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Foreword

The 2016 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 69 jurisdictions around the world and the OECD. This 2016 edition of the Global Transfer Pricing Country Guide has been reviewed and updated as of December 31, 2015.

Given the complexity of transfer pricing issues, the Global Transfer Pricing Country Guide should be the starting point rather than the finish line for 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, or visit http://www.deloitte.com/tax.
Due to the drop in oil prices, Angola is currently facing a severe budget and currency crisis, which has given rise to a 33 percent devaluation of the local currency and a significant shortage of foreign currencies. As a result, most importers are facing difficulties obtaining enough foreign currency from local banks and processing payments to nonresident providers, which in turn has led to a shortage of several goods in the market. As a reaction to that adverse situation, the Angolan government has implemented several measures and enacted new laws to increase the restrictions on transfers of currency abroad, through a new foreign investment law and adjustments to its currency exchange laws.

The tax authorities are also seeking to compensate for the sharp reduction in oil tax revenues through an increase of the tax derived from other industries. Transfer pricing is considered a tool to reach that objective. Thus, the tax authorities hired specialized transfer pricing consultants during the second half of 2015 to provide specific training to their tax audit team. They have also launched a bid to obtain technical assistance for the tax audits of the 30 big non-oil taxpayers (Angola has been hiring external technical assistance for the tax audits of oil operators for many years).

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). The tax authorities have negotiated with BvD to obtain access to the Orbis database.

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” (the local entity equity), with reference to the contract’s date of signature. Due to the drop in oil prices and the subsequent budget and currency issues, Angola introduced in 2015 new regulations on foreign investment and exchange regulation that increase the restrictions and taxes on payments or dividends to nonresident entities.

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.

**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?
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. Even when the taxpayer has not recorded any transactions with related parties in the tax year under analysis, the tax authorities have in the past requested the delivery of a transfer pricing report as complete as possible, imposing penalties whenever the information provided is deemed noncompliant with the documentation requirements.

There is little experience with the tax authorities’ expectation of the time frame to refresh or perform new studies. Initial discussions with the tax authorities indicate that comparables should be updated at least every three years.

**Deadline to prepare documentation**
June 30 of the following year, that is, six months after the closing of the accounts, given that 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 is no 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.º of the Industrial Tax Code provides that the tax authorities may perform transfer pricing adjustments, whether primary adjustments or correlative adjustments (the latter only when the primary adjustment involved a transaction between two taxpayers subject to the Imposto Industrial), 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. The tax authorities imposed penalties in 2015 against taxpayers who did not deliver the mandatory transfer pricing documentation, or who filed information that was not compliant with the documentation requirements.

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.
OECD BEPS Recommendations

Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan? If so, are there any material differences between the final report and your country’s measures? What is the effective date of those measures?

Angola is not an OECD member and has not implemented any measures included in the BEPS Action Plan.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures? What is the effective date of those measures?

Angola has not issued any legislation implementing the country-by-country reporting requirement.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?

Angola is not an OECD member, nor has it entered into any double tax treaties. Thus, Angola is not committed to participate in the multilateral instrument.
There were no major changes in Argentina’s transfer pricing regime in 2015, nor were there any court decisions regarding transfer pricing. The tax authorities continued to impose tax controls on transactions that could be linked to harmful tax planning objectives. As in past years, the tax authorities continued to focus on audits of specific industries. More regulatory requirements and exchange of information agreements are expected in the future.

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.

In 2014, the Argentine tax authorities issued a list of countries considered “cooperative” for tax transparency purposes; any country or jurisdiction not included on the published list of cooperative countries is deemed to be a noncooperative country, and will be subject to all tax provisions that apply to low- or no-tax jurisdictions. The 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 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.

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 $77,000), 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 $1,500/$750); for failure to comply with formal procedures (up to US $3,400); 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.
OECD BEPS Recommendations

Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan? If so, are there any material differences between the final report and your country’s measures? What is the effective date of those measures? The tax authorities have stated publicly that they are considering following the recommendations on Action 8 of the BEPS Action Plan.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures? What is the effective date of those measures? The tax authorities have stated publicly that they are considering enacting legislation implementing country-by-country reporting. The legislation is expected to adopt the master file requirement. Current legislation already requires the filing of the local file on a yearly basis. No effective date has been announced, but it is expected to be around September 2017.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan? Based on public statements of the fiscal authority, Argentina is committed to participate in the multilateral instrument develop under Action 15. Argentina has been very active in negotiating exchange of information agreements.

Argentina joined in the BEPS final report as an associate, thus taking part in the work conducted on an equal standing with OECD member states. Argentina adhered in 2011 to the Convention on Mutual Administrative Assistance in Tax Matters, whereby countries that are not members of any international organizations may adhere to the Convention, in line with the G-20 mandate to create international cooperation through multilateral information exchange instruments. Thus, Argentina may have access to tax information from countries that have not entered into a bilateral agreement with Argentina.
What's new
Australia continues the process of issuing updated guidance regarding the application of the new transfer pricing law implemented in 2013. This includes guidance on the new reconstruction provisions and advance pricing arrangements.

Movement has been made in Australia in relation to the OECD BEPS actions. This includes new laws relating to country-by-country reporting and enabling the deeming of a permanent establishment in certain circumstances. Further, any changes made to the OCED transfer pricing guidelines are relevant to Australia, because the guidelines are specifically referenced within the Australian legislation.

A case on financing arrangements was decided in 2015 (Chevron Australia Holdings Pty Ltd. V. Commissioner of Taxation (No. 4)). The decision is likely to be appealed; however, the current decision stands, and taxpayers should be aware of its implications if they have financing arrangements with related parties.

General information
Tax authority and law

<table>
<thead>
<tr>
<th>Relevant dates</th>
<th>Applicable legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>For income years starting on or after 1 July 2013</td>
<td>Subdivisions 815-B, 815-C and 815-D of the Income Tax Assessment Act (ITAA) 1997 &amp; Subdivision 284-E of Schedule 1 of the Tax Administration Act (TAA) 1953 (“the new laws”).</td>
</tr>
<tr>
<td>For income years starting on or after 1 July 2004 to 30 June 2013</td>
<td>Subdivision 815-A, ITAA 1997 (enacted in September 2012, with retroactive application to income years commencing on or after July 1, 2004). These provisions are applicable only to Australian taxpayers that transacted with affiliates in countries with which Australia has a double tax agreement.</td>
</tr>
</tbody>
</table>
However, these rulings largely remain in force until they are replaced. The following ATO Taxation Rulings address transfer pricing matters:

- 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 June 29, 2013) (not relevant for the new rules, replaced by TR 2014/8 below)
- TR 98/16 – Penalties
- TR 1999/1 – Charging for services (does not apply in relation to the new rules; however, a replacement ruling has not yet been released)
- TR 2000/16 – Relief from double taxation and the Mutual Agreement Procedure
- 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 June 29, 2013)
- TR 2014/8 – Transfer Pricing Documentation and Subdivision 284-E (applicable to income years commencing on or after June 29, 2013).

Two Taxation Rulings were released in late 2014 that relate to the new rules. TR 2014/6 provides the Commissioner’s views on the application of section 815-130 of the ITAA 1997 which specifies the relevance of the actual commercial or financial relations to the identification of arm’s length conditions (commonly termed reconstruction provisions). 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. In 2014 and 2015, the ATO issued PS LAs on the following:

- PS LA 2014/2 – application of penalties under the new rules
- PS LA 2014/3 – 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 2015/3 – guidance to ATO personnel on the application of the new reconstruction provisions
- PS LA 2015/4 – guidance regarding advance pricing arrangements

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 July 1, 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, and the report was released to the public in June 2015.

Australia has passed a new law regarding the deeming of a permanent establishment in certain circumstances, when an overseas entity derives sales income from Australian-based customers. The law entered into effect January 1, 2016, and was designed to target entities with large online sales income not recognized and taxed in Australia. However, the practical application of the law may be much broader.

**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.
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 legislative 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. The existence of a RAP may be relied on for potential penalty mitigation. 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 tax payable imposed by the ATO in relation to transfer pricing.

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 along with specific consideration of the Australian reconstruction provisions. 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 June 29, 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.

The ATO has released simplification measures to assist some taxpayers to manage the onerous compliance costs of maintaining compliant documentation. These measures replace any safe harbors previously provided by the ATO (for example, in relation to services). The thresholds to apply the simplification measures are difficult to meet (including tests relating to countries dealt with, types of transactions, profitability, and pricing methods) but when a taxpayer falls within the measures, the required documentation is significantly reduced.

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 process, because taxpayers must self-assess compliance with the new rules and disclose on the IDS 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 to consider the transfer pricing for the specific year in question, potentially update the financial data of the selected comparables, and undertake a comparison of arm’s length results against the entity’s outcomes, to assess the existence of a transfer pricing benefit as required under the legislation.

It is recommended that by year four (or if there is a significant change in the business) new transfer pricing documentation (as opposed to an update report or addendum) 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 in English 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 for the period 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 request documentation to be supplied within 21 to 28 days of a request. An extension of this deadline is unlikely.

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

- January 15 – 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 June 30 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 December 31 year-ends, July 15).

**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) and question 15 (employee share-based remuneration) 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 ability for self-assessment with respect to arm’s length prices under Division 13.

Under the new laws (for income tax years commencing on or after July 1, 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. This can be included within the financial statements or as an adjustment within the calculation of taxable profit/loss.

Downward transfer pricing adjustments cannot be self-assessed under the transfer pricing laws. Therefore, an adjustment to reduce taxable profit/loss cannot be included in the income tax return. However, it may be possible to make an adjustment to revenue or expenses with the financial statements to correct if the transfer pricing was incorrect during the year.
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 July 1, 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 shortfall 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 shortfall 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.

The GIC will be calculated on the tax shortfall amount and not the penalty.

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. It is important to note the classification of documentation as a RAP is, in fact, assessed by the ATO officer undertaking the review.

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) 2015/4. The practice statement outlines the policies and procedures of the ATO’s APA program (which allows unilateral, bilateral, and multilateral APAs).
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.

OECD BEPS Recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan?
If so, are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
Yes. As the Australian legislation specifically requires application to be consistent with the OECD transfer pricing guidelines, to the extent the October 2015 report implemented changes to the wording of the guidelines, these will be applicable in Australia from the point of issuance of the updated guidelines.

Due to Australia’s new transfer pricing laws and the rewrite of Taxation Rulings and Practice Statements, the practical application of these changes should become more evident as the ATO releases additional documents.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
Yes. Australia has enacted legislation to implement the country-by-country reporting requirements, Subdivision 815-E of the ITAA 1997. Additional guidance was also released by the ATO in the Law Companion Guideline LCG2015/3 on December 17, 2015.

The country-by-country reporting requirements apply to Australian taxpayers who are part of a global group with income greater than AUD 1 billion in the previous year. The country-by-country reporting requirements may apply to a subsidiary in Australia that is part of a larger global group, even when a parent company is already filing the equivalent reports in its home country. An exemption may be applied for, but there is little guidance on when it would be granted.

For entities required to file a country-by-country report in Australia, three documents will be required: a CbC report, a master file, and a local file. The final CbC report format has not yet been released by the ATO, but is expected to be broadly similar to that recommended by the OECD. This reporting requirement is more onerous than the OECD recommendations, as a subsidiary entity will be required to file all reports in Australia by the deadline.

This documentation is separate from the transfer pricing documentation required for compliance with 284-E TAA 1953 and penalty protection purposes.

The country-by-country provisions in Australia apply to income years commencing on or after January 1, 2016, with the report due for filing within 12 months following the year end. For example, for a December 31, 2016, year end, the report is due before December 31, 2017.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
Yes.
Austria

What’s new
In 2015, the OECD base erosion and profit shifting (BEPS) project played an important role in the Austrian tax authorities’ plans. Now that the OECD has issued its final guidance on transfer pricing documentation and country-by-country reporting, the Austrian tax authorities are expected to issue guidance or a new law on explicit, mandatory transfer pricing documentation and a CbC reporting requirement effective for 2016 in Austria.

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 with regard to the arm’s length principle.

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, specific payments such as 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 tax 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.

The Austrian tax authorities are expected to issue explicit, mandatory transfer pricing documentation requirements in 2016. The requirements are expected to be based on the new OECD guidance on Action 13 of the BEPS project.

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 June 30 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 April 30 of the year following the tax year. Taxpayers represented by a tax advisor may file their income tax returns by April 30 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 skills. According to nonbinding information from the Austrian tax 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 need to be corrected based on the arm’s length principle, 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.

Is interest charged on penalties?
Not applicable.

Is interest payable when a refund is due to the taxpayer?
Generally, interest on late payment of taxes due 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 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.

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 tax 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 based on the fees for the unilateral 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.
OECD BEPS Recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan? If so, are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
In general, the Austrian tax authorities have committed to following the recommendations of the final report on Actions 8-10. However, no explicit measures have been enacted or announced. It is expected that the recommendations will influence future transfer pricing and tax audits.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
Austria is expected to issue guidance and/or legislation on the implementation of explicit, mandatory transfer pricing documentation and country-by-country reporting. It is also expected that the Austrian tax authorities will follow the OECD guidance in this regard. Depending on the exact wording of the legislation, these mandatory requirements may have to be prepared by taxpayers for fiscal year 2016.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan? The Austrian tax authorities have not made any announcements regarding participation in the multilateral instrument, but Austria is likely to participate in the same.
Belarus

What’s new
In mid-2015, the Belarusian tax authorities announced significant amendments to the domestic transfer pricing regulations, to enter into effect in 2016. The goal of these amendments is to introduce transfer pricing documentation requirements and to make the local legislation more aligned with the OECD transfer pricing guidelines. These efforts indicate that today transfer pricing is one of the top priorities for the Belarusian tax authorities.

General information
Tax authority and law

Regulations, rulings, guidelines
No specific regulations or guidelines have been introduced.

Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?
Transfer pricing rules apply to the following transactions:

Real estate transactions
Transactions that involve the sale or purchase of real estate, including transactions with housing bonds, are subject to transfer pricing control if the transaction price differs from the arm’s length price by at least 20 percent.

Cross-border transactions
• Transactions with related nonresidents, if the transaction amount exceeds BYR 1 billion (approx. USD 54,000).
• Transactions with nonresidents registered in low-tax jurisdictions, if the transaction amount exceeds BYR 1 billion. The list of low-tax jurisdictions is published by the Belarus Presidential Administration.
• Transactions with related nonresidents or nonresidents registered in low-tax jurisdictions with the involvement of independent intermediaries with no substantial functions, if the transaction exceeds BYR 1 billion.
• Transactions involving strategic goods, if the transaction amount exceeds BYR 10 billion (approx. USD 540,000). The list of goods will be published by the Council of Ministers of Belarus.
• Transactions by large taxpayers, if the transaction amount exceeds BYR 10 billion. The list of large taxpayers is published by the Belarus Tax and Duties Ministry.

Transactions within Belarus
Domestic transactions are regarded as controlled if performed with a related party that has the right to corporate income tax exemption inasmuch as that party:
• Falls under certain categories of taxpayers not subject to corporate income tax
• Applies specific taxation regimes (for example, the unified tax system)
• Operates in territories specified by the legislation (for example, free economic zones, High Technology Park)

If such transactions involve independent intermediaries with no substantial functions, they are also deemed controlled. The threshold for domestic transactions is BYR 1 billion.

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 transactional net margin method (TNMM), and the profit split method.

Priority of methods
CUP method has the priority among other methods. Five methods can be applied in a strict hierarchical order: (1) CUP, (2) the resale price method, (3) the cost plus method, (4) TNMM, (5) the profit split method.

Availability of benchmarking/comparative data
The availability of comparable data is the main issue the tax authorities and taxpayers face in this regard. The transfer pricing legislation does not approve any databases, but databases like Amadeus, Ruslana (BvD), and Spark (Interfax) have been accepted in practice by tax officials for purposes of transfer pricing analysis.

Are foreign comparables acceptable to local tax authorities?
No direct prohibition exists in the Tax Code. The Tax Code provides that the financial statements compiled under Belarusian accounting standards for local comparables may be used for comparability analyses.

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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 sharing” arrangement would not be allowed as a deduction.

Are management fees subject to withholding?
Generally, no. However, in a number of cases tax authorities may treat management fees as consulting, accounting, marketing, or legal fees, which are subject to withholding tax.

May stock option costs be included in the cost base for intercompany services charges?
No specific guidance available.

Commissionaire arrangements
Are commissionaire arrangements allowed?
Yes.

Cost sharing agreements
Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?
Generally, no. Recharges made to Belarusian entities under a CCA or a CSA would not be deductible for tax purposes in Belarus. Moreover, currency control regulations would likely make it impossible to make payments outside Belarus under a CCA or a CSA.

Alternative approaches to the calculation of recharged amounts must be considered when implementing such structures in Belarus.

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
No.

Documentation requirements
Effective January 1, 2016, taxpayers are required to prepare and file transfer pricing reports. Before 2016, submission of transfer pricing documentation was not required.

Taxpayers should prepare and file the following transfer pricing reports:
• Transfer pricing documentation (for controlled transactions over the threshold of BYR 10 billion)
• Economic justification of the applied price (for real estate transactions and foreign/domestic transactions over the threshold of BYR1 billion)
• Controlled transaction notifications (taxpayers are required to notify the tax authorities of each transaction by sending electronic invoices)

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?
Generally, yes. However, the requirements are not specified in legislation.

Deadline to prepare documentation
No specific deadline set.

Deadline to submit documentation
Deadlines for the submission of transfer pricing documentation and economic justification are very tight:
• For desk tax audits – when requested by the tax authorities, but within 10 working days from the date of the relevant request;
• For field tax audits – when requested by the tax authorities, but within 5 working days from the date of the relevant request.

Controlled transaction notification is due on a daily basis, but no later than the 5th day of the month following the reporting one.

Deadline to file income tax return
Taxpayers should submit a tax return to the tax authorities once per quarter, by the 20th of the month following the reporting quarter (for quarter I – by April 20, for quarter II – by July 20, for quarter III – by October 20). For quarter IV a tax return is to be submitted by March 20 of the year following the reporting one.
Acceptable languages for documentation
Russian and Belarusian.

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, but the DZIT typically seek to scrutinize any differences between the figures on the tax return and on the financial statement.

Self-initiated adjustments
Self-initiated adjustments are allowed only if they do not result in a decrease in tax liabilities.

Statute of limitations on assessment for transfer pricing adjustments
Any period not covered with tax audit starting 2012 (the tax regulations were introduced in Belarusian legislation in 2012).

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 within 30 working days after the additional assessment notification is received, unless the taxpayer challenges the assessment.

Penalty on transfer pricing assessment
General rules apply.

Fines for nonsubmission of transfer-pricing-related documents – up to 30 basic amounts (approximately USD 340 as of January 2016).

Is interest charged on penalties?
No. Interest is charged on the amount of additional assessment at the National Bank of Belarus refinance rate (set at 25 percent as of January 2016).

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 has been subject to dispute between taxpayers and tax authorities. Guidance is not clear on this matter.

Advance Pricing Agreements
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 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.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan?
If so, are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
No specific legislative changes related to the BEPS Actions have been introduced.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement?
Are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
No legislative measures have been enacted.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
No.
Belgium

What’s new
During 2015, the Belgian tax authorities continued their efforts to prevent base erosion and profit shifting (BEPS). Belgium fully endorsed the OECD’s recommendations in this respect. Following these recommendations, the Belgian government is currently in the process of introducing formal transfer pricing documentation requirements in line with BEPS Action 13.

To ensure that the BEPS deliverables are effectively applied by taxpayers, the Belgian government announced the expansion of their transfer pricing department to 30 full-time employees. In addition, transfer pricing questionnaires were sent to a variety of taxpayers in early 2013, 2014, and 2015. This “audit wave” is expected to continue in the future.

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

Rulings are published (in French and 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.

Are management fees subject to withholding?
No (except in certain limited circumstances).

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 revised 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 September 1, 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 period (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 to date. 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.

As part of an action plan to combat tax fraud, the Belgian government announced it will introduce formal transfer pricing documentation requirements in line with the three-tiered approach of Action 13 of the BEPS project.

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 April 29, 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
There 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.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan?
If so, are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
In its action plan to combat base erosion and profit shifting, the Belgian Minister of Finance confirmed its full support for the OECD BEPS project, as well as the EU’s initiatives in relation to the automatic exchange of rulings. The new transfer pricing rules will be applied immediately during tax audits and APA negotiations. The specific requirements and expected timing of implementation are not yet known.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
The Belgian government is currently in the process of drafting legislation on transfer pricing documentation further to BEPS Action 13. Reportedly, draft legislation would be presented to the Parliament in early 2016. The required documentation would largely adhere to the OECD standards and include a master file and local file requirement, as well as a country-by-country reporting requirement. Both Belgian resident companies and permanent establishments of nonresident companies required to keep Belgian books would have to comply. The new requirements would apply for financial years starting on or after January 1, 2016.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
The Finance Minister’s action plan to combat base erosion and profit shifting states that Belgium supports all OECD initiatives to amend double taxation treaties in a multilateral way.
What’s new
Brazil’s transfer pricing rules did not undergo significant changes during 2015, but taxpayers have been strongly affected by the devaluation of the Brazilian Real. The currency devaluation resulted in significant increases in the cost of imports and higher taxable adjustments, especially for those companies that use the resale price minus profit method (PRL from its Brazilian acronym) to support their inbound transactions, because that method’s equation uses a resale price in Brazilian Real minus a statutory profit margin, and the outcome is a price that is compared to the price of the actual import in foreign currency translated to local currency at the current exchange rate. Because Brazilian law does not include the “best method rule” (except for commodity transactions), importers that historically used the PRL method may now be considering the possibility of adopting different methods, such as the comparable independent prices method (PIC) and the production cost plus profit (CPL) method.

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.

**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, reasonable cost allocation criteria must be adopted, and documentation must be kept.

Are cost contribution or cost sharing payments 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 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 June 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 a request. That period may be extended, depending on the reason presented by the taxpayer for requesting the extension, such as volume and complexity of the requested information.

**Deadline to file income tax return**
The income tax return has been replaced by the ECF, which must be filed by June 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?
Under domestic legislation, there is an obligation to reflect the transfer pricing effects in the financial statements. The result of a transfer pricing study is an adjustment to be added back in the Corporate Income Tax basis.

**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: in the case of self-assessed transfer pricing adjustments, the penalty is 20 percent. Penalties deriving from an audit procedure vary between 75 percent and 150 percent. In case of incorrect or omitted information on the ECF, the new corporate income tax electronic filing system, a penalty of 3 percent of the transaction price would be imposed.

**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.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan? If so, are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
Brazil has not adopted any rules in response to the OECD’s BEPS initiative.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
Not applicable.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
Not applicable.
**Bulgaria**

**What’s new**

The Bulgarian tax authorities have shown increased focus on transfer pricing issues in recent years. They have been collecting information on related-party transactions through specific sections in the corporate income tax return since 2013. The number of tax audits focusing on transfer pricing issues may increase in the future.

**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, if an existing double taxation agreement is 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**

Under Bulgarian transfer pricing legislation, the traditional transaction methods have priority over the transactional profit methods. The CUP method should be used in all cases when its application is possible. If it cannot be reliably applied, then the cost plus method (for intragroup services and the production of goods) and the resale price method (for the distribution of goods) may be used.

If the application of the above methods will not lead to reliable results, then the transactional profit methods may be used.

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
Since 2014, Bulgarian tax residents have been required to disclose in their annual tax return the accounting revenues, expenses, payables, and receivables from transactions with related parties.

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 the 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, interest will be charged according to Bulgarian Supreme Court case law.

Reduction in transfer pricing penalties
Taxpayers may benefit from penalty exemption in cases of hidden profits distribution, if the taxpayer discloses such distribution in its annual tax return.

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.

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.
OECD BEPS recommendations

Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan? If so, are there any material differences between the final report and your country’s measures? What is the effective date of those measures?

Bulgaria has not committed to follow the OECD recommendations on Actions 8-10 of the BEPS Action Plan.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures? What is the effective date of those measures?

Bulgaria has not enacted legislation implementing the country-by-country reporting requirement. There is no publicly available data as to whether the enactment of such legislation is currently being considered.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?

