments

The statute of limitation for corporate income tax assessments is six years.

## Taxpayer set-offs for other related-party transactions

Set-offs are allowed only on arm's length terms and conditions.

## Interest and penalties

### Additional assessment payment deadline

Romanian legislation does not include any regulations in this respect.

### Penalty on transfer pricing assessment

Adjustments to a company's profits are subject to 16 percent corporate income tax, interest, and penalties for late payment of taxes, according to the Fiscal Procedure Code. If transfer pricing documentation is incomplete or nonexistent, a fine of approximately €3,000 may be imposed.

## Is interest charged on penalties?

Interest and penalties are both applied to the additional corporate income tax assessed, at the following rates:

- 0.03 percent per day interest;
- 0.02 percent per day penalties for late payment.

## Is interest payable when a refund is due to the taxpayer?

If a refund is paid after the period prescribed by law, the taxpayer may request the payment of interest for this delay by the tax authorities.

## Reduction in transfer pricing penalties

Transfer pricing penalties could be reduced to zero if documentation is complete and the prices of the intercompany transactions are in compliance with the arm's length principle.

## Advance Pricing Agreements (APAs)

### Are APAs available?

Yes, APAs are available (unilateral and multilateral).

### APA filing fee

The filing fee for an APA ranges between €10,000 and €20,000. The fee for the modification of an existing APA is set between €6,000 and €15,000.

### APA term of agreement

The term of an APA may be up to five years.

## Competent authority

### When may taxpayer submit tax adjustment to Competent Authority (CA)?

When the taxpayer realizes that the transaction was not performed according to the arm's length principle. Also, if the related party's tax authority performs adjustments on the transaction carried out with the Romanian company.

### May CA develop new settlement positions?

The competent authority may reconsider and develop a new settlement position if the arm's length principle is not met.

### May taxpayer go to CA before paying tax?

If an adjustment is received from the Romanian tax authorities, the taxpayer can contest this adjustment in a court of justice. However, until a favorable answer is received from the court, the tax should be paid. If the adjustment is received indirectly from a related party, as a result of an audit by foreign tax authorities, this adjustment should be accepted by the Romanian fiscal authorities before modifying the corporate income tax computation.



# Russia

## What's new

Effective for 2015, Russia has introduced new tax rules for interest income and expenses. All interest income and expenses in connection with transactions between related parties should be calculated according to the transfer pricing rules. If a bank is a party to the transaction, then it should be compared with a predefined range.

Even though officially only a special department within the Federal Tax Service can conduct special transfer pricing audits regarding transactions recognized as controlled transactions, some local tax authorities have been investigating prices in uncontrolled transactions between related parties during general tax audits.

## General information

### Tax authority and law

Russian Tax Office (Federal Tax Service); Tax Code of the Russian Federation Part 1: Articles 105.1 — 105.25, 129.3, 129.4, 154, 161, 187, 208, 211, 220, 230, 250, 274, 301, 304, 307, 308, 333.33, 340, 346.6.

### Regulations, rulings, guidelines

Among the main guidelines issued by the Federal Tax Service regarding the new transfer rules are:

- Clarifications on the preparation and submission of transfer pricing documentation for control purposes (Letter N OA-4-13/14433@ 31.08.2012);
- The notification form for controlled transactions (Precept #MMB-7-13/524@ 27 July 2012); and
- Clarifications on the APA procedure (Letter No-OA-4-13/85@ 12 January 2012).

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

The following transactions are subject to transfer pricing control in Russia: all cross-border related-party transactions, cross-border transactions of goods traded on commodity markets (if the transaction amount exceeds RUB 60 million), cross-border transactions with offshore residents (if the transaction amount exceeds RUB 60 million), all transactions between domestic related parties with an annual income higher than RUB 1 billion from those transactions and other special thresholds.

### Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

In accordance with the current Russian transfer pricing rules, the income of permanent establishments taxable in the Russian Federation will be determined taking into account the functions performed, assets used, and economic (commercial) risks assumed.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the comparable profits method, and the profit split method.

### Priority of methods

The CUP remains the primary method, and may now be applied when information regarding at least one comparable transaction is available. In the case of the resale of goods, the resale price method is the primary method. The application of two or more methods is permitted.

### Availability of benchmarking/comparative data

The Russian Tax Code defines the sources of information (both official and publicly available, including various databases) that may be used for the determination of market price/profitability.

### Are foreign comparables acceptable to local tax authorities?

The Russian Tax Code specifically states that for purposes of determining the profitability range of Russian companies, the accounting and statistical data of foreign organizations may be used only if Russian comparables were not identified.

## Services issues

### Are management fees deductible?

Yes, expenses associated with the management of an organization or individual subdivisions thereof, and expenses for the acquisition of services involving the management of an organization or individual subdivisions thereof could be deducted (if the general criteria of tax deductibility are met: expenses should be economically justified and supported by the appropriate documents). Overall, management fees are carefully scrutinized by the tax authorities, and significant efforts are required to sustain claims for deductions.



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**Are management fees subject to withholding?**

Management fees paid to a foreign legal entity are not subject to Russian withholding tax.

**May stock option costs be included in the cost base for intercompany services charges?**

Stock option costs may be included in the cost base for intercompany services if properly structured.

**Commissionaire arrangements****Are commissionaire arrangements allowed?**

Yes, but in practice commissionaire arrangements may not work, because of Customs and VAT implications. Such arrangements may give rise to permanent establishment risk.

**Cost sharing agreements****Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?**

CCAs and CSAs are not specifically provided for in the legislation or regulations. Hence, the tax authorities usually do not accept such arrangements. The current transfer pricing rules do not contain a specific provision in this regard.

**Are cost contribution or cost sharing payments deductible?**

These payments are not deductible. Therefore, these arrangements should be formalized as service agreements.

**Are cost contribution or cost sharing payments subject to withholding tax?**

No, if the arrangement is structured as a service agreement.

**What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?**

Not applicable.

**Documentation and tax return disclosures****Tax return disclosures**

Taxpayers are required to file a notification of controlled transactions.

**Documentation requirements**

According to the Russian Tax Code, specific transfer pricing documentation could be requested by the tax authorities regarding all transactions recognized as controlled.

**Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

There is no requirement to keep contemporaneous documentation. However, documentation should be submitted within 30 days upon request. Failure to submit transfer pricing documentation could lead to additional penalties (up to 40 percent). The documentation content requirements generally are in line with the OECD format. A new benchmark study should be performed every year.

**Deadline to prepare documentation**

In accordance with the Russian Tax Code, taxpayers will be required to submit information on controlled transactions (i.e., notifications) in a calendar year to the tax authorities no later than May 20, and the tax authorities may request documentation after June 1 of the subsequent year.

**Deadline to submit documentation**

The tax authorities are allowed to request transfer pricing documentation from taxpayers no earlier than 1 June of the year following the calendar year in which the controlled transactions were entered into. Taxpayers are required to file documentation with the tax authorities within 30 days after receiving a request.

**Deadline to file income tax return**

In general, income tax returns must be filed no later than 28 March following the end of the tax year.

**Acceptable languages for documentation**

Documentation must be in Russian, or include a translation into Russian.



### Transfer pricing adjustments

**Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

Yes, book/tax differences are allowed. Transfer prices should be reflected primarily on an income tax return, and in some cases, on other tax returns (for example, VAT and the mineral extraction tax).

### Self-initiated adjustments

The Russian Tax Code allows taxpayers to make adjustments to the tax base in accordance with the chosen transfer pricing method (i.e., voluntary adjustments), provided these do not lead to a reduction in tax liabilities. Hence, the law does not provide for downward adjustments.

### Statute of limitations on assessment for transfer pricing adjustments

Three years from tax year-end.

### Taxpayer set-offs for other related-party transactions

There is no formal provision on this topic.

### Interest and penalties

#### Additional assessment payment deadline

There are no specific regulations applicable to transfer pricing. The general settlement procedure is applicable.

#### Penalty on transfer pricing assessment

Starting in 2014, transfer pricing penalties equal to 20 percent of the amount of additional tax payable will be introduced. A penalty of 40 percent of the underpaid tax (but not less than RUB 30,000) will be applied in 2017, and will be used if the price/profitability is outside the market range (resulting in

an underpayment of tax) and if the required transfer pricing documentation has not been prepared.

#### Is interest charged on penalties?

No.

#### Is interest payable when a refund is due to the taxpayer?

Yes, after the deadline for payment of a refund. An amount of tax recovered in excess will be refundable, together with any interest assessed thereon. Interest will be assessed on an amount of tax recovered in excess from the day following the day of recovery up to and including the day on which the refund actually takes place.

### Reduction in transfer pricing penalties

No specific provision. However, the general rules for reduction of penalties may apply.

### Advance Pricing Agreements (APAs)

#### Are APAs available?

APAs are available for "major taxpayers" (those with annual tax payments exceeding RUB 1 billion or annual revenue/assets exceeding RUB 20 billion), which may enter into an APA with the tax authorities.

#### APA filing fee

Starting in 2015, the application fee for an APA request is RUB 2 million.

#### APA term of agreement

An approved APA would be valid for three years, and may be extended for two additional years at the taxpayer's request.

### Competent authority

#### When may taxpayer submit tax adjustment to Competent Authority (CA)?

There is no formal procedure.

#### May CA develop new settlement positions?

There is no formal procedure.

#### May taxpayer go to CA before paying tax?

There is no formal procedure.

# Singapore

## What's new

The Inland Revenue Authority of Singapore (IRAS) on 6 January 2015 released revised transfer pricing guidelines. The new, comprehensive guidelines replace the transfer pricing guidelines issued in 2006, and three supplementary guidelines/circulars issued in 2008 and 2009.

The most significant change in the revised guidelines is the IRAS requirement and expectation that taxpayers prepare and maintain transfer pricing documentation to substantiate that their related-party dealings are at arm's length. The concept of contemporaneous documentation has been defined in the new guidelines. The new guidelines also contain various updates to key transfer pricing principles and approaches.

## General information

### Tax authority and law

Inland Revenue Authority of Singapore (IRAS); Section 34D, included in Singapore Income Tax Act in 2010, establishes the legal requirement for related-party transactions to be carried out at arm's length. Section 34D provides IRAS with the legal authority to enforce the arm's length principle and make adjustments if related-party transactions are not carried out on an arm's length basis.

### Regulations, rulings, guidelines

Transfer pricing guidelines were officially issued on 23 February 2006. They endorse the arm's length principle, as defined by the OECD. IRAS issued supplementary guidelines on APAs on 20 October 2008. Additional guidelines on related-party loans and services were issued on 23 February 2009.

IRAS on 6 January 2015 released revised transfer pricing guidelines. The new, comprehensive guidelines replace the transfer pricing guidelines issued in 2006, and the three supplementary guidelines/circulars issued in 2008 and 2009.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

Singapore's tax authority expects related-party transactions to be carried out at arm's length. Persons are considered related parties when one person, directly or indirectly, has the ability to control the other, or when both of them, directly or indirectly, are under the control of a common

person. Related parties include associated enterprises and separately taxable entities of an enterprise, such as permanent establishments of the enterprise.

### Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

Yes, the use of transfer pricing analyses to compute profits attributable to a permanent establishment or branch is permissible.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the transactional net margin method (TNMM), and the profit split method.

### Priority of methods

Taxpayers must use the method that produces the most reliable results.

### Availability of benchmarking/comparative data

Several business databases are available to identify comparable companies. Financial data from published accounts is available from the Accounting and Corporate Regulatory Authority.

### Are foreign comparables acceptable to local tax authorities?

The Singapore tax authority had previously not published specific guidelines on this issue. In practice, the IRAS shows a clear preference for local comparables, and foreign comparables would likely be more acceptable if obtaining domestic comparables is not feasible.

The 2015 transfer pricing guidelines have now provided clear guidance on the selection of comparables. First, the new guidelines indicate a preference for listed companies over unlisted companies as comparables, on the basis and belief that the former have more publicly available information.

Second, the guidelines state an explicit preference for local companies as comparables. A taxpayer may use suitable regional comparables, but only if an attempt has been made to identify local comparables and an insufficient number of such comparables is available.



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Lastly, the guidelines provide guidance on the admission and rejection of loss-making comparables. Generally, a comparable with a weighted average loss for the tested period or that has incurred a loss for more than half of the tested period is considered unreliable as a benchmark.

### Services issues

#### Are management fees deductible?

Yes, if they are incurred wholly and exclusively in the production of assessable income of the payer, are not referable to a stewardship function, and the quantum satisfies the arm's length standard. For reimbursement/cost allocation, the expense must not be specifically prohibited under the Singapore Income Tax Act.

#### Are management fees subject to withholding?

Following the enactment of the Income Tax (Amendment) Act 2009, withholding tax will no longer apply to management fees for services rendered by nonresidents entirely outside of Singapore, subject to certain conditions.

#### May stock option costs be included in the cost base for intercompany services charges?

If this cost is considered part of the fully absorbed cost required to provide the service, it should be included in the determination of the arm's length service fee.

### Commissionaire arrangements

#### Are commissionaire arrangements allowed?

Yes, but these arrangements give rise to significant risk of creating a permanent establishment.

### Cost sharing agreements

#### Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?

There is no specific statutory authority. The Singapore tax authority is likely to follow the OECD transfer pricing guidelines. Some guidelines on cost pooling arrangements are available in additional guidelines on related-party loans and services issued on 23 February 2009, now consolidated into the 2015 transfer pricing guidelines), but such arrangements apply only to services.

#### Are cost contribution or cost sharing payments deductible?

Yes, provided they are incurred wholly and exclusively in the production of assessable income of the payer and do not include capital expenditure (e.g., depreciation).

#### Are cost contribution or cost sharing payments subject to withholding tax?

No, subject to certain exceptions.

#### What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?

Deductibility will depend on the nature of the intangibles. If the payment is for goodwill or for acquiring assets, it is not deductible. If it is a license fee for the right to use the intangible, it would generally be tax deductible.

### Documentation and tax return disclosures

#### Tax return disclosures

There are no disclosure requirements for year of assessment 2004 and subsequent periods (financial years ending after 31 December 2002). For earlier years, taxpayers are required to disclose the value and counterparty of some related-party transactions, and whether arm's length prices were charged.

#### Documentation requirements

Contemporaneous documentation is now required under the 2015 transfer pricing guidelines, as part of the record-keeping requirements for tax.

Safe-harbor thresholds for exemption from documentation are available, but limited to specific situations.

#### Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?

The 2015 transfer pricing guidelines define contemporaneous documentation as documentation that must be adequate and prepared no later than the tax return filing date for the financial year in which the transaction takes place. For example, transfer pricing documentation for transactions carried out in financial year 2014 should be prepared no later than 30 November 2015.

The new guidelines contain an expanded list of required information, particularly pertaining to information at the group level, which will require more time and effort by the taxpayers to document. However, the guidelines do not require or advocate that documentation be prepared in a "master file and local file" format, and there is also no country-by-country reporting requirement.

The new guidelines state that taxpayers should update their transfer pricing documentation when there are material changes; absent any such major changes, transfer pricing documentation should be updated at least once every three years. A financial update of the benchmark should be conducted annually.

#### **Deadline to prepare documentation**

Under the 2015 transfer pricing guidelines, documentation must be prepared no later than the tax return filing date for the financial year in which the transaction takes place.

#### **Deadline to submit documentation**

Under the 2015 transfer pricing guidelines, transfer pricing documentation is not required to be submitted together with the tax return. The documentation should be kept by taxpayers and submitted to IRAS within 30 days when requested to do so.

#### **Deadline to file income tax return**

November 30 of each calendar year.

#### **Acceptable languages for documentation**

Documentation must be in English.

#### **Transfer pricing adjustments**

##### **Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

The transfer prices reflected on an income tax return and financial statements should be the same.

#### **Self-initiated adjustments**

The 2015 transfer pricing guidelines indicate that self-initiated retroactive adjustments are generally not allowed as a tax deduction, although the guidelines do not preclude the possibility of bringing such adjustments (if they result in additional Singapore income) to tax.

#### **Statute of limitations on assessment for transfer pricing adjustments**

Six years from the year of assessment to which the income/expense is related. Effective from year of assessment 2008, this period is reduced to four years. In cases of tax evasion, the period is unlimited.

#### **Taxpayer set-offs for other related-party transactions**

Generally not permitted.

#### **Interest and penalties**

##### **Additional assessment payment deadline**

Additional tax is payable within one month from the date of the Notice of Additional Assessment, unless the "stand over" of tax applies.

##### **Penalty on transfer pricing assessment**

There are no specific transfer pricing penalties. Existing penalty provisions under the Singapore Income Tax Act are applicable, ranging from 100 percent to 400 percent of underpaid tax, and may include fines and imprisonment.

##### **Is interest charged on penalties?**

There is no additional interest charged on penalties.

##### **Is interest payable when a refund is due to the taxpayer?**

No.

##### **Reduction in transfer pricing penalties**

There is no provision regarding this issue.

#### **Advance Pricing Agreements (APAs)**

##### **Are APAs available?**

Yes (unilateral and bilateral). The 2015 transfer pricing guidelines provide guidance on filing an APA request.

##### **APA filing fee**

There is no filing fee for an APA application.

##### **APA term of agreement**

Generally three to five years forward. Rollback may be allowed on a case-by-case basis.

#### **Competent authority**

##### **When may taxpayer submit tax adjustment to Competent Authority (CA)?**

Singapore follows the mutual agreement procedure for the pertinent treaty, as well as that stated in the transfer pricing guidelines.

##### **May CA develop new settlement positions?**

Yes.

##### **May taxpayer go to CA before paying tax?**

No. Tax must be settled in accordance with the Singapore Income Tax Act first, unless the Singapore tax authority agrees to "stand over" such tax liability, on the condition that late payment penalties would be imposed.



