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Global transfer pricing guide



More and more fiscal authorities continue to develop their transfer pricing laws. The principles are common, although interpretations differ from one tax authority to another. Compliance takes time and patience, and the demands and penalties from authorities are increasing. There is greater emphasis on examination and audit activity to encourage compliance and ignoring this issue is not an option for any well-run business.

This international transfer pricing guide provides an overview of the different transfer pricing rules and regulations in key countries and details of how you can get further advice from Grant Thornton specialists who can help with:

- **audit support** – sophisticated economic arguments, research and databases can help defend transfer pricing policies before the tax authorities
- **documentation** – using expert local knowledge to prepare country-specific documentation to satisfy local tax regulations
- **planning** – the growth or restructuring of a company doing business internationally provides an opportunity to review transfer pricing and tax planning to minimise tax burdens
- **supply chain re-engineering** – the critical analysis of the supply chain to gain operational efficiencies.

For a more detailed discussion on any of the country specific transfer pricing rules, or for further assistance in addressing and resolving any intercompany transfer pricing issues, please contact the relevant country contact listed at the end of each article and at the back of this guide.

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Australia

Regulatory snapshot

Overview
When did transfer pricing rules start?
1982
Level of TP
Long standing and established regime
Return disclosure
Yes
Documentation
Contemporaneous documentation is not compulsory but allows access to reduced penalties in the event of a transfer pricing adjustment
Methods
Most appropriate method approach
Audit risk
High
Penalties
High
Advance Pricing Agreements (APAs)
Available

- Division 13 of part III of the Income Tax Assessment Act 1936, contains the Australian domestic law with regards to transfer pricing, which has been in place since 1982. At the time of writing, the government is proposing to modernise the Australian transfer pricing legislation. The new legislation has been introduced to parliament and is expected to receive royal assent with only minor modifications. The following information is based on the new transfer pricing legislation contained in the Tax Laws Amendment (Countering Tax Avoidance and Multinational Profit Shifting) Bill 2013 (new transfer pricing rules).
- Taxpayers with an aggregate amount of the international related party transactions greater than \$2 million need to disclose the details of the related party transactions in Section A of the International Dealing Schedule (IDS) along with their annual income tax returns.
- The new transfer pricing rules align the transfer pricing regime to the self-assessment taxation system operating in Australia. This places the responsibility on the companies public officer for determining the overall tax position arising from all cross border dealings.
- The taxpayer bears the burden of proof to satisfy the Australian Tax Office (ATO) and the courts that a company's transfer pricing arrangements are at arm's length.
- There is no legal requirement to prepare and maintain the transfer pricing documentation in Australia. However, contemporaneous documentation is recommended to evidence compliance with the arm's length principle and demonstrate reasonable efforts in the event of a transfer pricing adjustment and, in so doing, access to reduced penalties.
- Australia applies the 'most appropriate method approach' for selecting the transfer pricing method(s).
- Acceptable transfer pricing methods include comparable uncontrolled price (CUP), resale price, cost plus, transactional net margin method (TNMM), profit split and other methods that comply with the arm's length principle.



- The main focus of transfer pricing audits by the ATO are services, business restructuring, low profit and/or loss making entities, hybrid financing arrangements, thin capitalisation and intellectual property shifting.
- Tax penalty rates range from 10% to 50% on the additional tax, depending on individual assessment of each circumstance.
- Unilateral, bilateral and multilateral APAs are available to taxpayers in three different types of programme, i.e. simplified, standard and complex.
- TR 1998/16 – penalty tax guidelines
- TR 1999/1 – international transfer pricing for intra-group services
- TR 2001/11 – operation of Australia’s permanent establishment attribution rules
- TR 2003/1 – thin capitalisation, applying the arm’s length debt test
- TR 2004/1 – cost contribution arrangements
- TR 2007/1 – effects of determinations made under division 13, including consequential adjustments (replaces TR 1999/8)
- TR 2010/7 – interaction of the thin capitalisation provisions and the transfer pricing provisions
- TR 2011/1 – application of the transfer pricing provisions to business restructuring.

Does your country have transfer pricing rules vs. ruling, laws and guidelines?

The new transfer pricing rules relocate the domestic transfer pricing rules to subdivisions 815-B, 815-C and 815-D of the Income Tax Assessment Act 1997 (ITAA 97) to make sure a single set of rules apply for both treaty and non-treaty countries. The new rules are designed to better align Australia’s domestic rules with internationally consistent transfer pricing approaches set out by the Organisation for Economic Cooperation and Development (OECD).

Consistent with the approaches under Division 13, the new rules in Subdivision 815-B apply the arm’s length principle to relevant dealings between both associated and non-associated entities.

Effective date of commencement of transfer pricing regulations

Transfer pricing regulations are effective since 1982 in Australia.

Rulings, laws and guidelines

Australia is a member of the OECD. Australia follows OECD guidelines¹ in relation to transfer pricing, and the principles of the OECD guidelines are reflected in guidance that has been provided by the ATO. The ATO has issued various taxation rulings concerning transfer pricing, which interpret the application of the statutory rules; and provide guidance on issues not specifically covered by statute, without a legally binding effect. The taxation rulings that relate to transfer pricing include:

- TR 1994/14 – basic concepts underlying division 13
- TR 1997/20 – arm’s length transfer pricing methodologies for international dealings
- TR 1998/11 – documentation and practical issues associated with setting and reviewing transfer prices

Is transfer pricing documentation required? If so, what information should be included?

There is no legal requirement to prepare and maintain transfer pricing documentation in Australia. While the subdivision does not mandate the preparation or keeping of documentation, failing to do so prevents a taxpayer from establishing a reasonably arguable position. Establishing a reasonably arguable position allows an entity access to lower administrative penalties. TR 1998/11 recommends contemporaneous documentation to evidence compliance with the arm’s length principle; to fulfil the statutory requirements to keep records; to reduce the risk of tax audits and adjustments; and to reduce/mitigate penalties in the event of an audit adjustment. TR 1998/11 outlines the ATO’s recommended four step approach to transfer pricing documentation which provides a basis for reviewing and documenting transfer pricing for international dealings between related parties:

- **Step 1:** accurately characterise the international dealings between the associated enterprises in the context of the taxpayer’s business and document that characterisation
- **Step 2:** select the most appropriate transfer pricing methodology(ies) and document the choice
- **Step 3:** apply the most appropriate method, determine the arm’s length outcome and document the process
- **Step 4:** ensure documentation is complete process to ensure adjustment for material changes.