Bulgaria is one of the counties taking part in the development of a multilateral instrument capable of incorporating the tax treaty-related BEPS measures into the existing network of bilateral treaties. In light of this, it is likely that Bulgaria will participate in the multilateral instrument.
Canada

### What’s new

There were no significant developments in Canada’s transfer pricing regime in 2015. Early in the year, the Canada Revenue Agency (CRA) issued two Transfer Pricing Memoranda (TPM), providing administrative guidance: TPM-15, “Intra-group services and section 247 of the Income Tax Act,” provides additional guidance regarding the analysis of intragroup services, and TPM-16, “Role of Multiple-Year Data in Transfer Pricing Analyses,” discusses the CRA’s views on the use of multiple-year data in determining an arm’s length price.

Canada has not issued any official guidance or legislative proposals relating to the BEPS recommendations issued by the OECD.

### General information

**Tax authority and law**
Canada Revenue Agency (CRA); Income Tax Act (ITA) Section 247.

**Regulations, rulings, guidelines**

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 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.

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charge, but stock option costs are not deductible in Canada. An addback adjustment to income may be necessary on a Canadian tax return if these costs are included as part of an inbound service charge.

**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 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.

It is generally recommended that comparable searches be refreshed each year for up-to-date financial results, and that a new search be performed when circumstances warrant it; otherwise, typically every three years.

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**

Corporate 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 an 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 discretionary approval by the Minister of National Revenue.

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 on that additional payment accrues back to the corporation’s original payment due date. 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 the threshold of the lesser of CAD $5,000,000 and 10 percent of the taxpayer’s gross revenue.

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 reasonable efforts 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. Failure to prepare contemporaneous transfer pricing documentation and provide that documentation upon request may result in a taxpayer being deemed not to have made 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?

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?
CA may negotiate an agreement based on new settlement positions, unless an adjustment has been determined by the CRA’s Appeals Branch or the Canadian 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.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan?
If so, are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
Canada has consistently supported the OECD’s BEPS action plan but has not issued any formal guidance or legislative adoption of the recommendations.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement?
Are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
Canada has consistently supported the OECD’s BEPS action plan, including country-by-country reporting, but has not issued any formal guidance or legislative adoption of those recommendations.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
Canada has consistently supported the OECD’s BEPS action plan, but has not issued any formal guidance or legislative adoption of the recommendations.
Chile

What’s new
Even though Chile’s transfer pricing rules are some of the most recent in the region – the rules were introduced in 2012 – the country has an efficient tax authority in terms of transfer pricing. The Chilean IRS is open to inviting companies and their tax advisers to discuss their transfer pricing policies. In 2015, the tax authorities conducted more in-depth tax audits, and announced that the country intends to follow the BEPS recommendations.

General information
Tax authority and law
Internal Revenue Service (Servicio de Impuestos Internos – SII); Article 41 E of Income Tax Law. 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.
• Resolution N° 110 (December 2015) establishes a requirement to file a second transfer pricing affidavit related to providing qualitative information.

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 entities considered in Article 41 H 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.

• Companies that are domiciled in a territory or jurisdiction will be deemed to have a preferential tax regime when at least two of the following conditions are met (Article 41 H):
  – The effective tax rate on foreign-source income is less than 50 percent of the rate in the first paragraph of article 58 of the Income Tax Law (withholding rate in that article: 35 percent).
  – The jurisdiction has not entered into a treaty with Chile that allows for the exchange of information for tax purposes, or the treaty entered into is not in force.
  – The jurisdiction’s legislation lacks rules that authorize the tax administration to audit transfer prices in accordance with the OECD or the UN’s recommendations.
  – Territories whose legislation prohibits tax administrations to request information from taxpayers and/or request or deliver information to other countries.
  – Territories that the OECD or the UN consider preferential regimes for tax purposes.
  – Territories that exclusively tax income generated, produced, or sourced within their own territories.
• 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.

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.

A second Transfer Pricing Return – Form 1913 – must be filed by the filing date for the income tax return on an annual basis. Entities classified as “large companies” by the Chilean IRS are subject to this requirement.

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?
Two transfer pricing returns 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). Interest is charged at a rate of 1.5 percent per month.

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.
OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan? If so, are there any material differences between the final report and your country’s measures? What is the effective date of those measures? The Chilean IRS will follow all BEPS recommendations.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures? What is the effective date of those measures? The Chilean IRS will follow all BEPS recommendations, including deadlines.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan? Yes.
**What’s new**

In 2016, China’s State Administration of Taxation (SAT) introduced several important changes that may impact the practice and examination of transfer pricing in China for years to come. These changes were primarily introduced through Bulletin 16 regarding services and intangibles transactions, the discussion draft for the revised Circular 2 covering documentation requirements, and the formalization of significant regulatory changes to China’s transfer pricing regulations.

The changes to the regulations through Bulletin 16 and Circular 2 largely implement China’s response to the transfer pricing action points coming out of the OECD’s BEPS initiative. The changes give effect to a Chinese version of the OECD’s three-tier documentation framework, expanding some of the OECD’s requirements regarding the master and local files to provide more information to the SAT. The amendments also formally revise the regulations regarding intangibles to cover the new DEMPE requirements, and add an additional factor – “promotion” – and references to Chinese location specific advantages. Finally, the changes to the regulations implemented a benefit test for services transactions, and formalized a six-test approach for determining whether services will be deductible.

While the revised Circular 2 was not issued in 2015, it is expected to be issued in the first half of 2016 and will most likely apply to the 2016 financial year onwards.

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**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**

Below is a list of the principal transfer pricing regulations, rulings, and 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
• Bulletin on Enterprise Income Tax Issues concerning Outbound Payments to Overseas Related Parties (Bulletin [2015] No. 16)

On September 17, 2015, the SAT released a discussion draft on “Special Tax Adjustment Implementation Measures.” This discussion draft would comprehensively revise existing guidance that was previously issued in the existing “Implementation Measures of Special Tax Adjustment (Trial), (Guoshuifa [2009] No. 2,” known as Circular 2. From the time of issue and the end of the year, a number of changes were made to the draft regulations, and a final version is expected to be issued during the first half of 2016. The revised Circular 2 is expected to apply for the 2016 financial year onwards.

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.

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.
Bulletin 16, issued in March 2015, formalized several previously announced positions for dealing with service fees and royalties being paid to overseas related parties. In particular, the SAT introduced the benefit test formally to analyze the reasonableness of service fees. This is expected to change the tax authorities’ focus when they review service fees, and local tax authorities are already challenging the payment of service fees to overseas related parties. Under the Bulletin 16 regulations (which will be incorporated into the revised Circular 2), there are six tests that the service fee must pass: the benefit test, the necessity test, the value creation test, the duplication test, the remuneration test, and the authenticity test.

The new tests set a higher documentation standard than was required in the past, and taxpayers will be required to show that their service transactions meet these requirements.

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 January 1, 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 January 1, 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 August 1, 2013. Effective January 1, 2014, the program was extended to railway transportation and postal services. While it had been expected that all types of services would be covered by the program by the end of 2015, the SAT has delayed the final parts of the reform. These are now expected during 2016.

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.

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 (May 31).

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 May 31.

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 prefiling 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.

While the BEPS initiative was underway, the SAT put its APA program on hold, but the program has now resumed. There is a large backlog of APA applications, which may take a number of years to clear due to limited resources within the SAT.

**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?
Generally, no, because taxpayers must settle tax liabilities with the governing tax bureau 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.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan? If so, are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
China will adopt some of the conclusions of the OECD’s BEPS final reports, although some measures will be tailored to China’s circumstances. China may also introduce entirely new rules. In making the changes, China will try to strike a balance between economic development and safeguarding Chinese interests – targeting tax avoidance while also protecting substantive cross-border activities to facilitate outbound Chinese investment.

The SAT made specific comments on several of the key topics covered by Actions 8-10 at a conference in October 2015. The specific issues addressed were:
- Risk and recharacterization: recommendations will be implemented through the new Circular 2, with provisions to deny or recharacterize transactions that would not have occurred between third parties.
- Intangibles: the new Circular 2 will cover the recommendations, while also monitoring the relationship between intangibles and location savings.
- Services: China will not implement a regulation for “low-value services,” but has issued new guidance on services transactions through Bulletin 16 and in the draft revised Circular 2.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
At the end of 2015, China had not yet enacted legislation or regulations implementing the country-by-country reporting requirement, although it was included in the discussion draft for the revised Circular 2. It is expected that China’s country-by-country reporting regulations will be in place and apply to the 2016 financial year.

The revised Circular 2 will adopt a master file/local file requirement, although there are some key differences from the OECD report. For the master file, if companies exceed the related-party transaction threshold (expected to be RMB 500 million) they will need to prepare a Chinese master file – similar to the OECD master file, but it must be prepared in Chinese and submitted directly to the Chinese tax authorities. For the local file, if companies exceed the related-party threshold they will need to prepare a Chinese local file. The local file requirements are more stringent than those of the OECD, and effectively require disclosure of some of the contents of the OECD master file in the local file. Specifically, the local file will require full details of the value chain, and how profits have been allocated between the parties.

The new documentation requirements are expected to apply to the 2016 financial year.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
China is involved in drafting the multilateral instrument, and is expected to participate in signing, at least with some of its treaty partners.
Colombia

What's new
There were no normative changes to Colombia’s transfer pricing rules in 2015. The Colombian tax authorities continued to audit taxpayers in different industries regarding their transfer pricing issues. Colombia is still in the process of joining the OECD; thus, the OECD transfer pricing guidelines are not binding on Colombia and there is no official statement on the implementation of the BEPS initiatives.

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

Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?
Article 260-1 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.

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 according to Article 260-3 of the Tax Code and Article 5 of Decree 3030 of 2013.

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.

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According to the tax regulations in effect, technical assistance and consultancy 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.

On the other hand, administrative services are not domestic-source income; thus, local companies should not apply withholding and the deduction is limited to 15 percent of taxable income, unless a double taxation agreement is in force.

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, Articles 5 and 6 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 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. $575,000), only for those transactions that in the fiscal year exceed the amount equivalent to 32,000 U.V.T. (approx. $300,000).

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. $100,000).

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 complete 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 (Article 4, Numeral 4 of Decree 3030 of 2013).

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 26 and 27 of Decree 2243 of 2015, 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 (Article 4, Numeral 4, Paragraph 2 of Decree 3030).
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?
Article 260-3 of the Tax Code states that 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?
No.

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.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan?
If so, are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
Colombia is not a member of the OECD, and acceptance of the BEPS Action Plan is not mandatory. However, the OECD transfer pricing guidelines may be used as a source of nonbinding interpretation, as the Constitutional Court held on August 12, 2003. Thus, the recommendations under BEPS Actions 8, 9, and 10 may be used as nonbinding interpretation criteria of Colombian law. No legislation is necessary to implement the BEPS recommendations, but they will not be considered laws.
Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country's measures? What is the effective date of those measures?

The country has not enacted any legislation regarding this issue.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?

No.
Costa Rica

What’s new
Costa Rica’s tax administration has been including transfer pricing analysis as an integral part of its tax audits more often. Since 2003, Costa Rica’s tax authorities have had the ability to question and analyze the prices of transactions between related parties to determine if the prices may be deemed market prices. But it wasn’t until the publication of Decree No. 37898-H in September 2013 that the tax authorities started to consistently review transactions between related parties using the OECD’s methods and guidelines.

So far, only a few cases have resulted in litigation, but the information requests during tax audits regarding related-party transactions and transfer pricing have increased substantially. The tax authorities’ preferred transfer pricing method has been the comparable uncontrolled price method, and for companies with operating losses the tax authorities have begun to use the transactional net margin method.

Costa Rica’s fiscal year 2015, which ended on September 30, was the second fiscal year since the implementation of the transfer pricing rules. No major changes have occurred since the publication of the decree that introduced the rules, but tax reviews and tax collections using the transfer pricing methods have increased.

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.

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 Rica’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 county 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.
OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan? If so, are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
Costa Rica is in the process of becoming an OECD member state. As part of this process, some of the BEPS recommendations have been presented to the Costa Rica tax authorities, but no specific actions have been taken.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
Costa Rica is in the process of becoming an OECD member state. As part of this process, some of the BEPS recommendations have been presented to the Costa Rica tax authorities, but no specific actions have been taken.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
Costa Rica is in the process of becoming an OECD member state. As part of this process, some of the BEPS recommendations have been presented to the Costa Rica tax authorities, but no specific actions have been taken.
Croatia

What’s new
The Croatian tax authorities placed a concentrated focus on the transfer pricing area during 2015. Due to the changes to the Corporate Income Tax Regulations that apply from 2016 onwards, all taxpayers, regardless of their size, are now required to submit the “Report on business transactions with related parties” jointly with their corporate income tax return (the PD form), if they have recorded business transactions with related entities during the tax year.

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.

Due to changes to the Corporate Income Tax Regulations, all Croatian taxpayers, regardless of their size, are required to submit the “Report on business transactions with related parties” jointly with their corporate income tax return, if they have recorded business transactions with related entities during the tax year.

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.

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.

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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 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 and 2014 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.

Deadline to submit documentation
All taxpayers must submit their transfer pricing documentation upon request by the tax authorities. Additionally, taxpayers must provide their “Report on business transactions with related parties” by April 30 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 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.

OECD BEPS recommendations

Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan?

If so, are there any material differences between the final report and your country’s measures?

What is the effective date of those measures?

Croatia has not yet implemented the BEPS Action plan.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures?

What is the effective date of those measures?

No.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?

Croatia has not yet implemented the BEPS Action plan.
What’s new
The Czech tax administration implemented new initiatives in the transfer pricing area in 2015. Effective for the 2014 fiscal year, taxpayers must include an attachment to their corporate income tax return reporting any intercompany transactions.

The Czech tax authorities’ new approach is also apparent in their focus on transfer pricing. The tax authorities now focus on a company’s declared functional profile and on the economic substance of intercompany transactions during tax audits.

Following a change in the provisions of the Income Taxes Act regarding the arm’s length principle (effective January 1, 2014), the burden of proof regarding correct transfer price-setting has shifted from the tax authorities to the taxpayer. That indirectly implies that the taxpayer is responsible for providing sufficient evidence of correct transfer price-setting.

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.
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 January 1, 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: 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 January 1, 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.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan?
If so, are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
The Czech tax authorities have not introduced any specific measures in response to the BEPS initiative, nor has a detailed schedule for adoption been announced.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
The Czech government is considering adopting legislation implementing country-by-country reporting. Nevertheless, no detailed information regarding the implementation of country-by-country reporting has been provided.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
The Czech government intends to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan.
Denmark

What’s new
A lot has happened during 2015 on the Danish transfer pricing scene. The OECD BEPS reports were released in early October, which meant that the guidance on transfer pricing immediately changed in line with the OECD reports. Furthermore, Denmark adopted the country-by-country requirements in late December, and is currently in the process of updating its transfer pricing documentation regime to be in line with the guidance contained in the OECD’s BEPS Action 13 report on the local file and master file approach. The revised rules will require Danish entities to perform a thorough update of their transfer pricing documentation for FY 2016.

The Danish Supreme Court ruled on the emphasis on the correct bearer of cost. The case concerned a termination fee for the termination of a distribution. The Supreme Court held that the payer of the termination fee did not document that it benefitted from the actual termination fee payment. Therefore, the Supreme Court held that the company was not the rightful bearer of the cost and thus the termination fee was not deductible.

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.

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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. However, Denmark generally follows the new OECD BEPS guidance. BEPS Actions 8-10 and Action 7 in particular should be considered regarding commissionaire arrangements.

Cost sharing agreements
Are cost contribution arrangements or cost sharing agreements accepted?
Yes. According to Danish administrative guidelines 2015-2, section C.D.11.4.3.5, Denmark follows Chapter VIII of the OECD transfer pricing guidelines, and the guidance included in the OECD’s BEPS Actions 8-10 report on cost contribution arrangements. The new guidance on CCAs is expected to be incorporated into the Danish administrative guidelines during 2016.

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 they engaged in. The requirement applies to foreign citizens and foreign companies with permanent establishments in Denmark. The disclosure is part of the taxpayer’s tax return, and it is digitized.

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 January 24, 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 entered into 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 with;
• A functional analysis (functions, assets, and risks);
• The taxpayer’s 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 documentation 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 June 30 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, Norwegian, or Swedish.

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 may deviate from the transfer prices reflected on an income tax return for 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
In the sixth year after the tax year-end, e.g., five years and four months from the tax year-end, provided the fiscal year follows the calendar year.

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 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 as part of their income tax return. As of July 1, 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), or
• 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?
Yes. Ordinary interest and collection apply. Penalties that are not paid in due time will be subject 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.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan? If so, are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
Yes. Denmark follows the OECD guidance. The new guidance applies as of the date of release of the final OECD BEPS reports.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
On December 18, 2015, Denmark incorporated the OECD BEPS Action 13 guidance on country-by-country reporting into Danish law. The 2016 country-by-country report must be filed no later than the end of 2017.

The threshold for country-by-country reporting is DKK 5.6 billion on a consolidated basis in the year prior to the country-by-country reporting year.

Denmark is currently in the process of implementing the mandatory local file and master file approach proposed by the OECD. Generally, the new draft transfer pricing documentation regulation follows the OECD guidance as presented in the OECD BEPS Action 13 report.

The new transfer pricing regulation is expected to be implemented during the spring of 2016 and will have effect from July 1, 2016.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
Denmark is expected to participate in the multilateral instrument.
Dominican Republic

What’s new
There were no significant changes to the Dominican Republic’s transfer pricing legislation in 2015. During the year, major hotel chains operating in the Dominican Republic signed advance pricing agreements with the tax authorities for a retroactive period of three years, covering FY 2013, 2014, and 2015. The negotiations to renew the APA for FY 2016 through 2018 will begin this year.

General information
Tax authority and law
Dirección General de Impuestos Internos (DGII).
Law 11-92, the Dominican Tax Code.

Regulations, rulings, guidelines

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, but a copy of the CCA must be submitted to the tax authorities before expenses can be recognized.

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 180 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.
**OECD BEPS recommendations**
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan? If so, are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
No formal announcements have been made regarding BEPS.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
No formal announcements have been made regarding BEPS.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
No.
Ecuador

What’s new
Ecuador’s Internal Revenue Service (Servicio de Rentas Internas or SRI) issued regulations regarding its transfer pricing rules in 2015, including an updated list of the countries and jurisdictions considered tax heavens for tax purposes, which now excludes Hong Kong.

The rules regarding the duty to file a transfer pricing report also were amended, and now set the threshold for filing a report at US $15 million in transactions with related parties, up from US $6 million. The transfer pricing rules now include specific conditions on the duty to disclose and analyze local transactions.

Updated memos have also been issued detailing standardized procedures for transfer pricing analysis and reports, application of transfer pricing methods, profit level indicator selection, and the search for comparable companies.

General information
Tax authority and law
Internal Revenue Service (Servicio de Rentas Internas, or SRI); Tax Law and Its Regulations.

Regulations, rulings, guidelines
The transfer pricing regime is embodied in the following regulations:
• The section next to Article 15 of the Tax Law (Transfer Pricing Regime)
• The section next to Article 4 of the Tax Law (Definition of Related Parties)
• Resolution No. NAC-DGERCGC15-00000052 (Definition of tax havens, low-tax jurisdictions, and preferential tax regimes)
• Resolution No. NAC-DGERCGC15-00000455 (Transfer pricing thresholds for filing reports and local related-party transactions)
• Resolution No. NAC-DGREC15-00001048 (Procedures for consultations to SRI for a prior assessment of transactions between related parties for transfer pricing purposes – similar to an APA)
• OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations as of 1995 (Technical reference)

• Memo of December 31, 2015, which contains general guidance regarding the content of Transfer Pricing Reports, Appendix, and SRI rulings on the application of transfer pricing methods

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 13.2 percent), preferential tax regimes, or in tax havens.

Relationships between parties regarding concentration of transactions (50 percent or more of sales, purchases, or other transactions), may be challenged by the SRI upon review. 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 the 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 may be determined. Ecuadorian legislation does not distinguish between 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 sufficient comparative data, because the number of companies listed in the Ecuadorian stock exchange is minimal. The available information does not include details regarding 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. But if local comparable information is available, using local data is preferable.

Services issues
Are management fees deductible?
Management fees are deductible up to established limits, and provided the corresponding withholding tax has been withheld.

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 such expenses. In the case of entities in the start-up phase, the amount is 10 percent of total assets.

Taxpayers may request a higher deductibility limit, provided that a prior assessment consultation (APA Ecuador) is submitted on operations performed between related parties.

Are management fees subject to withholding?
Yes, the withholding tax rate is 22 percent.

May stock option costs be included in the cost base for intercompany services charges?
There are no Ecuadorian tax regulations regarding 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 22 percent.

What is the payer’s tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?
Payments are deductible upon the allowed limits, provided the cost is related to the business activity of the Ecuadorian taxpayer, and the corresponding withholding tax has been withheld. The withholding tax rate is 22 percent. Ecuadorian tax rules on indirect costs have a limit of 5 percent of taxable income plus the amount of such expenses. In case of intangibles similar to royalties the limit is 20 percent. The total amount of royalties paid cannot be considered a deductible expense if the asset on which the royalties are paid to related parties has been in the Ecuadorian taxpayer’s possession for the last 20 years.

Documentation and tax return disclosures
Tax return disclosures
The transfer pricing adjustment established in the transfer pricing report must be disclosed in the tax returns in order to calculate taxable income and the corresponding income tax liability. If no transfer pricing adjustment is included in the income tax return, the taxpayer may subsequently file an amended return to pay income tax due plus interest. In addition, 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
Current threshold limit to be obliged to file the transfer pricing report (IPT) is set to $15,000,000 foreign related parties transactions; and $3,000,000 for the transfer pricing appendix regarding transaction. The IPT must be submitted in magnetic form in PDF-Text, attaching annexes and complementary information.
If Ecuadorian entities comply with any of the following conditions, local related-party transactions must be considered as part of transfer pricing threshold limits:

- The taxpayer had taxable profits lower than zero
- The taxpayer obtained tax credits due to particular tax incentives
- The taxpayer reduced its applicable income tax rate through reinvested profits
- The taxpayer operates or manages special zones of economic development (free-trade zones)
- The taxpayer’s activities are related to the exploitation of nonrenewable resources
- The taxpayer has direct or indirect shareholders domiciled in tax havens or lower-tax jurisdictions
- The taxpayer has entered into transactions with related parties subject to a specific tax regime that aim to develop the following activities: (1) production and sale of bananas or (2) international cargo/passenger transport, couriers, or post mail.

SRI has issued memos detailing guidelines on the content of the transfer pricing report, focusing on the full description of related-party transactions, documentation that supports economic substance, selection of transfer pricing methods, search for comparable companies, calculation of capital adjustments, and selection of profit level indicator.

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. Taxpayers who exceed the applicable transaction thresholds must file the transfer pricing appendix and report annually.

Taxpayers should perform new comparables search for TP purposes every year.

Deadline to prepare documentation
The appendix of operations with foreign and/or domestic related parties (the transfer pricing appendix) and the transfer pricing report must be prepared by March/April of the following fiscal year, to comply with tax obligations regarding transfer pricing and income tax returns on a timely basis.

Deadline to submit documentation
The transfer pricing appendix and the transfer pricing report must be submitted within 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. 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) must reflect prices based on the arm’s length principle in their accounting records and in documents supporting such records; otherwise, transfer pricing adjustments must be disclosed in the income tax return.

Self-initiated adjustments
Adjustments should be made if a taxpayer recognizes that its transfer prices are not at arm’s length. Adjustments should accrue in the year in which a transaction occurs and be fully documented. Adjustments favorable to the taxpayer are not allowed.

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
The failure to file a transfer pricing appendix or transfer pricing report, or filing with errors or with differences from the income tax return may be subject to fines of up to US$15,000.
If as part of an income tax assessment the SRI makes transfer pricing adjustments, a penalty of 20 percent of the amount assessed will apply.

Is interest charged on penalties?
No, interest is not charged on penalties.