# Slovakia

## What's new

The Slovak Republic expanded the obligation to prepare transfer pricing documentation to include domestic related parties, as of 2015. Further, new guidelines were issued in 2014, introducing three types of documentation, based on the taxpayer's size. In the area of tax controversy, a growing number of tax audits, as well as a more professional approach by the tax authorities are apparent.

## General information

### Tax authority and law

Slovak tax authorities; Section 2(n) and (r), Section 17(5), and Section 18 of ITA.

### Regulations, rulings, guidelines

ITA, MF/8120/2014-721, OECD transfer pricing guidelines.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

The definition of related parties for transfer pricing purposes is found in Section 2 (n), (o), (p), and (r) of the ITA. The nature/extent of a transaction is decisive, as a substance-over-form rule applies in the Slovak Republic.

### Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

Yes. The local transfer pricing rules follow the principles and standards laid down by the OECD Report on the Attribution of Profits to Permanent Establishments.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price (CUP) method, the resale price method (R-), the cost plus method (C+), the profit split method (PS), and the transactional net margin method (TNMM).

### Priority of methods

There is no priority of methods.

### Availability of benchmarking/comparative data

Pan-European database Amadeus is available to the Slovak tax authorities. Companies are entitled to support their transfer pricing arrangements with benchmark analyses.

### Are foreign comparables acceptable to local tax authorities?

Yes. The Slovak tax authorities prefer Slovak comparables. If not available, relevant foreign comparables may be considered. The Slovak tax authorities generally accept Pan-European benchmark searches.

## Services issues

### Are management fees deductible?

Generally, yes; however, tax deductibility is determined on a case-by-case basis.

### Are management fees subject to withholding?

It depends on the pertinent tax treaty. In most cases, there is no withholding tax on management fees.

### May stock option costs be included in the cost base for intercompany services charges?

Generally, yes. However, Slovak tax legislation does not provide any guidance on this subject, and the Slovak tax authorities' position is not known because of the lack of practical experience.

## Commissionaire arrangements

### Are commissionaire arrangements allowed?

Yes.

## Cost sharing agreements

### Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?

Generally, yes; however, tax deductibility is determined on a case-by-case basis.

### Are cost contribution or cost sharing payments deductible?

Generally, yes; however, tax deductibility is determined on a case-by-case basis.

### Are cost contribution or cost sharing payments subject to withholding tax?

Generally, no.

### What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?

Payments are deductible or amortizable.



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## Documentation and tax return disclosures

### Tax return disclosures

Taxpayers must disclose in their annual tax return some general information regarding transactions with related parties and their value.

### Documentation requirements

In August 2014, the Ministry of Finance of the Slovak Republic published guidelines -- MF/8120/2012-721—distinguishing the content of documentation required for entities applying IFRS, micro accounting units, and others.

**Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

With respect to the annual updates of documentation, a complete documentation in line with the guidance is requested. However, the documentation could be used in future years, provided no significant changes affecting the valuation of controlled transactions occur.

### Deadline to prepare documentation

Documentation must be prepared up front for the relevant taxation period.

### Deadline to submit documentation

Within 15 days from the date of the request from the tax authorities. Documentation may be requested even if no tax audit is being conducted.

### Deadline to file income tax return

The tax return must be filed within three calendar months following the last day of the tax period, unless the ITA provides otherwise; however, the period for submission of documentation by the taxpayer to the tax authorities is 15 days from receipt of the request.

### Acceptable languages for documentation

Transfer pricing documentation must be submitted in the Slovak language. However, at the taxpayer's request, the tax authorities may allow the transfer pricing documentation to be submitted in a language other than the Slovak language.

## Transfer pricing adjustments

**Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

The transfer prices reflected on an income tax return may differ from those reflected in financial statements.

### Self-initiated adjustments

Upward adjustments are permitted; it is unclear whether a decreasing adjustment would be allowed.

**Statute of limitations on assessment for transfer pricing adjustments**

Ten years from the end of the year in which the annual income tax return should be filed.

**Taxpayer set-offs for other related-party transactions**

Generally not permitted.

## Interest and penalties

**Additional assessment payment deadline**

Additional tax is usually payable within 30 days of receipt of the assessment.

**Penalty on transfer pricing assessment**

Ordinary penalties apply. In case of a tax assessment, the taxpayer must pay a penalty of three times the European Central Bank (ECB) basic rate, or 10 percent (whichever is higher) on the additional tax assessed.

**Is interest charged on penalties?**

Late payment interest on penalties, amounting to four times the European Central Bank (ECB) basic rate, or 15 percent (whichever is higher) per annum, may be charged if the penalty is not paid by the statutory deadline.

**Is interest payable when a refund is due to the taxpayer?**

Interest is payable only when a refund is not paid to the taxpayer within the statutory deadline as stipulated by the law.

**Reduction in transfer pricing penalties**

There is no provision in this regard. Penalties may be reduced or waived if the taxpayer files a request and consequently negotiates with the tax authorities on a case-by-case basis.

## Advance Pricing Agreements (APAs)

### Are APAs available?

Yes. APAs cover only the appropriateness of the method used, not the margin/mark-up.

### APA filing fee

For unilateral APAs, a fee must be paid to the state authority amounting to 1 percent of the transaction volume in question, with a minimum of EUR 4,000 and a maximum of EUR 30,000. For bilateral APAs, the fee payable to the state authority is equal to 2 percent of the transaction volume in question, with a minimum of EUR 5,000 and a maximum EUR 30,000.

### APA term of agreement

The maximum term is five years.

## Competent authority

### When may taxpayer submit tax adjustment to Competent Authority (CA)?

There is no formal procedure. The Slovak Republic follows the mutual agreement procedure for pertinent treaty provisions.

### May CA develop new settlement positions?

Yes.

### May taxpayer go to CA before paying tax?

Yes, but liability to pay tax will not be avoided.



# Slovenia

## What's new

The transfer pricing area in Slovenia is developing, and has in recent years become the focus of tax audit procedures. The tax authorities have organized a transfer pricing team specializing in transfer pricing inspections. There is a rising trend of transfer pricing adjustments being imposed on audited taxpayers. The basis for the conclusion of advance pricing agreements (APAs) was established in 2014; however, detailed rules and procedures have not yet been adopted in Slovene legislation.

## General information

### Tax authority and law

Tax Administration of the Republic of Slovenia. Corporate Income Tax Act (Official Gazette of the Republic of Slovenia, no. 117/06 to 50/14), articles 16-19, 32, 72; Tax Procedure Act (Official Gazette of the Republic of Slovenia, no. 13/11 to 90/14) article 382; Financial Administration Act (Official Gazette of the Republic of Slovenia, no. 25/14) article 11.

### Regulations, rulings, guidelines

Rules on transfer prices (Official Gazette of the Republic of Slovenia, no. 141/06 to 4/12).

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

Transfer pricing rules apply to transactions between entities that are connected either through direct or indirect ownership, control, or voting rights equal to at least 25 percent, or if one entity controls the other on the basis of a contract or terms of transactions different from those that are or would be achieved between unrelated parties.

### Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

Yes.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price method (CUP), the resale price method, the cost plus method, the profit split method, and the transactional net margin method (TNMM).

## Priority of methods

The most appropriate method considering the circumstances should be used. If the comparable market price can be determined with equal reliability using transaction-based methods or profit-based methods, the use of traditional transaction-based methods is preferred. The comparable uncontrolled price method is preferred over other methods.

## Availability of benchmarking /comparative data

Pan-European database Amadeus is available to the Slovene tax authorities. Companies are entitled to support their transfer pricing arrangements with benchmark analyses.

## Are foreign comparables acceptable to local tax authorities?

Foreign comparables are acceptable. Pan-European benchmark searches are accepted by the Slovenian tax authorities.

## Services issues

### Are management fees deductible?

Generally, management fees are considered tax deductible for corporate income tax purposes, provided that:

- The management services were actually performed;
- The services are properly documented (for example, through an agreement as to the basis for the services, invoices, and evidence on the services performed); and
- The price for the services has been set in accordance with the arm's length principle.

It is also important that management and administrative services do not include shareholder activities or duplicative activities, because such costs would not be tax deductible.

### Are management fees subject to withholding?

Generally, management fees are not subject to withholding tax, but there are exceptions to the general rule. For example, if it is deemed that no service has been performed and that therefore, in substance, the payment should be viewed as a hidden profit distribution similar to dividends, the payment would be subject to withholding. Moreover, payments for certain services provided to companies established in countries on the "black list" issued by the Ministry of Finance, considered tax havens with favorable tax regimes, would also be subject to withholding.



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**May stock option costs be included in the cost base for intercompany services charges?**

There is no specific guidance regarding stock option costs as part of intercompany service charges. The basic conditions to test the tax deductibility for services should be observed. The tax deductibility of the intercompany charge would be determined on a case-by-case basis.

**Commissionaire arrangements**

**Are commissionaire arrangements allowed?**

Yes.

**Cost sharing agreements**

**Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?**

There is no specific guidance in relation to CAAs and CSAs. The tax authorities allow such arrangements for intragroup services when they are based on the cost allocation method.

**Are cost contribution or cost sharing payments deductible?**

Yes, provided the price is set at arm's length and costs are necessary to generate taxable income.

**Are cost contribution or cost sharing payments subject to withholding tax?**

Generally, they are not. Withholding tax may be levied on payments made for the transfer of intellectual property, interest, or if the service provider is established in a "blacklisted" country. The list of blacklisted countries is published by the tax authorities and is regularly updated.

**What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?**

It depends on the accounting treatment of cost. The payments are tax deductible or depreciated over the useful life of the intangible.

**Documentation and tax return disclosures**

**Tax return disclosures**

The taxable entity must disclose in its tax return the total value of its intercompany transactions for each related entity.

**Documentation requirements**

Transfer pricing documentation should be prepared for each fiscal year, if a taxable entity has entered into intercompany transactions with foreign entities. Documentation should include a description, value, economic conditions, and transfer pricing method for each type of transaction. Additional documentation

requirements are set forth in Article 382 of the Tax Procedure Act.

**Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

Transfer pricing documentation should be prepared separately for each fiscal year. There is no official guidance on the period of validity of the benchmark study; however, the tax authorities tend to accept it for three consecutive fiscal years. After that period, a new benchmark study should be prepared.

**Deadline to prepare documentation**

The deadline for preparation of transfer pricing documentation is the filing date of the corresponding year's corporate tax return.

**Deadline to submit documentation**

Transfer pricing documentation need not be submitted to the tax authorities. In the event of a tax audit, documentation should be submitted to the tax authorities immediately upon request. If a taxpayer cannot submit the documentation immediately, the tax authorities will set a deadline cannot be shorter than 30 days and longer than 90 days, depending on the volume and complexity of data.

**Deadline to file income tax return**

The tax return should be submitted within three months after the end of a fiscal year.

**Acceptable languages for documentation**

In general, documentation should be made available to the tax authorities in the Slovene language. The masterfile may be prepared in a foreign language and translated if requested by the tax inspector, whereas the local country file should always be prepared in Slovene.

**Transfer pricing adjustments**

**Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

Book and tax differences are allowed. Adjustments should be made in the annual tax return when the tax base is too low because of intercompany prices that were not set at arm's length.

### **Self-initiated adjustments**

Self-initiated adjustments are expected when intercompany prices are not arm's length. Such adjustments are mandatory when the tax base should be increased.

### **Statute of limitations on assessment for transfer pricing adjustments**

The statute of limitations is five years after submission of the tax return for a given tax period. The period of limitation is interrupted by any official act by the tax authorities to levy the tax of which the taxable person is notified. The limitation period of the right to assessment expires 10 years from the date when the period started running.

### **Taxpayer set-offs for other related-party transactions**

There is no formal provision in this regard.

### **Interest and penalties**

#### **Additional assessment payment deadline**

The payment is due within 30 days after receipt of an official assessment issued by the tax authorities.

#### **Penalty on transfer pricing assessment**

The amount of the penalty depends on the size of the company. For medium-sized and large companies, the penalty can be up to 45 percent of the underpaid tax, but not more than €300,000. The penalty for the person responsible for the company can be up to €5,000.

#### **Is interest charged on penalties?**

No, interest is not charged on penalties.

#### **Is interest payable when a refund is due to the taxpayer?**

Interest is payable only in case of a refund that is the result of a wrongful assessment by the tax authorities. The interest rate is 0.0274 percent per day.

#### **Reduction in transfer pricing penalties**

It is up to the tax officer to decide whether penalties will be imposed. Minor unintended irregularities might be excused.

### **Advance Pricing Agreements (APAs)**

#### **Are APAs available?**

According to the new Financial Administration Act, APAs are available. Detailed rules and procedures have not yet been adopted for these agreements in Slovene legislation, but the inclusion of this provision in national legislation provides the basis for the conclusion of these agreements.

The rules on APAs will follow the OECD's Transfer Pricing Guidelines for Multinational Enterprises and tax Administrations.

#### **APA filing fee**

No filing fees for APA applications have been established.

#### **APA term of agreement**

No rules regarding APA terms have been established.

### **Competent authority**

#### **When may taxpayer submit tax adjustment to Competent Authority (CA)?**

There are no special provisions in the legislation. A request may be submitted after the proposed adjustment is communicated to the taxpayer in writing when a tax audit is finished.

#### **May CA develop new settlement positions?**

There are no special provisions in the legislation.

#### **May taxpayer go to CA before paying tax?**

There is no formal procedure in the legislation; however, the general practice is that taxes must be paid in accordance with the tax authorities' decision based on the findings of the tax audit. After all taxes due are settled, the mutual agreement procedure (MAP) can start. Further to the OECD's recommendation, taxpayers may also consider filing a MAP request and/or notifying the appropriate competent authorities of a potential MAP case as soon as it appears likely that an issue will result in taxation contrary to the applicable convention.



# South Africa

## What's new

Transfer pricing has been through a series of changes in South Africa recently, with a radical overhaul in 2012 and incremental changes since then. In 2014, the country saw draft legislation that sought to change the rules regarding the secondary adjustment mechanism, which was finally enacted in early 2015. In addition, South Africa has appointed a committee to consider the action points recommended under the OECD BEPS program from a South African perspective, which has led to the publication of a series of recommendations. The recommendations for the most part follow the OECD's approach. Recent press releases from SARS have indicated the possibility of the introduction of a long-awaited APA program, and the possibility of statutory documentation requirements.

## General information

### Tax authority and law

South African Revenue Service (SARS); section 31 of the Income Tax Act No 58 of 1962 (effective July 19, 1995). Section 9D also requires the consideration of transactions between a controlled foreign entity (CFE) and a connected person to reflect an arm's length price consistent with the provisions of Section 31.

An amended version of section 31 became effective for years commencing after April 1, 2012. The changes have affected the consequences of adjustments, as discussed below. In addition, the amended section has changed the emphasis from arm's length pricing to the arm's length nature of the entire relationship between the parties. Therefore, SARS will consider not merely the pricing of a transaction but also any artificial (non-arm's-length) aspects of the entire relationship. SARS were expected to issue a new practice note during 2013 to take these changes into account, but the note had not been issued as of January 2015. In addition, the amended section 31 resulted in the onus being placed on the taxpayer to return on an arm's length basis, whereas, under the previous legislation, the Commissioner had a discretion to adjust the consideration. Thus, the key issue is that the burden of proof has shifted from the Commissioner (SARS) to the taxpayer.

### Regulations, rulings, guidelines

Practice Note 7, issued August 6, 1999, as well as the OECD Guidelines. Practice Note 2 (thin capitalization), issued May 14, 1996, and amended

May 17, 2002 (this note is no longer recognized, although technically it remains in force) and a draft Interpretation Note issued by the SARS. Because this is still in draft form there is some doubt around the treatment of inbound intragroup financial assistance. A final version of the note is expected soon.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

"Connected person" relationships are defined in section 1 of the South African Income Tax Act.

### Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

In practice, a transfer pricing approach is usually considered appropriate for determining the profits attributable to a permanent establishment or branch. However, the approach sometimes needs to be modified slightly to take into account specific provisions in the relevant double tax agreement (DTA). For example, most DTAs permit the deduction, from the income of the permanent establishment, of the costs of head office management services provided to the permanent establishment, but do not permit these costs to be marked up. SARS has not stated whether it intends to adopt the new Article 7 of the OECD model tax treaty and associated commentary, and we expect that in negotiating new DTAs it may include a reservation to this effect.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the profit split method (contribution analysis or residual analysis), and the transactional net margin method (TNMM).

### Priority of methods

There is no priority of methods; however, the most appropriate method should be selected and the reason for the choice should be documented.

### Availability of benchmarking/comparative data

Comparables data regarding South African companies are generally not available. South Africa has only limited requirements for filing Statutory Accounts, which are restricted to publicly listed companies. These are also rare, and often cannot be reliably applied because of extensive intragroup transactions.



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**Are foreign comparables acceptable to local tax authorities?**

Yes. SARS has not expressed a preference for specific foreign comparables, but requires a reasonable degree of comparability. Generally, Pan-European comparables are accepted.

**Services issues**

**Are management fees deductible?**

Generally, yes. When an indirect method of allocation has been used, it is often necessary to apply to the South African Reserve Bank to remit the management fees. This application must be made on an annual basis. The Reserve Bank delegates the authority to permit the fees to its authorized dealers, the main banks, and depending on their level of comfort, the applications may be escalated to the Reserve Bank for approval.

**Are management fees subject to withholding?**

No. However, withholding taxes are being introduced in certain circumstances effective 1 January 2016.

**May stock option costs be included in the cost base for intercompany services charges?**

Yes, the total costs of employing certain individuals may be included in the cost base.