What are the deadlines for documentation preparation?

There is no specific deadline for documentation preparation. Transfer pricing documentation is considered as ‘contemporaneous’ if prepared by the due date for filing the annual income tax return.

¹ OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, 1995 and subsequent updates

In which language should documentation be filed?

Transfer pricing documentation should be prepared in English.

How long is it necessary to keep transfer pricing documentation?

The new transfer pricing rules introduced an eight year time limit on when the ATO can make transfer pricing amendments, with the exception on 'consequential adjustments'. This rule replaces the current unlimited time period for making transfer pricing amendments.

Are intercompany agreements recommended?

It is generally recommended that taxpayers support their intercompany transactions through intercompany agreements.

Do you have to make disclosures about transfer pricing in the tax return? What statements or certifications are required?

Australian taxpayers need to disclose their related party transactions in section A of the International Dealing Schedule (IDS) along with their annual income tax returns. Taxpayers must complete the IDS in the event that the aggregate amount of their international related party transactions or dealings (including the value of property transferred or the balance outstanding on any intercompany loans) is greater than \$2 million. The IDS requires disclosure to the ATO of the following information:

- types of related party transactions (e.g., tangible products, services, financial transactions (loans, guarantees, derivative transactions, debt factoring, securitisation), capital transactions, share-based employee remuneration plans, cost contribution arrangements)
- magnitude of the related party transactions
- related party transactions with specified (tax haven) countries
- transfer pricing methodology(ies) applied and documentation prepared to support the related party transactions
- business restructuring events
- branch transactions.

Which transfer pricing methods are acceptable?

All transfer pricing methods are acceptable, i.e. CUP, resale price, cost plus, profit split (e.g. contribution analysis or residual analysis) and TNMM.

Is there a priority among the acceptable methods?

Similar to the OECD guidelines, the most appropriate method rule applies. However, depending on the availability of reliable comparable data, traditional methods are preferred in the practice to transactional profit methods.

In addition the new transfer pricing rules allow for the use of 'a combination of methods' to identify the arm's length conditions that operate between entities dealing cross-border.

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

The new transfer pricing rules introduced an eight year limit on when the ATO can make transfer pricing amendments, with the exception on 'consequential adjustments'. This rule replaces the current unlimited time period for making adjustments.

What rates and conditions apply for transfer pricing penalties? And is there penalty relief?

Penalty rates applying transfer pricing adjustments under division 13 and DTAs are outlined in TR 1998/16. Under the self-assessment regime (from 1992/93 year of income and all subsequent years), the penalty rates imposed are:

- 50% penalty rate on tax avoided for transfer pricing arrangements entered into with the sole or dominant purpose of enabling a taxpayer to pay no or less tax. The penalty rate may be reduced to 25% if the taxpayer has reasonably arguable position
- 25% of the tax avoided for other transfer pricing arrangements; reducing to 10% if the taxpayer has a reasonably arguable position.

Generally, a position is considered as 'reasonably arguable' if it is 'about as likely as not' to be correct. In order to demonstrate that a position is reasonably arguable, the taxpayer must prepare and maintain documentation to support the arm's length nature of its related party dealings.

Tax penalties may be increased by 20% where:

- a taxpayer takes steps to prevent or hinder the ATO from discovering that a transfer pricing provision should be applied
- a taxpayer has been penalised under a scheme section in a prior year of income.

Tax penalty may be reduced:

- by 20% if the taxpayer makes a voluntary disclosure to the ATO after it has been informed of an impending audit
- by 80% if the taxpayer makes a voluntary disclosure to the ATO before it has been informed of an impending audit.

The ATO has the discretion to remit all or part of the penalties. In addition to the penalty, the taxpayer is liable to pay a shortfall interest charge on the value of any increase in the tax assessment arising from the ATO's transfer pricing adjustments.

An important element of the new transfer pricing rules is the introduction of specific rules allowing the ATO reconstruction powers to disregard the actual transaction and arrangements, where the actual economic substance of the transaction differs from the legal form.

The new transfer pricing rules introduce thresholds for administration penalties arising from the arm's length principle on satisfying certain criteria.

Are there exemptions to transfer pricing rules in your country?

There is no exemption to transfer pricing rules in Australia. The new transfer pricing rules may apply to all cross-border transactions between third parties. As such, all cross-border dealings are subject to the arm's length principle.

Are advance pricing agreement (APA) options available?

The ATO released detailed guidance on Australia's APA programme, i.e. Practice Statement Law Administration 2011/1 (PS LA 2011/1) in March 2011 (which replaces TR 95/23 that has been withdrawn). The practice statement outlines the policies and procedures of the ATO's APA programme, which allows unilateral, bilateral, and multilateral APAs.

In addition, PS LA 2011/1 outlines differentiated APA programmes, with three different types of APAs, i.e. simplified, standard and complex.

Tax audit areas

Transfer pricing remains a high risk area. In May 2009, the ATO announced a major transfer pricing project, referred to as the 'strategic compliance initiative'. The strategic compliance initiative project was designed to protect Australia's tax base and the main focus areas are:

- intragroup finance and guarantee fees
- business restructures and transformations
- intellectual property transactions
- services to the mining industry
- low-profit/loss making entities.

To support the strategic compliance initiative, the ATO recruited a large number of experienced transfer pricing staff.