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

Reduction in transfer pricing penalties
Not applicable.

**Advance Pricing Agreements (APAs)**
Are APAs available?
Yes. Ecuadorian taxpayers may submit consultations to the SRI for a prior assessment of transactions between related parties for transfer pricing purposes. All the information and data on the proposed transfer pricing method must be filed with the tax authorities, which will take up to two years to validate the analysis performed. The results of the assessment may be applicable for three fiscal years.

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.

**OECD BEPS recommendations**
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan?
If so, are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
No.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement?
Are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
No.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
No.
Egypt

What’s new
The Egyptian Tax Authority (ETA) has not started auditing transfer pricing cases consistently; therefore, there isn’t much practical transfer pricing audit experience or precedent in Egypt. The introduction of transfer pricing legislation, as well as Egyptian transfer pricing guidelines since 2010 places increasing pressure on all stakeholders. It requires taxpayers to demonstrate compliance and adherence to transfer pricing rules, and imposes a specific work program on Egyptian tax inspectors to conduct transfer pricing adjustments according to the rule of law.

The most important development in 2016 is the increased awareness of transfer pricing issues among stakeholders, most importantly the ETA, which has announced it will release a transfer pricing declaration form (Form No. 2) for taxpayers to provide details of their related-party transactions. The new form is expected to be required to be attached to the annual tax return for submission to the ETA.

General information
Tax authority and law

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 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 guidelines.
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. However, the Egyptian Tax Authority have a preference for regional (African/Middle Eastern) comparables rather than Western European comparables.

**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, The Egyptian transfer pricing guidelines put forth a four-step approach to applying the arm’s length principle. Taxpayers are advised to follow the four-step approach to price their controlled transactions according to the arm’s length principle and/or to assess the consistency of their pricing with the arm’s length principle in general.

The four-step approach as outlined by the Egyptian transfer pricing guidelines is summarized below:

<table>
<thead>
<tr>
<th>Step</th>
<th>Description</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Identifying intragroup transactions and understanding the nature of such transactions</td>
<td>This step requires conducting a functional analysis in addition to analyzing the scope of the controlled transaction, type of the controlled transaction, timing, expected costs and benefits, contractual terms, parties to the transaction, organization structure, business objective, the nature of the industry, and market size.</td>
</tr>
<tr>
<td>2</td>
<td>Selecting the most appropriate pricing method(s)</td>
<td>This step requires the selection of one or more transfer pricing methods to determine arm’s length prices for the controlled transactions.</td>
</tr>
<tr>
<td>3</td>
<td>Applying the selected pricing method(s)</td>
<td>This step requires extending the functional analysis and conducting a comparability analysis.</td>
</tr>
<tr>
<td>4</td>
<td>Determining the arm’s length amount and introducing a review process to reflect any future changes</td>
<td>Taxpayers are not expected to utilize the analysis conducted in Step 3 on a permanent basis and therefore, are required to monitor the validity of the method and the data used.</td>
</tr>
</tbody>
</table>

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 taxpayers to submit their transfer pricing documentation at the time they file their income tax returns. Instead, transfer pricing documentation should be submitted by the taxpayers to the ETA 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. Accordingly, it may be said that transfer pricing documentation requirements in Egypt are contemporaneous in terms of preparation but not submission.

The Egyptian transfer pricing guidelines put forth a four-step approach to applying the arm’s length principle. Taxpayers are advised to follow the four-step approach to price their controlled transactions according to the arm’s length principle and/or to assess the consistency of their pricing with the arm’s length principle in general. The guidelines state, however, that there is no comprehensive, predefined set of documentation requirements that meet the circumstances of all taxpayers, due to the fact that 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 a multinational group 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, English is acceptable. However, the Egyptian Tax Authority may require the taxpayer, at its own expense, to submit an official translation of any 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 January 1 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. We are not aware of any taxpayers having initiated (or having tried to initiate) a CA procedure 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.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan? If so, are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
The Egyptian Tax Authority has not taken a position on the BEPS initiative.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
The Egyptian Tax Authority has not taken a position on the BEPS initiative.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
The Egyptian Tax Authority has not taken a position on the BEPS initiative.
What's new

The Salvadoran transfer pricing rules did not undergo any changes in 2015. However, the tax authorities released in May a list of “tax debtors” that included taxpayers with unpaid taxes due, as well as complementary taxes determined by the tax authorities as a result of tax audits, including the corresponding penalties and interest, even when the cases have not been resolved in court. The list included several cases of income tax adjustments due to transactions with related entities that were not conducted in accordance with the arm’s length principle.

General information

Tax authority and law
The Salvadoran Tax Administration: Treasury Department (Ministerio de Hacienda) and the Directorate of Internal Taxes (Dirección General de Impuestos Internos); Salvadoran Tax Code and guidelines.

Regulations, rulings, guidelines
The Tax Code was amended through Legislative Decree No. 233 in November 2009, including articles 62-A; 124-A; 135, section F; 147, section e; 199-B; 199-C; 199-D; 247, section l. 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; and
- 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.

The transfer pricing rules also apply to transactions conducted with entities located in preferential tax regimes, as well as 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 provided (material reality), that they were necessary for the business, that the taxpayer has withheld the appropriate tax, and that the payment has been agreed to in accordance 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.

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 informative return on operations conducted with related parties (Form F982), provided the total amount of such operations exceeds $71,000. 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 informative 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.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan? If so, are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
Local legislation has not been amended to reflect the BEPS recommendations, and the tax authorities have not announced forthcoming reforms to the Salvadoran Tax Code to that effect.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
The tax authorities have not made any announcements on this matter. The Salvadoran Tax Code was amended in 2014 to make express reference to the OECD’s transfer pricing guidelines, which enables taxpayers and the Tax Authority to use the OECD transfer pricing methods. This could indicate that transfer pricing documentation should be prepared following OECD guidelines. However, there are no specific requirements in local legislation to adopt the reporting requirements according to BEPS.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
The tax authorities have not made any announcements on this matter.
Estonia

What’s new
Estonia’s transfer pricing regime did not undergo any major changes in 2015. The tax authorities had not been very active in conducting transfer pricing audits, but activity in this field has increased in recent years. Since 2014, the Estonian Tax and Customs Board added six tax auditors who are trained to address transfer pricing cases. In addition, over 300 tax auditors in the audit division have basic transfer pricing knowledge and are also able to audit these cases.

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
in a low-tax territory (20 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)?
There are no formal rules, but generally within the general statute of limitations period (three years).

May CA develop new settlement positions?
Yes.

May taxpayer go to CA before paying tax?
There are 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.
**OECD BEPS recommendations**

Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan? If so, are there any material differences between the final report and your country’s measures? What is the effective date of those measures?

Estonia is committed to follow the recommendations of the OECD’s October 2015 final report, as 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 Estonian regulations. According to information provided by the Ministry of Finance, the regulations are currently being amended, but the exact time when they will be issued is not set. However, the Ministry of Finance is planning to analyze this issue in 2016.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures? What is the effective date of those measures?

Pertinent changes to Estonia’s Tax Information Exchange Act are being made in 2016, which will be in force in 2017. The legal basis for implementing country-by-country reporting is already set in Estonian legislation (the Estonian Tax Information Exchange Act and the Estonian Taxation Act).

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?

Estonia is not participating in the multilateral instrument working group, but will monitor its progress and results.
Finland

What’s new
The Finnish Tax Administration continues to focus on transfer pricing audits and transfer pricing issues. However, experience in 2015 has shown that transfer pricing disputes may take many years to resolve. None of the major pending cases (on recharacterization disputes, the impact of tax amortization benefit, and passive association) have been decided by the courts yet.

General information
Tax authority and law

Regulations, rulings, guidelines

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 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 six 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.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan?
If so, are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
Finland is committed to following the recommendation of the final report on Actions 8-10 of the BEPS Action Plan. The Ministry of Finance has set up a working group for each of the Action Plan items; the groups will assess the
potential need for changes to local laws to implement the actions and propose required changes of laws.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures? What is the effective date of those measures?

Finland has initiated the implementation of country-by-country reporting. The legislation adopts the master file/local file requirement. There are no material differences between the BEPS final report and Finland’s measures.

The Ministry of Finance requested comments on the draft proposal by January 25, 2016. The objective is to apply new CbC reporting requirement as of January 1, 2017. Financial years ending January 1, 2017, and thereafter would be within the scope of the reporting requirement.

The ultimate parent company of a multinational group would be responsible for filing the CbC report with the tax authorities. However, when the ultimate parent company is a resident of a country that does not require CbC reporting, or if the Finnish tax administration is not able to receive the information through its information exchange network, the Finnish subsidiary would then be responsible for submitting the information to the Finnish tax administration. Failure to comply with the CbC reporting rules would incur a maximum penalty of €25,000.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?

Yes.
What’s new

The French government made efforts to implement the anti-base erosion and profit shifting (BEPS) actions through local legislation. The French National Assembly approved on December 17 an amendment to the Finance Bill for 2016, definitively implementing the country-by-country reporting requirements. As evidence of the high sensitivity around tax fairness in the public debate, some members of Parliament tried to require multinationals to publicly disclose their country-by-country report; however, this proposal was rejected and the final measure was upheld by the French constitutional court on December 29. It effectively entered into force under Article 223 quinquies C of the French Tax Code.

There has been continued pressure from the French tax authorities, which has focused on financial transactions and business restructurings (with an increased emphasis on closures). The tax authorities published in 2015 a list of abusive tax practices, listing various tax structures that would be deemed noncompliant. Transfer pricing restructurings involving a switch from full-fledged entity to contract manufacturing/service provider were of particular interest. In case of an audit, the imposition of bad faith penalties (40 percent of the additional tax) is likely in such circumstances. This trend is expected to continue during 2016 and the following years, as other BEPS recommendations and European Commission anti-tax avoidance measures are enacted to provide additional tools to the FTA to challenge high-risk transactions.

General information

Tax authority and law
French Tax Administration.

General Tax Code:
- Article 57 – transfer of profits and arm’s length principle
- Articles 238 A and 209 B – CFC rules
- Article 223 quinties B – annual transfer pricing form to be filed with the tax authorities
- Article 1729 F – penalties for failure to file country-by-country report
- Article 1735 ter – penalties for lack of transfer pricing documentation

Methods and comparables

Acceptable methods
The comparable uncontrolled profits (CUP) method, the resale price method, the cost plus method, the profit split method, the transactional net margin method (TNMM), and other methods if they provide results consistent with the arm’s length principle.

Priority of methods
No priority of methods.

Availability of benchmarking/comparative data
French comparable benchmarking data is readily available through a local database (Diane).

Tax Procedure Book:
- Article L.13 B – specific transfer pricing questions from tax authorities
- Article L.13 AA – general contemporaneous transfer pricing documentation requirements
- Article L.13AB – additional requirements for transactions with non-cooperative states and territories as defined in Article 238-0-A of the French Tax Code
- Article L.80 B 7 – advance pricing agreements and Supreme Tax Court case law on Abnormal Act of Management
- L.188 A – extension of statute of limitations when the FTA makes a request from foreign tax authorities.

Regulations, rulings, guidelines

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 and follows the recommendations issued by the 2010 OECD report on attribution of profits to permanent establishments.

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Are foreign comparables acceptable to local tax authorities?
Pan-European benchmarks may be accepted, provided they include a sufficient number of French comparables, or provided the taxpayer demonstrates the economic relevance of a pan-European benchmarking to its specific case. This approach has been confirmed in a court case.

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 may be recharged. General rules of deductibility apply for French tax purposes.

Commissionaire arrangements
Are commissionaire arrangements allowed?
Yes, but such arrangements are challenged during 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 within the scope of the transfer pricing documentation requirement must file a specific transfer pricing form with the French tax authorities within six months following their tax return due date. The form (Cerfa 2257) must include a description of the taxpayer’s business activities, including a description of the intangibles used, a summary of the intercompany transactions, and the transfer pricing methods applied. The form must be filed electronically.

Documentation requirements
Transfer pricing documentation regulations require French entities that meet certain financial criteria (revenues or gross assets above €400 million, or entities part of a group that exceeds this criteria), to maintain a contemporaneous transfer pricing documentation. The documentation should contain information to allow the French tax administration to assess the arm’s length nature of the intercompany transactions undertaken by the controlled entity. Article L.13 AA requires disclosure to the FTA of any rulings granted to related parties by foreign tax authorities.

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 updated annually. Comparable data should also be refreshed annually and new searches performed every three years.

Deadline to prepare documentation
Transfer pricing documentation should be prepared on a contemporaneous basis, and be made available to the FTA in case of an audit.

Deadline to submit documentation
Documentation must be made available to the tax inspector on the first day of a tax audit, or within 30 days of a formal request.

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
Documentation in English is accepted; however, the tax authorities may require a translation into French. The annual transfer pricing form 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 appropriately 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
Failure to provide documentation, or providing incomplete documentation triggers a penalty equal to the higher of (i) 5 percent of the transfer pricing adjustment per year, and (ii) 0.5 percent of the intercompany transactions for which complete documentation is not available, with a minimum of €10,000 per fiscal year. Bad faith penalties amounting to 40 percent of the tax reassessment may also apply, and may amount to 80 percent in case of fraud or 100 percent if the taxpayer is found to have prevented the tax inspector from doing his audit duties.

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 for unilateral APAs). Multilateral agreements are possible.

APA filing fee
There is no fee for filing an APA request.

APA term of agreement
Three to five years forward. The usual period of time covered by APAs is five years. 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.
OECD BEPS recommendations

Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan? If so, are there any material differences between the final report and your country’s measures? What is the effective date of those measures?

The French government has expressed its commitment to apply the OECD BEPS Action Plan recommendations. France follows the OECD transfer pricing guidelines and actions 8-10 of the BEPS Action Plan are implemented as an update of the OECD transfer pricing guidelines.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures? What is the effective date of those measures?

Country-by-country reporting was enacted in December 2015 and entered into force in 2016, and is applicable to fiscal years that begin after January 1, 2016. Companies within the scope of the requirement must file an annual report disclosing financial and economic indicators of their activities within the 12 months following the fiscal year closing. Noncompliance will trigger a penalty up to €100,000.

The French tax administration will issue administrative guidelines to clarify the application of the country-by-country reporting requirement. Although it is expected that the content of the country-by-country report will be similar to the OECD template, there may be differences, notably with respect to the scope, the filing procedures, and information exchange mechanisms.

Master file/local file requirements were implemented in France in 2010, and they are broadly similar to the OECD’s master file/local file requirements. However, the OECD recommendations are more detailed than the French transfer pricing documentation regulations, and taxpayers will therefore need to adapt their French transfer pricing documentation to comply with the OECD documentation standards. No formal filing is required for the transfer pricing documentation (master file and local file).

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?

France has stated its intention to implement the multilateral instrument being developed under Action 15 of the BEPS Action Plan in 2016.
What’s new
In 2015, the German tax authorities discussed the draft and final versions of the OECD BEPS reports issued during the year, as well as their potential impact on German transfer pricing law and practice. The new guidance provided by the OECD may lead to additional material discussions with the tax authorities during German tax audits. Moreover, the Federal Ministry of Finance focused on the implementation of BEPS Action 13 (Guidance on Transfer Pricing Documentation and Country-by-Country Reporting) into German law. However, at the end of 2015, the ministry had not issued a draft law in this respect.

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.

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

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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.
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 October 11, 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. However, the expiration of those time limits may be suspended/interrupted by specific events, such as tax audits.

**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 or 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 tax 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.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan?
If so, are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
Germany has not enacted any new law, decree law, or administrative principles reflecting the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan. However, the Federal Ministry of Finance intends to issue a specific decree law on this matter.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
Germany has not enacted legislation or issued a draft law implementing the country-by-country reporting requirement. Based on public statements by the German tax authorities, such legislation, which would also adopt the master file/local file requirement, is expected to be enacted in 2016. The new law would apply for business years beginning after December 31, 2015. Further details have not been provided.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
Yes, Germany generally supports the multilateral instrument.
What’s new
The most significant development that took place during 2015 with regard to Greece’s transfer pricing regime was the enactment of Law 4337/2015, which led to the rationalization of the penalty system. Moreover, a new Ministerial Circular was issued (POL. 1142/2015) that clarified the transfer pricing provisions of both the Greek Income Tax Code and the Greek Code of Tax Procedures.

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);

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 advance pricing agreements.

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.

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 a preference for Greek comparables; however pan-European searches have not been challenged often.

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 at 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 with both 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.)
• A description of the transfer pricing method adopted and the reasons for that selection
• For transactions with affiliated entities located in non-cooperative states, additional information should be included, primarily financial statements (balance sheets and profit/loss accounts) of the respective entities.

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. Based on tax audit practice, tax auditors generally do not accept intentional set-offs.
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 liability 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;
• 25 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
• 50 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), delayed submission of the amending SIT (if the difference resulting from the amended transactions exceeds €200,000), or submission of an inaccurate SIT (if the inaccuracy is more than 10 percent of the transactions) a one-off penalty calculated at 1/1000 of the value of the intragroup transactions (not less than €500 and not exceeding €2,000) is imposed.

Moreover, in case of nonsubmission of Summary Information Table, a one-off penalty equal to 1/1000 of the value of the intragroup transactions (not less than €2,500 and not exceeding €10,000) is imposed.

In case of delayed submission/nonsubmission of the Transfer Pricing Documentation File the following penalties (imposed at the expiration of the one-month deadline), are imposed, depending on the length of the delay:

• €5,000 (for submissions between the 31st and 60th day)
• €10,000 (for submissions between the 61st and the 90th day)
• €20,000 (for submissions after the 90th day or nonsubmission in general)

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 December 31, 2013, the penalty imposed amounts to €100, whereas for late filing of the SIT for fiscal years commencing on or after January 1, 2014, the one-off penalty of 0.1 percent of the taxpayer’s revenue is imposed, ranging from €1,000 to €10,000.

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 until the day of the actual payment. Until December 31, 2015, the interest is calculated on a monthly basis at the time of collection for the entire month. The relevant interest rate is 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. However, recent Law 4337/2015, which modified L. 4174/2013, made the relevant penalties regime less strict, because the amendments introduced were intended to decrease the penalties imposed.

Advance Pricing Agreements (APAs)
Are APAs available?
Yes. The provisions regarding APAs are effective January 1, 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.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan? If so, are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
No additional measures have been enacted pursuant to Actions 8-10 of the BEPS Action Plan. However, the Greek transfer pricing provisions include a direct reference to the OECD transfer pricing guidelines regarding the interpretation and examination of compliance with the arm’s length principle. In this matter, Greece generally complies with the OECD’s BEPS Action Plan.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
Greece has not enacted legislation implementing country-by-country reporting. However, on January 27, 2016, Greece signed the Multilateral Competent Authority Agreement for the automatic exchange of country-by-country reports.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
No. However, Greece participates in the ad hoc group created to work on the development of the multilateral instrument.
Guatemala

What's new
After a one-year waiver in 2014, Guatemala's transfer pricing rules returned to force and application in 2015. The Superintendence of Tax Administration (SAT) has linked transfer pricing reporting to the annual income tax return, and taxpayers with controlled transactions that impact their tax basis will be subject to transfer pricing enforcement for the first time. Affected taxpayers must now file a mandatory transfer pricing informative appendix when filing their 2015 income tax return in March 2016.

The upcoming commencement of transfer pricing audits by the SAT will open the door to expected controversies between taxpayers and the tax administration, including some with constitutional implications. For example, the courts may have to decide between the full arm's length range as established by the Congress, and the interquartile range as provided by the Executive branch in the pertinent regulations.

General information
Tax authority and law

Regulations, rulings, guidelines

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.

For purposes of Guatemala's transfer pricing rules, two parties are considered related when one of them is a resident in Guatemala and the other resides abroad, and the following criteria are met:
• One of them directs or controls the other, or owns, directly or indirectly, at least 25 percent of its capital stock or voting rights
• Five or fewer persons direct or control both related parties, or jointly own, directly or indirectly, at least a 25 percent participation in the capital stock or voting rights of both persons
• When dealing with legal entities, whether it is the one that is the resident in Guatemala or it is the foreign one, which belong to the same corporate group.

The following are also considered to be related parties:
• A person who is a resident in Guatemala and an exclusive distributor or agent of the same resident abroad
• An exclusive distributor or agent who is a resident in Guatemala of an entity that is a resident abroad and the latter
• A person who is a resident in Guatemala and its permanent establishments abroad
• permanent establishment located in Guatemala and its parent company that is a resident abroad, 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.

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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.

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, their acceptance by the tax authorities cannot be predicted.

Are Cost Contribution or Cost Sharing Payments deductible?
These kinds of agreements are not specifically provided for under local law; thus, their acceptance by the tax authorities cannot be anticipated.

Are Cost Contribution or Cost Sharing Payments subject to withholding tax?
These kinds of agreements are not specifically provided for under local law; thus, their acceptance by the tax authorities cannot be predicted. 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, their acceptance by the tax authorities cannot be predicted. 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 Superintendence 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 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.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan? If so, are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
Guatemala is not committed to following the OECD’s recommendations.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
Guatemala has not enacted legislation implementing country-by-country reporting, nor is it considering doing so.

The Ministry of Finance requested comments on the draft proposal by January 25, 2016. The objective is to apply new CbC reporting requirement as of January 1, 2017. Financial years ending January 1, 2017, and thereafter would be within the scope of the reporting requirement.

The ultimate parent company of a multinational group would be responsible for filing the CbC report with the tax authorities. However, when the ultimate parent company is a resident of a country that does not require CbC reporting, or if the Finnish tax administration is not able to receive the information through its information exchange network, the Finnish subsidiary would then be responsible for submitting the information to the Finnish tax administration. Failure to comply with the CbC reporting rules would incur a maximum penalty of €25,000.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
Guatemala is not committed to participating in the multilateral instrument.
What’s new
In recent years, Hong Kong has been expanding its treaty network rapidly, and has signed double tax agreements with 33 countries as of December 31, 2015. The expanded treaty network offers Hong Kong taxpayers more opportunities to enter into bilateral/multilateral advance pricing agreement to secure certainty on their transfer pricing positions.

The Inland Revenue department (IRD) launched a public consultation exercise from April to June 2015 on the automatic exchange of information (AEOI), and analyzed the consolidated comments. It is expected to introduce a bill in the Legislative Council in early 2016, and the IRD is committed to the timely implementation of AEOI in Hong Kong.

Globally, the OECD’s base erosion and profit shifting (BEPS) initiative is expected to have a profound impact on the continued evolution of international transfer pricing arrangements. Hong Kong has noted this global trend and has been closely monitoring development. While there have not been any changes in the tax laws specifically related to BEPS, the IRD has indicated publicly that it will follow the BEPS Action Plan and take a more stringent approach in the transfer pricing area.

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.

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 August 15;
• For businesses with accounting periods ending between January 1 and March 31, the due date is extended to November 15;
• For businesses with accounting periods ending between April 1 and November 30, 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.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan? If so, are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
No. Hong Kong is not one of the G20 countries, and therefore is not obligated to follow the recommendations of the OECD’s October 2015 final report.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
No, Hong Kong has not yet enacted legislation implementing the country-by-country reporting requirement, but the IRD has indicated it will consult the tax community on the subject in due course.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
No.
Hungary

What's new
Hungary's transfer pricing legislation was not substantially updated during 2015. Accordingly, Hungary has yet to follow the recommendations set forth in the OECD's final BEPS reports issued in October 2015.

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. 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:
- January 1, 2012
- June 18, 2013
- December 30, 2014

The Hungarian Ministry of Finance issued Decree no. 38/2006 on advance pricing agreements (modified as of January 1, 2012, and January 1, 2016 (the latter including solely administrative modifications)); 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 June 30, 2013.

Regulations, rulings, guidelines

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 January 1, 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.