**Commissionaire arrangements**

**Are commissionaire arrangements allowed?**

Commissionaire arrangements as such are not recognized by South African law. However, a very similar structure is to use an agent for an undisclosed principal.

**Cost sharing agreements**

**Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?**

Yes. South Africa follows Chapter VIII of the OECD transfer pricing guidelines. However, outbound payments by a South African entity may require exchange control approval.

**Are cost contribution or cost sharing payments deductible?**

Most payments would be deductible under Income Tax Act Section 11(a) — the general deduction formula. However, payments might not be deductible if they represent contributions toward the cost of a capital asset, such as intellectual property (for instance, R&D contributions). Therefore, the deductibility of payments must be considered on a case-by-case basis.

**Are cost contribution or cost sharing payments subject to withholding tax?**

No. South Africa has enacted legislation imposing withholding tax on service fees, effective 1 January 2016. However, this withholding tax will apply only to service fees derived from a South African source. It is not yet entirely clear when service fees will be considered to be so derived.

**What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?**

Payments usually may be claimed as capital allowances over the useful life of the intangible. However, the precise tax effects will depend on the nature of the agreement between the parties.

**Documentation and tax return disclosures**

**Tax return disclosures**

A taxpayer is required to disclose in its tax return whether it has a transfer pricing policy document. Submission of the document is optional, although it must be available upon request (if the taxpayer disclosed that it had a document). Recent changes to the income tax return have significantly increased the level of disclosure required. Depending on responses given to more general questions, further schedules may be created that require more granular disclosure at the transactional level.

**Documentation requirements**

South Africa does not have statutory transfer pricing documentation requirements. Generic statutory requirements are followed for documentation retention purposes. Practice Note 7 broadly follows OECD transfer pricing guidelines para. 5.4. While there is no requirement to have documentation, the tax return does ask whether documentation is available, and SARS has recommended that taxpayers prepare documentation to cover the relevant intercompany transactions.

With the introduction of the self-assessment provisions, there is arguably an inherent requirement for some degree of analysis to be undertaken, which may be construed as a documentation requirement. Further, SARS has recently indicated its intention to consider statutory documentation requirements.

**Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

Documentation is not compulsory. However, taxpayers are strongly advised to have documentation if they are parties to significant cross-border intragroup transactions. The South African documentation requirements are very similar to those found in the OECD transfer pricing guidelines. One such requirement is that the documentation must be contemporaneous. This means that documentation should evolve so that it continues to reflect the taxpayer's transactions and circumstances. However, there is no specific form of update prescribed. In practice, annual updates may take the form of a memorandum that supplements the information in a previous document, or fresh documentation. As a general rule of thumb, it is considered that comparables should be updated every three years.

South Africa has also indicated that it will likely adopt the OECD revised guidance on documentation including the recommendations on timing.

**Deadline to prepare documentation**

There is no formal deadline for preparing documentation. However, there are questions in the income tax return regarding whether or not a transfer pricing policy has been prepared. In addition, SARS is likely to adopt the OECD recommendations on timing in relation to documentation.

The requirements of the tax return have also varied from year to year. In some years taxpayers who record that they have documentation have been required to submit it. Therefore, taxpayers should carefully consider the submission requirements each year. It is considered a best practice for taxpayers to submit their documentation even in years when it is not required by SARS.

**Deadline to submit documentation**

If prepared, documentation must be submitted upon request.

**Deadline to file income tax return**

Tax returns must be submitted within one year of the end of the relevant financial year.

**Acceptable languages for documentation**

In theory, documentation could probably be in any of South Africa's 11 official languages. In practice, however, documentation is invariably in English, and English is the functional language of SARS

**Transfer pricing adjustments**

**Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

Book/tax differences are allowed. There may be differences between the accounting and taxable income due to timing differences or due to differences in the treatment of some items for accounting purposes and tax purposes. In addition, a transfer pricing adjustment can be included in the tax computation as an adjusting item to calculate the final taxable income without having to be adjusted for the financial statements.

An example of this treatment may apply as a result of the amended transfer pricing rules, in terms of which a transfer pricing adjustment gives rise to a deemed dividend by the South African entity to the foreign related entity. This deemed dividend is subject to dividends withholding tax at the rate of 15 percent. The availability of treaty relief is uncertain, but considered unlikely.

**Self-initiated adjustments**

South African law changed for tax years beginning on or after 1 April 2012. Adjustments are no longer at the discretion of SARS, but are required to be made by the taxpayer itself at year-end.

**Statute of limitations on assessment for transfer pricing adjustments**

Three years from the date of the original assessment when full disclosure has been made. There is no time limitation in the event of inaccurate or incomplete disclosures.

In terms of the self-assessment provisions, this could be extended to five years.

**Taxpayer set-offs for other related-party transactions**

Practice Note 7 recognizes that such arrangements do sometimes occur between independent enterprises and should be assessed in terms of the arm's length principle. However, the South African exchange control implications of such arrangements must be carefully considered, as set-offs are generally not permitted.

## Interest and penalties

### Additional assessment payment deadline

Outstanding tax must be paid by the second date reflected on the assessments; this is 30 days after the date of assessment. Penalties (at 20 percent of the unpaid tax) and interest are payable if the second tax payment by a corporate taxpayer (payable at year-end) is less than 80 percent of the actual tax payable for the year in question. However, the tax authorities may waive this penalty in whole or in part if they are satisfied that the second provisional return was calculated on a reasonable basis and that the estimated taxable income was not deliberately or negligently understated.

In addition, there are certain “understatement penalties” that apply when a taxpayer is in default in certain prescribed ways. These range from 5 percent to 200 percent of the unpaid tax, depending on the circumstances, including the degree of fault on the taxpayer’s part.

### Penalty on transfer pricing assessment

For fiscal years beginning on or after 1 April 2012, transfer pricing adjustments give rise to a deemed loan by the taxpayer to the foreign related party. This is referred to as a secondary adjustment. The taxpayer is therefore subject to tax on interest on this deemed loan. However, to the extent the deemed loan is regarded as having been repaid to the taxpayer by the end of the year of assessment in which the primary adjustment was made, this adjustment will not be treated as a loan for purposes of section 31.

However, effective 1 January 2015, the deemed loan secondary adjustment mechanism was replaced with a deemed dividend mechanism. This means that all existing deemed loans will be treated as deemed dividends deemed payable on 1 January 2015 (subject to dividends withholding tax at the rate of 15 percent). Transfer pricing adjustments made after that date are subject to the deemed dividend secondary adjustment mechanism.

Payment for the withholding tax is generally due six months after the deemed date of payment; however, for secondary loan transactions that are recharacterized as dividends on 1 January 2015, payment is due by the end of the following month (February 2015). This misalignment has caused some concern and is a matter being brought to the National Treasury’s attention.

An unresolved issue at this point is whether there might be DTA relief from the withholding tax when the counterparty to the adjusted transaction is a shareholder in the South Africa entity and is resident in a country with which South Africa has entered into a DTA.

The normal penalty regime also applies.

### Is interest charged on penalties?

Yes, interest is charged on penalties at the prescribed rate, which is currently 8.50 percent.

### Is interest payable when a refund is due to the taxpayer?

Yes, interest is payable at the prescribed rate — currently 4.50 percent. Interest is calculated from the date of the assessment.

### Reduction in transfer pricing penalties

The deemed dividend mechanism is currently applied automatically, and there is no room for negotiation to reduce the amount. SARS has less discretion to reduce penalties than it used to have before recent legislative changes, because the new rules apply penalties according to certain prescribed objective criteria. However, some negotiation regarding those criteria is possible.

In practice, settlements are often reached for the payment of agreed amounts without either side (SARS or the taxpayer) conceding the merits. The precise penalty amount that applies in such circumstances is often not determinable, as penalties and interest from part of the single agreed amount.

## Advance Pricing Agreements (APAs)

### Are APAs available?

APAs are not available. Recent press releases indicate that SARS may be considering the introduction of APAs.

### APA filing fee

Not applicable.

### APA term of agreement

Not applicable.

### Competent authority

#### When may taxpayer submit tax adjustment to Competent Authority (CA)?

A taxpayer can engage in CA discussions with SARS once it receives formal notification of a transfer pricing adjustment in another country with which South Africa has a DTA, or if the taxpayer is subject to such an adjustment in South Africa.

In practice, the CA generally will not entertain an application for MAP until the taxpayer has objected against the assessment, and it has been disallowed by SARS, resulting in the case being subject to an appeal to the tax court. As a result, both the domestic and MAP processes run concurrently. In most cases, this will have the effect of suspending the domestic litigation process pending the MAP outcome.

#### May CA develop new settlement positions?

Yes.

#### May taxpayer go to CA before paying tax?

No.



# Spain

## What's new

The most important event affecting Spain's transfer pricing regime was the broad-based tax reform, originally proposed by the Spanish government in June 2014 and published in the official gazette on November 28, 2014. The reform, which became effective on January 1, 2015, entails the introduction of a new Corporate Income Tax Law, as well as extensive changes to the Personal Income Tax Law, Nonresident Income Tax Law, and the Value Added Tax Law; changes to the General Tax Law are still pending approval.

## General information

### Tax authority and law

Agencia Estatal de la Administración Tributaria (AEAT). Royal Legislative Decree 4/2004 governing transfer pricing rules has been changed by the broad-based tax reform effective January 1, 2015. As a result, the previous Article 16 (Related-Party Transactions) of the Spanish Corporate Income Tax Law is now Article 18 of the new CITL (Law 27/2014 of November 27).

### Regulations, rulings, guidelines

After approval of the new Corporate Income Tax Act, the reform of the Corporate Income Tax Regulations are pending approval. The future regulations are expected to be issued in the first half of 2015; thus, Royal Decree 1793/2008 is still in force. Specifically, Royal Decree 1793/2008 provides detailed rules regarding documentation, penalty procedures, tax audit transfer pricing process, secondary adjustments, and an APA-specific procedure. Royal Decree 1794/2008 also governs the Mutual Agreement Procedure and EU Arbitration Convention (EU/90/436) from a Spanish domestic perspective.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

Extensive rules exist to define the nature of related parties. Those rules have been slightly modified by the new Corporate Income Tax Law.

Article 18 establishes the persons or entities considered related parties:

- a) An entity and its partners or shareholders;
- b) An entity and its directors (remuneration paid by an entity to its directors for their activities as such does not render them related parties);

- c) An entity and the spouse or persons related directly or horizontally by blood or by marriage to the third grade of the partners, shareholders, or directors;
- d) Two entities that belong to the same mercantile group;
- e) An entity and the directors of another entity when both entities belong to the same mercantile group;
- f) An entity and the spouse or persons related directly or horizontally by blood or by marriage to the third grade of the partners, shareholders, or directors of another entity when both entities belong to the same mercantile group;
- g) Two entities when one of the entities has an indirect interest of at least 25 percent in the share capital or equity of the second entity;
- h) Two entities in which the same partners, shareholders, or their spouse or persons related directly or horizontally by blood or by marriage to the third grade have a direct or indirect interest of at least 25 percent of the share capital or equity;
- i) A Spanish resident entity and its foreign permanent establishments.

When the related-party connection is defined for partners or shareholders in an entity, the interest must be equal to or greater than 25 percent, instead of the previous 5 percent (or 1 percent in the case of listed shares on a regulated market). The definition of directors includes shadow directors.

The following scenario has been removed from Article 18: Nonresident entities and their permanent establishments in Spain. However, this scenario has been included in the Nonresident Income Tax Law.

A mercantile group is deemed to exist when various entities form a single decision-making unit according to the criteria established in Article 42 of the Commercial Code, independent of their residence and the obligation to prepare consolidated financial statements.

### Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

Spanish tax law does not provide specific rules for the determination of the profit attributable to a permanent establishment. Therefore, reference must be made to the provisions found in double tax treaties, most of which reflect Article 7 of the OECD Model Convention, and the relevant commentary, as applicable.



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The relevant provision reflects the so-called “functionally separate entity approach” that has been adopted by OECD member states as the “authorized OECD approach” or as the “preferred interpretation.”

The profit to be attributed to the permanent establishment should be determined by applying the arm’s length principle as described in the OECD transfer pricing guidelines, as well as the OECD 2010 Report on the Attribution of Profits to Permanent Establishments, issued July 22, 2010.

Two additional provisions have been added by the new Corporate Income Tax Law:

- Taxpayers with permanent establishments abroad (internal dealings): If allowed by the applicable tax treaty, a taxpayer’s tax base should include its foreign permanent establishment’s estimated income (on an arm’s length basis) from domestic transactions with the latter.
- In line with the above, the Nonresident Income Tax Law also allows (insofar as it is permitted by a tax treaty), in determining the revenue of a permanent establishment located in Spain, to deduct estimated expenses regarding domestic transactions performed with both their head office and any of their permanent establishments located outside of Spain.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the profit split method, and the transactional net margin method (TNMM). Other transfer pricing methods are allowed, assuming they are consistent with the arm’s length principle.

### Priority of methods

The primacy of the CUP, cost plus, or resale price methods over the indirect methods has disappeared. To select the most appropriate method, factors such as the characteristics of the comparables, the availability of reliable information, and the degree of comparability must be taken into account.

### Availability of benchmarking/comparative data

Iberian database Sabi provides information on more than 1 million Spanish companies. Pan-European databases with Pan-European data are also used, but results must be analyzed. For financial transactions, the use of common databases like Bloomberg should be acceptable.

### Are foreign comparables acceptable to local tax authorities?

The Spanish transfer pricing legislation is based on the OECD transfer pricing guidelines and the work of the European Union Joint Transfer Pricing Forum. Although pan-European comparables should be acceptable, in practice the Spanish tax authorities have expressed a strong preference for the use of local comparables whenever possible.

## Services issues

### Are management fees deductible?

Management fees are deductible if they’re at arm’s length, and the service yields or may yield a profit to the company receiving the services. This benefit must be proved and documented, together with the substance and reality of the services.

### Are management fees subject to withholding?

Yes; however, if a tax treaty is in force, the withholding tax rate may be reduced or even eliminated under Article 7 (Business Profits) of the relevant treaty. If the management fees include intangibles (for example, a software license), royalty withholding tax may apply.

### May stock option costs be included in the cost base for intercompany services charges?

Spanish tax law does not provide an explicit answer to this question. Nevertheless, any intercompany services charge should pass the “benefit test” and meet the arm’s length principle. Accounting regulations could help support the case, but timing issues must be addressed.

## Commissionaire arrangements

### Are commissionaire arrangements allowed?

Yes, even though there is no specific legal framework for them. The Spanish tax authorities have focused on analyzing the permanent establishment exposure of such agreements.

## Cost sharing agreements

### Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?

Yes, cost contribution arrangements and cost sharing agreements are specifically mentioned and requirements are set out in the new Corporate Income Tax Law: identification of the parties, description of activities or project, calculation method and allocation criteria applied, extension, and buy-in and buy-out payments.

### **Are cost contribution or cost sharing payments deductible?**

Yes, if the requirements of the Corporate Income Tax Law and the regulations (the arm's length principle) are met.

### **Are cost contribution or cost sharing payments subject to withholding tax?**

Yes; however, if a tax treaty is in force the withholding tax rate may be reduced or even eliminated under Article 7 (Business Profits) of the relevant treaty.

### **What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?**

Payments are deductible or amortizable over the useful life of the intangible.

## **Documentation and tax return disclosures**

### **Tax return disclosures**

Taxpayers must provide information regarding related-party transactions with the corporate income tax return — Model 200. The form contains information requirements meant to report intragroup relationships, to identify the taxpayer management team, the taxpayer's ownership in other entities, and other entities' participation in the taxpayer.

Model 200 specifies information to be included with reference to the taxpayer's intercompany transactions. The specific information required is as follows:

- Name of the related taxpayer or legal entity
- Tax number of the related taxpayer or legal entity
- Relationship type
- Country or province of the related party
- Type of transaction
- Transaction characteristic (income or payment)
- Transfer pricing valuation method
- Transaction amount

The tax authorities are expected to use this information to select transfer pricing audit targets.

Only intercompany transactions undertaken by the taxpayer with a related party that exceed €100,000 in value are subject to disclosure obligations in the corporate income tax return.

### **Documentation requirements**

Spain's documentation requirements, established by Royal Decree 1793/2008, are closely aligned with the EU Transfer

Pricing Forum's Code of Conduct concepts, the masterfile and the local file. The OECD transfer pricing guidelines also apply.

With Law 27/2014, a general reference to proportionality and sufficiency principles in relation to the obligation to maintain transfer pricing documentation has been introduced.

Additionally, the option to prepare simplified documentation has been broadened to related persons or entities with turnover below €45 million (the previous limit was €10 million). This regime cannot be applied in the following circumstances: (i) transactions entered into with related entities by personal income taxpayers in the course of an economic activity; (ii) share transfers; (iii) business transfers; (iv) real estate transactions; and (v) transactions involving intangible assets.

The documentation exceptions previously contained in the regulations have been included in the new Corporate Income Tax Law, and are listed below:

- Transactions within the same consolidated tax group
- Transactions between an Economic Interest Groupings (AIE) or a certain type of joint venture (UTE) and its members, or other entities in the same consolidated tax group
- Transactions that take place as part of share public offerings or tender offers
- Transactions between two related entities of not more than €250,000 (without exceptions).

### **Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

Taxpayers should update their transfer pricing documentation on a yearly basis, including all relevant changes in the conditions of their commercial and financial relations in light of the pertinent documentation requirements.

### **Deadline to prepare documentation**

Transfer pricing documentation should be available for the tax authorities at the conclusion of the voluntary period for filing the annual corporate income tax return (for the fiscal year ending December 31, 2014, the due date is July 25, 2015).