Contact us

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Canada

Regulatory snapshot

Overview
When did transfer pricing rules start?
1997
Level of TP
Established regime, active tax authority
Return disclosure
T106 form discloses transactions undertaken with non-arm's length non-residents during the taxation year
Documentation
Required if certain criteria are met
Methods
Most appropriate method detailed in the OECD guidelines
Audit risk
High
Penalties
High
Advance Pricing Agreements (APAs)
Available

- Canada has had transfer pricing rules since 1997 and the regulations were applicable to taxation years that began after 1997. The rules can be found in Section 247 of the Canadian income tax act.
- In the tax filing, taxpayers with intercompany transactions must disclose the types of transactions and whether the documentation requirements have been met if all transaction and intercompany balance values exceed CAN\$1 million.
- Acceptable TP methods include comparable uncontrolled price (CUP), resale price, cost plus, profit split and transactional net margin.
- The penalty is 10% (non-deductible) of the net income or capital adjustment if the value of this adjustment exceeds the lesser of 10% of the taxpayer's gross revenues and CAN\$5 million, plus interest. The penalty is applied only where it is concluded that 'reasonable effort' to determine and use arm's length prices was not made.

Does your country have transfer pricing rules vs. ruling, laws and guidelines?

The Canadian Income Tax Act (the Act) applies to the taxation years beginning after 1998. Section 69 of the Act applies to prior taxation years. The Act represents Canada's transfer pricing legislation and covers definitions, the calculation of transfer pricing adjustments, penalties, contemporaneous documentation requirements and timing.

Administrative guidance relating to definitions, methods, penalties, cost sharing arrangements, confidentiality of third-party information, and the advance pricing agreement (APA) and competent authority processes are provided in information circular 87-2R 'International transfer pricing' (1999). Other guidance:

- Competent Authority process – IC 71-17R5
- APA programme – IC 94-4R
- Small business APA programme – IC 94-4RSR
- Income tax transfer pricing and customs – IC 06-1
- Transfer pricing memorandum (TPM) series – ongoing [<http://www.cra-arc.gc.ca/tx/nrsdnts/cmmn/trns/menu-eng.html>]



Effective date of commencement of transfer pricing regulations

Section 247 of the Act applies to taxation years beginning after 1998. Section 69 of the Act applies to prior taxation years.

Is transfer pricing documentation required? If so, what information should be included?

Documentation must be prepared or obtained before the tax filing due date for most corporations, six months after the corporate year end.

Documentation must be provided to the Canadian Revenue Agency (CRA) within three months of the written request to submit documentation date.

Canada is a member of Pacific Asia Travel Association (PATA), making that documentation standard useful as guidance.

Subsection 247(4) of the Act describes the contemporaneous documentation requirement to be recorded or documents prepared or obtained that provide a complete and accurate description of:

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

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

What are the deadlines for documentation preparation?

Documentation must be prepared or obtained before the tax filing due date. In the case of corporations such documentation must be complete within six months after the taxation year end, and five months after the taxation year end for partnerships.

In which language should documentation be filed?

Transfer pricing documentation can be provided in English or French.

How long is it necessary to keep transfer pricing documentation?

In the case of foreign-controlled entities, the CRA may reassess tax on transfer pricing adjustments made in respect of tax years seven years prior to the date of the notice of assessment. For Canadian controlled entities, this period is six years. In the case of fraud or gross negligence, no statute of limitations exists.

Are intercompany agreements recommended?

Yes, but not required.

Do you have to make disclosures about transfer pricing in the tax return? What statements or certifications are required?

Canadian corporations and partnerships file 'Form T106' annually if all transaction and intercompany balance values exceed CAN\$1 million. Branches of non-resident corporations only file this form in respect of transactions with other related non-residents. Form T106 reports (by related non-resident) the value of each type of transaction and intercompany balances as well as the transfer pricing method used. Question 6 on this form requires a yes or no response to the question 'have you prepared or obtained contemporaneous documentation as described in subsection 247(4) of the Income Tax Act for the tax year/fiscal period with respect to the non-resident?'

Which transfer pricing methods are acceptable?

The CRA favours application of OECD methods (CUP, resale price, cost plus, profit split and the transaction net margin method) to each transaction or group of transactions that may be reasonably aggregated. Methods are not discussed or ranked in section 247 of the Act.

Is there a priority among the acceptable methods?

The CRA has endorsed the revisions made to the OECD guidelines in 2010, as such it is expected the CRA will endorse a 'most appropriate' method approach.

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

In the case of foreign-controlled entities, the CRA may reassess tax on transfer pricing adjustments made in respect of tax years seven years prior to the date of the notice of assessment. For Canadian controlled entities, this period is six years. In the case of fraud or gross negligence, no statute of limitations exists.

What rates and conditions apply for transfer pricing penalties? And is there penalty relief?

Refer to subsection 247(3) of the Act. The penalty is 10% (non-deductible) of the net income or capital adjustment if the value of this adjustment exceeds the lesser of 10% of the taxpayer's gross revenues and CAN\$5 million, plus interest. The penalty is applied only where it is concluded that 'reasonable effort' to determine and use arm's length prices was not made.

Are there exemptions to transfer pricing rules in your country?

None.

Are advance pricing agreement (APA) options available?

Unilateral, bilateral and multilateral APAs are available to Canadian taxpayers to the extent that these programs exist with Canada's tax treaty partners. The CRA generally prefers bilateral APAs to unilateral APAs. A small business APA program was started in 2005, this imposes certain restrictions that make agreements negotiated under this program quite different from any other APA.

Through its treaty network, Canada's competent authority engages in Mutual Agreement Procedure (MAP) exchanges with foreign tax authorities. For more details, see IC 71-17R.

Tax audit areas

Audits are conducted by international tax auditors and federal tax auditors at the Tax Service's Office (TSO) level. It is usual for a taxpayer to receive a written request for subsection 247(4) documentation at the beginning of an audit. Books and records located outside of Canada may be requested by law and the CRA may request to travel (at the taxpayer's expense) to the country in which these books and records are kept to inspect these books and records, and also to perform site visits or interview personnel.

Assistance to the TSOs is provided by International Advisory Service Section. Reassessments of tax caused by transfer pricing adjustments may be appealed provided that a 'notice of objection' is filed with the appeals branch within 90 days of the date of the notice of assessment.