Section 18 of the Corporate Income Tax Act was modified as of January 1, 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 was abolished in Hungary as of January 1, 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 was abolished in Hungary as of January 1, 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 January 1, 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 December 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 May 31 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 January 1, 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 January 1, 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.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan? If so, are there any material differences between the final report and your country’s measures? What is the effective date of those measures? Hungarian legislation does not yet follow the recommendations set forth in the final BEPS report.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures? What is the effective date of those measures? Hungarian legislation does not yet follow the recommendations set forth in the final BEPS report.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan? No information is available.
Iceland

What's new
Iceland's Parliament approved a bill in 2015 that amended the transfer pricing rules so that only entities that conduct transactions with foreign related entities are subject to the Icelandic documentation requirements, and the documentation requirements apply only to those transactions. Prior to that amendment, the documentation requirements also applied to entities that conducted transactions only with domestic related entities.

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, regulation no. 1180/2014 on documentation and transfer pricing in transactions between related entities.

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.

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 may 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.

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?

Are cost contribution or cost sharing payments deductible?
Yes, as a general rule. However, R&D cost is generally capitalized.

Are cost contribution or cost sharing payments subject to withholding tax?
There is no regulation or practice on this issue.

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 there is no regulation or practice on this issue.

**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 foreign related entities. If an entity exceeds this threshold, it is required to prepare documentation as of the next fiscal year. Only entities that conduct transactions with foreign 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 is likely 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 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.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan?
If so, are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
Yes, there is a general commitment to follow the recommendations of the OECD’s October 2015 final report, but to what extent has not been decided or made public. No measures have been introduced.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
The majority of the local file requirements are met by the existing Indonesian documentation requirements.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
Yes, there is a commitment to participate.
What's new
India's transfer pricing regime has been the subject of changes aimed at reducing the litigation that has resulted. The much-awaited rules on the application of multiple-year data and the range concept have been notified. From an audit perspective, a risk-based approach has been introduced, replacing the transaction-based methodology for the selection of transfer pricing cases for audit.

The Indian government's increased focus on the mutual agreement procedure for resolving tax disputes resulted in 180 finalized cases during the last two years.

General information

Tax authority and law

Regulations, rulings, guidelines

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, resident or nonresident, other than an associated enterprise when there exists a prior agreement in relation to the relevant transaction between such other person and the associated enterprise, or the terms of the relevant transaction are determined in substance between such other person and the associated enterprise, the transfer pricing regulations will apply to those transactions.

The transfer pricing provisions are also applicable to specified domestic transactions with an aggregate value exceeding INR 200 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?
The Indian branch of a foreign multinational enterprise is treated as a nonresident and the transactions between branch and headquarters are subject to transfer pricing regulations. While there are specific rules for permanent establishment, attribution of profits using transfer pricing methodology is acceptable to the authorities.

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 (contribution analysis or residual analysis) (PSM) and the transactional net margin method (TNMM)

The CBDT has prescribed the application of a sixth method – the “Other Method” -- for the computation of arm’s length prices. This method could be used for unique transactions, such as intangibles or business transfers, transfer of unlisted shares, sales of fixed assets, revenue allocation/splitting, the provision or receipt of guarantees, and others.

The CBDT issued safe harbor rules for international transactions in categories/sectors including information technology, IT-enabled services, knowledge process outsourcing services, contract research & development in...
the IT and pharmaceutical sectors, financial transactions (outbound loans and corporate guarantees) and auto ancillary manufacturing. The CBDT also issued safe harbor rules for specified domestic transactions. 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.

Are foreign comparables acceptable to local tax authorities?
There is no specific prohibition against the use of foreign comparables. However, tax authorities prefer local comparable companies over foreign comparable companies, although the courts have been indifferent to the category of comparable companies.

Services issues
Are management fees deductible?
There are no formal guidelines specifically for management fees, and all business expenses are deductible. However, the tax authorities regularly insist that taxpayers meet the “need test” for availing themselves of such management services, and that they satisfy the “benefit test.” Subject to meeting the documentation requirements, the management fee would then be deductible.

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 the tax authorities generally insist that stock option costs must be included in the cost base for intercompany service charges.

Commissionaire arrangements
Are commissionaire arrangements allowed?
No, commissionaire arrangements are not allowed in countries with legal systems based on common law.

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 or other service costs are 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?
The treatment of the payments would be dependent on the nature of the expenses.

Documentation and tax return disclosures
Tax return disclosures
A report providing the particulars of associated enterprises, international transactions, deemed 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 200 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.
Under Rule 10D, taxpayers are required to maintain information such as details of ownership structure and shareholding; profile of the business undertaken by the multinational group and the taxpayer; nature and terms of the international transaction entered into by the taxpayer; details of functions performed, assets employed, and risks assumed by the taxpayer; analysis performed to evaluate comparability and selection of methods for determining the arm’s length price; a record of the actual work carried out for determining the arm’s length price; details of the adjustments, if any, and any other information, data, or document, including information or data relating to the associated enterprise, which may be relevant for determining the arm’s length price.

**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, every taxpayer’s financial year commences on April 1 and ends on March 31. Taxpayers must submit an Accountants’ Report (for transfer pricing) along with the tax return. The deadline for the same is November 30 following the end of the financial year. Documentation is not required to be submitted with the tax return.

**Acceptable languages for documentation**
Documentation should 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?
Transfer prices are computed using book profits. Due to certain differential accounting treatments, profits for income tax purposes and book profits may be different. However, book profits are the basis for computing international transactions and profits. Transfer pricing adjustments are made using book profits.

**Self-initiated adjustments**
There are no formal procedures for self-initiated adjustments. However, taxpayers may voluntarily offer to tax the difference between the arm’s length price and the transfer price, if any.

**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 prescribed information and documentation, or failure to report a transaction is 2 percent of the value of the international transaction or specified domestic transaction. There is an additional penalty of 2 percent of the value of the international transaction or specified domestic transaction for failure to maintain information or furnishing incorrect information or documents. The penalty for failure to furnish a report from an accountant with the income tax 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 prefiling 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.

The fee for filing a request for rollback provisions is INR 0.5 million, irrespective of the transaction value.

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?
There are no clear guidelines on payments of tax demands during pending MAP proceedings. However, there are memoranda of understanding between the CAs of India and some countries, including Denmark, the United Kingdom, and the United States, that provide for tax demands to be kept in abeyance during pending MAP proceedings. Abeyance is conditional on various criteria, including the furnishing of bank guarantees of applicable amounts.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan?
If so, are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
As a member of the G20 and an active participant in the BEPS project, India is committed to its outcome. Currently, no specific legislation in relation to BEPS action points has been introduced; however government sources have indicated publicly that some of the provisions are likely to be introduced in the Annual Finance Bill in February 2016.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
The Indian transfer pricing regulations currently do not call for maintaining information contained in the master file and the country-by-country reporting template. Specific legislation will be required to implement country-by-country reporting. Government sources have indicated publicly that the country-by-country reporting requirement is likely to be introduced in the Annual Finance Bill in February 2016.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
As a member of the G20 and an active participant in the BEPS project, India is committed to its outcome.
Indonesia’s transfer pricing regime continues to evolve. In 2015, the Directorate General of Taxation (DGT) was proactive in issuing additional guidance and implementation of the rules in areas that needed further clarity, such as the mutual agreement procedure (MAP) and advance pricing agreement (APA) regulations.

Besides the issuance of updated guidance on MAP and APA regulations, 2015 saw the reintroduction of thin capitalization rules as a measure to prevent excessive borrowings from related parties. The new debt-to-equity ratio (DER) regulation will require taxpayers to review existing funding arrangements to determine the characterization of the relevant interest under the new DER rules for Indonesian tax purposes.

These recent developments are in line with the DGT’s plan to make 2016 “the Year of Tax Law Enforcement” in Indonesia.

What’s new

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These recent developments are in line with the DGT’s plan to make 2016 “the Year of Tax Law Enforcement” in Indonesia.

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 Indonesian Rupiah (IDR) 10 billion (approximately USD 700,000) per counterparty per annum. Further, domestic related-party transactions, which were previously subject to transfer pricing rules, were exempt from the transfer pricing requirements prescribed under PER-32, provided the counterparties are not subject to different tax rates.

The Guidelines for Transfer Pricing Audit were updated through PER 22/PJ/2013 (PER-22), issued on 30 May 2013. This regulation revokes KEP-01/PJ 07/1993, which provided guidelines on similar matters.

Circular Letter No. SE-50/PJ/2013 (SE-50) was issued on October 24, 2013, to provide clarity and expand on the guidelines provided in PER-22. SE-50 is effective October 24, 2013, and officially revokes SE-04/PJ.7/1993.

Guidance for Advance Pricing Agreements (PER-69/2010, dated December 31, 2010) and Mutual Agreement Procedures (PER-48/2010, dated November 3, 2010) were released by DGT during 2010 and are available to taxpayers as alternative dispute resolution mechanisms.

On December 22, 2014, the Indonesian Ministry of Finance (MoF) issued an updated regulation (No.240/PMK.03/2014) on the implementation of the Mutual Agreement Procedure. The regulation is effective December 22, 2014, and is applicable to any ongoing MAP requests that were submitted prior to the issuance of this regulation but have not been concluded.

2015 started with the issuance of MoF regulation (No.7/PMK.03/2015 issued on January 12, 2015) on the procedure and implementation of APAs. On September 9, 2015, MoF Regulation Number 169/PMK.010/2015 (PMK-169) was issued to reintroduce the thin capitalization rules. The regulation provides detailed guidance on the definition of debt and equity, the prescribed threshold for debt-to-equity ratio (DER), and other compliance requirements.

The rule set out in PMK-169 limits the amount of tax-deductible borrowing cost arising from the debt to a maximum DER of 4:1. This means that any borrowing cost on debt that exceeds this ratio will not be tax deductible for corporate income tax purposes. The permitted 4:1 DER is applicable for all Indonesian taxpayers established or domiciled in Indonesia, except for certain sectors that are guided by special rules, such as banks, financing
institutions, insurance and re-insurance companies, mining, oil and gas enterprises that are bound by Production Sharing Contract, infrastructure companies, and companies subject to final income tax.

The thin capitalization rules apply to both related- and third-party debt, whether foreign or domestic. The said ratio will be effective from fiscal year 2016.

Although Indonesia is not a member of the OECD, the OECD transfer pricing guidelines are generally accepted in practice.

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, PER -32 adopts the use of the most appropriate transfer pricing method in testing the arm’s length nature of related-party transactions.

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 Oriana and Osiris.

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, information relating to cost details actually expended in the provision of services, details of the cost base, and evidence of the arm’s length nature of the payments are required to support deductibility. In addition, the taxpayer should ensure that the services availed are not duplicative in nature, not a shareholder activity, or in the nature of incidental benefit or passive association.

Are management fees subject to withholding?
Under domestic law, foreign payments are subject to 20 percent withholding. However, treaty benefits are available...
depending 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 Form DGT-I.

**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 Form DGT – I.

**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 (Form 3A/3A-1 or Form 3B/3B-1): (1) details of related-party transactions including the transfer pricing method adopted; and (2) notes on transfer pricing documentation.

**Documentation requirements**
Transfer pricing guidelines (PER 43/PJ/2010), as 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?
The current regulation provides that documentation should be made available upon request by the DGT. However, because of the information to be supplied in tax return disclosures on related parties, as well as the stringent requirements in transfer pricing audits, updating the transfer pricing report on an annual basis has become obligatory. 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 a tax 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 at the latest within one-month period or within seven days pursuant to PER-22.

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
No specific provisions exist. Self-initiated adjustments may be acceptable if they result in more taxable income for the Indonesian taxpayer. The Indonesian tax office does not view year-end adjustments favorably, especially if they lead to a reduction of the Indonesian taxpayer’s profits.

Statute of limitations on assessment for transfer pricing adjustments
The general rule applies. 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; 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. The MoF updated and revised the existing APA regulation through regulation No.7/PMK.03/2015 issued on January 12, 2015.

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 period of three years for unilateral APAs and four years for bilateral APAs, starting from the tax year in which the APA is agreed. Rollbacks are not permitted.

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.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan?
If so, are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
No formal adoption has been announced. Because Indonesia is a member of the G20, it has indicated that some of these principles may be adopted in a transfer pricing regulation.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
The DGT has indicated that it intends to implement CbC reporting. These changes are likely to be contained in a superior regulation to be issued by the MoF during 2016. There are indications that additional information, such as interest, service, and royalty payments may be required to be disclosed.

The majority of the local file requirements are met by the existing Indonesian documentation requirements.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
Indonesia has already signed the Convention on Mutual Assistance in Tax Matters (multilateral).
Ireland

What’s new
During 2015, the key area of focus for transfer pricing in Ireland has been the OECD BEPS project. New legislation was introduced in late 2015 that incorporates the country-by-country reporting requirement into Irish law for 2016 onward. The law is aligned with Action 13 of the BEPS plan. In addition, the Irish Revenue have introduced regulations in relation to local filing of country-by-country reports when ultimate and surrogate parent filing is unavailable. The Irish Revenue is expected to adopt the next version of the OECD transfer pricing guidelines into domestic law once the guidelines are finalized.

General information
Tax authority and law

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 May 6, 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.

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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.

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 normally seek transfer pricing documentation during a transfer pricing audit. Formal transfer pricing audits now take place under Irish transfer pricing law.

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 December 31 year end, the tax filing date is the following September 23 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 January 1, 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 December 31, 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.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan?
If so, are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
Yes. Irish transfer pricing law is expected to be updated in 2016 or 2017 to align with the principles contained in the new version of the OECD transfer pricing guidelines as contained in Actions 8-10.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
Yes. Legislation enacted in December 2015 introduced a country-by-country reporting requirement effective for accounting periods beginning on/after January 1, 2016, for companies within its scope. Irish domestic law has not yet been amended to adopt the master file/local file requirement.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
Yes.
Israel

What’s new
The Israeli Tax Authorities are aware of the progress that has been made and the urgency of the BEPS legislation, in particular Action 13 and country-by-country reporting. Although we do not expect a significant change in the Israeli transfer pricing regulations in the near future, reference will be made to the interpretation of the OECD transfer pricing guidelines and the BEPS recommendations. In this light, it is likely for an Israeli circular to be issued with regard to country-by-country reporting.

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 November 29, 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.

May stock option costs be included in the cost base for intercompany services charges?
Based on a recent Israeli court ruling, stock options costs are expected to be included in the cost base for intercompany service charges.

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, in practice, cost contribution arrangements and cost sharing agreements are recognized and accepted by the Israeli tax authority, as long as they reflect the arm’s length principle. This assumes the criteria under the OECD transfer pricing guidelines are met: (i) the arrangement provides anticipated benefit to recipients; (ii) the service does not duplicate one that is already provided to the recipient; and (iii) it does not constitute a stewardship/shareholder service.
Are cost contribution or cost sharing payments deductible?
Generally, yes, as long as the payments satisfy the arm’s length principle 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.

Documentation and tax return disclosures

Tax return disclosures
An annual declaration form (Form 1385) of all controlled transactions, the name/location of the related parties to the transaction, prices, and transfer pricing method must be filed on a per-entity, per-transaction 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, if relevant; (11) economic results; (12) adjustments performed, if relevant; 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.

OECD BEPS recommendations

Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan?
If so, are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
There is no formal provision or effective date in this regard. However, Israel’s requirements are expected to be aligned with the OECD’s final reports.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
No formal position has been announced. However, it is our understanding that the introduction of a country-by-country reporting requirement is in process.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
No formal position has been announced. However, as a member of the OECD, it is expected that Israel will cooperate with the BEPS initiative, including the opportunity to be part of a multilateral treaty.
What’s new
In 2015, Italy introduced provisions to start implementing the recommendations of the OECD BEPS project. Among these measures are the introduction of a new, optional patent box regime, aimed at encouraging R&D and innovation by providing an incentive for enterprises to relocate high-value jobs associated with the development, manufacture, and exploitation of patents in Italy.

The country also introduced a country-by-country reporting obligation in accordance with Action 13 of the OECD’s Base Erosion and Profit Shifting initiative.

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; Article 31-ter of Presidential Decree n. 600/1973 (APA regulations).

Regulations, rulings, guidelines

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?
Under Article 152 of Presidential Decree n. 917/1986, Italian tax law provides specific rules for the determination of profits attributable to a permanent establishment. 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 a permanent establishment should be determined by applying the arm’s length principle and the OECD transfer pricing guidelines. In addition, 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.

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.

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 charged 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?

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 for tax returns connected with fiscal years until 2015.

The term is extended to five years from the end of the calendar year in which the tax return was filed for the 2016 fiscal year and onwards.

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?
Under new article 31-ter of Presidential Decree No. 600 of September 29, 1973, the scope of the international ruling procedure (equivalent to an APA), available to enterprises involved in international transactions, has been extended to include cases of inbound or outbound transfers of residence for tax purposes. Hence, it is now possible to apply for an APA for the following reasons:

• Transfer prices
• Assessment of the presence of a permanent establishment and the relevant profit attribution
• Interest, dividends, and royalties
• Inbound or outbound transfers of residence for tax purposes

APA filing fee
Not applicable.

APA term of agreement
Once signed, APAs are binding on the taxpayer and the Italian tax authorities for the fiscal year during which they are issued, and for the following four years, provided the relevant factual and legal circumstances remain unchanged.

The taxpayer may avail itself of the option to extend the APA to the prior tax years, up to the tax year in which the ruling application was submitted.

When the APA is based on an agreement reached with foreign tax authorities through a mutual agreement procedure as provided for in a tax treaty, it is binding for prior tax years, up to the tax year in which the ruling application was submitted.

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.
OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan? If so, are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
Italy is committed to follow the approach agreed to in the BEPS Action Plan. In 2015, Italy adopted provisions regarding some of the BEPS recommendations, including new provisions on taxation of the digital economy, a patent box regime, and country-by-country reporting.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
Law No. 208 of December 28, 2015 (the Stability Law for 2016), introduced a country-by-country reporting obligation in accordance with Action 13 of the OECD Base Erosion and Profit Shifting project. Taxpayers subject to the new obligation are required to submit an annual report to the Italian tax authorities indicating revenues, profits before tax, income tax paid and due, and other relevant elements of the effective economic activity performed, for each country in which the group operates.

The report must be prepared by the entity ultimately required to prepare the consolidated financial statements of multinational groups with a consolidated turnover of over €750 million in the tax period before the one referred to in the report, and submitted to the tax authorities of its country of residence, which will share it with the tax authorities of other countries through exchange of information tools.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
Yes.
What’s new
Japan’s Liberal Democratic and the New Komeito parties on December 16, 2015, released the 2016 Tax Reform Proposals. These proposals were approved by the Japanese cabinet on December 24, and are expected to be approved by the National Diet and incorporated into law by March 31. With regard to transfer pricing, the reforms incorporate the Action 13 of the OECD BEPS plan concepts of country-by-country reporting, master file, and local file.

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

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.

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

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. Future expected changes related to country-by-country reporting and the master file/local file are discussed below.

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 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.

APAs 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.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan? If so, are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
No announcement has been made on how the Japanese government may update the Japanese transfer pricing rules to incorporate these actions; however, it is expected that the aspects covered in Actions 8-10 will be incorporated, including the “super royalty” concept on hard-to-value intangibles.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
Based on the tax reform, to be finalized and implemented on April 1, 2016, the following additional requirements will be in place:

• Country-by-country reports
  – The first CbC reports for multinational enterprises (MNEs) will be for their first fiscal year beginning on or after April 1, 2016, and will be due 12 months after the end of that fiscal year via the electronic data processing system, e-Tax.
  – Penalties will apply if the CbC report is not filed by the due date (12 months after end of that fiscal year).
  – MNE groups with consolidated revenues of less than JPY 100 billion in the year prior to a given reporting year are exempt from the obligation to file a CbC report for the relevant reporting year.

• Master File
  – All MNE groups with a Japanese entity or permanent establishment that meet the filing threshold must file a master file.
  – The master file must include the relevant items listed in Annex 1 of the Amendment to the Transfer Pricing Guidelines (BEPS Action Item 13).
  – The master file may be filed in English or Japanese.
  – MNEs’ first master file will be for their first fiscal year beginning on or after April 1, 2016, and due 12 months after the end of that fiscal year via the
electronic data processing system, e-Tax. 2016 Tax Reform notes that the master file reporting entity responsibility can be a designated to a Japanese permanent establishment of a foreign company of a non-Japanese MNE group.

– Penalties are expected to apply if the master file is not filed by the due date (12 months after the end of that fiscal year).
– MNE groups with consolidated revenues of less than JPY 100 billion in the year prior to a given reporting year are exempt from the obligation to file a master file for the relevant reporting year.

• Local File
– The items to be included in the local file are specified in the Act on Special Measures Concerning Taxation Enforcement Order Article 22-10 and Annex II of the OECD transfer pricing guidelines.
– Local file rules contained in the 2016 Tax Reform apply for tax filings for fiscal years beginning on or after April 1, 2017, and must be prepared by a Japanese entity’s tax return filing date.
– The local file must be kept for seven years.
– Japanese entities are exempt from local file requirements for specific related-party transactions, under the following conditions: (i) the value of transactions with the foreign related party in the previous fiscal year is less than JPY 5 billion; and (ii) the value of intangible property transactions with the foreign related party in the previous fiscal year is less than JPY 300 million.
– Non-exempt companies that fail to submit the local files within 45 days of a request by the tax authorities or that fail to submit additional material supporting the arm’s length price within 60 days of a request from the tax authorities may be subject to presumptive taxation.
– For entities that are exempt from the obligation to prepare a local file, the tax authorities may request material for supporting the arm’s length nature of pricing. This must be provided within 60 days of a request from the tax authorities.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
Japan is expected to participate in the multilateral instrument.
2016 saw relatively few significant transfer pricing reforms, legislative changes, or new directions of tax authority compliance and enforcement action in Kazakhstan.

Discussions took place between the authorities and various taxpayer associations and industry-specific bodies regarding potential future reforms, including the introduction of an additional tax register on transfer pricing as an integral part of the Corporate Income Tax return, in a form identical to the current monitoring report. Also discussed was the possibility of changing the type of information disclosed in the annual monitoring report submitted by large taxpayers to the tax authorities. The discussions between the authorities and taxpayer associations are still in progress, and the results are expected to be released in the course of 2016.

### General information
#### Tax authority and law

#### Regulations, rulings, guidelines
- Resolution of the Government (dated March 12, 2009) #292, “On approval of the list of officially recognized sources of information on market prices”
- Order of the Minister of Finance (dated March 19, 2015) #194, “On approval of the list of goods (works, services) international transactions that are subject to monitoring”
- List of exchange goods adopted by government regulation (dated May 6, 2009) #638
- List of countries with concessional tax regimes adopted by Order of the Minister of Finance (dated December 29, 2014) #595
- Order of the Minister of Finance (dated March 26, 2009) #129, “On approval of the regulation on the procedure of interaction of the authorized bodies during transfer pricing control”
- Entrepreneur’s Code of Republic of Kazakhstan (dated October 29, 2015) #375-V
- Resolution of the Government (dated February 3, 2011) #74, “Concerning the approval of regulations (methodology) on pricing of natural uranium concentrate”
- Resolution of the Government (dated June 30, 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.

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 March 12, 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.

The documentation must include:

- 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)
- 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 every two years 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 refreshing of comparables.

Deadline to prepare documentation

Documentation must be prepared by May 15 of the year following the reporting year for transactions in goods (works, services) subject to monitoring.

Supporting information and documents must be prepared and submitted within 90 days upon request by the authorities.

Deadline to submit documentation

By May 15 of the year following the reporting year for transactions of goods (works, services) that are subject to monitoring.

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 March 31 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). In accordance with Article 10 of the Law of Republic of Kazakhstan “On transfer pricing,” adjustments will be allowed only if they result or may subsequently result in an increase in taxable income.

Statute of limitations on assessment for transfer pricing adjustments
Five years, as stipulated by general tax legislation (the Tax Code). However, in case of enquiries upon audit by the tax authorities in accordance with transfer pricing legislation, the statute of limitations may be extended to up to seven years.

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 paid by the deadline established for payment of Corporate Income Tax, which is April 10 following the tax reporting period.

Penalty on transfer pricing assessment
A penalty 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, or refusal to provide documents is subject to a fine up to 350 MCI, or US $2,100.

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
Fines may be avoided in case of self-initiated adjustments as stipulated by general tax legislation. However, no reduction in penalties is provided if payment deadlines are missed.