### **Deadline to submit documentation**

The tax authorities may request documentation at any time after the taxpayer files the annual corporate income tax return.

### **Deadline to file income tax return**

The corporate income tax return must be filed within six months and 25 days following the close of the fiscal year.

### **Acceptable languages for documentation**

There are no specific rules in this regard. Documentation should be acceptable in line with the recommendations of the EU Joint Transfer Pricing Forum. Documentation in languages other than Spanish would be examined on a case-by-case basis, depending on the tax inspector's preference.

In practice, English documentation is usually accepted, although a translation may be requested during a tax audit.

From a strategic perspective, it is preferable to prepare documentation in Spanish. If the documentation is needed as evidence (especially in court), it should be translated into Spanish.

### **Transfer pricing adjustments**

#### **Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

No specific prohibition is contained in the local regulations, but the general practice is not to perform transfer pricing adjustments in the corporate income tax return. Thus, the financial statements should be aligned with the corporate income tax return.

#### **Self-initiated adjustments**

The General Tax Directorate has publicly expressed its distaste for self-initiated adjustments, because they could mean the taxpayer has not fulfilled the compulsory "fair value" accounting principle. This position could evolve.

#### **Statute of limitations on assessment for transfer pricing adjustments**

Four years after filing the corporate income tax return.

#### **Taxpayer set-offs for other related-party transactions**

Set-offs are not permitted.

### **Interest and penalties**

#### **Additional assessment payment deadline**

The general rules for administrative assessments apply. Interest is applicable from the date the tax would have been payable. Interest paid is deductible.

#### **Penalty on transfer pricing assessment**

For fiscal years 2007 and 2008:

- Tax penalty of 50 percent to 150 percent of the unpaid tax, if transfer pricing documentation is lacking and an adjustment is made;
- 15 percent of wrongly declared net operating losses or tax credits; and
- 50 percent of tax credits that have been inappropriately applied.

For fiscal years between 2009 and 2014:

- If the tax authorities do not make a transfer pricing adjustment, a tax penalty of €1,500 per item of data and €15,000 per group of omitted, inaccurate, or misleading documentation may be imposed.
- If the tax authorities do make a tax adjustment, the penalty would amount to 15 percent of the adjustment, with a minimum threshold of double the penalty that could be applied if the documentation is lacking or incomplete.

In some cases, penalties of up to 3 percent of the entity's turnover may be imposed, up to a maximum of €600,000. Secondary adjustments are applicable according to law (i.e., recharacterization of transaction).

For fiscal years 2015 and thereafter:

- If the tax authorities do not make a transfer pricing adjustment, a tax penalty of €1,000 per item of data and €10,000 per group of omitted or misleading documentation may be imposed. There is an upper limit, consisting of the minimum value between 10 percent of the related transactions subject to corporate income tax, personal income tax, or nonresident income tax during the fiscal year and 1 percent of the company's turnover.
- If the tax authorities do make a tax adjustment, the penalty would be equal to 15 percent of the adjustment.

#### **Is interest charged on penalties?**

Interest may not be charged on penalties during the administrative stage, but may be charged during the judicial stage.

**Is interest payable when a refund is due to the taxpayer?**

When a refund is due to a taxpayer, the Spanish Tax Administration is bound to pay interest on the revenue improperly paid.

**Reduction in transfer pricing penalties**

Reductions between 25 percent and 50 percent of transfer pricing penalties may be applied (Article 188.3 of General Taxation Law 58/2003).

**Advance Pricing Agreements (APAs)**

**Are APAs available?**

Yes, unilateral, bilateral, and multilateral APAs are available.

**APA filing fee**

There is no filing fee.

**APA term of agreement**

The term of an APA may be up to four fiscal years following the year of approval, the negotiation year itself, and the previous years in which the tax authorities' right to conduct a tax audit has not become statute-barred and there is no final assessment in relation to the transactions included in the request.

**Competent authority**

**When may taxpayer submit tax adjustment to Competent Authority (CA)?**

A request may be submitted after the proposed adjustment is communicated to the taxpayer in writing.

**May CA develop new settlement positions?**

Yes.

**May taxpayer go to CA before paying tax?**

No. The tax due must be paid or otherwise guaranteed, but then payment is suspended.



# Sweden

## What's new

In 2014 the Swedish government worked on a new corporate taxation system. Among the major issues addressed were a limitation on the deduction of interest expense and other financial costs, as well as financing allowances. However, the corporate tax system reform has been postponed.

The Swedish Tax Agency and the Swedish government are closely monitoring BEPS developments. The scope of local tax audits is expanding, tax auditors' demands are becoming more stringent, and STA's requests are becoming more complex. Thus, taxpayers are advised to observe the progress of the BEPS project and focus on aligning their transfer pricing structures and policies.

## General information

### Tax authority and law

Swedish Tax Administration (Skatteverket); Chapter 14 §§ 19-20 of the Swedish Income Tax Act.

### Regulations, rulings, guidelines

Arm's length principle (SFS 1999:1229; 14:19-20); documentation requirements (SFS 2001:1227; 19:2a-2b); APAs (SFS 2009:1289); case law (RÅ 1991 ref. 107).

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

Direct or indirect management, supervision, ownership, or control in another company is required. In determining whether control exists, a shareholder should take into account share capital and voting power of other shareholders, if an agreement regarding the exercise of common control has been entered into between the shareholders. Accordingly, if three unrelated taxpayers each own one-third of a company and a shareholder agreement regarding the exercise of common control has been concluded, transactions between the company and the shareholders will qualify as controlled transactions. Moreover, companies may be affiliated based on either de jure or de facto control. The term covers legal persons in which the same group of shareholders may exercise control or that share the same management, even if the shareholders are not the same. Accordingly, if three unrelated taxpayers each own one-third of two companies, the two companies will be affiliated. Moreover, two companies may also be affiliated even if they are not

owned by the same group of shareholders, if the two companies have the same management.

### Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

Yes. There are no specific Swedish regulations.

## Methods and comparables

### Acceptable methods

Sweden follows the OECD transfer pricing guidelines in this regard. Thus, the acceptable methods include the comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the profit split method, and the transactional net margin method (TNMM).

### Priority of methods

Sweden follows the OECD transfer pricing guidelines in this regard. The OECD guidelines, as updated in 2010, suggest using the "most appropriate" method.

### Availability of benchmarking/comparative data

Information is available from the Swedish Companies Registration Office.

### Are foreign comparables acceptable to local tax authorities?

An assessment will be made on a case-by-case basis. Pan-European comparables will normally be accepted if the comparability factors under the OECD transfer pricing guidelines are met.

## Services issues

### Are management fees deductible?

Yes, if the cost equals the benefit received. OECD principles generally apply for the deductibility of mark-ups.

### Are management fees subject to withholding?

No.

### May stock option costs be included in the cost base for intercompany services charges?

No formal guidance or case law is currently available.

## Commissionaire arrangements

### Are commissionaire arrangements allowed?

Yes.



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## Cost sharing agreements

### Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?

Yes.

### Are cost contribution or cost sharing payments deductible?

Yes, if the cost equals the benefit received. OECD principles generally apply.

### Are cost contribution or cost sharing payments subject to withholding tax?

No.

### What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?

Payments are deductible or amortizable.

## Documentation and tax return disclosures

### Tax return disclosures

No specific disclosure is required for intragroup transactions.

### Documentation requirements

Statutory documentation requirements are effective as of January 1, 2007. EU transfer pricing documentation (as established by the Code of Conduct on transfer pricing documentation for transactions between associated enterprises in the European Union (OJ C 176, 28.7.2006 p 01)) is accepted.

### Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?

The Swedish documentation requirements are annual requirements. Taxpayers are expected to work continuously on transfer pricing issues throughout the year to be able to do price setting in accordance with the arm's length principle (SKV M 2007:25, Section 6.1.1). Documentation for a specific year can be prepared after year-end. Documentation is expected to be prepared before the filing of the income tax return to allow the taxpayer to perform a price check on intercompany transactions and to submit its income tax return in accordance with the arm's length principle (SKV M 2007:25, Section 6.1.3).

As a rule, transfer pricing documentation must contain only the information required for a reasonable assessment of the application of the arm's length principle (SKVFS 2007:1, Section 2). This means that a principle of proportionality applies. Thus, complex or unusual intercompany transactions require more detailed documentation than simple and routine intercompany transactions.

There are no particular rules regarding benchmarking analyses. The tax authorities typically would expect that these be updated periodically, rather than on a yearly basis.

### Deadline to prepare documentation

There is no statutory deadline to prepare documentation, but documentation is expected to exist on a current basis. Documentation may be requested as of the date for submission of the tax return.

### Deadline to submit documentation

Upon request. A thirty-day period is generally provided for submission.

### Deadline to file income tax return

There is no requirement to file transfer pricing documentation by the return filing date. The deadlines to file the income tax return depends on the date when the taxpayer's fiscal year ends. The legislation divides the calendar year into four tax return periods. The date when the taxpayer's fiscal year ends will determine which tax return period it belongs to, and that in turn will determine the last date for filing the tax return. The dates for filing are: 1 July, 1 November, 15 December, and 1 March, with the possibility of a one-month extension (only in the case of tax returns submitted electronically).

### Acceptable languages for documentation

Documentation may be prepared in Swedish, English, Danish, or Norwegian.

## Transfer pricing adjustments

### Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?

Generally, taxation follows the Swedish GAAP. However, it is possible to make transfer pricing adjustments in the tax return.

### Self-initiated adjustments

There is no formal procedure for self-initiated adjustments.

**Statute of limitations on assessment for transfer pricing adjustments**

Six years from tax year-end.

**Taxpayer set-offs for other related-party transactions**

No formal provision, but Sweden generally follows the OECD transfer pricing guidelines.

**Interest and penalties**

**Additional assessment payment deadline**

Sweden's general tax rules apply.

**Penalty on transfer pricing assessment**

Sweden does not impose specific transfer pricing penalties. An ordinary penalty of 40 percent of the additional tax on the income adjustment may be imposed.

**Is interest charged on penalties?**

Transfer pricing audit adjustments are subject to a maximum 40 percent penalty surcharge on the tax levied by the adjustment, plus an interest surcharge on the tax debt.

**Is interest payable when a refund is due to the taxpayer?**

Yes, refunds payable to the taxpayer accrue interest on a day-to-day basis. The interest payable is nontaxable.

**Reduction in transfer pricing penalties**

There is no provision in this regard.

**Advance Pricing Agreements (APAs)**

**Are APAs available?**

Formal rules on APA filing procedures are effective January 1, 2010. Only bilateral or multilateral APAs are allowed.

**APA filing fee**

The fee for filing an APA application is approximately €15,000. The fee for filing for renewal of an APA is approximately €10,000. The fee for filing for a renewal with changes is approximately €12,500.

**APA term of agreement**

Generally three to five years.

**Competent authority**

**When may taxpayer submit tax adjustment to Competent Authority (CA)?**

Within three years from receiving the tax assessment decision the taxpayer believes is in conflict with the pertinent tax treaty.

**May CA develop new settlement positions?**

No formal procedure exists in this regard.

**May taxpayer go to CA before paying tax?**

Yes.



# Switzerland

## What's new

The Swiss tax authorities have been increasingly requesting that taxpayers provide, as part of a tax audit, transfer pricing documentation or other evidence to demonstrate the arm's length nature of their intragroup transactions. Lack of documentation may result in lengthy tax audits.

In September 2014, the Swiss Finance minister introduced draft legislation for corporate tax reform. The authorities announced that the new legislation, which is likely to be enacted in 2018 or 2019, should allow the Swiss tax code to be BEPS-compliant in the future.

## General information

### Tax authority and law

In Switzerland, a distinction must be made between cantonal and federal tax authorities. The country does not have explicit transfer pricing legislation, although the tax authorities may adjust unjustified expenses -- based on Art. 58 of the Federal Taxes Act and Art. 24 of the Harmonization of the Cantonal Tax Laws Act -- to adjust the net profits of a taxpayer that does not meet the arm's length standard. As an OECD founding member state, Switzerland adheres to the principles of the OECD transfer pricing guidelines. Transfer prices between related parties are increasingly verified and questioned as part of tax audits.

### Regulations, rulings, guidelines

The Swiss tax authorities generally follow the OECD transfer pricing guidelines. Specific regulations have been issued on services (SFTA Circular 2004) and debt/equity ratio (SFTA Circular 1997). Under the prevailing laws, a taxpayer must be in a position to demonstrate, upon request, the arm's length nature of a related-party transaction.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

There are no specific rules regarding the definition of related companies. The Swiss tax authorities generally follow the OECD's definition of "associated enterprises."

### Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

Because Switzerland adheres to the principles of the OECD transfer pricing guidelines, the position published by the OECD regarding the attribution of profits to permanent establishments is binding on the Swiss tax authorities.

## Methods and comparables

### Acceptable methods

All OECD transfer pricing methods are accepted with no preference

### Priority of methods

Historically, preference was given to the traditional transaction methods, such as the comparable uncontrolled price (CUP) method, the cost plus method, and the resale price methods, in line with the 1995 OECD transfer pricing guidelines, although the transactional net margin method (TNMM) was widely used in practice. Profit split methods were mostly used in the context of advance pricing agreements with another country or countries. However, given the tax authorities' increased sophistication regarding transfer pricing and the 2010 update of the OECD transfer pricing guidelines, all transfer pricing methods are considered equal.

### Availability of benchmarking/comparative data

There is limited Swiss comparables data. Pan-European benchmark studies covering Switzerland in the search scope are usually accepted.

### Are foreign comparables acceptable to local tax authorities?

There is no specific prohibition; in practice, foreign comparables are acceptable. Tax authorities may review comparables, as a study submitted must be adequate from a qualitative perspective.

## Services issues

### Are management fees deductible?

Yes, if the services are rendered and the fees meet the arm's length standard, management services fees are tax deductible.

### Are management fees subject to withholding?

No.



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**May stock option costs be included in the cost base for intercompany services charges?**

Employee stock option costs are not automatically tax deductible, because certain cantonal tax authorities challenge the notion that stock options may have been issued without a cost to the company. These costs should be analyzed based on the specific facts and circumstances of each case to meet specific rules in Swiss tax law relating to employee stock option costs.

**Commissionaire arrangements**

**Are commissionaire arrangements allowed?**

Yes, but the tax authorities may consider such an arrangement a permanent establishment of the foreign principal company in Switzerland.

**Cost sharing agreements**

**Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?**

Yes.

**Are cost contribution or cost sharing payments deductible?**

Yes, as long as the payments satisfy the arm's length standard.

**Are cost contribution or cost sharing payments subject to withholding tax?**

No, as long as the price is at arm's length. If it is not at arm's length, any deviation may be considered a "deemed dividend" and therefore subject to withholding tax.

**What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?**

Buy-in payments are deductible or amortizable over the useful life of the intangible (decided on a case-by-case basis, depending on the facts and accounting treatment).

**Documentation and tax return disclosures**

**Tax return disclosures**

No specific disclosure regarding transfer prices is required so far.

**Documentation requirements**

Under the Swiss tax code, taxpayers must provide evidence regarding their transfer prices within set deadlines, upon request by the tax administration. Increasingly, cantonal tax authorities request transfer pricing documentation from taxpayers. Although no specific format is prescribed, it is advisable for taxpayers to prepare adequate documentation, particularly if they change their

business model, incur high royalty charges, or engage in transactions with low-tax jurisdictions and offshore entities.

As part of the BEPS initiative, the OECD has proposed amendments to Chapter V of the OECD transfer pricing guidelines. As part of the new documentation and disclosure rules, principal companies must disclose their business structure/function & risk profile to justify the allocation of the residual profit of a value chain to such entity. Switzerland hosts a significant number of principal companies. In order to defend the current profit attribution, it is advisable for such companies to prepare appropriate transfer pricing documentation. This is less for Swiss tax purposes but more to defend the business model/transfer prices of their transactions with their respective related counterparties. .

**Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

Documentation does not need to be prepared annually. But as stipulated above, preparing documentation proactively when changing the business model is recommended.



**Deadline to prepare documentation**

Upon request. In general, a taxpayer has 30 days to submit the documentation, although time extensions may be granted if necessary. Taxpayers must provide the evidence requested by the tax authorities within a reasonable time. Because tax audits may take place years after the transactions took place, it is advisable that documentation be prepared contemporaneously.

**Deadline to submit documentation**

Upon request. In general, a taxpayer has 30 days to submit the documentation, although time extensions may be granted if necessary.

**Deadline to file income tax return**

Five months after the end of the business year. A six-month extension may be granted upon request.

**Acceptable languages for documentation**

German, French, and Italian are the official languages in Switzerland. Depending on the tax inspector, English documentation may be acceptable, but taxpayers may have to translate all (or part) of the documentation upon request.

**Transfer pricing adjustments****Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

Transfer prices must match the taxpayer's tax accounts. The tax accounts may deviate from the statutory (or IFRS) accounts.

**Self-initiated adjustments**

There is no formal procedure in this regard.

**Statute of limitations on assessment for transfer pricing adjustments**

Generally, five years after the taxable year in question, but in case of pending tax audits, up to 15 years. That exception applies for years with taxable losses. Those years are usually assessed for tax purposes once the losses are being used against future profits.

**Taxpayer set-offs for other related-party transactions**

There is no formal procedure for set-offs..

**Interest and penalties****Additional assessment payment deadline**

Not specified.

**Is interest payable when a refund is due to the taxpayer?**

Yes.

**Is interest charged on penalties?**

Not usually.