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China

Regulatory snapshot

Overview
When did transfer pricing rules start?
1998 (yet the most comprehensive legislative update so far occurred in 2009)
Return disclosure
Yes
Documentation
Compulsory with de minimis provided
Methods
Best method approach
Audit risk
High
Penalties
High
Advance Pricing Agreements (APAs)
Available

- The core Transfer Pricing (TP) rules were promulgated under circular 2 in January 2009 with an effective date from 1 January 2008.
- Taxpayers with intercompany transactions must disclose the transactions details through as many as nine forms during the annual income tax filing process.
- Contemporaneous TP documentation is compulsory with de minimis threshold. China applies the ‘best method approach’ for conducting TP analysis.
- Acceptable TP methods include comparable uncontrolled price (CUP), resale price, cost plus, transactional net margin, profit split and other methods that comply with the arm’s length principle.
- TP audit can be targeted at any transaction if it results in the reduction of China’s tax revenue, and is more prone to intellectual property, equity and service provision transactions.
- Other than administrative cash fines, deemed profit adjustment is applied for not complying with the TP documentation obligation. TP Audit adjustment is subject to an interest surcharge plus a 5% surcharge.

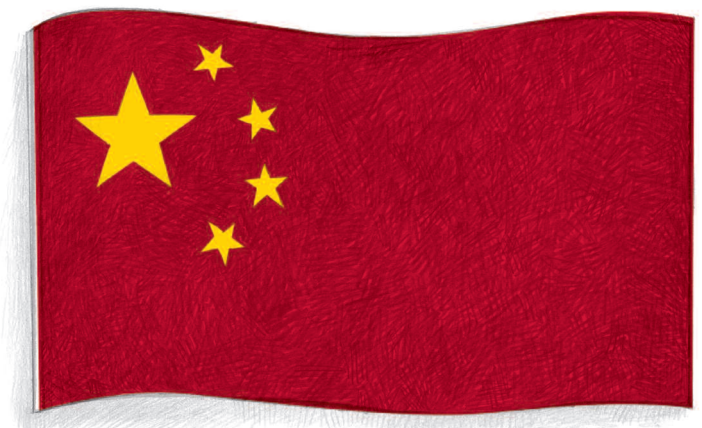
- Advance Pricing Agreements (APA) are available to taxpayers with annual intercompany transaction amount exceeding RMB40 million. An effective APA can cover three to five years.

Does your country have transfer pricing rules vs. ruling, laws and guidelines?

The State Administration of Taxation (SAT) issued Guoshuifa [2009] No. 2 ‘Implementation measures of special tax adjustments (trial version)’ (circular 2) which contains 13 chapters and 121 articles. It covers related party transactions disclosure, contemporaneous documentation, transfer pricing audits, thin capitalisation, cost contribution arrangement (CCA), APA, general anti-avoidance, controlled foreign corporation (CFC), and etc.

Effective date of commencement of transfer pricing regulations

Circular 2 is effective as of 1 January 2008.



Rulings, laws and guidelines

In addition to circular 2, there are several effective rulings related to transfer pricing as following:

- **Guoshuifa [2008] no. 86:** additional guidance on service charges between parent and subsidiary entities.
- **Guoshuifa [2008] no. 114:** requiring taxpayers to disclose detailed related-party transaction information in the annual tax return process.
- **Caishui [2008] no. 121:** additional guidance on the application of thin capitalisation ratios between related parties.
- **Guoshuihan [2009] no. 363:** requiring loss-making single-functioned manufacturer/distributor/contract R&D service provider to provide, prepare and submit transfer pricing documentation, regardless of its intercompany transaction amount.

Is transfer pricing documentation required? If so, what information should be included?

Taxpayers are obliged to prepare transfer pricing documentation if they trigger the de minimis thresholds. As required by circular 2, transfer pricing documentation should contain organisational structure, business and operation, related party transactions, selection and application of the transfer pricing method, comparable analysis, copies of intercompany agreements, functional and risk analysis form and financial analysis form.

What are the deadlines for documentation preparation?

The transfer pricing documentation should be in place by 31 May of the year following the year during which the related-party transactions occur, and be submitted within 20 days upon request from the tax authorities. Where the enterprise cannot submit the documentation due to force majeure, it shall submit the documentation within 20 days after the elimination of the force majeure.

In which language should documentation be filed?

Transfer pricing documentation shall be filed and submitted in Chinese.

How long is it necessary to keep transfer pricing documentation?

Enterprises are responsible for keeping contemporaneous documentation for ten years starting from 1 June of the year following the year in which the documented related-party transactions occur.

Are intercompany agreements recommended?

It is recommended that taxpayers document their intercompany transactions through intercompany agreements.

Do you have to make disclosures about transfer pricing in the tax return? What statements or certifications are required?

All taxpayers in China are required to prepare ‘annual reporting forms of related party transactions for PRC enterprises’ (annual TP filing forms) and submit them along with the annual tax filing forms. The annual TP filing forms include:

- relationship between related parties
- related party transaction summary
- purchase and sales form
- service form
- intangible asset transaction form
- fixed asset transaction form
- financing form
- overseas investment form
- overseas payment form.

Which transfer pricing methods are acceptable?

CUP, resale price, cost plus, transactional net margin, profit split and other methods that comply with the arm’s length principle.

Is there a priority among the acceptable methods?

No, the best method approach applies.

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

A maximum of ten years.

What rates and conditions apply for transfer pricing penalties? And is there penalty relief?

Cash penalty

Failure to submit the annual TP filing forms or TP documentation is subject to a fine of RMB 2,000-10,000. For any entity which refuses to provide transfer pricing documentation and other relevant information on related party transactions, a fine of RMB 10,000 to 50,000 should apply.

Deemed profit adjustment

The tax authority can use the deemed profit method to conduct TP adjustment on an entity if the entity refuses to prepare the transfer pricing documentation or discloses false information.