Advance Pricing Agreements (APAs)
Are APAs available?
Yes. From a legislative point of view, APAs are possible and are regulated by the government.

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.
OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan? If so, are there any material differences between the final report and your country’s measures? What is the effective date of those measures? The Kazakh tax authorities have not introduced any specific measures in response to the BEPS initiative, nor has a detailed schedule for adoption been announced.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures? What is the effective date of those measures? No information regarding the implementation of country-by-country reporting has been provided.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan? No official announcement has been made regarding Kazakh participation in the multilateral instrument. However, Kazakhstan has participated in the working group discussions regarding the multilateral instrument. Accordingly, it is possible that the country could participate in the development and implementation of the Action 15 instrument in the future.
What’s new

Although there was some expectation that the Kenya Revenue Authority would release new transfer pricing regulations following a stakeholders workshop in 2014, there were no changes to the transfer pricing legislation or regulations during 2015. However, the revenue authority continues to carry out transfer pricing audits. One of the areas of focus during audits is intragroup services, where the revenue authority is increasing its scrutiny to ascertain the actual services provided vis-à-vis the level of fees charged.

2015 also witnessed the setting up of an alternative dispute resolution (ADR) mechanism within the revenue authority, which allows taxpayers to pursue a negotiated settlement on a disputed assessment. However, taxpayers retain the right to appeal should the two parties fail to reach consensus at the ADR level.

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 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 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 rules prescribe the information that should be included in the transfer pricing documentation, which includes details regarding 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?
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. Typically, the revenue authority provides a 14-day period within which to submit documentation.

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.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan?
If so, are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
The Kenyan Revenue Authority has not publicly stated its position on the BEPS Action Plan.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
No legislation has been enacted on country-by-country reporting, and no formal position has been taken.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
No formal commitment.
What's new
In December 2015, Korea amended tax laws requiring the submission of transfer pricing documentation. The Ministry of Strategy and Finance (MOSF) announced proposed revisions to the Presidential Enforcement Decree of the laws with more specific details on the compliance guidance for the transfer pricing documentation.

The revised transfer pricing legislation requires taxpayers that meet a threshold to submit both the local file and master file by the tax return filing due date, starting the fiscal year beginning on or after January 1, 2016. When one of the files (or a part thereof) is not submitted or is falsely submitted, a penalty of KRW 30 million will be imposed.

The tax revisions have significant implications, because they signal the Korean government’s intention to closely follow and promptly adopt recommendations of the BEPS Action Plan into local transfer pricing legislation.

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 December 27, 2010).

Availability of benchmarking/comparative data
Several databases are available to the public.

Are foreign comparables acceptable to local tax authorities?
Foreign comparables are not prohibited, but the Korean tax authorities are unlikely to accept them. 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.

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**

Under the revised transfer pricing legislation effective January 1, 2016, taxpayers (Korean entities or permanent establishments of foreign entities) with (i) annual sales revenue in excess of KRW 100 billion and (ii) annual cross-border intercompany transactions in excess of KRW 50 billion are required to disclose transfer pricing information in a new format -- the “Comprehensive Report of Overseas Related-Party Transactions” -- which is a summary of the information that would be contained in taxpayers’ local file and master file.

Taxpayers not subject to the “Comprehensive Report of Overseas Related-Party Transactions” are still 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.

**Documentation requirements**

Under the revised transfer pricing legislation effective January 1, 2016, documentation requirements have been changed so that taxpayers (Korean entities or permanent establishments of foreign entities) with (i) annual sales revenue in excess of KRW 100 billion and (ii) annual cross-border intercompany transactions in excess of KRW 50 billion are required to submit the local file, starting for fiscal years beginning on or after January 1, 2016. An ultimate parent company in the same business field should submit the master file to the Korean tax authorities. If the ultimate parent company is not in Korea, a local entity should receive the master file from the foreign parent company and then submit it to the Korean tax authorities.

For taxpayers that do not meet the above thresholds, 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?

Taxpayers that meet the threshold for submission of transfer pricing documentation are required to submit the documentation annually. A complete report including the following information must be submitted:

- Local file – a description of the local entity of the multinational entity (MNE) (i.e., organization chart, business information, etc.), the local entity’s material controlled transactions and transfer pricing information, and financial information.
- Master file – a description of the MNE group’s structure and business details, intangible assets, financial transactions, and status of financial and tax information of the MNE group.

Both files should be updated annually; however, some information to be specified in the Enforcement Regulation (information that does not change significantly every year) may be updated every three years.

For taxpayers that do not meet the threshold, no annual documentation requirement is imposed. However, to qualify for the penalty waiver, taxpayers must prepare contemporaneous documentation that includes 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.

Deadline to prepare documentation
Contemporaneous documentation must be prepared by the tax return filing due date.

Deadline to submit documentation
Effective for fiscal years beginning on or after January 1, 2016, taxpayers that meet the threshold for submission of transfer pricing documentation must submit both the local file and the master file by the tax return filing due date. For instance, for taxpayers whose fiscal year ends on December 31, 2016, the deadline would be March 31, 2017. If the master file is submitted in English, a Korean translation must be submitted within one month of the documentation deadline. Documentation can be submitted in electronic form.

All other taxpayers must submit transfer pricing documentation within 60 days of a request by the tax authorities (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
Under the new documentation submission requirements, the local file must be submitted in Korean. The master file may be submitted in English, but a Korean translation must be submitted within one month.

For taxpayers not subject to the new documentation requirements, documentation must be submitted in Korean. Documentation in English may be acceptable upon approval 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?

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 January 1, 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 January 1, 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 January 1, 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.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan?
If so, are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
Korea has not issued any legislative proposals regarding BEPS Actions 8-10.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
New transfer pricing legislation requiring the filing of a master file and local file is effective January 1, 2016, in Korea. According to the proposed Presidential Enforcement Decree, the contents of the master file/local file under the OECD’s BEPS Action Plan recommendations are generally in line with the master/local file requirements under Korea’s legislation.

The Korean tax authorities plan to introduce the country-by-country reporting requirement in a few years, after monitoring and evaluating other countries’ legislation adopting the reporting requirement.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
No explicit announcements have been made.
Latvia

What’s new
The OECD BEPS Action Plan has been of great interest to the Latvian tax authorities during 2015, and they have expressed a willingness to introduce some of the recommendations in local legislation in the near future.

In other developments, the Supreme Court of Latvia in September 2014 issued a ruling upholding the tax authorities’ position that, in applying the resale price method, not only the gross profit margin, but also the operating profit margin may be analyzed, even though this position does not follow generally accepted transfer pricing practices.

Based on that decision, the Court of Appeal ruled in favor of the tax authorities in a similar case in 2015. The taxpayer decided did not appeal the decision to the Supreme Court. Taxpayers should keep this in mind when applying the RPM method.

General information
Tax authority and law
State Revenue Service (SRS); Taxes and Duties Act, articles 15.1, 16.1 (from January 1, 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 and 16.

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? Transfer pricing rules apply to all Latvian corporate taxpayers – residents and permanent establishments. However, there are separate regulations on profit attribution to a permanent establishment or branch that are not clear. As a result, in some recent cases the tax authorities have taken a position that is not in line with transfer pricing rules.

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.

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.

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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 Regulation 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 January 1, 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 January 1, 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, the tax authorities expect comparable data to be refreshed every year, and a new search to be performed every three years. The documentation should also be amended if there are changes in the conduct of the related parties or the economic circumstances surrounding the transaction.

Deadline to prepare documentation
The transfer pricing documentation requirements are in force effective January 1, 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 (EEC) 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 January 1, 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.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan?
If so, are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
The Latvian tax authorities are expected to follow the recommendations on Actions 8-10 of the BEPS Action Plan. However, the tax authorities have not introduced any specific measures in response to the BEPS initiative, nor has a detailed schedule for adoption been announced.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
Latvia has not yet implemented country-by-country reporting requirements into domestic legislation, but the tax authorities are expected to enact legislation in the near future.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
The Latvian tax authorities are expected to follow the recommendations on Actions 8-10 of the BEPS Action Plan. However, the tax authorities have not taken any specific actions.
Lithuania

What's new
The Lithuanian transfer pricing environment experienced some changes in 2015. Following the submission of the first applications for advance pricing agreements in 2014, several APAs were successfully completed in 2015. From a regulatory perspective, changes relating to the new Code of Administrative Offenses were adopted by the Lithuanian Parliament. The code provides that entities in violation of the transfer pricing documentation requirements may be penalized with an administrative penalty of up to EUR 5,800 effective April 1, 2016. In light of this, the Lithuanian tax authorities may become more active in performing transfer pricing audits in the coming year.

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 April 9, 2004;
- Law on corporate income tax (No. IX-675), dated December 20, 2001;
- Law on Tax Administration (No. IX-2112), dated April 13, 2004;
- Order No. VA-27 of the head of STI regarding submission of the report on transactions and operations with associated parties, dated March 22, 2005;
- Order No. VA-105 of the head of STI regarding APAs, dated October 19, 2011;
- Order No. VA-49 of the head of STI regarding the recovery of tax overpayments by taxpayer, dated June 30, 2009;
- Order No. VA-25 of the head of STI regarding the method of imposing penalties and the calculation of late payment interest, dated March 28, 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 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

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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 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.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan?
If so, are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
The Lithuanian tax authorities generally follow the OECD’s guidance. Although no formal action has yet been taken, tax authority officials announced publicly that they would...
follow the plans laid down in the final report on BEPS Actions 8-10. These are expected to be adopted into legislation in 2016 or 2017.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
Yes. Based on communication from the Lithuanian tax authorities, it is likely that the country-by-country reporting requirement will enter into force at the beginning of 2017.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
Yes, Ministry of Finance officials have confirmed their commitment to participate in Action 15 of the BEPS Action Plan.
What’s new

2015 was a year of transition for the transfer pricing landscape in Luxembourg. Despite the fact that no legislative changes were introduced during the 2015 legislative period, the Luxembourg tax authorities continued to focus on transfer pricing and related documentation when conducting their review of corporate tax files. Concomitantly, the Luxembourg government made several announcements, including commitments to follow guidance issued by the OECD as part of the BEPS initiative for which legislative changes are to be expected in 2016, specifically regarding country-by-country reporting and the three-tiered approach to documentation.

General information

Tax authority and law
Luxembourg Tax Administration. Article 56 of the Income Tax Law.

Regulations, rulings, guidelines

Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?
Luxembourg legislation -- 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.”

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?
Yes.

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.

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.

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**Documentation and tax return disclosures**

**Tax return disclosures**
No specific disclosure is required.

**Documentation requirements**
Luxembourg imposes no general 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?**

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. 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 May 31 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 January 1, 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 contracts), must 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 covered transactions are carried out.

APA filing fee
Effective January 1, 2015, there is a filing fee that ranges from €3,000 to €10,000, depending on the complexity of the case and the workload 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.

**OECD BEPS recommendations**
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan?
If so, are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
Yes, Luxembourg is committed to follow the recommendations of the BEPS final reports. Luxembourg has not adopted the OECD transfer pricing guidelines into domestic law. Thus, Luxembourg will continue to refer to the OECD transfer pricing guidelines as interpretive guidance. Once the BEPS recommendations are approved and inserted into the OECD transfer pricing guidelines, Luxembourg will follow the recommendations under Actions 8-10.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
Yes, country-by-country reporting legislation will be enacted in the coming months, and will be applicable for financial years starting on or after January 1, 2016.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
Yes.
What’s new
Effective for year of assessment 2014, Malaysian taxpayers must disclose in their income tax return whether contemporaneous transfer pricing documentation has been prepared; as an added measure to drive compliance, a new penalty provision has been introduced in the Income Tax Act. In other relevant developments, the statute of limitations for transfer pricing assessments has been increased to seven years; the income tax files of taxpayers with foreign holding companies and/or cross-border related-party transactions have been transferred to the Multinational Tax Department that focuses on transfer pricing audits; and the implementation of the thin capitalization rules has been deferred to December 31, 2017, and will be effective January 1, 2018.

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 January 1, 2009. Prior years are covered under the general anti-avoidance legislation (Section 140) and the record-keeping provisions (Section 82).

Regulations, rulings, guidelines

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.

Both cross-border and domestic related-party transactions are subject to transfer pricing regulations.

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
Transactional profit methods (the transactional net margin method and the profit split method) should be employed only when traditional transactional methods (the comparable uncontrolled price method, the resale price method and the cost plus method) cannot be reliably applied.

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. Under those circumstances, the IRB treats the local taxpayer as the tested party (irrespective of characterization) and accepts only local 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

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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 provisions and the arm’s length principle apply, specifically, the benefits test. In practice, the IRB refers to the OECD transfer pricing guidelines 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 treatment 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 must be disclosed in the tax return.

The main disclosures required to be set out in a tax return are:
- Intragroup sales;
- Intragroup purchases;
- Loans received from or provided to related parties; and
- Other income and expenses arising from related party transactions.

The IRB may issue Form MNE to the taxpayer to gather additional information on cross-border related-party transactions and characterization of the taxpayer, among other items.

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 year of assessment 2014, taxpayers must declare on the income tax return whether they have prepared transfer pricing reports for the period for which the return is made.

Documentation requirements
The current regulatory framework requires 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 documentation 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 transactions data may suffice, provided there are no material changes in the other
factors relevant for determining the arm’s length price. A new comparables search is recommended every three years. It is advisable for taxpayers to prepare a standalone report for each year (containing all relevant information and analysis), to facilitate submission during audit for a specific year(s) only.

**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 along with the return. 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 on any transfer pricing assessment.

**Deadline to file income tax return**
Seven months from the end of the taxpayer’s financial year.

**Acceptable languages for documentation**
English and Malay.

**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? Effective for year of assessment 2014, the income tax return must be completed based on signed, audited 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 to increase the profits subject to tax in Malaysia.

**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. Failure to prepare contemporaneous transfer pricing documentation may be viewed by the IRB as negligence or willful default.

**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**
For the first audit, a transfer pricing penalty is imposed at a rate that ranges from 25 percent to 35 percent of the amount of tax undercharged. For subsequent audits, 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.

**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 RM50 million; and
  - For other transactions, total value must exceed RM25 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.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan? If so, are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
Yes, the IRB is aligned with the outcome of Actions B-10; a separate committee has been set up to look into the BEPS recommendations and to suggest relevant amendments to the current regulatory framework. The timing of release and implementation of updated regulations will be announced.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
Yes, to the extent deemed appropriate, the IRB is considering an update to the current framework to give effect to Action 13. Details on the exact requirements and time frame for implementation will be announced.

Malaysia has signed the OECD’s Multilateral Competent Authority Agreement for the automatic exchange of country-by-country reports.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
IRB is inclined to participate in the multilateral instrument. Formal notification of the IRB’s stance is expected.
What’s new

The Mexican tax authorities included in new legislation applicable for fiscal year ending 2016 Article 76-A of the Mexican Income Tax Law, which imposes an obligation on Mexican taxpayers to file the transfer pricing country-by-country report, the master file, and the local file by December 31, 2017.

Regarding pro rata expenses, the Mexican tax authorities will no longer deny the deduction of allocated expenses if the Mexican taxpayers have supporting documentation and comply with all the requirements established in the Mexican Income Tax Law Regulations. If a case results in litigation, the Mexican tax courts require complete documentation to allow the deduction.

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, XI), 76-A, 82, 90, 94 (Sec VII), 101, 110 (Sec IX, X, XI), 111, 140, 147 (Sec X), 148 (Sec XI, 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 – Articles 9, 138, 285, and 302. Mexican Federal Fiscal Code – Articles 21, 26 (Sec XV), 31-A, 34-A, 81 (Sec XVII, XL), 82 (Sec XVII, XXXVII), 84 (Sec XIII), 146-B (Sec I).

Regulations, rulings, guidelines

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.

Services issues

Are management fees deductible?
Yes, provided information is available to demonstrate that the service was actually provided, the services provided were necessary, they provided a benefit to the Mexican taxpayer, and the price or consideration complied with the arm’s length principle.

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 (I.3.3.1.27)(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 or DISIF if filled by the auditor or the taxpayer, respectively); Tax Report Filing System (SIPIAD); questionnaires in the SIPRED and SIPIAD; Relevant Operations Disclosure Return (Formato 76) (for transfer pricing adjustments
over MXN 5 million or 20 percent of the arm’s length value). The master file, country-by-country report, and the local file are required under new provisions effective January 1, 2016. Specifically, Articles 32-H and 76-A of the Income Tax Law provide that Mexican taxpayers must have available the multinational enterprise’s master file and country-by-country report, and must file them with the Mexican tax authorities by December 31, 2017.

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, whether it is applying any regulation or treaty, and the interquartile range and results, as well the number of observations used for the analysis. 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.

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-by-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 of the following 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?
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. 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 $702 for filing the request, and US $141 for submission of the annual report during the APA term. The amount is periodically updated for inflation, Articles 53-G and 53-H of the Federal Rights Law.

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.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan?
If so, are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
Yes. Mexico’s Income Tax law makes reference to the OECD’s transfer pricing guidelines as a source of interpretation for transfer pricing purposes (as long as they do not contradict domestic rules). No additional or specific measures regarding Actions 8-10 of the BEPS Action Plan have been incorporated into domestic legislation.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
Article 76-A of the Income Tax Law requires the filing of the country-by-country report, the master file, and the local file as informative returns in line with Action 13 of the BEPS Action Plan. The new regulations entered into effect on January 1, 2016, and the deadline for filing the first informative return is December 31, 2017. Thereafter, the deadline for filing the informative returns is December 31 of the following year.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
Yes, although no actions have been taken, except the agreement with diverse countries for exchange of tax information.

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.
What's new

The Dutch government announced in 2015 some modifications to the Corporate Income Tax Act, including supplementary transfer pricing documentation requirements in line with the three-tiered approach of Action 13 of the OECD’s BEPS Action Plan. New legislation has been implemented as of January 1, 2016, that includes country-by-country reporting and requirements to prepare a master file and a local file.

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, 2011, 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.

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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?
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
The master file and local file should be prepared as part of the taxpayer’s tax compliance when the corporate income tax return is filed.

The country-by-country report should be provided within 12 months after the end of the pertinent fiscal year of the ultimate parent company.

For entities not subject to country-by-country reporting requirements and that do not have to prepare a master file and local file, transfer pricing documentation should be in place at the time the intercompany transaction takes place. The taxpayer should be able to provide documentation upon request by the Dutch tax authorities. In practice, the taxpayer will be provided with a reasonable term to provide the requested documentation. The length of that term depends on the complexity of the request, but will be at least four weeks and a maximum of three months.

Deadline to submit documentation
The country-by-country report should be provided within 12 months after the end of the fiscal year of the ultimate parent company.

The master and local file should be provided as part of the taxpayer’s tax records upon request from the Dutch tax authorities.

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.

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 charge exists. The general penalties apply – maximum of 100 percent in case of malicious intent.

In addition, the tax inspector could reverse the burden of proof in transfer pricing situations in case of evident shortcomings in the transfer pricing documentation.

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.
OECD BEPS recommendations

Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan?
If so, are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
Yes. The Netherlands is committed to the recommendations of the final report on Actions 8-10. The Transfer Pricing Decree of 2013 covered a number of matters related to aligning value creation with transfer pricing outcomes. Changes to the existing Dutch guidance with regard to Actions 8-10 are not anticipated.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
Yes. The Netherlands has implemented country-by-country reporting legislation, which also includes master file and local file documentation requirements.

There are no material differences between the OECD guidelines and the Dutch legislation regarding the implementation of country-by-country reporting and the contents of the master file and local file. However, to reduce the administrative burden for small businesses, a threshold of €50 million in revenue applies, so that companies below that threshold are not subject to the master file and local file requirements.

The legislation has been implemented as of January 1, 2016. Thus, the first country-by-country report must be filed by December 31, 2017, for multinationals with a December year-end. The master file and local file are part of the taxpayer’s records when its corporate tax return is filed.

Noncompliance with the country-by-country reporting requirements is a criminal offense punishable with penalties up to €8,200 or imprisonment for up to six months. In case the noncompliance is intentional, a fine of up to €20,500 or imprisonment for up to four years would apply. The Dutch government notes that criminal prosecution will generally be reserved for the most serious cases.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
Yes. The Netherlands is committed to participate in the multilateral instrument that is being developed under Action 15 of the BEPS Action Plan.
New Zealand

What’s new
There have been no changes to New Zealand’s transfer pricing legislation or any new court decisions in a transfer pricing context in the past 12 months.

While the Internal Revenue has stated publically that it fully endorses all of the OECD’s Base Erosion and Profit Shifting (BEPS) work, New Zealand’s transfer pricing legislation is quite broad, and IR has confirmed that changes in legislation would not be required to implement many of the BEPS actions.

IR is becoming more focused on transfer pricing reviews and audits, predominantly on large enterprises, specific industry groups, or particular transaction types (financing, intellectual property transactions, and supply chain restructures). With IR doubling the size of its core transfer pricing team in 2015, this closer scrutiny has resulted in a higher number of transfer pricing adjustments under audit in 2015 than has been seen before.

General information
Tax authority and law
Inland Revenue (IR); 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, and is expected to endorse any changes to the guidelines as a result of the BEPS actions. 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. IR also publishes practical guidance and compliance strategies on its website, and these are updated periodically.

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 – 20 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 May 8, 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.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan? If so, are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
IR policy officials are actively participating in the OECD’s BEPS work. They have stated that they fully endorse Actions 8-10 of the Action Plan. Legislative change would not be required to give effect to this. The effective date is likely to align with the OECD’s recommendations in this area.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
No reforms have been announced in respect of this action. This is one area in which legislative change would be required to give effect to the BEPS recommendations, because New Zealand does not currently have mandatory documentation requirements.

The IR is expected to commit to adopting master file/local file and country-by-country reporting requirements, likely from 2017 onwards, in line with OECD recommendations.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
Yes, New Zealand is committed to participate in the multilateral instrument.
Norway

What’s new
The Norwegian Ministry of Finance issued a consultation paper regarding local Norwegian country-by-country reporting requirements on December 2, 2015. The proposed rules are primarily in line with the OECD recommendations in the BEPS Action 13 report.

The proposed country-by-country reporting requirements are limited to Norwegian groups with total income of more than NOK 6.5 billion. If approved, the reporting requirements will apply with immediate effect for financial years commencing on January 1, 2016, and thereafter. The country-by-country report for income year 2016 must then be submitted by December 31, 2017.

General information
Tax authority and law

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.

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
• 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 April 30. However, the deadline is May 31 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 program 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.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan?
If so, are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
Yes, Norway is committed to follow the OECD recommendations of the 2015 final BEPS reports on Actions 8-10. These measures will be effective immediately, because the General Tax Act section 13-1 makes reference to the OECD transfer pricing guidelines.
Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country's measures? What is the effective date of those measures?
Yes, Norway is planning to enact country-by-country reporting requirements in domestic legislation. The current legislative proposal is primarily in line with the OECD recommendations in the BEPS Action 13 report. If approved, the reporting requirements will apply with immediate effect for financial years commencing on January 1, 2016, and thereafter. The country-by-country report for income year 2016 must then be submitted by December 31, 2017. The proposed CbC reporting requirements do not adopt the master file/local file requirements.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
Yes, Norway intends to participate in the multilateral instrument being developed under BEPS Action 15.
OECD

What’s new
On October 5, 2015, the OECD Secretariat published final papers outlining consensus actions under the G20/OECD Base Erosion and Profit Shifting (BEPS) Project.

The objective of the G20/OECD work is to ensure that “transfer pricing rules secure outcomes that see operational profits allocated to the economic activities which generate them.” The final papers include amended guidance on applying the arm’s length principle. In many areas, this amended guidance takes effect immediately. The amended guidance requires multinationals to accurately delineate the actual transactions undertaken (which may not be the same as the contractual arrangements) in their functional analyses to ensure that the most appropriate pricing method is selected.

Significant changes to the information to be provided to tax authorities have been agreed to, including the requirement that multinationals to provide a country-by-country report to tax authorities showing “big picture” global information. The G20/OECD have reached agreement on the common template and model legislation for the implementation of country-by-country reporting, with the intention that it will be a single international standard implemented consistently (with no additional data requests) by participating countries.