**Penalty on transfer pricing assessment**

There are no specific transfer pricing penalties. General penalty rules apply, but are usually applied only in cases of fraud or negligence. Penalties are nondeductible and between 100 percent and 300 percent of the tax revenue lost. Non-arm's-length transfer pricing could be deemed a "hidden profit distribution" subject to federal withholding tax (up to 53 percent).

**Reduction in transfer pricing penalties**

Not applicable.

**Advance Pricing Agreements (APAs)****Are APAs available?**

Yes. There are no formal requirements regarding the format of the APA request. The Swiss Competent Authorities do not have their own team of economists, but rely on the filing party or its consultancy firm to provide, upon request, the necessary evidence, such as benchmark studies or analyses of assessment by other APA authorities.

**APA filing fee**

There is no filing fee for APA applications.

**APA term of agreement**

Subject to negotiation, but generally three to seven years forward. Depending on the countries involved, taxpayers may have the option of requesting rollbacks.

**Competent authority****When may taxpayer submit tax adjustment to Competent Authority (CA)?**

There is no formal procedure. For MAP cases, the Swiss authorities expect the taxpayer (or a consultant on its behalf) to provide supporting material to strengthen the negotiation position to eliminate double taxation.

**May CA develop new settlement positions?**

There is no formal procedure.

**May taxpayer go to CA before paying tax?**

Yes.

# Taiwan

## What's new

Taiwan's tax authorities in 2014 enhanced transfer pricing audits and focused on transactions involving intangibles and service fees. The Ministry of Finance proposed a draft amendment to Taiwan's transfer pricing guidelines on January 7, 2015, which adds rules regarding business restructurings, and lowers the threshold to apply for an advance pricing agreement, as well as adding rules regarding APA prefilling conferences.

The MOF may amend the transfer pricing guidelines again in the near future to address BEPS Action Plan developments.

## General information

### Tax authority and law

Ministry of Finance; Article 43-1 of Taiwan Income Tax Law.

### Regulations, rulings, guidelines

Regulations Governing Assessment of Profit-Seeking Enterprise Income Tax on Non-Arm's-Length Transfer Pricing (the transfer pricing guidelines).

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

A party that has equity ownership, common management, or effective control over the finance, personnel, or operations of another party, or enters into a joint venture agreement with another party will be treated as related to that party. Detailed definitions of related party are included in the transfer pricing guidelines.

### Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

A branch of a foreign company is a taxable business entity. Generally, a foreign company could engage in business transactions (such as trade of intangible goods) with its Taiwan branch, and the foreign company's profits from those transactions would not be taxable in Taiwan. However, when a foreign company itself has revenue from Taiwan sales, the foreign company may apply to the tax authorities for approval to prorate that business revenue and count related Taiwan-source income based on value added in Taiwan. A transfer pricing analysis may be one of the tools for the allocation.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the comparable profit method, the profit split method, and other arm's length methods approved by the Ministry of Finance.

### Priority of methods

The best method rule applies.

### Availability of benchmarking/comparative data

Public international and domestic business databases are available.

### Are foreign comparables acceptable to local tax authorities?

Taiwan comparables are preferred. However, the tax authorities will accept foreign comparables if the number of Taiwan comparables is insufficient.

## Services issues

### Are management fees deductible?

Yes.

### Are management fees subject to withholding?

Management fees will be exempt from withholding tax only if (1) the fees are allocated from a head office or regional headquarters to a Taiwan branch; or (2) the management services are rendered offshore and evidence could be provided to adopt the Rules to Recognize Taiwan-Source Income. Advance application would be required in the latter situation.

### May stock option costs be included in the cost base for intercompany services charges?

Yes, stock option costs could be included in the service expenses charged to Taiwan affiliates. The Taiwan entity could take the deduction on its income tax return, but the employees who are granted the stock option must recognize income on their individual income tax returns accordingly.

## Commissionaire arrangements

### Are commissionaire arrangements allowed?

Yes.



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## Cost sharing agreements

### Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?

The Rules Governing the Recognition of Taiwan-Source Income Pursuant to Article 8 of the Income Tax Law released by the MOF on September 3, 2009, accepted cost sharing agreements for R&D expenses, with the following conditions:

- The cost sharing agreement is a joint research and development project between all participants;
- All participants will jointly own the intellectual property and enjoy its benefits according to the cost and effort contributed by each party, respectively; and
- No royalty payment or tax evasion is involved under the cost sharing agreement.

For other cost sharing expenses, advance application to the tax authorities on a case-by-case basis would be required.

### Are cost contribution or cost sharing payments deductible?

Yes.

### Are cost contribution or cost sharing payments subject to withholding tax?

If the cost sharing payment qualified as a payment pursuant to a cost sharing agreement according to the Rules Governing the Recognition of Taiwan-Source Income Pursuant to Article 8 of the Income Tax Law, it will not be recognized as Taiwan-source income and therefore will be exempt from Taiwan withholding tax.

### What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?

Payments are deductible or amortizable over the useful life of the intangible.

## Documentation and tax return disclosures

### Tax return disclosures

Taxpayers who engage in reportable transactions are required to disclose related-party information on their income tax returns.

### Documentation requirements

Contemporaneous documentation is required.

### Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?

Yes, transfer pricing documentation is required annually. However, if the taxpayer is under the threshold stipulated by Taiwan's safe harbor rules, regulated by MOF Ruling No. 09704555160 dated November 6, 2008 (operating revenue plus non-operating revenue is less than NTD 300 million, or the total amount of related-party transactions is less than NTD 200 million) it could prepare a transfer pricing substitute document instead of a full report.

There is no clear regulation that a new comparables search should be performed annually, but in practice, a new comparables search is generally conducted for annual transfer pricing analysis.

### Deadline to prepare documentation

Contemporaneous documentation must be prepared when taxpayers file their corporate income tax returns. For calendar-year taxpayers, the period to file the tax return is May 1 to May 31 of the year following the closing of the accounting year.

### Deadline to submit documentation

Taxpayers must furnish documentation within one month after receiving a written request from the tax authorities. One extension of another month is possible, for valid reasons.

### Deadline to file income tax return

For calendar-year taxpayers, the period to file the income tax return is May 1 to May 31 of the year following the closing of the accounting year. According to Taiwan's transfer pricing guidelines, taxpayers must have transfer pricing documentation and relevant documents prepared at the time of filing the annual income tax return, but it is not necessary to submit the transfer pricing documentation and relevant documents when filing the income tax return.

### Acceptable languages for documentation

Documentation should be in Chinese, except as otherwise approved by the tax authorities.

### Transfer pricing adjustments

**Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

Generally, the transfer prices reflected on the income tax return should be the same as those reflected in financial statements, except when there are some adjustments for tax purposes.

A one-time transfer pricing adjustment could be made for tax purposes only. At present, no public ruling has been issued by the Taiwanese competent authorities for such an adjustment. However, the Ministry of Finance did issue a private ruling on this issue. To make a one-time transfer pricing adjustment in its accounting books, a Taiwanese taxpayer must obtain prior approval from the Taiwanese tax authorities. According to the private tax ruling, a taxpayer may apply for approval of a one-time transfer pricing adjustment if all the following criteria are met:

- The parties to the controlled transactions must enter into an agreement on the terms of the transaction, as well as on all the factors that would affect the transfer pricing of the controlled transaction, and submit the agreement to the Taiwanese tax authorities for their review before making the one-time transfer pricing adjustment;
- The factors mentioned above must be objective (for example, cost fluctuation of raw materials, market volatility, or economic cycle) and not subject to the transaction parties' control; and
- A one-time transfer pricing adjustment will be recorded in the accounting books before the annual closing of the books rather than adjusted only in the income tax return.

### Self-initiated adjustments

Based on an MOF ruling, self-initiated upward adjustments to the median of the interquartile range are allowed under the comparable profits method.

### Statute of limitations on assessment for transfer pricing adjustments

Generally, five years from the date of filing the return.

### Taxpayer set-offs for other related-party transactions

There is no formal provision.

### Interest and penalties

#### Additional assessment payment deadline

Taxpayers should make the payment before the due date indicated on the payment notice.



### Penalty on transfer pricing assessment

Substantial adjustments made by the tax authorities based on the transfer pricing guidelines will trigger a penalty of up to 200 percent of underpaid taxes under Article 110 of Taiwan's Income Tax Law.

### Is interest charged on penalties?

No.

### Is interest payable when a refund is due to the taxpayer?

No. If the refund is due to miscalculation or misapplication of the tax law by the taxpayer, interest is usually not payable in practice.

### Reduction in transfer pricing penalties

No provision.

### Advance Pricing Agreements (APAs)

#### Are APAs available?

APAs are allowed for taxpayers who meet the criteria defined in the transfer pricing guidelines. Eligible taxpayers must file an application to the tax authorities by the end of the first year in which the transactions covered in the APA were conducted.

#### APA filing fee

There is no filing fee.

#### APA term of agreement

An APA will be effective for a period of three to five years, or the duration of the covered transactions, whichever is shorter. An extension of up to five years may be allowed.

### Competent authority

#### When may taxpayer submit tax adjustment to Competent Authority (CA)?

There is no formal procedure.

#### May CA develop new settlement positions?

Yes.

#### May taxpayer go to CA before paying tax?

No. The taxpayer should pay the tax fine by filing the income tax return.

# Thailand

## What's new

There were no significant changes to Thailand's transfer pricing regime during 2014. However, the Thai Revenue Department has indicated that they are in the process of drafting new transfer pricing laws and regulations, which will likely be issued during 2015.

## General information

### Tax authority and law

Revenue Department; Section 65 bis(4), Section 70 ter, Section 65 bis (7), Section 65 (13), (14) and (15) of the Thai Revenue Code.

### Regulations, rulings, guidelines

Departmental Instruction No. Paw. 113/2545 (issued May 16, 2002 – "Calculation of corporate income tax in the case of establishing transfer pricing").

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

Departmental Instruction No. Paw. 113/2545 applies the definition of "Associated Enterprise" from the OECD transfer pricing guidelines.

### Do the local transfer pricing rules or tax authority allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

The transfer pricing rules do not address the determination of profits attributable to a permanent establishment or branch. The Thai Revenue Department has typically used a formulaic approach for determining profits attributable to a permanent establishment, but they have accepted transfer pricing analyses in some cases.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, and other methods that are acceptable by international standards and that appropriately apply to the actual transactions.

### Priority of methods

Transaction-based methods are preferred over profit-based methods.

### Availability of benchmarking/comparative data

Audited financial statements filed by all registered (private and public) companies with the Thai Ministry of Commerce are available through an online database.

### Are foreign comparables acceptable to local tax authorities?

The Thailand Revenue Department has a strong preference for Thai comparables. However, if the taxpayer has attempted to obtain local comparables and they are not available, foreign comparables from similar markets are likely to be accepted by the local tax authorities.

## Services Issues

### Are management fees deductible?

Yes, provided the services result in a benefit to the Thai company and the fees are determined on an arm's length basis.

### Are management fees subject to withholding?

Yes, 15 percent withholding tax applies to management fees paid cross-border. This withholding tax will normally be exempted under an applicable income tax treaty, unless the fees are characterized as royalties.

### May stock option costs be included in the cost base for intercompany services charges?

There is no specific statutory authority in this regard. Thailand's tax authority is likely to follow the OECD transfer pricing guidelines.

## Commissionaire Arrangements

### Are commissionaire arrangements allowed?

Yes, but such arrangements give rise to significant risk of creating a permanent establishment.

## Cost sharing agreements

### Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?

There is no specific statutory authority. Thailand's tax authority is likely to follow the OECD transfer pricing guidelines.

### Are cost contribution or cost sharing payments deductible?

Yes, provided the taxpayer can substantiate that the cost relates specifically to the taxpayer's business.



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**Are cost contribution or cost sharing payments subject to withholding tax?**

Yes, depending on the nature of the payment. For example, if the payment is considered a royalty, withholding tax would apply.

**What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?**

Payments are deductible or amortizable over the useful life of the intangible, depending on specific facts. Payments must relate directly to the taxpayer's business.

**Documentation and Tax Return Disclosures**

**Tax return disclosures**

A "Declaration Form" attached to the annual corporate tax return requires answers to questions regarding whether revenues and expense transactions are based on market prices.

**Documentation requirements**

No statutory requirements, but Instruction 113/2545 indicates that Revenue officers should evaluate certain documents. There is, therefore, an implicit assumption that these transfer pricing documents should be maintained.

**Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

There are no statutory annual requirements. However, taxpayers should update their transfer pricing documentation annually. Comparables' financial data would normally be refreshed for two to three years after the original search.

**Deadline to prepare documentation**

There is no statutory deadline for preparation of documentation. However, because taxpayers are required to respond to questions in the Declaration Form regarding pricing of transactions, transfer pricing documentation should be prepared by the return filing date.

**Deadline to submit documentation**

Documentation must be submitted in a timely manner when requested.

**Deadline to file income tax return**

The annual income tax return must be filed within 150 days from the company's year-end. Extensions are not available.

**Acceptable languages for documentation**

The Thai Revenue Department will accept English documentation in the first instance, but may request that some or all documentation be translated into Thai. Documentation for APAs must be in Thai.

**Transfer Pricing Adjustments**

**Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

The transfer prices on the tax return should generally be the same as those reflected in financial statements. If there is a transfer pricing adjustment in the tax return only, this will be subject to significant scrutiny. While an adjustment to increase taxable profits will likely be accepted, an adjustment to reduce taxable profits will be more difficult for the Thai tax authorities to accept.

**Self-initiated adjustments**

Adjustments are permitted, whether increasing or decreasing profit. In the case of a profit increase, a taxpayer will be subject only to a surcharge of 1.5 percent per month. In either case, there must be adequate documentation to substantiate the adjustment in the current period.

**Statute of limitations on assessment for transfer pricing adjustments**

A summons for tax examinations must be issued within two years of the filing date, or five years when tax evasion is suspected. A tax assessment must be issued within 10 years.

**Taxpayer set-offs for other related-party transactions**

There is no formal provision on this topic.

**Interest & Penalties**

**Additional assessment payment deadline**

Generally, 30 days from the date of receipt of the assessment notice. An extension may be requested.

**Penalty on transfer pricing assessment**

There are no specific transfer pricing penalties; the general corporate tax penalty regime applies. A penalty of up to 100 percent of the additional corporate tax and interest surcharges of 1.5 percent per month may apply on outstanding tax.

**Is interest charged on penalties?**

No interest is charged on penalties.

**Is interest payable when a refund is due to the taxpayer?**

Interest is technically available on refunds.

**Reduction in transfer pricing penalties**

There is no provision in this regard; however, the taxpayer may apply to the assessment officer or appeal to the Board of Tax Appeal for a reduction of penalties.

**Advance Pricing Agreements**

**Are APAs Available?**

According to Departmental Instruction No. Paw. 113/2545 (Clause 5), APAs are available. However, based on current practice, the Thai Revenue Department is not willing to accept applications for unilateral APAs. Bilateral agreements may be applied for under the mutual agreement procedure of treaties. The Thai Revenue Department has issued a booklet including guidance for bilateral APAs.

**APA filing fee**

No fee.

**APA term of agreement**

The term of bilateral APAs may be three to five years.

**Competent authority**

**When may taxpayer submit tax adjustment to Competent Authority (CA)?**

There is no formal procedure. Thailand follows the mutual agreement procedure under the relevant tax treaty (usually three years).

**May CA develop new settlement positions?**

There is no formal procedure.

**May taxpayer go to CA before paying tax?**

No. The tax due must be paid or otherwise guaranteed.



# Turkey

## What's new

The year 2014 has witnessed increased transfer pricing audit activity in the Turkish market. The recently formed specialist teams of transfer pricing auditors had been working on audit preparations for some time, and 2014 was the year in which these teams began working in the field. The number of tax inspectors increased during 2014. Accordingly, transfer pricing audits have increased, and leniency during audits has dwindled: documentation is requested upfront, almost no extension is granted for preparation, and additional probing questions may be asked. Deductibility of management service fees and royalties, customs and indirect tax implications of the year-end transfer pricing adjustments, and VAT implications of disguised profit distributions are the major issues discussed and challenged. Tax and transfer pricing audits are expected to increase, especially after the elections slated for June 2015.

## General information

### Tax authority and law

Ministry of Finance — Revenue Administration; New Turkish Corporate Tax Code (Law No. 5520) Article 13 (effective 1 January 2007), Article 41/5 of Income Tax Law, Transfer Pricing Decree No. 2007/12888 (announced 6 December 2007), Transfer Pricing General Communiqué No. 1 and 2 (announced 18 November 2007 and 22 April 2008, respectively), Transfer Pricing Decree No. 2008/13490 (announced 13 April 2008).

### Regulations, rulings, guidelines

Article 13 of the Turkish Corporate Tax Code provides the general principles. Practical applications are explained through examples included in Communiqués No. 1 and 2, as well as Transfer Pricing Decree No. 2007/12888 and Decree No. 2008/13490. A guideline announced in November 2010 includes detailed explanations regarding annual documentation requirements and a sample report format.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

Article 13 of The Turkish Corporate Tax Code defines related parties as: (1) companies' own shareholders and corporations and individuals related to those shareholders; (2) corporations and individuals that directly or indirectly control are controlled by a corporation or its shareholders through management, supervision, or share capital; and

(3) spouses of the shareholders, siblings, and parents of the shareholders and up to third degree (inclusive) natural and in-law relatives of the shareholders. Transactions with parties resident in countries deemed to cause "harmful tax competition" (to be determined by the Council of Ministers) are also considered related-party transactions. Additional situations are discussed in Transfer Pricing General Communiqués No. 1 and 2 whereby parties may be considered related even in the absence of a shareholder relation.

### Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

There are no specific local regulations regarding the attribution of profits to a permanent establishment or branch. However, transfer pricing analyses may be used to defend the arm's length nature of profits attributed to a permanent establishment, depending on the specific circumstances of each individual case.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the profit split method, and the transactional net margin method (TNMM), as well as unspecified methods.

### Priority of methods

Transactional methods are explicitly preferred.

### Availability of benchmarking/comparative data

Limited local data is available.

### Are foreign comparables acceptable to local tax authorities?

No specific regulations. In practice, pan-European comparables may be acceptable in the absence of local data.

## Services issues

### Are management fees deductible?

Yes, provided the following conditions are satisfied: (a) the management service must actually be performed, and performance must be verifiable; (b) the management service must be necessary and beneficial for the recipient's operations in Turkey; and (c) the management fee must be arm's length. Stewardship costs are nondeductible (in accordance with the OECD transfer pricing guidelines).



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### **Are management fees subject to withholding?**

Management fees may be subject to withholding tax, depending on the nature of the service and the place where the service is provided. Relevant income tax treaty provisions may eliminate withholding tax under certain conditions.

### **May stock option costs be included in the cost base for intercompany services charges?**

Stock option costs are costs incurred for employees and deemed a benefit (salary) provided to the employee. Once charged to a Turkish company with respect to an employee, those costs should normally be subject to income tax withholding through payroll. Accordingly, stock option costs should be treated separately from intercompany service charges.

### **Commissionaire arrangements**

#### **Are commissionaire arrangements allowed?**

No specific regulations. Such arrangements may give rise to permanent establishment risk.

### **Cost sharing agreements**

#### **Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?**

Cost contribution arrangements and cost sharing agreements are generally acceptable within the framework of intragroup services. However, sufficient documentation must be presented regarding the receipt, benefit, and arm's length nature of services received.

#### **Are cost contribution or cost sharing payments deductible?**

According to Transfer Pricing General Communiqué No. 1, to ensure tax deductibility, the following conditions must be satisfied: (a) the services underlying CCAs or CSAs must actually be rendered, and payments must be related to services that contribute to the generation and securing of revenues in Turkey; (b) the group company in Turkey receiving the service must need the pertinent service; (c) the portion of the costs to be allocated with respect to the services provided for the benefit of the Turkish recipient must meet the arm's length principle; and (d) relevant supporting documentation must be maintained.

#### **Are cost contribution or cost sharing payments subject to withholding tax?**

Yes, depending on the nature of the payment and the type of underlying service. Income tax treaties may eliminate the withholding tax or reduce the rate, depending on the type of service and where the service has been performed,

and the period of physical presence in Turkey to provide the services.

#### **What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?**

There are no specific regulations on this topic.

### **Documentation and tax return disclosures**

#### **Tax return disclosures**

All corporate taxpayers are required to complete a Form Relating to Transfer Pricing, Controlled Foreign Companies and Thin Capitalization and submit it to their tax office together with their corporate tax returns.

#### **Documentation requirements**

Annual transfer pricing documentation is required. The scope of related-party transactions subject to the documentation requirements varies according to the taxpayer's tax office. Ordinary corporate taxpayers must document only cross-border related-party transactions, but so-called "large taxpayers" must document domestic related-party transactions as well. Transactions between local Turkish firms and companies in Turkish Free Trade Zones are treated as cross-border transactions.

#### **Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

Yes. A complete report is required each year. Although brand new comparable searches are not explicitly required, in practice the financials of comparables should be updated each year to reflect the most up-to-date data available.

#### **Deadline to prepare documentation**

Simultaneous with the annual corporate income tax return.

#### **Deadline to submit documentation**

There is no specific deadline. Documentation must be submitted within 15 days of an official request.

#### **Deadline to file income tax return**

The deadline to file the corporate income tax return is the 25th day of the fourth month following the end of the fiscal year (April 25 of the following year for calendar-year taxpayers).

#### **Acceptable languages for documentation**

The only acceptable language is Turkish.

### Transfer pricing adjustments

#### Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?

In principle, the transfer prices reflected on an income tax return must be the same as those in financial statements. However, some book/tax differences may be allowed depending on specific circumstances.

#### Self-initiated adjustments

Based on general provisions, self-initiated adjustments can be made through "regret filing" procedures as long as the adjustment does not result in a decrease in taxable income.

#### Statute of limitations on assessment for transfer pricing adjustments

Five years from tax year-end.

#### Taxpayer set-offs for other related-party transactions

No specific regulations.

### Interest and penalties

#### Additional assessment payment deadline

Additional tax assessments must be paid within 30 days from the date of notification of the additional assessment. Taxpayers may file a lawsuit against the Tax Administration within this 30-day period. However, the right to request a reduction of penalties is lost if legal action is taken.

#### Penalty on transfer pricing assessment

There are no specific transfer pricing penalties. The general penalty provisions in the Turkish Tax Procedures Code apply: (1) general tax loss penalty is 100 percent of unpaid tax; (2) delay interest is applied on additional assessments on a monthly basis for the period between the normal due date of the additional tax assessed and the date of assessment (monthly delay interest rate is 1.40 percent effective 19 October 2010; 1.95 percent between 19 November 2009 and 18 October 2010, and 2.5 percent between 21 April 2006 and 18 November 2009).

#### Is interest charged on penalties?

If penalties have been assessed, and the due date passed without the penalty being paid, interest is imposed. However, as long as there is still time before the due date, no interest on the penalty is required.

#### Is interest payable when a refund is due to the taxpayer?

No.

### Reduction in transfer pricing penalties

There is no reduction specific to transfer pricing-related penalty assessments. The general rules in the Tax Procedures Code apply. Taxpayers may appeal to the Ministry of Finance for a reduction in the tax loss penalty through settlement procedures before or after imposition of the assessment.

### Advance Pricing Agreements (APAs)

#### Are APAs available?

Yes. The scope of an APA is limited to cross-border related-party transactions.

#### APA filing fee

Effective 1 January 2015, the APA application fee is TL 50,202.80, and TL 40,162.10 for subsequent renewals.

#### APA term of agreement

The maximum term for an APA is three years.

### Competent authority

#### When may taxpayer submit tax adjustment to Competent Authority (CA)?

The taxpayer may go to competent authority after the amount of the proposed adjustment is officially notified in writing.

#### May CA develop new settlement positions?

It is theoretically possible, but there are very few instances thus far.

#### May taxpayer go to CA before paying tax?

Yes, the taxpayer may, in principle, go to competent authority after the amount of the proposed adjustment is officially notified in writing to the taxpayer, before paying the tax. The Turkish Revenue Authority's website provides guidelines in this regard. The Mutual Agreement Procedure (MAP) is theoretically applicable for controversial issues, as long as there is a double tax treaty in effect. However, given the fact that the process is too long and that the results have not been tested so far, it is difficult to finalize a CA process in Turkey.



# Ukraine

## What's new

During 2014, extensive discussions in Ukraine focused on reforming and improving the transfer pricing regulations, which entered into effect as of 1 September 2013. The International Monetary Fund and the World Bank took an active role in this process, providing feedback and recommendations.

As a result of the reform work conducted in 2014, significant amendments were introduced into Ukraine's transfer pricing legislation as of 1 January 2015. These changes bring Ukrainian legislation closer in line with the OECD's transfer pricing guidelines, but at the same time they make the regulations more fiscal in nature.

## General information

### Tax authority and law

State Fiscal Service of Ukraine. Tax Code of Ukraine, Article 39.

### Regulations, rulings, guidelines

Tax Rulings on Transfer Pricing, approved by Decrees of the Ministry of Revenues and Duties #699 dated 22 November 2013 and #368 dated 1 July 2014.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

Transfer pricing rules apply to the following transactions:

- Transactions with nonresident related parties;
- Transactions with residents of low-tax jurisdictions. The list of jurisdictions is published by the Cabinet of Ministers and may include not only low-tax jurisdictions, but also countries that do not disclose information to the Ukrainian authorities and/or have not entered into a double tax treaty with Ukraine; and
- Export transactions conducted through nonresident commissionaires (both related and unrelated).

### Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

No specific guidance available.

## Methods and comparables

### Acceptable methods

The Tax Code provides five methods for transfer pricing analysis: the comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the profit split method, and the transactional net margin method (TNMM).

### Priority of methods

Taxpayers are free to choose any method they consider most appropriate for the pertinent transaction. However, the CUP method should be used if it can be applied with at least the same degree of certainty as any other method. The resale price and cost plus methods should be given preference over TNMM and the profit split method.

### Availability of benchmarking/comparative data

The tax authorities have not officially approved any databases. While many taxpayers are beginning to work with universally accepted databases, it remains to be seen to what extent these will be accepted by the tax authorities.

### Are foreign comparables acceptable to local tax authorities?

No direct prohibition exists in the Tax Code. However, the Tax Code may be interpreted in a way that would suggest taxpayers should first attempt to find local comparables, and only if unsuccessful can they look for foreign comparables.

## Services issues

### Are management fees deductible?

Generally, yes, but a number of strict formalities must be followed to ensure deductibility.

Management fees pooled and recharged under a standard "cost recharge" arrangement would not be allowed as a deduction.

### Are management fees subject to withholding?

No.

### May stock option costs be included in the cost base for intercompany services charges?

No specific guidance available.



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## Commissionaire arrangements

### Are commissionaire arrangements allowed?

Yes, but a series of tax implications (transfer pricing, permanent establishment, VAT) would have to be considered before implementing such an arrangement.

Export sales through nonresident commissionaires are automatically subject to the transfer pricing regulations, regardless of whether the sale is made to a related or an unrelated party.

## Cost sharing agreements

### Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?

Generally no. Recharges made to Ukrainian entities under a CCA or a CSA would not be deductible for tax purposes in Ukraine. Moreover, currency control regulations would likely make it impossible to make payments outside Ukraine under a CCA or a CSA.

Alternative approaches to the calculation of recharged amounts must be considered when implementing such structures in Ukraine.

### Are cost contribution or cost sharing payments deductible?

No.

### Are cost contribution or cost sharing payments subject to withholding tax?

No.

### What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?

No specific guidance available.

## Documentation and tax return disclosures

### Tax return disclosures

Taxpayers must complete a special appendix to the corporate income tax return to disclose any transfer pricing adjustments they make. Starting with the 2015 income tax return (to be filed in 2016), another annex will be required to provide details regarding controlled transactions.

### Documentation requirements

Two types of documentation are required:

- Report on controlled transactions, due 1 May of the year following the reporting one; and
- Transfer pricing documentation, due one month after a request from the tax authorities (two months for large

taxpayers). The request may be issued by the authorities no earlier than on 1 May of the year following the reporting one.

A calendar year is a reporting period for transfer pricing purposes.

### Deadline to prepare documentation

No specific deadline set.

### Deadline to submit documentation

The report on controlled transactions, a formal document that details all controlled transactions conducted during the reporting year, is due 1 May of the year following the reporting one.

Transfer pricing documentation is due one month after receipt of a request from the tax authorities.

### Deadline to file income tax return

For taxpayers who submit one annual income tax return, the deadline is 60 calendar days after the end of the reporting year (that is, 2 March 2015 for the 2014 income tax return). For taxpayers who submit income tax returns on a quarterly basis, the deadline is 40 calendar days after the end of the reporting year (9 February 2014 for the 2014 income tax return).

### Acceptable languages for documentation

Documentation must be in Ukrainian.

## Transfer pricing adjustments

### Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?

Book/tax differences are allowed.

### Self-initiated adjustments

Self-initiated adjustments are allowed only if they do not result in a decrease in tax liabilities. Ukrainian tax legislation forbids downward adjustments.

### Statute of limitations on assessment for transfer pricing adjustments

Seven years.

### Taxpayer set-offs for other related-party transactions

No specific guidance available.

## Interest and penalties

### Additional assessment payment deadline

General rules apply. Payment must be made 10 days after the additional assessment notification is received, unless the taxpayer challenges the assessment.

### Penalty on transfer pricing assessment

No penalties apply for the period from 1 September 2013 to 31 August 2014. Subsequently, standard penalties will apply — up to 50 percent of underpaid tax plus interest penalties.

Fines for non-submission or incomplete submission of transfer pricing-related documents:

- Failure to submit the report on controlled transactions – 100 minimum wages (approximately USD 8,000 as of January 2015);
- Failure to record transactions in the report on controlled transactions – 5 percent of the amount of the omitted controlled transactions;
- Failure to submit transfer pricing documentation – 3 percent of the volume of controlled transactions, capped at 200 minimum wages for all controlled transactions (approximately USD 16,000 as of January 2015).

### Is interest charged on penalties?

Yes. Interest is charged at the National Bank of Ukraine discount rate (set at 14.0 percent as of January 2015) multiplied by 120 percent.

### Reduction in transfer pricing penalties

No reduction is allowed under the Tax Code.

### Is interest payable when a refund is due to the taxpayer?

This issue is subject to dispute between taxpayers and tax authorities. Some tax practitioners believe interest should not be paid in these cases, whereas the tax authorities often insist that it should be paid.

## Advance Pricing Agreements (APAs)

### Are APAs available?

APAs are available for large taxpayers. The legislation contemplates both unilateral and multilateral APAs.

### APA filing fee

There is no filing fee for an APA request.

### APA term of agreement

Three years, with the possibility of prolonging the term of the agreement for another two years.

## Competent authority

### When may taxpayer submit tax adjustment to Competent Authority (CA)?

No specific guidance available.

### May CA develop new settlement positions?

No specific guidance available.

### May taxpayer go to CA before paying tax?

No specific guidance available.



# United Kingdom

## What's new

Transfer pricing in the UK remains an issue of political and public importance. This is reflected in the UK government's proposed adoption of OECD/G20 base erosion and profit shifting (BEPS) recommendations. From 1 April 2015, a new tax will apply to arrangements that divert profit from the UK – the "diverted profits tax." Advance pricing agreements and advance thin capitalization agreements now include the option for the UK tax authorities to terminate the agreements in the event of changes to UK legislation or OECD transfer pricing guidelines arising from BEPS actions.

UK tax authority audit activity in 2014 suggests a more thematic approach to risk assessment in certain areas. Intragroup procurement arrangements, for example, appear to be the subject of a more coordinated UK tax authority challenge.

## General information

### Tax authority and law

HM Revenue and Customs (HMRC); following the UK's Tax Law Rewrite project, effective 1 April 2010 for accounting periods ending on or after 1 April 2010, the UK transfer pricing legislation is found in Part 4 of the Taxation (International and Other Provisions) Act 2010 (TIOPA 2010) (S 146 et seq.).

The mutual agreement procedure is set out in Part 2 of TIOPA 2010 (ss 124-125). APAs are in Part 5 of TIOPA 2010 (S 218 et seq.).

Permanent establishment rules are in CTA 2010 (ss 1141-1144). Rules about attribution of profit to permanent establishments are in CTA 2009 (Chapter 4, Section 20).

A diverted profits tax of 25 percent is to be introduced in Finance Bill 2015, effective 1 April 2015, to apply to arrangements designed to divert profit from the UK. These include arrangements that avoid the creation of a permanent establishment in the UK and those that involve transactions or entities that lack economic substance.

### Regulations, rulings, guidelines

UK legislation on transfer pricing incorporates the OECD model treaty, including the arm's length principle as set out in Article 9 of the OECD Model Tax Convention, and the OECD's Transfer Pricing Guidelines for Multinational

Enterprises and Tax Administrations. With effect for accounting periods beginning on or after 1 April 2011, this is the 2010 version of the transfer pricing guidelines.

In addition to the legislation and reliance on the OECD model treaty, HMRC publishes guidance on its interpretation of transfer pricing legislation, OECD principles, and UK case law. This guidance is currently found in the International Manual at INTM410000 et seq., and includes guidance on thin capitalization.

Guidance on advance rulings is available in Statement of Practice SP2/10, which provides details on advance pricing agreements, and Statement of Practice SP1/12 provides details on advance thin capitalization agreements. These statements of practice provide details of the processes to enter into such agreements in the UK.

Statement of Practice SP1/11 provides guidance on mutual agreement procedures and arbitration in relation to transfer pricing matters.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

Parties are related when one party directly or indirectly participates in the management, control, or capital of the other, or when the same person or persons directly or indirectly participate in the management, control, or capital of both parties. Generally, there is a 51 percent test of control, but this can be reduced to 40 percent in joint venture situations. Persons "acting together" to exert control in relation to financing arrangements are also treated as being related.

### Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

UK chargeable profits of a permanent establishment/branch are calculated as though the UK operations were conducted on arm's length terms with any connected parties and the remainder of the entity of which the permanent establishment/branch is part (the "separate enterprise principle"). The profit attribution approach is consistent with the commentary on Article 7 of the OECD model treaty and the OECD's guidelines for attribution of profits to permanent establishments.

Accordingly, the arm's length principle and OECD transfer pricing methods are used for the attribution exercise.



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## Methods and comparables

### Acceptable methods

The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the profit split method (residual analysis, contribution analysis), the transactional net margin method (TNMM), and unspecified methods (provided the derived result satisfies the arm's length principle).

### Priority of methods

The 2010 OECD transfer pricing guidelines, which were incorporated into UK law for accounting periods beginning on or after 1 April 2011, do not impose a distinct hierarchy of methods, because the choice of one method over another is based "on the most appropriate method to the circumstances of the case." Nevertheless, certain comparisons must be undertaken, in particular with regard to the availability and reliability of the data. Moreover, the OECD transfer pricing guidelines state that taxpayers retain the freedom to apply other unspecified methods, provided the derived result satisfies the arm's length principle.

### Availability of benchmarking/comparative data

Detailed financial information on UK registered companies is available.

### Are foreign comparables acceptable to local tax authorities?

HMRC's general preference is for UK comparables. However, foreign (in particular European Union) comparables are acceptable in practice if appropriately comparable UK data cannot be identified, or if foreign data sufficiently meet comparability criteria.