Additional interest on transfer pricing adjustments

Starting from 1 January 2008, the transfer pricing adjustment is subject to additional interest. The interest will be levied on a daily basis, counting the number of days in the period starting 1 June of the next taxable year and ending the day when the under-paid income tax is collected by The SAT. The interest rate equals to the People’s Bank of China lending rate plus an additional 5%. The additional 5% can be waived if the enterprises fulfil the documentation obligation.

Are advance pricing agreement (APA) options available?

Unilateral, bilateral and multilateral APAs are available. The negotiation and implementation of an APA generally includes six phases: pre-filing meeting, formal application, review and evaluation, negotiation, signing, execution and monitoring.

Tax audit areas

Transfer pricing is a high risk area. Transfer pricing is a key issue in any tax audit. The following cases may easily draw the attention of the tax authority and trigger a transfer pricing audit: loss making companies with a single function, substantial difference between related and non-related sales margins, profit lower than its group enterprises or industry standard, significant invoicing profit in tax haven, recurring loss, marginal profit or fluctuating profit. The tax authorities focus especially on the following industries/transactions: real estate, automobile, pharmaceutical, retail industries, transfer of intangible, services, financing, and equity transfer.

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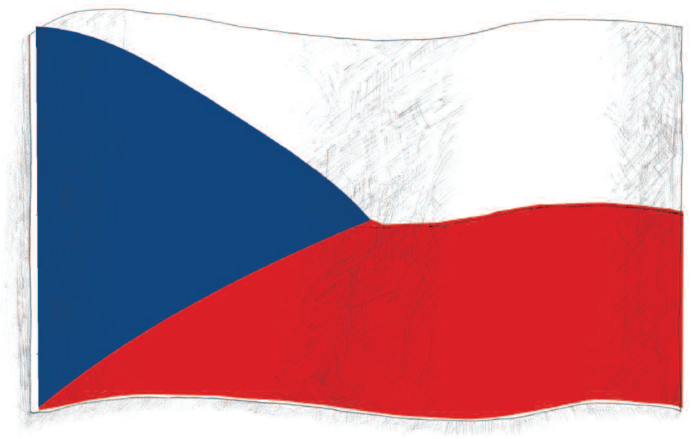
Czech Republic

Regulatory snapshot

Overview
When did transfer pricing rules start?
1993
Level of TP
Developing regime
Return disclosure
No
Documentation
Not compulsory
Methods
Best method approach
Audit risk
Low
Penalties
Low
Advance Pricing Agreements (APAs)
Available

- The arm's length principle was introduced in the Czech income taxes act as of 1 January 1993; however, until 2004 no guidelines were available.
- The core Transfer Pricing (TP) rules were promulgated under Guideline D-258 in January 2004.
- Taxpayers with related-party transactions must disclose the transaction details upon request of the tax authorities during a tax audit. TP documentation is not compulsory but recommended.
- The Czech Republic applies the 'best method approach' for conducting TP analysis. Recommendable TP methods include comparable uncontrolled price (CUP), resale price, cost plus, transactional net margin and profit split.

- TP audit can be targeted at any transaction between related parties; related parties are defined as economically (direct or indirect share of a minimum 25% of the share capital or voting rights) or personally related (the same person participating in management or control of both companies).
- Regular penalties apply on TP audit adjustments: late payment interest and penalty payment; on the other hand, TP audit adjustments shall be considered tax-deductible by the recipient tax subject (Czech Republic signed the Arbitration Convention 90/436/EEC).
- Advance Pricing Agreement (APA) in the form of binding ruling is available to all taxpayers and can cover a maximum of three years.



Does your country have transfer pricing rules vs. ruling, laws and guidelines?

The arm's length principle is enacted in article 23 (7) of the Czech income taxes act as of its outset in 1993. TP documentation requirements are specified in the Czech Ministry of Finance guidelines D-332 and D-333 (accompanied by D-334 on the binding ruling), which however are not binding but serve as a recommendation. In general, the Czech Republic follows the OECD guidelines¹. TP regulations apply to all related party transactions in which an entity subject to Czech income tax is involved. Related parties are defined as economically (direct or indirect participation of a minimum 25% of the share capital or voting rights) or personally related (the same person participating in management or control of both companies); the Czech income taxes act also includes an anti-abuse clause when considering related parties, also entities that established a legal relationship mainly to reduce the tax base or increase the tax loss; however this concept applies to domestic taxpayers and entities from countries that did not conclude a double tax treaty with the Czech Republic; otherwise, the definition of the double tax treaty shall prevail.

Effective date of commencement of transfer pricing regulations

TP regulations (arm's length principle for related parties) in the Czech Republic have been effective since 1993.

Rulings, laws and guidelines

Besides legally binding articles of the Czech tax law (as of 2004), several guidelines provide insight into the position of the tax authorities without a legally binding effect. These guidelines refer to the general guidance on the application of the OECD guidelines (currently, as of 2011: D-332 and D-333); binding ruling for TP issues (D-334).

Is transfer pricing documentation required? If so, what information should be included?

Taxpayers are not obliged to prepare TP documentation, however they are obliged to prove that the arm's length principles were observed; the form of the proof is not prescribed, but the TP documentation prepared according to OECD guidelines is recommended.

What are the deadlines for documentation preparation?

The documentation (or any other evidence) should be available when the company is asked during a tax audit. Absent or non-sufficient documentation will shift the burden of proof from the Czech tax authorities to the taxpayer to demonstrate that the transfer prices are at an arm's length basis. However, if the documentation is not available upon request of the tax authorities, the taxpayer may agree on a deadline to prepare the documentation.

¹ OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, 1995 and subsequent updates.

In which language should documentation be filed?

TP documentation can be submitted to the Czech tax authorities in the Czech language only.

How long is it necessary to keep transfer pricing documentation?

TP documentation should be kept for the period for which the right of the tax authorities to assess tax, does not become statute-barred, i.e. usually three years. In cases of tax losses, the deadline may be prolonged to five years, in cases of tax audits the deadline may be prolonged to a maximum ten years.

Are intercompany agreements recommended?

It is recommended (and usually required) by the tax authorities that during tax audits, taxpayers document their intercompany transactions through written intercompany agreements.