Some areas, such as the appropriate use of the profit split method and the transfer pricing of financial transactions, remain for further work during 2016 and 2017. Additional work is also being carried out on the attribution of profits to permanent establishments, following the changes to the threshold for creating a permanent establishment.

Some of the BEPS outcomes require changes to double tax treaties, to be facilitated by the multilateral instrument. Of particular relevance to transfer pricing is the new minimum standard in respect of dispute resolution under mutual agreement procedures (MAP). These are designed to ensure that treaty obligations related to MAP are fully implemented in good faith, that MAP cases are resolved in a timely manner, and to ensure that taxpayers can access the MAP when eligible. There will be a system of peer-based monitoring of countries’ implementation of adherence to obligations under MAP. In addition, 20 countries have committed to mandatory binding arbitration as a means of resolving disputes without double taxation.

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.

As part of the BEPS project, revisions have been made to the transfer pricing guidelines. This includes updated and expanded guidance to take into account the need to delineate (and price) the actual transaction undertaken, consider the appropriate allocation of risk, address circumstances where there is the provision of capital without functionality, and define exceptional circumstances where recharacterization of the actual transactions undertaken may apply. The guidance on the transfer pricing of intangibles has been revised and expanded, including examples. There is new guidance on cost contribution arrangements (requiring contributions to be measured at value in most cases) and on location savings, assembled workforce, and group synergies. In addition, a new approach for dealing with low-value-added services on a consistent and simplified basis has been developed.

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.

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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 authorized OECD approach recommends that the same principles apply to the attribution of profit to permanent establishments and to transfer pricing between legal entities.

**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)), or any other method that gives an arm’s length result.

**Priority of methods**

The most appropriate method should be selected, and profits methods and traditional methods are considered equal. However, a sufficiently accurate CUP, when it exists, is preferable. The BEPS project encourages that both sides of a transaction be considered when selecting the most appropriate method, even when the method ultimately selected is a one-sided method.

**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. If these differences have a material effect on price, adjustments must be made. Generally, 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. The OECD/G20 BEPS project contains proposals for amendments to Article 5 of the OECD Model Tax Treaty such that commissionaires and other forms of undisclosed agency arrangements will create a permanent establishment of their principal.

**Cost sharing agreements**

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

Yes. OECD transfer pricing guidelines Chapter VIII, as revised under the G20/OECD BEPS project to require contributions to be measured at value rather than cost in most cases.

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.

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.

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 be required.

**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, all OECD and G20 countries have committed to consistent implementation of country-by-country reporting to tax authorities. The requirement applies to multinational groups with turnover of more than €750 million. In addition, there are documentation recommendations for a global transfer pricing master file alongside local files. The master file sets out a global overview of the group’s transfer pricing and activities. The local file requirements are for detailed entity and transactional-level information.

**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. Country-by-country reporting should be completed on an annual basis. The recommendations for the master file and local file documentation are that these should be completed annually.

**Deadline to prepare documentation**
Depends on local law. Taxpayers should make reasonable efforts to document transfer prices and maintain documentation prepared in this process.

**Deadline to submit documentation**
Depends on local law. Documentation should be submitted in a timely manner when requested.

Country-by-country reports for years beginning on or after January 1, 2016, must be filed annually within 12 months of the end of the financial reporting year. The report will generally be filed with the tax authority of the parent company jurisdiction, and shared automatically with tax authorities in other countries where the group operates, subject to countries having signed up to a sharing mechanism.

The master file is to be filed locally with tax authorities. It is recommended that the master file be finalized by the filing date for the tax return of the group parent company.

The local file is also to be filed locally. It is recommended that it be finalized by the filing date for the local tax return.

**Deadline to file income tax return**
Not applicable.

**Acceptable languages for documentation**
Depends on local law. Countries are encouraged to permit filing of transfer pricing documentation in commonly used languages when it will not compromise the usefulness of the documents. When tax authorities believe that translation of documents into local language is necessary, they should make specific requests and provide suitable time for 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 OECD recognizes that book/tax differences may be warranted. 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.

**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.

**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.

Advance Pricing Agreements (APAs)

**Are APAs available?**
The OECD promotes bilateral APAs as an effective dispute resolution tool. Chapter IV (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).

As part of the BEPS project, a new minimum standard has been agreed by all OECD and G20 countries to ensure that treaty obligations related to the mutual agreement procedure are fully implemented in good faith, MAP cases are resolved in a timely manner, and taxpayers can access the MAP when eligible. Additionally, there will be a “robust peer-based monitoring mechanism.” Twenty countries have committed to mandatory binding arbitration in their double tax treaties.

The timing of the taxpayer’s submission to a CA 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 CA 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 endeavour to reach agreement acceptable to the taxpayer. CAs’ power to compromise an adjustment depends on the provisions of domestic law. Mandatory binding 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
There were no changes to Peru’s transfer pricing regulations during 2015; however, the Peruvian tax administration (SUNAT) intensified audits related to services, imports of raw materials, the use of financial information in foreign currency, comparability adjustments, and the selection of comparable companies.

Although Peru is not a member of the OECD, it has remained active in OECD-sponsored forums and meetings. In February 2015, a regional meeting of the OECD, the Inter American Center of Tax Administrations (CIAT), and SUNAT was held in Lima, Peru, at which the impact of BEPS in Latin America and the Caribbean was discussed. The results of the meeting were presented at the Fourth Annual Meeting of the Global Forum on Transfer Pricing in Paris.

General information
Tax authority and law

Regulations, rulings, guidelines

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.

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?
Yes, 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 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 prefilling documents, prefilling 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.
OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan? If so, are there any material differences between the final report and your country’s measures? What is the effective date of those measures? Peru is not formally committed to following the BEPS recommendations but may consider doing so.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures? What is the effective date of those measures? No.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan? No.
Philippines

What’s new
Revenue Regulations (RR) No. 2-2013, otherwise known as the Philippine transfer pricing regulations, was issued on January 23, 2013. It provides guidelines on the arm’s length principle for transfer pricing, which applies to both cross-border and domestic transactions between associated enterprises. But it was only during the last part of 2015 that a formal Transfer Pricing Team was formed by the Philippine tax office. The group is comprised of approximately 35 to 40 examiners, largely from the Large Taxpayers Service Group of the Bureau of Internal Revenue (BIR). This group is currently undergoing training and testing actual cases, which may be seen as a precursor to live transfer pricing assessments.

General information

Tax authority and law
Bureau of Internal Revenue; Revenue Regulations No. 2-2013, the transfer pricing guidelines in the Philippines.

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? Yes. The Philippine transfer pricing regulation is silent on this subject. The tax authorities prefer local sets of comparables, but in the absence of appropriate 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.
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?
While the Philippine transfer pricing guidelines are silent on this subject, a leading practice is to update the transfer pricing study at least every three years, and refresh the benchmarking every year.

**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 were introduced in the second half of 2014, the final guidelines have yet to be issued.

APA filing fee
The final filing fee for APAs 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.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan?
If so, are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
No formal legislation regarding the measures to be taken to adopt the recommendations has been introduced.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
The Philippines is expected to enact legislation implementing country-by-country reporting, but no legislation has been introduced.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
The Philippines is expected to participate in the multilateral instrument.
Poland

What’s new

The major transfer pricing developments in Poland during 2015 relate to an increase in the number of transfer pricing audits based on the new assessment approach and the introduction of a country-by-country reporting requirement in domestic legislation.

The tax authorities declared that related-party transactions would become the main focus area for tax audits. To improve the effectiveness of tax inspections, the Ministry of Finance carried out structural changes, including the creation of competence centers with experts in transfer pricing inspections in selected tax offices and tax control offices. These competence centers are supporting local tax offices in technical transfer pricing issues, and monitoring and selecting entities to be audited. The tax authorities also have purchased databases such as the Amadeus/Orbis database, the local QTPA database, and the RoyaltyStat database, that allow the tax offices and tax control offices to prepare benchmarking analyses verifying the arm’s length nature of related-party transactions and assisting in transfer pricing adjustments.

Areas of interest during tax audits include:

- Transfers of assets to passive companies, especially in low-tax jurisdictions
- Major restructuring projects connected with a decrease in the tax burden in the country
- Non-arm’s-length transactions, including licenses for trademarks, know-how, debt financing, guarantees, and cost sharing arrangements.

Another area of focus for the tax authorities are year-end adjustments in significant related-party transactions. Based on a communication published on the ministry’s website, transactions in which year-end adjustments take place will be subject to verification in the second quarter of 2016. Therefore, the minister encouraged taxpayers to correct their tax returns filed for years 2011-2015 by the end of Q1 2016 if the transactions were not concluded at arm’s length (taxpayers are not required to provide a specific reason for the correction). If the taxpayer makes the correction, it may apply a preferential rate for calculating interest on tax arrears of 50 percent of the standard rate (if the correction is made within six months of the tax payment date). However, if the correction results from the inspection, interest will be calculated on the full amount.

General information


Regulations, rulings, guidelines

Transfer Pricing Decree of September 10, 2009 (with further amendments), Decree on Tax Havens of April 23, 2015, Ordinance on APA Realization of May 31, 2006. Also, amendment to the Accounting Act of March 18, 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).

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. The tax authorities use the Amadeus/Orbis database, the QTPA database (a local database) and the RoyaltyStat database in the APA process and during tax audits. 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.

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 the parties is located in a tax haven.

Documentation requirements also 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.

Entities whose consolidated revenues exceed the equivalent of €750,000,000 in the year preceding the tax year are obliged to produce a country-by-country report on the income and tax paid by subsidiaries, their places of conducting business, as well as their permanent establishments. This regulation was introduced into local legislation as of January 1, 2016.

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 in order for the documentation to have a protective character it should be prepared on an ongoing basis no later than when the transaction is concluded, and updated subsequently.

Deadline to submit documentation
Seven days from the tax authorities’ request. It is standard practice for the tax authorities to make the request for submission of the documentation immediately upon the start of a corporate income tax audit for companies involved in significant intercompany transactions.
The deadline for submission of the country-by-country report for a given tax year is 12 months after the end of the tax year of the entity obliged to prepare the report.

**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 prepared 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**
Technically, self-initiated adjustments are not disallowed; however, there is no formal procedure to address this issue. Historically, self-initiated adjustments have been rare. In December 2015, the Ministry of Finance announced a new approach, calling taxpayers to perform self-initiated adjustments proactively with regard to non-arm’s-length prices for years 2011-2015 in exchange for favorable penalty interest treatment.

**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 if provided for in contracts and properly documented.

**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 the filing of an appeal to a local court 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 the standard 19 percent corporate tax rate. 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:
- Unilateral APA for domestic transactions: PLN 5,000-50,000 (approx. €1,250-€12,500);
- Unilateral APA for cross-border transactions: 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.
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.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan?
If so, are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
There is no information on whether Poland is going to implement specific recommendations of Actions 8-10 of the BEPS Action Plan into domestic legislation. Nevertheless, the Ministry of Finance has indicated that the recommendations will be generally accepted in Poland as part of the OECD’s transfer pricing guidelines.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
Country-by-country reporting regulations were introduced as of 2016. In addition, Poland (together with 30 other countries) signed the Multilateral Competent Authority Agreement (MCAA) to enable automatic sharing of country-by-country information. This will allow the Polish tax authorities to obtain information on the key indicators of multinational businesses.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
Poland is expected to participate in the multilateral instrument.
Portugal

What’s new
The newly elected Portuguese government has announced its intention to enact changes to the country’s tax laws, which will include the recent OECD BEPS recommendations. In addition, the government issued a “Report on Fraud and Tax Evasion” for 2015-2017, which includes several initiatives to be pursued in the coming years, including (i) encouraging the conclusion of more advance pricing agreements (APAs); (ii) further applying the transfer pricing rules in transactions subject to VAT; and (iii) increasing the number of tax inspectors specialized in complex tax matters, including transfer pricing.

General information
Tax authority and law
Tax and Customs Authority (“Autoridade Tributária e Aduaneira” or “A.T.”); Article 63 and Article 138 of the Corporate Income Tax Code.

Regulations, rulings, guidelines

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, two entities are considered to be related if one of them has the power to exercise significant influence (directly or indirectly) in the management decisions of the other, which is considered to be true in the following scenarios: (i) one entity or individual holds (directly or indirectly) 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 or individual; (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 its corporate bodies are constituted by the same individuals; (v) entities connected by a subordination agreement or any other agreement of a similar nature; (vi) holding companies, as stated in the Portuguese Commercial Companies Code; (vii) entities whose legal relationship allows one of them to exercise influence in the other’s management decisions; and (viii) a resident entity - or a foreign company’s permanent establishment (PE) - and entities resident in jurisdictions listed as tax havens.

In addition, (i) foreign entities and Portuguese PEs, (ii) Portuguese entities and foreign PEs, and (iii) Portuguese PEs and foreign PEs 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 transfer pricing rules are not explicit on this issue; thus, the profits to be attributable to the permanent establishment should be determined by applying the arm’s length principle as described in the OECD transfer pricing guidelines and the OECD Report on the Attribution of Profits to Permanent Establishments.

The Corporate Income Tax Code includes a new provision on the taxation of foreign permanent establishments of Portuguese taxpayers. That provision includes the possibility of treating those permanent establishments as separate and independent entities for purposes of calculating their profits. For this purpose, the taxable income of the Portuguese taxpayer should reflect the transactions with its foreign PEs as well as all the expenses related either to the income or assets attributable to such PEs.

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.

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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.

**Services issues**

**Are management fees deductible?**
Yes. However, if a double taxation agreement is available, the management fees may not be subject to withholding tax, provided procedures are followed.

**Are management fees subject to withholding?**
Yes. However, if a double taxation agreement is available, the management fees may 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, and subject to the existence of a tax treaty, the withholding tax may be reduced or eliminated, 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?**
There is no specific rule, but according to the general tax provisions, the payments should be deductible provided they comply with the domestic general deduction provision.

**Documentation and tax return disclosures**

**Tax return disclosures**
The Portuguese tax return (“Modelo 22”) allows taxpayers to perform a transfer pricing primary adjustment arising from the revision of the pricing conditions adopted in any transaction with a foreign related party (i.e., only adjustments that increase taxable profit are possible).

In addition, an annual return (“Informação Empresarial Simplificada” or “IES”) that must be filed by Portuguese companies requires the reporting of transfer pricing information. Thus, the annual return requires the taxpayer to (i) specify the amount and nature of each controlled transaction; (ii) list the methods used to analyze them; (iii) identify the 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 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?**
The transfer pricing documentation file should be prepared annually, and should consist of a complete report encompassing all relevant information.

If there are no major changes in the taxpayer’s business functions and risks compared with the preceding year, it is acceptable to limit the documentation to the update of (i) the relevant information for the period under analysis (taxpayer financials, transaction amounts); and (ii) the economic studies, through the update of the comparables’ financials, in line with the OECD transfer pricing guidelines’ approach. This approach may be adopted for a maximum period of three years.

**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 tax return must be filed by the last day of the 5th month following the tax year-end (whether that day is a business day or not).

The annual return 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. Even if submission in English is authorized, the Portuguese tax authorities may request that some documents (including intragroup agreements) be translated into 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?
As a general rule, the income tax return should reflect the controlled transactions reported in the financial statements. However, differences in transfer prices are allowed in the income tax return, but only regarding positive adjustments with foreign related parties.

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 within a four-year period following the last day of the tax year concerned. However, the following exceptions apply: (i) for undeclared income received from countries or territories with more favorable tax regimes, the statute of limitations is 12 years; and (ii) when the taxpayer benefits from tax deductions or credits (such as tax losses), the statute of limitations corresponds to the time frame in which the taxpayer may exercise that right.

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, indemnity interest may be applied when (i) a refund is due to the taxpayer by virtue of an administrative or court decision; and (ii) the legal deadline for payment of the refund has passed.

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 ("Portaria") #620-A/2008. Article 138 of the Portuguese Corporate Income Tax, effective January 1, 2014, allows taxpayers to enter into unilateral or bilateral/multilateral APAs.

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.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan?
If so, are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
The Portuguese government has not issued any new regulations related to Action 8-10 of the BEPS Action Plan. However, because Portugal is a member of the OECD, changes are expected during 2016.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
The Portuguese government issued regulations on country-by-country reporting in 2016’s budget law proposal. The proposed legislation adopts the master file/local file requirements with no material differences from the BEPS final report. If approved, groups with turnover equal to or greater than €750 million will be required to file the country-by-country report from 2016.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
The Portuguese government has not issued any new regulations related to Action 15 of the BEPS Action Plan.
Romania

What’s new
Following the current tax law changes and developments around the world, the tax framework in Romania has been subject to significant amendments that will enter into effect in 2016.

Transfer pricing remains an area of focus for the tax administration. In early 2016, a new order was issued regulating the threshold, content and terms for the preparation and submission of the transfer pricing file, as well as the procedure applicable for transfer pricing adjustments/estimates.

General information
Tax authority and law

Regulations, rulings, guidelines
The Romanian Fiscal Code and its methodological norms; The Fiscal Procedure Code; Order no. 442/2016 regarding the values of transactions, the content, deadline for preparation, and conditions for the request of the transfer pricing file, and the procedures for adjustments/estimates of transfer prices; Government Decision no. 529/2007 regarding the approval of advance pricing agreements (APAs) and advance fiscal solutions, and Order no. 3736/2015 regarding the application procedure and forms for issuing and amending APAs; 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 persons are related parties if:
• One legal person holds, directly or indirectly (through the shareholding of related entities) a minimum of 25 percent of the number/value of shares or voting rights of the other legal person, or it effectively controls the other legal person; or
• One person 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 or the person effectively controls both legal 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 of the legal person, or she/he effectively controls the legal person.

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, the transactional net margin method (TNMM) and any other method recognized by the OECD transfer pricing guidelines.

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 or Orbis databases are used. However, if there are other ways to obtain relevant financial data available for comparable companies, such information may be used.

Are foreign comparables acceptable to local tax authorities?
Yes. When a benchmark study is performed, it is required that Romanian comparables be used. However, if there is no sufficient information on the Romanian market, the territorial criteria should be extended in the following order: European Union, Pan-European, and international comparables.
Services issues
Are management fees deductible?
Starting January 1, 2016, management fee expenses should be deductible if they meet the general deductibility rule (i.e., incurred for business purposes). No other specific rules exist, except for management and consultancy services rendered by nonresidents. Those expenses are nondeductible if the transactions are artificial. Separately, until December 31, 2015, the specific deductibility rules mentioned the existence of contracts and also of sufficient and relevant supporting documentation confirming the actual rendering of the services for the Romanian companies benefit. Such services are subject to a high degree of scrutiny from the Romanian tax authorities during tax audits.

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, a valid certificate of fiscal residence is made available, and the nonresident has no Romanian permanent establishment.

May stock option costs be included in the cost base for intercompany services charges?
There are specific rules in Romania regarding the corporate tax treatment of stock options costs; generally, they should be 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. Local transfer pricing documentation should illustrate how the Romanian company benefits from the services received (and must demonstrate, with supporting documentation, that the services were actually provided) and should provide details regarding the allocation key. Moreover, 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.

In the event of a tax audit, the Romanian tax authorities may request documents that attest to the accuracy of the amounts allocated to the Romanian company (and properly registered in the supplier’s books). These arrangements are subject to a high degree of scrutiny from the Romanian tax authorities during tax audits.

Are cost contribution or cost sharing payments deductible?
Yes, but they must comply with domestic deductibility rules.

Are cost contribution or cost sharing payments subject to withholding tax?
No. However, the tax authorities are considering whether they should fall within the scope of the withholding. A case-by-case analysis is necessary to determine if such payments are in the nature of a service or a royalty.

What is the payer’s tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?
From a transfer pricing perspective, the Romanian legislation does not include any specific requirements in this regard. However, the local legislation provides for the application of the OECD transfer pricing guidelines.

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 taxpayer’s notes to financial statements.

Documentation requirements
To document compliance with the arm’s length principle, taxpayers must prepare the transfer pricing file for intercompany transactions.

In accordance with Order no. 442/2016, transfer pricing documentation should disclose information regarding the taxpayer’s industry and group, and an overview of the taxpayer, a presentation of the intercompany transactions carried out by the taxpayer, including the amounts of the transactions, the related parties involved in the transactions, functions performed, assets employed, risks undertaken, methods used, and economic analysis.
Starting in 2016, the documentation requirements, which will vary depending on the taxpayer’s size and the annual value of the intercompany transactions, are as follows:

• The annual obligation to prepare the transfer pricing file is applicable to large taxpayers that engage in intragroup transactions with a total annual value higher than the following thresholds:
  – €200,000 for interest received/paid for financial services
  – €250,000 for services received/provided
  – €350,000 for acquisitions/sales of tangible and intangible goods.

• The requirement to prepare the transfer pricing file based on a specific request applies to the following taxpayers:
  – Large taxpayers for which the criteria mentioned is not applicable; and
  – Small and medium-sized taxpayers that engage in intragroup transactions with a total annual value higher than the following thresholds:
    • €50,000 for interest received/paid for financial services
    • €50,000 for services received/provided
    • €100,000 for acquisitions/sales of tangible and intangible goods

• Documentation requirements for other taxpayers: taxpayers that engage in intragroup transactions for which the materiality thresholds are lower than those described above have the obligation to document compliance with the arm’s length principle during a fiscal inspection, according to general rules provided by the financial-accounting and fiscal legislation in force (no transfer pricing file 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?
Starting 2016, the annual obligation for the preparation of the transfer pricing file is applicable only to large taxpayers that engage in intragroup transactions exceeding certain thresholds.

There are no specific requirement regarding the updating of the benchmarking, the prudent approach would be to perform a new search for each year under analysis. In case of limited availability of information regarding comparables, an ex-ante approach may be used.

Deadline to prepare documentation
As with the documentation requirements, the deadline to prepare documentation varies depending on the taxpayer’s size and the annual value of the intercompany transactions, as follows:

• For large taxpayers that exceed specific thresholds the deadline for preparation of the transfer pricing file is the legal deadline for the submission of the annual corporate income tax return, for each fiscal year.
• For taxpayers that are obligated to prepare the transfer pricing file based on a specific request, the deadline for the preparation of the transfer pricing file is 30 to 60 days. The deadline can be extended only once for a maximum of 30 days.

Deadline to submit documentation
The deadline to submit documentation is as follows:

• For large taxpayers that exceed specific thresholds the deadline for submitting the transfer pricing file is a maximum of 10 days from the request date, but not earlier than 10 days from the expiration of the preparation deadline.
• For taxpayers that are obligated to prepare the transfer pricing file based on a specific request, the deadline for submitting the transfer pricing file is of 30 to 60 days. The deadline can be extended once maximum for a maximum of 30 days.

Deadline to file income tax return
In general, the deadline for submitting the annual tax return is March 25 of the year following the reporting year. Different deadlines apply to some taxpayers. The submission deadline for taxpayers that opted for a tax year that is different from the calendar year is the 25th day of the third month following the fiscal year-end.

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. Information about intercompany transactions is presented in the notes to the financial statements of a company. Thus, the value of intercompany transactions is the same in the income tax return as the one reflected in the financial statements.
In the case of transfer pricing adjustments performed by the tax authorities, the taxpayer’s fiscal position will be amended accordingly; such adjustments will not be reflected in the taxpayer’s books.

**Self-initiated adjustments**

Taxpayers may perform compensating adjustments to reflect compliance with the arm’s length principle. However, there are no specific local requirements, from a transfer pricing perspective, regarding the treatment of compensating adjustments, which are carefully examined by the Romanian authorities during tax audits. To what extent the Romanian tax authorities will accept these adjustments cannot be determined.

Transfer pricing adjustments must always be supported by a transfer pricing file and related benchmark studies to demonstrate compliance with the arm’s length principle.

For certainty, obtaining an advance pricing agreement is advisable.

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

The statute of limitation for corporate income tax assessments is five years, starting July 1 of the year following the year when the tax obligation arose.

**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

Transfer prices adjustments/estimates to a company’s profits are subject to 16 percent corporate income tax and late payment interest and penalties.

Additionally, large and medium taxpayers may be subject to a fine of approximately €3,000 for failure to prepare the transfer pricing file under the conditions and terms imposed by the competent authorities, while for small and medium taxpayers, a fine of €400 – €800 may apply.