## Services issues

### Are management fees deductible?

Yes.

### Are management fees subject to withholding?

No.

### May stock option costs be included in the cost base for intercompany services charges?

Historically, UK transfer pricing legislation did not include specific guidance on the treatment of stock options as part of a cost plus arrangement. The UK tax authorities have published guidance that indicates they would like to see the cost of stock options added to a company's cost base and recharged with a mark-up. In September 2010,

HMRC released updated guidance in their International Manual (currently INTM 440210) that confirms HMRC will accept the spread on vesting or spread on exercise as pricing methods for share options at the relevant time. This development provides greater flexibility to multinational enterprises in deriving arm's length share option charges. However, HMRC have explicitly stated the importance of applying the chosen method consistently over the full length of the arrangement, and for all employees to achieve a result that equates what might be expected in an arm's length situation.

## Commissionaire arrangements

### Are commissionaire arrangements allowed?

Yes, but such arrangements should be expected to be subject to HMRC challenge. In the UK, the equivalent of a "commissionaire" is an "undisclosed agent" and the UK's common law status must be taken into account in considering the treatment of a UK commissionaire.

## Cost sharing agreements

### Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?

Yes. The UK follows Chapter VIII of the OECD transfer pricing guidelines.

### Are cost contribution or cost sharing payments deductible?

Yes, although taxpayers may be required to recognize the underlying character of the costs shared and treat them accordingly.

### Are cost contribution or cost sharing payments subject to withholding tax?

No.

### What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?

Tax depreciation may be available on a buy-in payment for qualifying intangibles. A buy-in may also be structured as declining royalties. In such a case, the royalties may be deducted.

## Documentation and tax return disclosures

### Tax return disclosures

No separate disclosure is required (by signing the tax return, the taxpayer will be implicitly confirming compliance with the arm's length standard).

The UK government has confirmed its intention to introduce the OECD's country-by-country reporting requirement, and will introduce UK regulations to this effect once the OECD's work on Action 13 (transfer pricing documentation requirements) of the BEPS Action Plan has been finalized.

#### **Documentation requirements**

Taxpayers should keep records to support details in the tax return. However, note the comments in the "Deadline to prepare documentation" section below. Records should be retained for the later of (a) six years from the end of the relevant accounting period; (b) the date when the enquiry into the return is completed; or (c) the date on which HMRC are no longer able to open an enquiry (TIOPA 2010, Part 4).

UK legislation provides for penalties of up to £3,000 per tax return for failure to compile and retain transfer pricing documentation (FA 1998, Sch 18, para 23(1)).

#### **Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

There is no obligation for a taxpayer to submit its transfer pricing documentation with its annual tax return. However, the tax authorities can request that evidence of compliance with the arm's length principle be made available as per the record-keeping requirements detailed in International Manual 483030. HMRC expect the taxpayer to prepare and retain documentation that demonstrates the taxpayer's compliance, in accordance with the UK Corporation Tax Self-Assessment regime. This means that contemporaneous transfer pricing documentation must be prepared in support of every tax return annually. This documentation must be made available at the request of the tax authorities within the time specified.

#### **Deadline to prepare documentation**

HMRC has issued guidance on documentation requirements in International Manual 483030. There is no prescribed mandatory format for such documentation, but the guidance stipulates that the taxpayer must have the following documentation available to HMRC to demonstrate that the results of transactions with related parties are determined for tax purposes according to

transfer pricing rules (and, in particular, the application of the arm's length principle):

- Primary accounting records – these are the records of transactions occurring in the course of carrying on a business, and entered into a taxpayer's accounting system. These records are needed to produce a balance sheet and a statement of profit or loss, and must be retained for any audit of the accounts; as described above, there are legal requirements concerning the time for which such records must be retained. The requirements would still be necessary in the absence of any tax rules. These records include the results (in terms of value) of the relevant transactions.
- Tax adjustment records – these are the records that identify adjustments made by a taxpayer on account of tax rules to move from profits in account to taxable profits, including the value of those adjustments, when a tax return is made for the period in question. These adjustments might include the adjustment of actual results to arm's length results on account of transfer pricing rules.
- Records of transactions with associated parties – these are the records in which a taxpayer identifies transactions to which the transfer pricing rules apply.
- Evidence to demonstrate an arm's length result – this is the evidence in which a taxpayer demonstrates that a result is arm's length for purposes of the transfer pricing rules.

Because UK transfer pricing legislation states that the rules related to an arm's length result should be construed in a manner that ensures consistency with the OECD transfer pricing guidelines, documentation to demonstrate an arm's length result should therefore follow the guidance provided in the guidelines.

Records of transactions with associated parties and of any tax adjustments must be prepared by the filing date of the annual tax return. Evidence to demonstrate compliance with the arm's length principle in relation to each tax return may be requested by the tax authorities.

#### **Deadline to submit documentation**

Documentation should be contemporaneous (that is, prepared annually consistent with tax return dates), and must be made available upon request by the tax authorities within the time specified in the request. It is generally expected that documentation should be provided within 30 days of the documentation request.

### **Deadline to file income tax return**

The UK imposes no requirement to file transfer pricing documentation with tax returns.

The annual corporation tax return is required to be submitted within 12 months after the end of the period of account (if the period of account is less than 18 months).

### **Acceptable languages for documentation**

Documentation must be in English.

### **Transfer pricing adjustments**

#### **Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

UK taxpayers are obligated to self-assess their taxable results, which therefore requires upwards adjustments in the tax return if the results in the financial statements do not reflect an arm's length position, so that UK taxable profits are understated or losses overstated.

#### **Self-initiated adjustments**

The UK imposes a requirement to adjust to arm's length prices only when this increases UK taxable profit or reduces UK losses; there is no provision for downward profit or upward loss adjustments. There is an exception for intra-UK transactions, when an upward profit adjustment in the return of one party to a transaction can be compensated by a downward adjustment in the other party's tax return in certain situations on the making of a claim.

#### **Statute of limitations on assessment for transfer pricing adjustments**

Four years from the accounting period end. The period for HMRC to launch an enquiry into a return is extended to six years only when a company has acted "carelessly."

The period may be extended up to 20 years in case of "deliberate misstatement."

#### **Taxpayer set-offs for other related-party transactions**

The UK follows the OECD transfer pricing guidelines on separate consideration of transactions and when aggregation is permitted.

### **Interest and penalties**

#### **Additional assessment payment deadline**

Generally 30 days from the date of receipt of the assessment notice. An extension may be requested.

### **Penalty on transfer pricing assessment**

For returns due after 1 April 2009, penalties are linked to the behavior that gives rise to the error: if reasonable care was taken -- no penalty; careless behavior -- minimum 0 percent and maximum 30 percent; deliberate careless behavior -- minimum 20 percent and maximum 70 percent; and deliberate and concealed error -- minimum 30 percent and maximum 100 percent. If there is no additional tax liability due to losses or availability of UK group relief, a penalty charged at a discounted rate of the gross adjustment may still apply.

#### **Is interest charged on penalties?**

No.

#### **Reduction in transfer pricing penalties**

HMRC will not charge a penalty if the taxpayer took "reasonable care" but still made an error. Penalties may be avoided by taking reasonable care to provide correct returns and documents; keeping adequate records to enable the taxpayer to provide complete and accurate returns and documents (that is, effectively reasonably supporting documentation/economic analysis); requesting a tax advisor's advice; and disclosure on submission of the return or document.

#### **Is interest payable when a refund is due to the taxpayer?**

Yes. Interest is paid by HMRC on both early payments and overpayments at a commercial rate. Credit interest runs from the date on which the overpayment arose to the earlier of the date when the overpayment is repaid or the date on which tax was originally due (FA 2009, Sch 54).

### **Advance Pricing Agreements (APAs)**

#### **Are APAs available?**

Yes, as per TIOPA 2010, Part 5.

HMRC has published a Statement of Practice, SP 2/10, that sets out best practices on APAs.

#### **APA filing fee**

No fee.

#### **APA term of agreement**

Generally three to five years forward; either the taxpayer or HMRC may seek rollback. APAs now include a clause giving HMRC the right to terminate the agreement in the event of changes to UK legislation or the OECD transfer pricing guidelines arising from the BEPS actions.

### Competent authority

#### When may taxpayer submit tax adjustment to Competent Authority (CA)?

When an action giving rise to, or likely to give rise to, double taxation not in accordance with an income tax treaty has occurred, or when equivalent provisions in the European Union Arbitration Convention are satisfied.

#### May CA develop new settlement positions?

Yes.

#### May taxpayer go to CA before paying tax?

The taxpayer must agree that the amount is due and payable, but may be able to stand over actual payment pending the outcome of the mutual agreement procedure..



# United States

## What's new

The United States' transfer pricing regime did not experience any substantive developments in 2014. On February 14, 2014, the Internal Revenue Service did release the Transfer Pricing Audit Roadmap to the public which recommends and outlines new policies and procedures for transfer pricing audits. The roadmap provides examination teams, in particular IRS persons involved in the audit of transfer pricing issues, with a broad set of tools and audit techniques to assist with the planning, execution, and resolution of transfer pricing examinations.

## General information

### Tax authority and law

Internal Revenue Service (IRS); Internal Revenue Code §482 (latest amendment effective for tax years beginning after December 31, 1986).

### Regulations, rulings, guidelines

Treas. Reg. §1.482, Treas. Reg. §1.6662-6.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

The definition of control for transfer pricing purposes includes any kind of control, direct or indirect, whether legally enforceable or not. It is the reality of control that is decisive, not its form or the way it is exercised.

### Do the local transfer pricing rules or tax authority allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

The definition of control for transfer pricing purposes includes any kind of control, direct or indirect, whether legally enforceable or not. It is the reality of control that is decisive, not its form or the way it is exercised.

## Methods and comparables

### Acceptable methods

For tangible property: comparable uncontrolled price method, resale price method, cost plus method, comparable profits method, profit split method, and unspecified methods.

For intangible property: comparable uncontrolled transaction method, comparable profits method, profit split method, and unspecified methods. For platform contributions (buy-ins): comparable uncontrolled transaction method, income method, acquisition price method, market capitalization method, residual profit split method, and unspecified methods.

For services: services cost method, comparable uncontrolled services price method, gross services margin method, cost of services plus method, comparable profits method, profit split method, and unspecified methods.

### Priority of methods

The best (most reliable) method is required. Treas. Reg. §1.482-1(c)(1).

### Availability of benchmarking/comparative data

Multiple local databases containing sufficient qualitative and quantitative information to identify comparables exist, and information from those databases is acceptable to the local tax authorities.

### Are foreign comparables acceptable to local tax authorities?

Ordinarily, comparables should be derived from the geographic market in which the tested party operates. Treas. Reg. §1.482-1(d)(4)(ii). Geographic market is any geographic area in which the economic conditions are substantially the same and may include multiple countries.

## Services issues

### Are management fees deductible?

Yes. IRC §162.

### Are management fees subject to withholding?

No.

### May stock option costs be included in the cost base for intercompany services charges?

Stock option costs are required to be included in the cost base for intercompany services charges. Treas. Reg. §1.482-9(j).

## Commissionaire arrangements

### Are commissionaire arrangements allowed?

No.

## Cost sharing agreements

### Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?

Yes. Treas. Reg. §1.482-7 (intangible property); Treas. Reg. §1.482-9(b)(7) (services).

### Are cost contribution or cost sharing payments deductible?

Whether such payments are deductible or capitalized is determined under U.S. domestic tax rules.



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**Are cost contribution or cost sharing payments subject to withholding tax?**

No.

**What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?**

Whether such payments are deductible or capitalized is determined under U.S. domestic tax rules.

**Documentation and Tax Return Disclosures**

**Tax return disclosures**

Forms 5471 and 5472 require disclosure of detailed information on controlled transactions with foreign entities. Treas. Reg. §1.482-7(k)(4) requires a controlled participant to file a Cost Sharing Statement with the IRS within 90 days after the first occurrence of intangible development costs, and to make specified disclosures on its annual tax return. The new IRS Schedule of Uncertain Tax Positions (UTPs) is required for certain taxpayers starting with 2010 tax returns.

**Documentation requirements**

Contemporaneous documentation is required for penalty protection. Treas. Reg. §1.6662-6.

Contemporaneous documentation is also required for all cost sharing arrangements. Treas. Reg. §1.482-7(k)(2).

**Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

Documentation is optional; however, if the taxpayer wants to have penalty protection, then the taxpayer must have contemporaneous documentation, which means the taxpayer must update its transfer pricing documentation on an annual basis.

**Deadline to prepare documentation**

Documentation must be prepared by the filing date of the annual income tax return.

**Deadline to submit documentation**

Documentation must be submitted within 30 days of request.

**Deadline to file income tax return**

The deadline for corporate federal income tax returns is the 15th day of the third month following the close of the tax year (March 15 for calendar-year taxpayers). Corporate taxpayers may request a six-month extension to file (September 15 for calendar-year taxpayers).

**Acceptable languages for documentation**

Documentation must be in English.

**Transfer Pricing Adjustments**

**Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

Book/tax differences are allowed.

**Self-initiated adjustments**

Upward and downward adjustments are allowed on timely filed original returns. Adjustments on amended returns are allowed only if they do not decrease taxable income.

**Statute of limitations on assessment for transfer pricing adjustments**

Three years from the original due date or filing date of return, whichever is later. For substantial omissions of income, the period is extended to six years. In cases of nonfiling or fraud, the period is unlimited.

**Taxpayer set-offs for other related-party transactions**

Transactions with the same controlled taxpayer in the same year are taken into account if the taxpayer: (1) determines an appropriate arm's length charge; (2) documents all correlative adjustments; and (3) notifies the IRS's district director within 30 days of the notice of proposed adjustment or deficiency.

**Interest and penalties**

**Additional assessment payment deadline**

Interest is assessed from the due date of the original filing. The interest rules are not specific to transfer pricing; interest payable is determined under U.S. domestic tax rules.

**Penalty on transfer pricing assessment**

Transfer pricing penalty of 20 percent or 40 percent of additional tax resulting from adjustments exceeding objective thresholds may be imposed.

**Is interest charged on penalties?**

Generally, yes.

**Is interest payable when a refund is due to the taxpayer?**

Yes. Interest is paid on refunds pursuant to the domestic tax rules.

**Reduction in transfer pricing penalties**

No penalty will be assessed if the best method was reasonably selected and applied, sufficient documentation was prepared contemporaneously with the tax return filing, and provided to the IRS within 30 days of a request.

**Advance Pricing Agreements (APAs)**

**Are APAs available?**

Yes. Rev. Proc. 2006-9 allows multilateral, bilateral, and unilateral APAs. The Internal Revenue Service in November 2013 released a notice on proposed updates to its guidance on the APA process. Notice 2013-79 on APAs would supersede Rev. Proc. 2006-9.

**APA filing fee**

Yes. Rev. Proc. 2006-9 allows multilateral, bilateral, and unilateral APAs. The Internal Revenue Service in November 2013 released a notice on proposed updates to its guidance on the APA process. Notice 2013-79 on APAs would supersede Rev. Proc. 2006-9.

**APA term of agreement**

Generally, the term is five years. Longer terms may be considered as appropriate. Either the taxpayer or the IRS may seek rollback to open tax years.

**Competent Authority**

**When may taxpayer submit tax adjustment to competent authority (CA)?**

A request may be submitted after the amount of the proposed adjustment is communicated to the taxpayer in writing.

**May CA develop new settlement positions?**

CA may negotiate an agreement based on a different position from the U.S.-initiated adjustment, unless the taxpayer has entered into a closing agreement or has litigated the adjustment.

**May taxpayer go to CA before paying tax?**

Yes. The taxpayer may go to CA after the amount of the proposed adjustment is communicated in writing to the taxpayer, before paying the tax.



# Uruguay

## What's new

Even though Uruguay's transfer pricing environment did not experience much change during 2014, transfer pricing has gradually become an important topic in recent tax audits, with the tax authorities requesting that taxpayers provide their documentation during such audits.

## General information

### Tax authority and law

Uruguayan Tax Office — Dirección General Impositiva (DGI); Chapter VII Income Tax Act.

### Regulations, rulings, guidelines

Decree 56/009 and Decree 392/009. Resolutions issued by DGI: 2084/009, 2089/009, 818/010, 819/010, 745/011.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

Transfer pricing rules apply when transactions are entered into with nonresident related parties, including those with a functional relationship. They also apply to transactions with companies located in tax havens, and with companies subject to the Uruguayan free zone regime.

### Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

There is no formal provision in this regard.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the profit split method, the transactional net margin method (TNMM), and a special method for transactions in several commodities.

### Priority of methods

The most appropriate method rule applies, except in the case of commodities for which a special method applies.

### Availability of benchmarking/comparative data

Local comparative data is limited and should be analyzed on a case-by-case basis.

### Are foreign comparables acceptable to local tax authorities?

Local tax authorities may accept foreign comparables when reliable local comparables data are not available.

## Services issues

### Are management fees deductible?

Yes, subject to the general rules of deductibility.

### Are management fees subject to withholding?

Yes.

### May stock option costs be included in the cost base for intercompany services charges?

There is no formal provision in this regard.

## Commissionaire arrangements

### Are commissionaire arrangements allowed?

Yes.

## Cost sharing agreements

### Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?

There is no formal provision in this regard.

### Are cost contribution or cost sharing payments deductible?

There is no formal provision, but generally not.

### Are cost contribution or cost sharing payments subject to withholding tax?

No, provided they do not include payments for certain services.

### What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?

There is no formal provision in this regard.