Do you have to make disclosures about transfer pricing in the tax return? What statements or certifications are required?

No.

Which transfer pricing methods are acceptable?

Taxpayers are free to choose any OECD recognised TP method, as long as the method results in an arm's length pricing for the transaction.

Is there a priority among the acceptable methods?

There is no priority among the acceptable methods as long as the result is at arm's length. Taxpayers are not obliged to test all OECD recognised methods, though they should substantiate why the method chosen is considered as the best method.

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

TP adjustments can be assessed three years from the filing deadline (usually three month after the end of the calendar or economic year) plus any extensions provided by the Czech income taxes act (e.g. tax loss, additional tax return, investment incentives). In certain cases (e.g. tax audit), this period can be extended up to ten years.

What rates and conditions apply for transfer pricing penalties? And is there penalty relief?

No specific penalties exist; should the taxpayer fail to bear the burden of proof, then additional tax is assessed or the assessed tax loss is decreased, the late payment interest (Czech National Bank repo rate +14%) and penalty payment (20% of the additionally assessed tax or 1% of the additionally assessed tax loss reduction) apply. No penalty relief.

Are there exemptions to transfer pricing rules in your country?

No.

Are advance pricing agreement (APA) options available?

Binding rulings based on the submitted TP documentation are possible. A fee of CZK 10,000 (approx. EUR 400) must be paid in advance; one binding ruling may involve one or more transactions. Issued binding ruling is valid only ceteris paribus, by the same tax authority that has issued it for a maximum of three years.

Tax audit areas

TP is still a relatively low risk area. TP audits are rare and TP is not an issue in every tax audit. However, as of 2012 a new specialised tax office was introduced that should be equipped with TP specialists; this tax authority shall administer large taxpayers (including banks and insurance companies) and shall perform specialised tax audits, including TP audits.

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France

Regulatory snapshot

Overview

When did transfer pricing rules start?

The first tax guideline with respect to transfer pricing entered into force in 1973. The first tax rule with respect to transfer pricing documentation requirements was issued in 1996.

Level of TP

Long standing

Return disclosure

No

Documentation

According to sections L13 AA, L13 AB and L13 B of the tax procedures code, transfer pricing documentation must be available upon request for the French tax authorities.

Methods

The French tax legislation is based on the comparable uncontrolled price method (CUP). However, all methods approved in the OECD guidelines can be applied in France as long as they are supported by an appropriate transfer pricing study.

Audit risk

Low

Penalties

There are no specific tax penalties in the event of reassessments relating to the application of transfer pricing legislation. Standard penalties indeed apply under such circumstances.

For insufficient or non-existent documentation, the French tax authorities apply a minimum penalty of €10,000 which can be increased up to 5% of the tax, reassessed per fiscal year.

Advance Pricing Agreements (APAs)

APAs are available to companies. Unilateral APAs can also apply but in limited situations. A specific APA procedure exists for SMEs within the definition of European Union law.

Does your country have transfer pricing rules vs. ruling, laws and guidelines?

Article 57 of the French tax code contains the main French legal provisions on transfer pricing (TP). It states that in assessing the income tax due from French taxable entities that are controlled by or that control entities established outside France, any profits indirectly transferred to the latter, whether by an increase or reduction in purchase or sale prices or by any other means, shall be added back to taxable income.

Articles L13 AA, L13 AB and L13 B of the French tax procedures code set out the formal documentation requirements in France.

French regulations and guidelines are broadly based on and refer to the OECD guidelines¹.

Effective date of commencement of transfer pricing regulations

TP regulations have been effective in France since 1973.



¹ OECD transfer pricing guidelines for multinational enterprises and tax administrations, 1995 and subsequent updates.

Rulings, laws and guidelines

Besides articles of the French tax law, several tax guidelines exist which provide insight into the position of the tax authorities. They concern application of article 57 of the French tax code (4 A-2-73; 4 A-1211; 4 A-5-83); advance pricing agreements (4 A-8-99; 4 A-11-05); documentation requirements (13 L-7-98; 4 A-10-10) and SME (4 A-13-06).

Is transfer pricing documentation required? If so, what information should be included?

According to sections L13 AA and L13 AB, TP documentation must be available for the French tax authorities at the opening of a tax audit. Companies in the scope of these documentation requirements are:

- French companies with annual sales or gross assets totaling €400 million
- French subsidiaries with more than 50% of their capital or voting rights owned, directly or indirectly, by French or foreign entities meeting the €400 million criterion above
- French parent companies that directly or indirectly own at least 50% of companies meeting the €400 million criterion.

When the annual sales or gross assets do not meet the €400 million threshold, taxpayers must still comply with the 'de facto' documentation requirement in the event of a tax audit in order to avoid penalties.

The TP documentation includes two reports:

- a general report that provides an overview of the whole group and entities
- a specific report focused on the French entity.

A specific additional documentation must be provided in case of transactions entered into with affiliate entities located in 'non cooperative states' (Botswana, Brunei, Guatemala, Marshall Islands, Montserrat, Nauru, Niue and the Philippines).

What are the deadlines for documentation preparation?

According to sections L13 AA and L13 AB, the documentation should be available at the beginning of the tax audit i.e. as from the date of the first meeting with the tax inspector. For companies that are not in the scope of sections L13 AA and L13 AB, the documentation has to be available upon request of the tax authorities during a tax audit. The minimum deadline to reply is two months.

In which language should documentation be filed?

In principle, all documents provided to the French tax authorities must be in French. In practice, if the documents are in English, a translation has to be provided upon request of the tax inspector. It is recommended to provide the tax inspector with a summary in French of the TP policy as soon as the tax inspector raises TP questions.

How long is it necessary to keep transfer pricing documentation?

The minimum required retention period for TP documentation is the time allotted by the general statute of limitation relating to corporate income tax return filings i.e. during the years open to tax audit (see below statute of limitations).

Are intercompany agreements recommended?

It is strongly recommended that taxpayers document their intercompany transactions through intercompany agreements.

Do you have to make disclosures about transfer pricing in the tax return? What statements or certifications are required?