Is interest charged on penalties?

Interest and penalties are both applied to the additional corporate income tax assessed, at the following rates:

- Late payment interest of 0.02 percent per day of delay
- Late payment penalties of 0.01 percent per day of delay

Also, starting 2016, penalties for failure to report (currently 0.80 percent per day) would also be applicable.

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 filling 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, and longer in the case of long-term contracts.

**Competent authority**

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

Currently, there are no specific regulations regarding the timing of a submission to CA.

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.

The transfer price adjustments must always be supported by a transfer pricing file and related benchmark studies to justify compliance with the arm’s length principle.
May taxpayer go to CA before paying tax?
If an adjustment/estimate is received from the Romanian tax authorities, the taxpayer can contest this in a court of justice. However, until a favorable answer is received from the court, the tax should be paid.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan? If so, are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
Under the new tax legislation in force starting 2016, the OECD transfer pricing guidelines apply in Romania. Thus, the OECD’s October 2015 final reports on the BEPS Action Plan may be regarded as applicable in Romania.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
There is no official information regarding the implementation of the country-by-country documentation requirements in Romania.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
No, Romania is not participating in the multilateral instrument under Action 15 of the BEPS Action Plan at this time.
Russia

What’s new
The Russian tax authorities are in the process of conducting transfer pricing audits for 2012 (the first year when transfer pricing rules came into force) and 2013. Taxpayers are awaiting the tax authorities’ decisions on those audits to understand major trends in the Russian tax authorities’ practice regarding transfer pricing policies.

General information
Tax authority and law

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);
• Clarifications on the APA procedure (Letter N° OA-4-13/85@ 12 January 2012); and
• Clarifications on the application of safe harbors on interest (Letter N 03-03-06/2/27735 14 May 2015).

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.
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 on 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 the tax authorities’ 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 March 28 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
Two years after filing the transfer pricing notification.

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
A penalty of 20 percent of the amount of additional tax payable will be increased to 40 percent of the underpaid tax starting in 2017 (but not less than RUB 30,000).

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
In 2015 the application fee for an APA request was 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.
OECD BEPS recommendations

Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan? If so, are there any material differences between the final report and your country’s measures? What is the effective date of those measures?

Although Russia is not an OECD member state, it is a G20 member, and it is committed to follow the OECD transfer pricing regulations and specifically the BEPS recommendations. Thus, revisions to the transfer pricing rules may be expected this year.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures? What is the effective date of those measures?

Russia is considering enacting country-by-country reporting legislation in 2018 in respect of 2017, but no legislation regarding country-by-country reporting has been introduced.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?

The Russian government has announced plans for Russia entering into agreements on tax information exchange. Following ratification of the Convention on Mutual Assistance in Tax Matters and the Model Intergovernmental Agreement on Exchange of Information in Tax Matters for Information Exchange with Offshore and Low-Tax Jurisdictions, Russia plans to amend legislation to introduce the automatic exchange of tax information regarding financial operations with foreign jurisdictions. This should allow for the planned accession to the multilateral agreement on the automatic exchange of financial information in 2018, as envisaged by the Unified Reporting Standard for financial operations developed by the OECD for taxation purposes, and the beginning of the exchange of such information.
Saudi Arabia

General information
Tax authority and law
Department of Zakat and Income Tax (DZIT).

Regulations, rulings, guidelines
Saudi tax law currently contains no detailed transfer pricing regulations or guidelines. However, related-party transactions and the applicability of the arm’s length principle are specifically covered in the law under general anti-avoidance provisions that empower the Saudi tax authorities to challenge any transactions as follows:

- Disregard any transaction that has no economic effect;
- Reclassify a transaction whose form does not reflect its substance;
- In a transaction between related parties or parties under common control, the DZIT may reallocate income and expenses between the parties to reflect the income that would have resulted from a transaction between independent and unrelated parties;
- Estimate the appropriate tax base and impose penalties.

A ministerial resolution issued in 2014 authorized the DZIT to develop detailed transfer pricing rules and guidelines. The DZIT is currently finalizing the detailed guidelines and augmenting their transfer pricing capabilities. The detailed transfer pricing rules are expected to be broadly in line with the OECD transfer pricing guidelines and international best practices.

Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply?
Under Saudi tax law, companies and organizations are considered to be under common control if they are 50 percent or more controlled by the same related person(s). Control is defined as ownership of rights to income or capital, voting rights or value, or other beneficial interest either directly or indirectly through one or more subsidiaries of any type of companies.

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?
In general, the DZIT would seek to apply limited “force of attraction” rules. According to local rules, any income is considered to be accrued in Saudi Arabia if the income is attributable to a permanent establishment of a nonresident located in the Saudi Arabia, including income from rendering services or carrying out another activity in Saudi Arabia of the same or similar nature as performed through the permanent establishment.

Methods and comparables
Acceptable methods
The transfer pricing methods set out in the OECD transfer pricing guidelines are generally deemed acceptable.

Priority of methods
There is no priority of application of transfer pricing methods in the law.

Availability of benchmarking/comparative data
Limited local data is available.

Are foreign comparables acceptable to local tax authorities?
Due to the limited availability of local comparables, foreign comparables are generally deemed acceptable.

Services issues
Are management fees deductible?
Yes, subject to the usual justification and supporting documentation.

Are management fees subject to withholding?
Yes, up to 20 percent.

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?
No, not used in practice.

Cost sharing agreements
Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?
There are no specific guidelines regarding CCA arrangements, but theoretically they should be acceptable.

Are cost contribution or cost sharing payments deductible?
No specific guidelines.

Are cost contribution or cost sharing payments subject to withholding tax?
There is no specific guidance; however, withholding tax is likely to be applied depending on the nature of the payment.
What is the payer’s tax treatment of payments to a contributor of preexisting intangibles to a CCA or CSA?
No specific guidelines.

Documentation and tax return disclosures
Tax return disclosures
No specific tax return disclosures are required. There is no requirement for taxpayers to make any return disclosures in relation to related-party transactions.

Documentation requirements
There are no transfer pricing documentation requirements in Saudi Arabia at this time. However, from a practical perspective, taxpayers are expected to produce documentation to support their related-party transactions, and it is highly recommended that appropriate documentation be put in place.

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?
Not applicable.

Deadline to prepare documentation
There is no specific deadline to prepare documentation; however, the DZIT is becoming increasingly aggressive in challenging related-party transactions and examining the relevant supporting documentation to verify whether transactions have been carried out on arm’s length terms.

Deadline to submit documentation
There is no deadline to submit documentation. Transfer pricing documentation must be submitted only if requested.

Deadline to file income tax return
Corporations must file their tax returns with the tax authorities within 120 days from the fiscal year-end. For partnerships, the deadline is 60 days. Taxpayers whose taxable income exceeds SAR 1 million before the deduction of expenses must have the accuracy of the return certified by a licensed certified accountant. Additionally, audited financial statements must be filed with the Ministry of Commerce within six months of the year-end and with the DZIT at the time of submission of the tax return.

Acceptable languages for documentation
The DZIT may request Arabic translations.

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, but the DZIT typically seek to scrutinize any differences between the figures on the tax return and on the financial statement.

Self-initiated adjustments
There is no formal procedure.

Statute of limitations on assessment for transfer pricing adjustments
There is no separate statute of limitations on assessments for transfer pricing adjustments. However, the general statute of limitations – five years – may apply if the DZIT seeks to make a transfer pricing adjustment to taxable income. However, this can be up to 10 years in cases where the tax return was not filed, or if filed, was found incomplete or inaccurate with the intent of tax evasion.

Taxpayer set-offs for other related-party transactions
There is no formal procedure.

Interest and penalties
Additional assessment payment deadline
Not applicable.

Penalty on transfer pricing assessment
There are no specific transfer pricing penalties. Penalties are applicable under general provisions of Saudi tax law.

Is interest charged on penalties?
The DZIT may apply a delay penalty of 1 percent for every 30 days of delay.

Reduction in transfer pricing penalties?
No specific provision.

Is interest payable when a refund is due to the taxpayer?
No specific provision.

Advance Pricing Agreements
Are APAs available?
Formal APAs are not available, but advance rulings are possible.

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?
There is no formal procedure.

**OECD BEPS recommendations**
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan? If so, are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
The DZIT is in the process of issuing specific transfer pricing guidelines, which are expected to be introduced in the near future. Given that Saudi Arabia is a member of the G20, the guidelines are expected to take into account the outcome of BEPS Actions.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
No country-by-country reporting requirement has been introduced.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
Yes, Saudi Arabia is a member of the relevant ad-hoc group.
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

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 transfer pricing guidelines provide clear guidance on the selection of comparables. First, the 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.

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.

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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 guidance on cost pooling arrangements is available in the Singapore 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 December 31, 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 required under the Singapore 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 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 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
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
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 Singapore 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  
Four years from the year of assessment to which the income/expense is related. 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, bilateral and multilateral). The Singapore 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, APA requests to cover three to five years forward are acceptable. Rollbacks may also be allowed, if conditions are met, with the rollback generally not exceeding two years immediately prior to the covered period.

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.
OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan? If so, are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
Singapore has not yet taken a position on the OECD approach, but is monitoring developments and will consider the adoption of any recommendations into the Singapore transfer pricing guidelines on a case-by-case basis (that is, Singapore will not automatically adopt all recommendations).

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
No public announcement on country-by-country reporting has been made yet, but the government is consulting widely and appears to generally be in favor of adoption. There is a possibility that a consultation document may be released following private/closed consultations.

Assuming the consultation proceeds as expected, Singapore would likely adopt country-by-country reporting in the OECD-prescribed format once a sufficient number of OECD/G20 countries have adopted similar legislation, potentially from 2016 onwards.

The current transfer pricing documentation requirements, which were updated in January 2015, do not require documentation to be prepared in a master file/local file format.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
Yes, Singapore is actively participating in this initiative.
Slovakia

What’s new
Slovakia issued new transfer pricing guidelines in May 2015, introducing a EUR 1,000,000 threshold for transactions to be documented in transfer pricing documentation. Starting in 2016, the Slovak tax authorities will consider whether documentation was prepared contemporaneously when imposing a penalty for noncompliance with the arm’s length principle.

General information
Tax authority and law
Slovak tax authorities; Section 2(n) and (r), Section 17(5), and Section 18 of the Income Tax Act (ITA).

Regulations, rulings, 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, the cost plus method, the profit split method, 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.

Services issues
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.

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.

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 May 2015, the Ministry of Finance published guidelines — MF/011491/2015-724 — distinguishing the content of documentation required for entities applying IFRS, micro-accounting units, and others. The guidelines provide that all transaction valued at over EUR 1,000,000 are treated as significant and thus must be tested to demonstrate compliance with the arm’s length principle. The guidelines also extend the obligation to prepare transfer pricing documentation to transactions with for domestic related parties.

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 information contained in the previous year’s documentation could be used (through reference) in future years, provided no significant changes affecting the valuation of controlled transactions occur.

Deadline to prepare documentation
There is no specific deadline to prepare documentation; however, the Income Tax Act requires documentation to be prepared for the relevant taxation period.

Deadline to submit documentation
Within 15 days from the date of the request from the tax authorities, but no earlier than 15 days after the deadline to file the corporate income tax return for the respective taxation period. 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 Income Tax Act provides otherwise.

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 calculated per annum as follows:
• A penalty of the base interest rate of the European Central Bank (ECB) (but a minimum of 3 percent) calculated from the additional tax liability assessed in an additional tax return (for self-initiated adjustments);
• A penalty of two times the base interest rate of the ECB (but a minimum of 7 percent) calculated from the additional tax liability assessed in additional tax return filed within 15 days from the date when the tax audit was opened (for self-initiated adjustments at the start of a tax audit); or
• A penalty of three times the base interest rate of the ECB (but a minimum of 10 percent) calculated from additional tax liability assessed by the tax authorities during a tax audit (for adjustments made by the tax authorities).

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.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan?
If so, are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
The Slovak government supports the BEPS initiative, but no official announcements have been made.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
Slovakia is considering enacting legislation implementing the country-by-country reporting requirement.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
No information is available.
What’s new
The Slovene Tax Procedure Act was amended in December 2015 to introduce advance pricing agreements (APAs), effective January 1, 2017.
Slovenia has seen an increase in the number of mutual agreement procedures in 2015, although the official statistics for 2015 are not available yet. Transfer pricing represents an area of interest for the Slovene tax authorities and many audits start in connection with transfer pricing.

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; amendment (Official Gazette of the Republic of Slovenia, no. 91/15) article 14.a to 14.g (APA); 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.
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 €150,000. The penalty for the person responsible for the company can be up to €20,000. In practice, penalties have been rarely imposed in transfer pricing audit cases.

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, but they are expected.

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.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan?
If so, are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
Slovenia supports the BEPS project and recognizes its professional and political importance and complexity.

Slovenia agrees with the proposed actions, but has emphasized that technical discussions on specific issues are necessary for the OECD member states to implement the actions.
Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures? What is the effective date of those measures?

The Slovenian government is considering adopting legislation implementing country-by-country reporting. Nevertheless, no detailed information regarding the implementation of country-by-country reporting has been provided.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?

Slovenia is expected to participate in the multilateral instrument under BEPS Action 15.
South Africa

What’s new

There were no significant changes to South Africa’s transfer pricing rules during 2015. However, a potential change was announced in December 2015 by means of a draft notice on transfer pricing documentation retention. The final version of the notice has not been issued. However, based on the draft notice, transfer pricing documentation may become compulsory for many multinational enterprises with South African operations.

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 2016. 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 discretion to adjust the consideration.

Regulations, rulings, guidelines

Practice Note 7, issued August 6, 1999, as well as the OECD transfer pricing guidelines. Practice Note 2 (thin capitalization), issued May 14, 1996, and amended May 17, 2002, has been abolished and a draft Interpretation Note has been issued by the SARS. Because this is still in draft form there is some doubt concerning the treatment of inbound intragroup financial assistance. A final version of the note is expected soon.

SARS has also issued a draft notice on retention of documentation relating to transfer pricing. This is in draft form and provides a detailed list of documentation SARS expects South Africa tax residents to retain to support their transfer pricing practices. In its current form, it is a combination of requirements from the annual tax return form and the OECD guidance on transfer pricing documentation and country-by-country reporting. The implementation date has not yet been announced.

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. A company is likely to be connected to another entity when it holds 20 percent or more of the share capital and voting rights and there is no other majority shareholder.

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 indicated it will not be adopting the revised Article 7 and associated commentary, but will continue to adopt the prior version.

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 private companies are not publicly available.
Are foreign comparables acceptable to local tax authorities?
Yes. There is little information regarding South African or African comparables. In practice, Pan-European comparables have been most widely used for South African tested parties. However, comparables from other regions may be acceptable if the reasons for the use of those comparables are explained in the policy document. Global searches are being used more and more often in South Africa and Africa generally.

Services issues
Are management fees deductible?
Generally, yes. When an indirect method of allocation has been used, while permission to remit fees is governed by the company’s authorized dealer (bank), in some cases it may also be necessary to apply to the South African Reserve Bank to obtain approval to remit the management fees. This application is often required on an annual basis.

Are management fees subject to withholding?
No. However, the tax authorities at one point announced that withholding taxes may be introduced in certain circumstances effective January 1, 2017. National Treasury has indicated in discussions with many stakeholders that this plan may be scrapped, and that the 2016 budget may propose reporting requirements as an alternative.

May stock option costs be included in the cost base for intercompany services charges?
In principle, the total costs of employing some individuals should be included in the cost base. However, it is not always clear whether these costs actually constitute a cost to the relevant company, so the answer may depend on the specific arrangement.

Commissionaire arrangements
Are commissionaire arrangements allowed?
Commissionaire arrangements are not recognized by South African law. However, a very similar structure involves using 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. Withholding tax on royalties does apply when a payment as part of a contribution for the use of intangibles is implemented.

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).

Documentation requirements
Generic statutory requirements followed. Practice Note 7 broadly follows the 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.

However, SARS issued a draft notice in December 2015 that may, in effect, make documentation compulsory for taxpayers with cross-border transactions. The notice requires records of certain specific information to be retained for purposes of the South Africa Tax Administration Act. This probably means that affected taxpayers will be required to have comprehensive, up-to-date transfer pricing documentation that discloses significant specific information in relation to cross-border transactions. The SARS sought comments from taxpayers and tax advisors (to be submitted by February 5), and the final version of this notice is pending.
The draft notice includes a threshold of annual consolidated South African turnover of R1 billion or more (approximately $62.5 million) for application of the notice. Groups that exceed that threshold would be required to comply fully with the notice. For groups with a lower consolidated South African turnover, a lesser degree of compliance would be acceptable.

The documentation requirements included in the draft are a combination of information requested through the annual tax return, the proposed country-by-country reporting template, and transfer pricing supporting documentation (master file and local 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?

Documentation is not yet compulsory. However, depending on the final version of a notice issued in draft form in December 2015, this may change for certain taxpayers. SARS strongly advises taxpayers who may not be subject to the documentation requirements proposed in the draft notice to have documentation if they are parties to significant cross-border intragroup transactions. The existing guidance and the draft notice indicate that the South African documentation requirements remain 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, and be prepared at the time the transaction is entered into, or at the latest by the date the annual return for the year in which the transaction occurred is filed. There is no specific guidance as to how often documentation should be updated, but it is possible that the OECD guidance on this will be followed.

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. As indicated in the draft notice issued in December 2015, the likely latest date for completion will be at the time the annual tax return relating to the year the requirements become effective is filed.

The requirements of the tax return have also varied from year to year. In some years, taxpayers who report that they have documentation have been required to submit it. Therefore, taxpayers should carefully consider the submission requirements each year. It is recommended for taxpayers to submit their documentation even in years when it is not required by SARS.

It seems likely that taxpayers affected by the draft notice may need to prepare or update documentation annually.

Deadline to submit documentation

Documentation must be submitted upon request. SARS may introduce country-by-country reporting in conjunction with the annual tax return.

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.

Self-initiated adjustments

South African law changed for tax years beginning on or after April 1, 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. There have been several changes to the rules, notably, that self-assessment provisions are now subject to a five-year period. Arguably, because transfer pricing is now a self-assessment provision in that taxpayers are required to file on an arm’s length basis, and must adjust accordingly on filing, transfer pricing is now subject to the five-year statute of limitations. In addition, SARS can extend the time limit by a further two years when the taxpayer is not forthcoming in providing information requested under a transfer pricing audit.

Taxpayer set-offs for other related-party transactions

Practice Note 7 recognizes that such arrangements sometimes occur between independent enterprises and should be assessed in terms of the arm’s length principle. Generally, South Africa follows the OECD transfer pricing guidance on this. 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 (taxable income is above R 1,000,000) 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 the estimated taxable income was not deliberately or negligently understated.

In addition, "understatement penalties" apply when a taxpayer is in default in prescribed ways. These penalties 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. There are also administrative penalties that may become effective once the new documentation requirements come into force.

Penalty on transfer pricing assessment

For fiscal years beginning on or after April 1, 2012, transfer pricing adjustments gave rise to a deemed loan by the taxpayer to the foreign related party. This is referred to as a secondary adjustment. The taxpayer was therefore subject to tax on interest on this deemed loan. However, to the extent the deemed loan was 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 would not be treated as a loan for purposes of section 31.

However, effective January 1, 2015, the deemed loan secondary adjustment mechanism was replaced with a deemed dividend mechanism. This meant that all existing deemed loans were treated as deemed dividends declared on January 1, 2015 (subject to dividend withholding tax at the rate of 15 percent). Transfer pricing adjustments made after that date are subject to the deemed dividend secondary adjustment mechanism.

An unresolved issue at this point is whether there might be tax treaty relief from withholding tax when the counterparty to the adjusted transaction is a shareholder in the South African entity and is resident in a country with which South Africa has entered into a double tax agreement. Clarity on this issue is being sought by means of an application to SARS for a ruling.

The normal penalty regime also applies.

Is interest charged on penalties?

Yes, interest is charged on penalties at the prescribed rate, which is currently 9.75 percent.

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

Yes, interest is payable at a prescribed rate -- currently 5.50 percent. Interest is calculated from the date of the relevant assessment. Interest at this prescribed rate may be applicable to some delayed refunds or on successful appeals.

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 prescribed objective criteria. However, some negotiation regarding those criteria is possible.

In practice, many transfer pricing disputes are resolved through the alternate dispute resolution or settlement routes.
procedure. These agreements are entered into and result in the payment of agreed amounts without either side (SARS or the taxpayer) conceding the merits, or necessarily attributing value to either the tax, interest, or penalty. As such, the precise penalty amount that applies in such circumstances is often not determinable. These agreements often include a prohibition from resolving the resulting double tax incidence through the mutual agreement procedure.

**Advance Pricing Agreements (APAs)**

**Are APAs available?**

APAs are not available. SARS has indicated that an APA program is not likely to be considered in the near future.

**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 tax treaty, or if the taxpayer is subject to such an adjustment in South Africa.

SARS has recently issued guidance on applying for the mutual agreement procedure (MAP). Generally, this procedure is available once there is an incidence of double taxation that cannot be easily resolved through the domestic dispute process. South Africa adopts a two-tier process: initially, a taxpayer can object to an assessment if there is a disagreement as to the assessment issued. SARS will then either accept, partially accept, or reject the taxpayer’s objection. If the objection is disallowed the taxpayer can appeal this decision to the tax court, and at the same time appeal the decision to the CA when there is an incidence of double taxation and there is a treaty in place. It is not entirely clear whether the MAP process will take precedence over the domestic appeals process.

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

No. Generally SARS adopts a “pay now fight later” approach. However, if certain criteria are met, there may be grounds for requesting a suspension of payment.

**OECD BEPS recommendations**

**Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan?**

If so, are there any material differences between the final report and your country’s measures? What is the effective date of those measures? South Africa has provided input and representation to the BEPS program. As a G20 member, it is likely to adopt and implement recommendations under BEPS that are minimum standard requirements. SARS has already indicated its intention to implement certain recommendations under Action 13 of the Action Plan, as indicated in the draft notice on transfer pricing documentation retention.

**Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures? What is the effective date of those measures?**

Yes. SARS has indicated its intention to adopt country-by-country reporting for South African tax residents that are members of multinational groups. SARS is considering applying a R 1 billion consolidated turnover threshold. The documentation retention requirements issued by SARS in a draft notice include the country-by-country requirements, as well as transfer pricing documentation requirements. In addition, SARS is likely to expand the level of detail required to be submitted.

No implementation date has been provided.

**Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?**

Yes, South Africa has signed the multilateral instrument.
Spain

What's new
During 2015 Spain implemented new legislation on the Corporate Income Tax (Law 27/2014 of November 27, 2014) and the regulations thereunder, issued on July 10, 2015, which derived from the country's broad-based tax reform, effective January 1, 2015.

General information
Tax authority and law

Regulations, rulings, guidelines
The Corporate Income Tax Regulations (Royal Decree 634/2015, of July 10, 2015) provide detailed rules regarding documentation, penalty procedures, tax audit transfer pricing process, secondary adjustments, and an APA-specific procedure. It also governs the Mutual Agreement Procedure and EU Arbitration Convention (EU/90/436) from a Spanish domestic perspective. The most relevant change of the Royal Decree 634/2015 with respect to its previous publications is that a new Article 14 has been included to regulate country-by-country reporting obligations.

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. 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) 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;
g) 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;
h) 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. The definition of directors includes shadow directors.

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.

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.

Additional provisions are included in the current Corporate Income Tax Law:
• Taxpayers with permanent establishments abroad (internal dealings): If allowed by the applicable tax treaty, a taxpayer’s tax base includes 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 the head office and any 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 follows 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.

Documentation requirements

Spain’s documentation requirements, established by Royal Decree 634/2015, are closely aligned with the EU Transfer Pricing Forum’s Code of Conduct concepts, the master file and the local file. The OECD transfer pricing guidelines also apply.

Law 27/2014 establishes a general reference to proportionality and sufficiency principles in relation to the obligation to maintain transfer pricing documentation.

Additionally, the option to prepare simplified documentation is offered to related persons or entities with turnover below €45 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).