## Documentation and tax return disclosures

### Tax return disclosures

Taxpayers must disclose the types of related-party transactions entered into, the amount of those transactions (in local currency), the related parties involved and their country of residence, the country of origin and destination of goods and services, the methods used, and the amount of transfer pricing adjustments, if any.



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### Documentation requirements

Depending on the total value of the transactions subject to the transfer pricing regime, taxpayers must (a) submit documentation on an annual basis (a transfer pricing study and a transfer pricing return); and (b) prepare and keep documentation.

**Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

For taxpayers whose transactions subject to the transfer pricing rules exceed specified amounts, documentation requirements are annual and consist of a complete report and a transfer pricing return. There is no mention in the rules regarding whether comparables can be refreshed or a new search must be performed annually.

### Deadline to prepare documentation

There is no formal provision. Generally, documentation is prepared by the filing date of the annual income tax return (within the fourth month after year-end).

### Deadline to submit documentation

For those taxpayers that must submit documentation on an annual basis, the deadline is the ninth month after year-end. Documentation to be filed includes a transfer pricing study and a transfer pricing return.

### Deadline to file income tax return

An income tax return must be submitted within four months of the end of the accounting period.

### Acceptable languages for documentation

Documentation must be in Spanish.

### Transfer pricing adjustments

**Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

The starting point of an income tax return is the financial statements. Subsequently, adjustments are made for tax differences, one of which might be for transfer pricing reasons.

### Self-initiated adjustments

A company can make a self-initiated adjustment by including it as a tax adjustment in the income tax return.

### Statute of limitations on assessment for transfer pricing adjustments

General statute of limitation rules apply: generally five years, but this period might be extended to 10 years in cases of fraud.

### Taxpayer set-offs for other related-party transactions

No specific provisions.

### Interest and penalties

#### Additional assessment payment deadline

No specific provision.

#### Penalty on transfer pricing assessment

Twenty percent of the additional tax payable. Companies in violation of the formal requirements established in the local transfer pricing regulation will be subject to graduated sanctions that increase in accordance with the severity of the breach.

#### Is interest charged on penalties?

No.

#### Is interest payable when a refund is due to the taxpayer?

No.

#### Reduction in transfer pricing penalties

No specific provision.

### Advance Pricing Agreements (APAs)

#### Are APAs available?

Yes.

#### APA filing fee

No filing fee is specified.

#### APA term of agreement

The term should not exceed three years.

### Competent authority

#### When may taxpayer submit tax adjustment to Competent Authority (CA)?

The mutual agreement procedure under the pertinent treaty would apply.

#### May CA develop new settlement positions?

There is no formal provision.

#### May taxpayer go to CA before paying tax?

Yes.



# Venezuela

## What's new

Venezuela's transfer pricing regime remained stable during 2014. Tax audit activity continued to be high, and tax authorities' interest in transfer pricing matters was unabated.

## General information

### Tax authority and law

National Integrated Tax and Customs Service Administration (SENIAT); Income Tax Law (ITL) Nr. 38.628 Chapter III Title VII (latest amendment effective February 16, 2007).

### Regulations, rulings, guidelines

SENIAT Providence NR sNAT-2003-2424, dated February 13, 2004 (effective from date of issuance).

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

A related-party relationship arises in the following situations:

- One company's direct or indirect participation in another company's management, control, or capital;
- Direct or indirect participation of two companies in another company's management, control, or capital;
- Operations with a party located in a foreign tax haven; and
- A third party that operates on behalf of a company in Venezuela to perform transactions with a related party of said company in Venezuela.

(Art. 116,117, 118 and 119 ITL).

### Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

Yes.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the profit split method, and the transactional net margin method (TNMM).

### Priority of methods

Taxpayers must use the best method, with priority for CUP.

### Availability of benchmarking/comparative data

Yes, but the number of local publicly held companies is limited.

### Are foreign comparables acceptable to local tax authorities?

Yes, there is no legal limitation on using foreign comparable companies.

## Services issues

### Are management fees deductible?

Yes.

### Are management fees subject to withholding?

Yes. The withholding rate depends on the type of contract. If it is a professional fees contract, the withholding tax rate is 34 percent of 90 percent of gross income. If it is a technical assistance contract, the withholding tax rate is 34 percent on a 30 percent basis.

When an income tax treaty is in effect, taxation will occur in the country from which the service provision has originated. The company not domiciled in Venezuela will be taxed according to the treaty, not the local legislation. This applies to both professional fees and technical assistance contracts.

### May stock option costs be included in the cost base for intercompany services charges?

Considering that the amount of the stock option is a Venezuela-source cost, it may be included in the cost base.

## Commissionaire arrangements

### Are commissionaire arrangements allowed?

Yes.

## Cost sharing agreements

### Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?

Yes, cost contribution arrangements and cost sharing agreements are accepted, but for permanent establishments only.

### Are cost contribution or cost sharing payments deductible?

Yes. If a place of business qualifies as a permanent establishment, it can deduct cost contribution or cost sharing payments, with the exception of cost/expenses for royalties, technical assistance, technological services, and professional services fees.



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**Are cost contribution or cost sharing payments subject to withholding tax?**

No. However, certain treaties may impose withholding tax.

**What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?**

Not applicable.

**Documentation and tax return disclosures**

**Tax return disclosures**

Article 168 of the ITL provides that an Informative Return must be filed in June of each year. However, SENIAT Providence NR SNAT-2003-2424 of February 13, 2004, establishes that a return must be filed within the six-month period following year-end for fiscal years ending in a month other than December.

**Documentation requirements**

Contemporaneous documentation is required under ITL art. 169, effective for tax years beginning after February 16, 2007.

**Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?**

Transfer pricing documentation may be requested by the tax authorities at any time; however, the statute of limitations of the tax obligation in Venezuela is four years. The tax authorities usually request documentation for the last four years, the information return, income tax return, and the information provided under article 169 of the Income Tax Law, which includes accounting information and information that forms part of the transfer pricing documentation, and supporting documents or work papers.

Regarding comparable transactions, the law does not specify whether they must be refreshed or whether taxpayers must prepare new searches on an annual basis.

**Deadline to prepare documentation**

Documentation must be contemporaneously prepared each tax year.

**Deadline to submit documentation**

Documentation must be submitted upon request.

**Deadline to file income tax return**

The deadline to file an income tax return is three months after the fiscal year-end.

**Acceptable languages for documentation**

Documentation and information related to transfer pricing calculations indicated in the tax return or information return forms must be kept by the taxpayer, duly translated into Spanish.

**Transfer pricing adjustments**

**Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

Yes, all financial information used in the analysis must be the same. If it is not, the taxpayer must explain the differences in case of an audit.

**Self-initiated adjustments**

Adjustments are permitted. The ITL states that if the conditions in a transaction between related parties are not at arm's length, the benefit not accounted for must be included in the company's income, subject to taxation, and be reflected on the tax return, allocating the proper adjustment to the fiscal year in which the transaction took place.

**Statute of limitations on assessment for transfer pricing adjustments**

Four years from the date of filing return, or six years if overall tax compliance was not accomplished.

**Taxpayer set-offs for other related-party transactions**

There is no formal provision.

**Interest and penalties**

**Additional assessment payment deadline**

Additional payment is due when the assessment is issued.

**Penalty on transfer pricing assessment**

Ordinary penalties apply, at 25 percent to 200 percent of additional tax. The penalty for not complying with the transfer pricing methodology is 300-500 tax units. The penalty for failure to file the transfer pricing return is 10-50 tax units. Tax Code art. 66, 103, 104, 111, effective 10/2001.

**Is interest charged on penalties?**

No.

**Is interest payable when a refund is due to the taxpayer?**

Yes, under Tax Code art. 67.

**Reduction in transfer pricing penalties**

Reduction applies if transfer prices are documented according to the pertinent legislation (Tax Code art. 96 num. 5).

**Advance Pricing Agreements (APAs)**

**Are APAs available?**

Yes (unilateral and bilateral). Title VII, Chapter III, fifth section of ITL (latest amendment effective February 16, 2007).

**APA filing fee**

Not specified. Taxpayer must bear the cost of an APA application.

**APA term of agreement**

The ITL specifies only that APAs may be longer as a result of a friendly procedure under the terms of a tax treaty.

**Competent authority**

**When may taxpayer submit tax adjustment to Competent Authority (CA)?**

There is no formal procedure.

**May CA develop new settlement positions?**

Yes.

**May taxpayer go to CA before paying tax?**

Yes.



# Vietnam

## What's new

The transfer pricing highlight of the year in Vietnam was the introduction of the new Form 03-7/TNDN, which replaces Form 01/QLT, and requires enterprises to self-assess the arm's length nature of their related-party transactions and declare the difference between accounting records and reassessed price on the basis of market price.

## General information

### Tax authority and law

General Department of Taxation (GDT); Circular 66/2010/TT-BTC, dated 22 April 2010, and issued by the Ministry of Finance provides guidelines on the calculation of arm's length prices in business transaction between affiliated parties. Circular 66 entered into effect on 6 June 2010, and replaces Circular 117/2005/TT-BTC dated 19 December 2005.

The Ministry of Finance on 20 December 2013 issued Circular 201/2013/TT-BTC providing guidance on the application of advance pricing agreements (APAs) in tax administration. The circular entered into effect on 5 February 2014.

Circular 156/2013/TT-BTC on Tax Administration, dated 6 November 2013, issued by the Ministry of Finance, provides a new template for the Transfer Pricing Declaration Form.

### Regulations, rulings, guidelines

Some official letters have been issued by the General Department of Taxation to guide in the implementation of Circular 66.

New Form 03-7/TNDN is applicable for tax periods/fiscal years ending after 1 January 2014. Form 03-7/TNDN will replace Form 01/QLT, and requires enterprises to self-assess the arm's length nature of their related-party transactions and declare the difference between accounting records and reassessed price on the basis of market price.

### Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?

The definition of related parties in Circular 66 is more extensive and clearer than the definition in Circular 117. There are two additional criteria to determine related parties: (i) Two enterprises that hold directly or indirectly

at least 20 percent of the chartered capital of a third enterprise are considered affiliated; and (ii) an enterprise that provides a guarantee or grants a loan that constitutes 20 percent or more of the amount of the chartered capital or that is more than 50 percent of the total value of the long- and medium-term loans of another enterprise will be regarded as related.

In addition, Circular 66 quantifies the definition of "material difference" that would trigger an adjustment to the comparable price or transaction. Accordingly, any factor that triggers at least a 1 percent increase or decrease in the transaction price, or a 0.5 percent increase or decrease in gross profit ratio or other profitability ratios would be considered a material difference; consequently, appropriate adjustments to the comparable price or transaction should be made.

### Do the local transfer pricing rules or tax authorities allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

Yes.

## Methods and comparables

### Acceptable methods

The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the comparable profits method (CPM), and the profit split method.

### Priority of methods

Vietnam has not established a priority of methods. The taxpayer must establish it is using the "best" method under the circumstances, including the reliability of supporting documentation.

### Availability of benchmarking/comparative data

Local Vietnamese company comparables are very limited due to the limited number of public companies and the quality of information available.

In general, Circular 66 requests that data, vouchers, and documents used as grounds for comparability analyses must be from clear sources so that they can be examined and verified by the tax authorities.

### Are foreign comparables acceptable to local tax authorities?

There are no formal provisions or guidelines on this issue, but in practice, foreign comparables would be acceptable as supporting documentation if no or limited



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domestic comparables are available. ASEAN or pan-Asian comparables would be preferable.

### Services issues

#### Are management fees deductible?

Management fees charged to local Vietnamese subsidiaries are not deductible, unless they are for specific services rendered by the foreign parties. Most management fees fail to establish this requirement and hence do not get to the question whether the fees are at arm's length. Allocation of overhead expenses to permanent establishments is limited to a formula apportionment based on revenue. However, few companies other than banks operate through permanent establishments in Vietnam because of licensing issues.

#### Are management fees subject to withholding?

Foreign contractor withholding tax (FCWT) is generally applicable to payments of management fees to foreign entities rendering such services for Vietnamese entities. The FCWT is comprised of both a VAT and a corporate income tax element, and has various rates of withholding, depending on the circumstances.

#### May stock option costs be included in the cost base for intercompany services charges?

There are no specific provisions in the regulations that prohibit these costs from being included in the cost base for intercompany services charges.

### Commissionaire arrangements

#### Are commissionaire arrangements allowed?

There is no specific statutory authority on this issue.

### Cost sharing agreements

#### Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?

There is no specific statutory authority on this issue.

#### Are cost contribution or cost sharing payments deductible?

Not applicable.

#### Are cost contribution or cost sharing payments subject to withholding tax?

Not applicable.

#### What is the payer's tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?

Not applicable.

### Documentation and tax return disclosures

#### Tax return disclosures

Taxpayers must prepare a declaration of related transactions — Form GCN-01/QLT — set out in Appendix 1-GCN/CC, issued together with Circular 66. The deadline for submission of this form is the same as the deadline for submission of the corporate income tax finalization declaration (90 days after the end of the fiscal year).

New Form 03-7/TNDN is applicable for fiscal years ending after 1 January 2014.

#### Documentation requirements

Taxpayers must maintain contemporaneous documentation, including a transactional description including the related party, product specifications, contractual terms, and pricing method adopted.

However, there is no clear guidance on a template of documentation.

#### Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?) Must comparables be refreshed or a new search performed?

Yes, the documentation requirements are annual requirements, and call for a complete transfer pricing report. However, the rules do not specify whether refreshing comparables would suffice if there are no significant changes in the company's functions performed, risks assumed, and assets employed.

#### Deadline to prepare documentation

Taxpayers must maintain contemporaneous documentation prepared in advance when the transactions occur.

#### Deadline to submit documentation

When the tax office makes a request, a taxpayer must provide information, documents, and source documents within 30 working days from the date of receipt of the request in writing from the tax office. This period may be extended once for a maximum of 30 additional days from the expiration of the original 30 working day period for legitimate reasons.

Under Point 5.a, Article 10 of Circular 156/2013/TT-BTC, the deadline for supplementing tax a dossier is before the tax authority issues a decision to conduct a tax inspection or tax audit at the taxpayer's office.

#### **Deadline to file income tax return**

The corporate income tax finalization declaration must be filed 90 days after the end of the fiscal year.

#### **Acceptable languages for documentation**

Documentation must be in Vietnamese. Documents in other languages must be translated into Vietnamese.

#### **Transfer pricing adjustments**

##### **Must the transfer prices reflected on an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?**

In general, the transfer prices reflected on an income tax return should be the same as those reflected in financial statements. There may be book/tax differences with respect to, for example, nondeductible expenditures.

#### **Self-initiated adjustments**

Applicable from the 2014 tax year the new format of the annual transfer pricing declaration (Form 03-7/TNDN) includes an additional requirement for enterprises to self-assess the arm's length nature of their related-party transactions and declare the difference between accounting records and reassessed price on the basis of market price. It appears the reassessment is required/possible only when it will result in an increase of an enterprise's profit and tax liability. The adjustment is to be made to individual revenue and expense items. A lump-sum adjustment is not accommodated.

#### **Statute of limitations on assessment for transfer pricing adjustments**

The general rules apply: 10 years from the date the violations are discovered.

#### **Taxpayer set-offs for other related-party transactions**

There is no formal provision.

#### **Interest and penalties**

##### **Additional assessment payment deadline**

If the tax authorities request the additional assessment payment during a tax audit, the taxpayer must pay by the deadline set by the tax officer on a case-by-case basis.

##### **Penalty on transfer pricing assessment**

Penalties will be levied in addition to transfer pricing adjustments. Circular 66 does not provide any guidelines on administrative fines or specific transfer pricing penalties. Instead, the penalty will be governed by the effective Law on Tax Management.

Under the Law on Tax Management, there will be an administrative penalty for failure to comply with tax regulations. When an enterprise makes voluntary adjustments, the underdeclared amount will be treated as a late payment, and is subject to late payment interest at the progressive rate of 0.05 percent per day on the deferred tax amount if the tax is paid within 90 days, and 0.07 percent if the tax is paid after 90 days. When an enterprise makes an incorrect declaration, a fine equal to 20 percent will be imposed on the underdeclared tax, if any, in addition to the late payment interest. When an enterprise commits acts of tax evasion or tax fraud, the fine is one to three times the underdeclared tax. Late filing of 90 days or more constitutes tax evasion. Failure to file the annual tax declaration form for related-party transactions and/or to have documentation may trigger the one-to-three-times tax evasion penalty.

Under Law No. 71/2014/QH13 on Amendment on Tax Laws, the 0.07 percent late submission penalty level for late tax submissions exceeding 90 days is removed. Accordingly, the 0.05 percent rate will be applied consistently. This Law will take effect from 1 January 2015.

##### **Is interest charged on penalties?**

Yes.

##### **Is interest payable when a refund is due to the taxpayer?**

Yes.

##### **Reduction in transfer pricing penalties**

No provision.

### Advance Pricing Agreements (APAs)

#### Are APAs available?

Yes, unilateral, bilateral, and multilateral APAs may be entered into. The Ministry of Finance on 20 December 2013 issued Circular 201/2013/TT-BTC providing guidance on the APAs program. The circular entered into effect on 5 February 2014.

#### APA filing fee

No formal provision.

#### APA term of agreement

An APA in Vietnam will have a maximum five-year term and a maximum five-year extension.

### Competent authority

#### When may taxpayer submit tax adjustment to Competent Authority (CA)?

There is no formal procedure.

#### May CA develop new settlement positions?

No experience or precedent, because Vietnam is not known to have ever been involved in a CA procedure under any of its tax treaties.

#### May taxpayer go to CA before paying tax?

No experience or precedent, because Vietnam is not known to have ever been involved in a CA procedure under any of its tax treaties.



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