No.

Which transfer pricing methods are acceptable?

Taxpayers are free to choose any OECD recognised TP method as long as the method results in an arm's length pricing for the transaction. Taxpayers are not obliged to test all OECD recognised methods, although they must substantiate the method chosen.

Is there a priority among the acceptable methods?

There is no priority among the acceptable methods, as long as, the result is at arm's length. The French tax authorities nevertheless usually prefer the comparable uncontrolled price (CUP) method, since article 57 of the French tax code is based on that method.

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

There is no specific TP statute of limitations. The usual statute of limitation regarding corporate income tax applies i.e. 31 December of the third year, following the year during which a fiscal year is closed. Fiscal years which were in a tax loss position can still be audited after the three year period, if the said tax losses have been offset against the tax profits of a fiscal year still open to tax audit.

What rates and conditions apply for transfer pricing penalties? And is there penalty relief?

There is no specific penalty due to the violation of TP regulations (except documentation rules – see below). All penalties relating to a tax audit are based on the amounts reassessed. The most usual penalties are late payment penalties i.e. late payment interest (0.40% per month) or/and late payment fine (5% or 10%). In the event of tax fraud, penalties can reach 40% or 80% of the tax that has been avoided.

Companies that are required to have TP documentation can be subject to penalties if they do not comply with their requirements (minimum penalty of €10K, and up to 5% of the tax reassessed per fiscal year).

Are there exemptions to transfer pricing rules in your country?

No.

Are advance pricing agreement (APA) options available?

Unilateral, bilateral and multilateral APAs are available. Pre-filing meetings are organised with the French tax authorities to discuss the case, before a formal APA request is made. The APA, which cannot be less than three years or more than five years, makes sure that the concerned companies cannot be reassessed by the tax authorities on the basis of their TP policies, for the financial years concerned by the agreement and assuming the fact pattern given (when the corresponding application was filed) correctly reflects the reality.

A streamlined procedure exists for SMEs within the definition of European Union law. The documentation required by the French tax authorities is lightened, and the French tax authorities assist the companies in the preparation of their request.

Tax audit areas

When a French company belongs to an international group of companies, the tax inspector frequently checks whether TP rules are correctly applied. This situation also concerns SMEs and groups of two companies i.e. a French company which is a subsidiary of a non French company or which has a subsidiary outside France. TP rules are very often a key issue in tax audits. The French tax authorities especially focus on the following areas: loss making routine functions, intellectual property (IP) transactions (transfer of IP, royalties) and business reorganisations.

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Germany

Regulatory snapshot

Overview
When did transfer pricing rules start?
2003
Level of TP
Established regime
Return disclosure
No
Documentation
Compulsory with threshold
Methods
Best method approach
Audit risk
High
Penalties
High
Advance Pricing Agreements (APAs)
Available

- The basic rules for Transfer Pricing (TP) in Germany were announced in the early 1980s. These rules were expanded by several important supplemented rules, which were promulgated in May 2003 (documentation requirements) and August 2008 (transfer of business) with an effective date from 1 January 2003 and 1 January 2008 respectively.
- TP documentation is compulsory within de minimis threshold.
- Germany applies the ‘best method approach’ for conducting TP analysis.
- Acceptable TP methods include comparable uncontrolled price (CUP), resale-minus, cost plus, transactional net margin (TNM), profit split and other methods that comply with the arm’s length principle.

- TP documentation has to be provided during an on-going tax field audit and only on request of the tax inspector in charge. There is no need to submit the TP documentation together with the annual tax returns.
- If the taxpayer does not submit the required documentation in a timely manner, there will be severe consequences. In case of a violation of the obligation to cooperate, the tax authorities are entitled to increase the tax basis based on their own estimations. In addition to this, the tax authority provides for a penalty of 5% to 10% of the additional estimated income. If there is a delay in submitting usable documentation, a penalty of at least €100 for each day beyond the day of the deadline becomes due with a maximum penalty of €1,000,000.
- Advance pricing agreements (APAs) are available to every taxpayer. An effective APA can cover three to five years.



Does your country have transfer pricing rules vs. ruling, laws and guidelines?

The arm's length principle and transfer pricing documentation requirements are enacted in 'article 1' of the foreign tax act and 'section 90 paragraph three' of the German general tax code. Specific non-statutory guidance was provided by the Federal Ministry of Finance in February 1983 and October 2010. The German transfer pricing legislation is not necessarily committed to following the OECD's TP guidelines exactly. However, it refers to and is broadly consistent with them. TP regulations apply to all related party transactions without a threshold in which an entity subject to German taxation is involved.

Effective date of commencement of transfer pricing regulations

TP regulations regarding the obligation to provide written TP documentation have been effective in Germany since 2003.

Rulings, laws and guidelines

Besides legally binding articles of the German tax law, several decrees provide insight into the position of the tax authorities without a legally binding effect. These decrees refer to general guidance on the profit allocation to related companies (BMF IV C 5 – S 1341 – 4/83), the attribution of profits to permanent establishments (FM Baden-Württemberg S 1300 – 20); intercompany services (BMF IV B 4 – S 1341 – 14/99), business restructuring (BMF IV B 4 – S 1341 – 08/10003); APAs (BMF IV B 4 – S 1341 – 38/06) and guidance with respect to the administrative principle procedures (BMF IV B 4 – S 1341 – 1/05).

Is transfer pricing documentation required? If so, what information should be included?

Taxpayers are obliged to prepare TP documentation and to keep it in their accounting records. In principle the documentation of the taxpayer should substantiate the serious effort to comply with the arm's length principle. The taxpayer needs to explain from his point of view the appropriateness of the transfer prices using objective criteria. According to German regulations regarding the documentation of profit allocation (GAufzV), the nature, scope and processing of the relevant facts, as well as, the direct economic and legal aspects thereof need to be exposed. In addition, the organisational and operational company structure needs to be displayed. Essentially, the following parts of the documentation of facts are important: business description, organisational structure, functional (including risk) analysis, industry analysis, contractual terms and conditions of the transactions, financial performance, information on the intercompany transactions, substantiation of transfer pricing method and prices actually charged.