Article 14 of the Corporate Income Tax Regulations (Royal Decree 634/2015) introduces and regulates the obligation to file a country-by-country report.

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, 2015, the due date is July 25, 2016).

Deadline to submit documentation

The tax authorities may request documentation at any time after the taxpayer files the annual corporate income tax return.

The new country-by-country report must be submitted no later than 12 months following the end of the fiscal year to which it refers.

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 tax authorities will not perform secondary adjustments when the related parties or persons carry out the corresponding restitution. To do so, the taxpayer must justify that the restitution has taken place before the tax authorities proceed with the corresponding secondary adjustment.

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 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
In cases when the tax authorities do not make a transfer pricing adjustment, a reduction of 25 percent of the transfer pricing penalty may apply if payment is made within the applicable deadlines.

In cases when tax adjustments are made, a reduction of 30 percent may apply if the taxpayer signs in conformity with the adjustments. After this reduction, an additional reduction of 25 percent may apply if payment is made within the applicable deadlines.

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.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan? If so, are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
Current Spanish transfer pricing legislation follows the OECD transfer pricing guidelines and recommendations and the work of the European Union Joint Transfer Pricing Forum.

Given that Spain has been an active member in the development of the OECD’s BEPS project recommendations, and taking into consideration that the OECD work is used as an interpretative source on this matter, there are no material differences between the final reports and the Spanish measures.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
The current Spanish transfer pricing legislation follows the OECD transfer pricing guidelines and recommendations. In this connection, Article 14 of the Corporate Income Tax Regulations (Royal Decree 634/2015) establishes the country-by-country reporting obligation, which is not different from that established in the OECD’s final report.

If the ultimate parent company of a group is resident in Spain, this parent company is required to file the country-by-country report in Spain. The monetary threshold for requiring a country-by-country report is €750 million. Spain does not require any additional information not required by the OECD on the final country-by-country report.

The first country-by-country reports will be required for years beginning on or after January 1, 2016.

In addition, the obligation to prepare a master and/or local file applies as of February 2009.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
Yes; Spain has been an active member in the development of the OECD’s BEPS Project, including Action 15.
Sweden

What's new
Sweden is committed to following the recommendations from the OECD’s BEPS project. The Swedish Tax Agency (STA) has stated that guidance from Actions 8–10 may be applied by the STA in its tax inquiries, effective immediately. Furthermore, the scope of tax audits is expanding, tax auditors’ requests are becoming more rigorous, and the STA’s requests are becoming more complex.

General information
Tax authority and law
Swedish Tax Agency (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.

Methods and comparables
Acceptable methods
Sweden follows the OECD transfer pricing guidelines in this regard. Thus, the acceptable methods include 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
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.

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.

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.

However, in light of BEPS guidance on benchmarking analyses, the STA has been requesting taxpayers to update benchmarking analyses more frequently.

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 30-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 deadline 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: July 1, November 1, December 15, and March 1, 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. When adjustments are imposed on taxpayers in a loss position, a penalty up to 1/4 of an ordinary penalty of 40 percent may be imposed on the adjustment until the taxpayer has reached a taxable position.

Is interest charged on penalties?
Interest may be charged on penalties if not paid by the payment date. Further, interest may be charged on penalties once a respite has been lifted.

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 not taxable.

Reduction in transfer pricing penalties
There is no provision in this regard. Discretionary reductions are possible.

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.

OECD BEPS recommendations

Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan?
If so, are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
Sweden has committed to follow the recommendation of the OECD’s October 2015 final reports on Actions 8-10 of the BEPS Action Plan. The STA has stated that it considers Actions 8-10 a clarification of the arm’s length principle, and as such they can be applied with immediate effect.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
Country-by-country legislation was not enacted in 2015. However, it is expected that legislation implementing the master file/local file requirement and country-by-country reporting will be effective January 1, 2017. This means that fiscal years starting on or after January 1, 2017, would be the first fiscal year subject to the master file/local file requirement and the submission of the country-by-country template for qualifying taxpayers.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
Sweden is committed to participating in the multilateral instrument being developed under Action 15 of the BEPS Action Plan.
Switzerland

What’s new
As many other OECD member states, Switzerland has announced that it would implement the requested minimum standard of the BEPS action plan into domestic legislation. Given the nature of the legislative process in Switzerland, most of the required changes will only be enacted effective 2017 or 2018.

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.”

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.

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. We recommend that such 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 that such an arrangement may create a permanent establishment of the foreign principal company in Switzerland if the limitations as per the OECD model tax treaty are not respected.

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 highly 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, analyses of assessment, or position papers by the other competent 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.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan?
If so, are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
As an OECD member state, Switzerland has committed to adhere to the prescribed minimum standard as per the BEPS action plan (exchange of information/country-by-country reporting). As far as the changes of the transfer pricing guidelines by the OECD is concerned, these changes have an immediate effect in Switzerland, given the absence of Swiss transfer pricing legislation.
Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures? What is the effective date of those measures?

Switzerland will enact legislation implementing the country-by-country reporting requirement. Swiss officials have not indicated a plan to implement explicit transfer pricing documentation requirements.

• Exchange of information — Effective January 2018
• Country-by-country reporting — Effective for financial year 2017; to be submitted in 2018

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?

Switzerland has committed that it would sign and ratify the multilateral instrument. The Swiss government has not announced a specific timetable for its implementation.
Taiwan

What's new
Taiwan’s transfer pricing guidelines were amended in March 2015. The new guidelines include a transfer pricing rule for business restructurings, a clarification of when the new profit-level indicator can be used, and amendments to the APA mechanism. The Ministry of Finance will amend the transfer pricing guidelines to adopt the recommendations of the BEPS Action Plan.

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). Amended by Decree No. 10400009570 issued by the Ministry of Finance on March 6, 2015.

Nature/extents 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.

Under the amended transfer pricing guidelines, in the event of a business restructuring, the functional and risk analysis covering both the pre-restructuring and post-restructuring periods must be disclosed in the 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, 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.

The threshold for applying for an APA is NTD 500 million for the aggregate amount of the transactions, or NTD 200 million for the annual transaction amount. Other detailed criteria are listed in the transfer pricing guidelines.

**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.
OECD BEPS recommendations

Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan? If so, are there any material differences between the final report and your country’s measures? What is the effective date of those measures? The Ministry of Finance and the tax authorities will follow the recommendations of the BEPS Action Plan. However, there is no formal provision yet. The legislation and effective date are still under discussion.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures? What is the effective date of those measures? Yes, the Ministry of Finance and the authorities are working on the amendment of the transfer pricing guidelines to adopt Action 13. The legislation is expected to be announced and become effective before the end of 2016.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan? There is no information in this regard.
Thailand

What’s new
In 2015, the Thai Government Cabinet approved, in principle, transfer pricing documentation rules that would require companies with related-party transactions to prepare and submit transfer pricing documentation at the time of filing their annual corporate tax return. A fine would be imposed for failure to prepare the documentation. The Thai government is expected to pass the laws in 2016, and they would be effective for 2017. The laws will be issued together with supporting regulations from the Thai Revenue Department.

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, but is not paid in practice.

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
There is no fee for applying for an APA.

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.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan? If so, are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
The Thai government has not announced a formal position.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
No.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
The Thai government has not announced a formal position.
The year 2015 was marked by increased transfer pricing audit activity in Turkey. A recurring theme in transfer pricing was the scrutiny of inbound headquarters (HQ) services across a wide variety of industries. Multinationals operating in Turkey will have to pay close attention to asserting and documenting the beneficial nature of inbound HQ services on a go-forward basis. There was also increased scrutiny of digital commerce (specifically, the definition of “digital workplace” and the attribution of revenues/profits to digital commercial activities) in parallel with BEPS Actions 1 and 7. Finally, a number of APAs were concluded and signed during the year. Although the number of signed APAs is still relatively low, APA petitions and completions appear to be on the rise.

**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**

The comparable uncontrolled price (CUP) method is the preferred method, if applicable. 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

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**General information**

**Tax authority and law**


**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. There is also a guideline on completion of the related-party transaction form that is to be attached to the annual corporate tax return.

**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 relationship.
be arm’s length. Stewardship costs are nondeductible (in accordance with the OECD transfer pricing guidelines).

**Are management fees subject to withholding?**
Management fees are subject to withholding tax of 20 percent. However, relevant income tax treaty provisions may either eliminate completely or reduce the withholding tax rate under certain conditions, depending on the nature of the service, the place where the service is provided, and the service provider’s period of stay in Turkey.

**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. Due to the Turkish VAT rules, such arrangements cannot be applied in Turkey. These arrangements may also 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. Income tax treaties may completely eliminate the withholding tax or reduce the rate, depending on the type of service, 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 deadline for submission of the annual corporate income tax return.

Deadline to submit documentation
Currently, there is no obligation to submit the annual documentation report to tax office together with the annual corporate income tax return. Documentation must be submitted within 15 days only if there is an official request.
Deadline to file income tax return
The deadline to file the corporate income tax return is the end of the 25th day of the fourth month following the end of the fiscal year (i.e., by the end of 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 the statutory financial statements attached to the annual corporate income tax return. However, some book/tax differences may be allowed depending on specific circumstances.

Self-initiated adjustments
Based on general provisions, self-initiated adjustments that result in an increase in the tax base can be made through "regret filing" procedures based on the Turkish Tax Procedures Code. Self-initiated adjustments that result in a decrease in taxable income may also be made under "correction" procedures; however, those adjustments may trigger a tax inspection.

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. If the additional assessment payment is made within the 30-day period, a percentage of deduction is applied depending on the type of penalty, according to the Turkish Tax Procedures Code. Alternatively, there is an option to request a settlement for the additional assessment. However, the right to benefit from a reduction at the time of payment is lost if the option to go to settlement or legal action is taken. Further legal action cannot be taken if settlement is achieved.

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 October 19, 2010; 1.95 percent between November 19, 2009 and October 18, 2010, and 2.5 percent between April 21, 2006 and November 18, 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. If the penalty is paid within a 30-day period, a percentage of deduction is applied depending on the type of penalty, based on the relevant rules of the Turkish Tax Procedures Code. 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 January 1, 2016, the APA application fee is TL 53,004.10, and TL 42,403.10 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 have been no instances so 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. Detailed MAP procedures and rules are expected to be included as a separate section in the new Draft Turkish Tax Procedures Code, which is still under review.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan?
If so, are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
No official information is available. The OECD BEPS recommendations have not impacted the Turkish transfer pricing regulations. No effective date has been announced regarding the implementation of the recommendations. Turkey is not a signatory to the Multilateral Competent Authority Agreement (MCAA) for the automatic exchange of country-by-country reports, signed by 31 countries on January 27, 2016.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
No. There has been no official announcement regarding the scope or effective date of implementation.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
There has been no official announcement regarding the multilateral instrument.
Ukraine

What's new

During 2015 the Ukrainian transfer pricing system continued to develop, having been launched only in 2013. The tax authorities continued to request transfer pricing documentations from taxpayers and launched several transfer pricing audits during the year.

2015 saw the introduction of additional amendments to the local transfer pricing regulations, the aim of which was to correct existing inaccuracies and to better align the local legislation with the OECD transfer pricing guidelines.

The process of tax reform continues in Ukraine, with further amendments to the transfer pricing legislation likely in 2016. While Ukrainian representatives did not participate in the development of OECD BEPS recommendations, partial implementation of the Action 10 and Action 13 measures was discussed late in 2015. This question will likely be on the agenda in 2016.

General information

Tax authority and law

Regulations, rulings, guidelines
Tax Rulings on Transfer Pricing, approved by Decrees of the Ministry of Revenues and Duties #699 dated November 22, 2013, and #368 dated July 1, 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 have not entered into a double tax treaty with Ukraine; and
• Export transactions conducted through nonresident commissionaires (both related and unrelated).
• Transactions between related parties that involve independent intermediaries that do not perform any substantial functions and do not bear any significant risks.

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 formal preference over TNMM and the profit split method.

Availability of benchmarking/comparative data
Ukrainian transfer pricing legislation does not officially approve any databases. However, the tax authorities issued Letter #22908/6/99-99-19-02-02-15, dated October 29, 2015, concluding that databases like Orbis, Amadeus, Ruslana (BvD), Spark (Interfax), ThomsonReuters, and Bloomberg may be applied for purposes of transfer pricing analysis.

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.

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.

Documentation requirements
Two types of documentation are required:
• Report on controlled transactions, due May 1 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 May 1 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 May 1 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, February 29, 2016, for the 2015 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 (February 9, 2016, for the 2015 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
Fines for non-submission or incomplete submission of transfer pricing-related documents:
• Failure to submit the report on controlled transactions – 300 minimum wages (approximately USD 12,000 as of January 2016);
• Failure to record transactions in the report on controlled transactions – 1 percent of the amount of the omitted controlled transactions, capped at 300 minimum wages for all 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 8,000 as of January 2016).

Is interest charged on penalties?
Yes. Interest is charged at the National Bank of Ukraine discount rate (set at 22.0 percent as of January 2016) 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.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan?
If so, are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
No specific legislative changes related to the BEPS recommendations have been introduced. However, in 2015 a draft law covering partial implementation of Action 10 was developed, but it was not approved by Parliament.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
No measures have been enacted into legislation. However, a draft law introduced late in 2015 covered implementation of country-by-country reports. This issue will likely be further discussed in 2016.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
Ukraine is a member of the ad hoc group, participating in the development of the multilateral instrument for BEPS tax treaty measures.
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 support for the G20/OECD base erosion and profit shifting (BEPS) recommendations.

Effective April 1, 2015, the UK government introduced the new “diverted profits tax” in advance of some of the BEPS changes. This tax applies to situations in which a UK permanent establishment has been avoided, or to transactions or entities that lack sufficient economic substance.

Advance pricing agreements with the UK now require that consideration be given to whether diverted profits tax applies.

Legislation and draft regulations to implement the G20/OECD country-by-country reporting requirement for large UK multinationals have also been introduced. The requirements take effect for accounting periods beginning on or after January 1, 2016.

General information
Tax authority and law
HM Revenue and Customs (HMRC); following the UK’s Tax Law Rewrite project, effective April 1, 2010, for accounting periods ending on or after April 1, 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 was introduced in Finance Act 2015, effective April 1, 2015, and applies 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 April 1, 2011, this is the 2010 version of the transfer pricing guidelines, as clarified by Actions 8-10 of the October 2015 G20/OECD BEPS reports.

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

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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.

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 April 1, 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. It will also be necessary to consider diverted profits tax with reference to the facts.

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, as clarified by Actions 8-10 of the October 2015 G20/OECD BEPS reports.

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 take the form of 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 passed legislation to introduce the G20/OECD’s country-by-country reporting requirement, and have published draft UK regulations to bring the G20/OECD Action 13 country-by-country reporting requirements into effect for UK-headquartered multinationals with turnover in excess of £586million.

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 April 1, 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.

OECD BEPS recommendations

Is your country committed to following the recommendations of the OECD's October 2015 final report on Actions 8-10 of the BEPS Action Plan?
If so, are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?

Yes, the UK is committed to following the G20/OECD work on Actions B-10. HMRC regards Actions 8-10 as primarily a clarification of the existing OECD transfer pricing guidelines, in line with the report from the OECD. They are therefore already applying the principles in ongoing transfer pricing inquiries.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
The UK has introduced legislation and published draft regulations so that country-by-country reporting in accordance with the G20/OECD template will be effective for UK-parented multinationals with turnover exceeding £586 million for accounting periods commencing on or after January 1, 2016.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
Yes.
United States

What’s new
In 2015, transfer pricing in the United States saw changes in many areas – the Treasury Department and IRS issued guidance on substantive transfer pricing rules, OECD CbC reporting and procedural rules and an important case decision.

The substantive transfer pricing guidance clarifies the coordination of §482 with other provisions of the Code, particularly §367(a) and (d). The IRS also issued a notice stating its intention to issue guidance with respect to contributions of built-in gain property to partnerships. The final set of regulations issued in 2015 implements the OECD’s country-by-country reporting recommendations. The IRS also released two new revenue procedures governing advance pricing agreements (APAs) and competent authority requests.

In Altera Corp. v. Commissioner, 145 T.C. No. 3 (2015) the Tax Court ruled that 2003 regulations requiring the inclusion of stock based compensation in cost sharing arrangements are invalid. This opinion will have far reaching implications for taxpayers that are participants a cost sharing arrangement.

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 (previously known as 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).

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

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.
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.

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, 5472, and 8865 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 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. New Rev. Proc. 2015-41, issued in 2015, allows
multilateral, bilateral, and unilateral APAs.

APA filing fee
The fee is $60,000 for original APA requests and
$35,000 for routine renewal requests; $30,000 for small-
case APA original and renewal requests; and $12,500
for amending APA requests or a completed APA.

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.

OECD BEPS recommendations
Is your country committed to following the
recommendations of the OECD’s October 2015 final
report on Actions 8-10 of the BEPS Action Plan?
If so, are there any material differences between
the final report and your country’s measures?
What is the effective date of those measures?
The United States is committed to following the
recommendations of the OECD’s October 2015 final report
on Actions 8-10 of the BEPS Action Plan. The only material
difference is that the United States Treasury regulations
under §482 continue to measure contributions to cost
sharing arrangements at cost, whereas the OECD’s final
report would measure them at value.

Has your country enacted legislation implementing
the country-by-country reporting requirement, or
is it considering enacting such legislation? If so,
does the legislation adopt the master file/local file
requirement? Are there any material differences
between the final report and your country’s measures?
What is the effective date of those measures?
On December 21, 2015, the U.S. Treasury Department
released proposed regulations that require annual country-
by-country reporting. Prop. Treas. Reg. §1.6038-4 (REG-
109822-15). Treasury based the proposed regulations on
the model template developed by the OECD.

The proposed regulations address only the country-by-
country report and do not discuss the master file or local
file requirements.

If the proposed regulations are finalized in 2016, calendar
year taxpayers will first apply the regulations in 2017.

Is your country committed to participate in the
multilateral instrument being developed under Action
15 of the BEPS Action Plan?
The United States has participated in the multilateral
instrument process; nevertheless, it plans to implement the
CbC reporting through bilateral agreements rather than
signing the multilateral instrument itself.
Uruguay

What’s new
Uruguay’s transfer pricing audit team within the country’s tax authority, which had previously functioned exclusively in the large taxpayers division, was split into two in 2015, and a new team was created in the medium-sized taxpayers division. The new team is expected to begin auditing transfer pricing issues among those companies in the near future.

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.
OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan? If so, are there any material differences between the final report and your country’s measures? What is the effective date of those measures? The government has not commented in this regard.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures? What is the effective date of those measures? No, there is no legislation to implement country-by-country reporting at this time.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan? The government has not commented in this regard.
Venezuela

What's new
Venezuela’s transfer pricing regime remained stable during 2015. The tax authority, SENIAT, continued to be active in conducting tax audits of the transfer pricing practices of multinational enterprises.

General information
Tax authority and law
National Integrated Tax and Customs Service Administration (SENIAT); Income Tax Law (ITL) Nr. 6.120, Chapter III Title VII (latest amendment effective December 30, 2015).

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 costs/expenses for royalties, technical assistance, technological services, and professional services fees.
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
Documentation must be contemporaneously prepared each tax 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?
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
Six years from the date of filing return.

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
Taxpayers are subject to the following penalties on transfer pricing matters:
• Failure to file tax returns or late filing (more than one year) – closure of the establishment for 10 continuous days and a fine of 150 Tax Units
• Filing of incomplete tax returns or late filing (less than one year – fine of 100 Tax Units
• Incomplete or late filing of other communications – fine of 50 Tax Units
• Filing a substitute tax return outside the term provided by law – fine of 50 Tax Units
• Failure to maintain documentation supporting the transfer pricing calculation – closure of the establishment for 10 continuous days and a fine of 1,000 Tax Units

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).

Advance Pricing Agreements (APAs)
Are APAs available?
Yes (unilateral and bilateral). Title VII, Chapter III, fifth section of ITL.

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.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan? If so, are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
No.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures? What is the effective date of those measures?
No.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
No.
Vietnam

What's new
Although there have been no significant changes to Vietnam’s transfer pricing regulations and guidelines in 2015, the practical implementation of existing regulations and the transfer pricing audit landscape have become more challenging in the past year. To strengthen transfer pricing audit capabilities, the Ministry of Finance issued decision No. 1484/QĐ-BTC in July 2015 to form specialized transfer pricing audit teams under the authority of the General Department of Taxation and of four provincial departments of taxation in Hanoi, Ho Chi Minh City, Binh Duong, and Dong Nai. Audits are now conducted on a transfer-pricing-specific basis, apart from the general tax compliance audits of previous years.

Aside from the more focused approach to transfer pricing audits, the Vietnamese tax authorities also require more stringent transfer pricing compliance. The new transfer pricing form 03-7/TNDN, applicable for tax periods starting from January 1, 2014, requires taxpayers to self-assess their related-party transactions and reflect the arm’s length price of those transactions. In some cases, the tax authorities have also required that the transfer pricing documentation report be submitted to clarify and justify the declared transfer pricing form for the pertinent year(s).

General information
Tax authority and law

The Ministry of Finance on December 20, 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 February 5, 2014.

Circular 156/2013/TT-BTC on Tax Administration, dated November 6, 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, including:
• Official Letter No. 5545/TCT-CC, dated December 11, 2015, providing guidelines and confirming the application of Circular 66. To benchmark the business results from the main business activities of enterprises under the comparable profits method, the operating profit will be used to calculate profit level indicators (i.e. net profit margin, net cost plus markup, return on assets) to reflect the result of enterprises’ main business activities and avoid distortion of non-operating factors (such as financial income/expense, other income/expense). The official letter also provides specific guidance on how to determine related parties under category E (long-term loan or loan guarantee).
• Decisions No. 1574/QĐ-TCT and No. 1575/QĐ-TCT dated September 1, 2015, provide official decisions on the establishment of transfer pricing inspection teams in the General Department of Taxation (GDT) and provincial tax departments in Hanoi, Ho Chi Minh City, Binh Duong, and Dong Nai. Accordingly, transfer pricing inspection and audit activities will be conducted in a specialized manner, separate from general tax audits.

New Form 03-7/TNDN is applicable for tax periods/fiscal years starting after January 1, 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 the market price of the transactions as a result of transfer pricing self-assessment.

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.

Official Letter No. 5545/TCT-CC provides that to determine related parties in the case of loans and loan guarantees, the loan amount will be based on the actual loan...
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 is available.

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 recent transfer pricing audits, the Vietnamese tax authorities have utilized the data from the country’s tax offices, which is collected, analyzed, and monitored by the tax authorities, for the selection of independent comparable companies incorporated in Vietnam. Due to data confidentiality requirements, information regarding these comparable companies is normally not disclosed to taxpayers.

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, the use of Vietnamese comparable companies is strongly recommended and accepted by the tax authorities. Otherwise, foreign comparables may be used as supporting documentation if no or few 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 January 1, 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
In general, 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 Administration.
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 January 1, 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 December 20, 2013, issued Circular 201/2013/TT-BTC providing guidance on the APAs program. The circular entered into effect on February 5, 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.

OECD BEPS recommendations
Is your country committed to following the recommendations of the OECD’s October 2015 final report on Actions 8-10 of the BEPS Action Plan?
If so, are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
The Vietnamese tax authorities have been following the developments of the BEPS initiative and observing its application in other countries. However, no legislation or regulations on the application of BEPS recommendations in Vietnam have been issued.

Has your country enacted legislation implementing the country-by-country reporting requirement, or is it considering enacting such legislation? If so, does the legislation adopt the master file/local file requirement? Are there any material differences between the final report and your country’s measures?
What is the effective date of those measures?
The Vietnamese tax authorities have been following the developments of the BEPS initiative and observing its application in other countries. However, no legislation or regulations on the application of BEPS recommendations in Vietnam have been issued.

Is your country committed to participate in the multilateral instrument being developed under Action 15 of the BEPS Action Plan?
The Vietnamese tax authorities have been following the developments of the BEPS initiative and observing its application in other countries. However, no legislation or regulations on the application of BEPS recommendations in Vietnam have been issued.
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