Is there a threshold for preparing transfer pricing documentation?

Small companies are exempt from the requirement of the detailed TP documentation. Small companies are where neither the total revenue from the delivery of goods (from transactions with related parties) exceeds €5,000,000 nor the total revenue from services other than the delivery of goods (from transactions with related parties) exceeds €500,000. Nevertheless, small companies need to provide evidence of the compliance with the arm's length principle.

What are the deadlines for documentation preparation?

The deadline for the submission of the documents is 60 days after the documentation has been requested by the Fiscal Authority. If the documentation contains extraordinary transactions, the deadline is shortened to 30 days. Absent (sufficient) documentation will shift the burden of proof from the German tax authorities to the taxpayer, to prove that the transfer prices are at arm's-length.

In which language should documentation be filed?

Transfer pricing documentation should be filed with the German tax authorities in German.

How long is it necessary to keep transfer pricing documentation?

Transfer pricing documentation should be kept for at least ten years.

Are intercompany agreements recommended?

It is recommended that taxpayers document their intercompany transactions through intercompany agreements.

Do you have to make disclosures about transfer pricing in the tax return? What statements or certifications are required?

In Germany taxpayers are not obliged to disclose any information concerning related party transactions in their (corporate income) tax returns.

Which transfer pricing methods are acceptable?

German tax authorities accept the use of the traditional transaction methods (CUP, resale-minus, cost plus) as well as the use of TNM method and profit share methods, if applicable.

Is there a priority among the acceptable methods?

German tax authorities prefer to use the traditional transaction methods. Nevertheless, taxpayers are free to choose any other TP methods if the traditional methods are not applicable and as long as the chosen method results in an arm's length pricing for the transaction. Taxpayers are not obliged to test all recognised methods, although they must substantiate the method chosen.

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

Basically TP adjustments can be assessed five years from the tax year-end, plus any extensions provided by the German tax authorities for filing tax returns.

What rates and conditions apply for transfer pricing penalties? And is there penalty relief?

A violation of the obligation to co-operate will lead to penalties in addition to the tax. The minimum penalty is €5,000 and the tax authority provides for a penalty of 5% to 10% of the additional estimated income. If there is a delay in submitting usable data, a penalty of at least €100 for each day, beyond the day of the deadline becomes due with a maximum penalty of €1,000,000.

Are advance pricing agreement (APA) options available?

Since 2006 the taxpayer has the opportunity to obtain an advance pricing agreement (APA) from the fiscal authorities. Bilateral and multilateral APAs are available but unilateral APAs are no longer supported by the German tax authorities. Pre-filing meetings are mandatory in the course of an APA request in order to discuss the case before a formal APA process is initiated.

Tax audit areas

Transfer pricing is a high risk area since it is a key issue in any tax audit. The German tax authorities especially focus on the following areas: loss making routine functions, IP transactions (transfer of IP, royalties), transactions with permanent establishments, head office activities, principal structures (including centralised functions and purchase offices), business reorganisations and financial transactions.

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Guernsey

Regulatory snapshot

Overview
When did transfer pricing rules start?
No current transfer pricing rules
Level of TP
Developing regime
Return disclosure
No
Documentation
Not compulsory
Methods
Best method approach
Audit risk
Low
Penalties
Low
Advance Pricing Agreements (APAs)
Available

- Guernsey has not introduced formal transfer pricing rules into its domestic tax legislation however under certain double tax treaties there is provision to apply generally accepted transfer pricing principles.
- There is no formal requirement to disclose intercompany transactions separately.
- Guernsey uses domestic law in that all expenses must have been incurred wholly and exclusively for the purposes of trade to apply transfer pricing methodology.
- Although there is no formal requirement for transfer pricing documentation, in reality evidence will be required to justify that the expense has been incurred wholly and exclusively for the purposes of the trade. The option on how to accurately calculate this expense would fall with the claimant and any method that complies with the arms length principle would be acceptable.

- No additional charges are levied should there be a dispute concerning whether a transaction is properly calculated within the tax computations of the entity on the understanding that the disclosure was made originally in good faith.

Does your country have transfer pricing rules vs. ruling, laws and guidelines?

Although there is no specific legislation, it is expected that the arm's length principle and transfer pricing guidelines laid down by the OECD are followed.

Effective date of commencement of transfer pricing regulations

The arms length principle is enshrined in Guernsey domestic law and has been in existence since the original law was enacted.

Rulings, laws and guidelines

Guernsey uses an arm's length principle and applies the domestic law provisions surrounding expenses which require them to be incurred wholly and exclusively for the trade in order to apply a transfer pricing methodology. No formal guidelines have been published.



Is transfer pricing documentation required? If so, what information should be included?

In order to justify that an intercompany expense has been incurred wholly and exclusively for the trade, the claimant would need to provide (if asked) transfer pricing documentation. The transfer pricing documentation should describe how transfer prices have been determined and include information which enables the tax authorities to evaluate the arm's length nature of the transactions.

What are the deadlines for documentation preparation?

The burden of proof will rest with the taxpayer to demonstrate that the transfer prices have been calculated at arm's length. Although at the time of the transaction it is not mandatory to produce any formal documentation the taxpayer should be able, within a reasonable time, to provide such information as to justify the charge made.

In which language should documentation be filed?

English

How long is it necessary to keep transfer pricing documentation?

Transfer pricing documentation should be kept for at least seven years.

Are intercompany agreements recommended?

It is recommended that taxpayers document their intercompany transactions through intercompany agreements.

Do you have to make disclosures about transfer pricing in the tax return? What statements or certifications are required?

No separate or formal disclosures are required.

Which transfer pricing methods are acceptable?

Taxpayers are free to choose any OECD recognised transfer pricing method as long as the method results in an arm's length pricing for the transaction. Taxpayers are not obliged to test all OECD recognised methods, though they must substantiate the method chosen.

Is there a priority among the acceptable methods?

There is no priority among the acceptable methods as long as the result is at arm's length.

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

Transfer pricing adjustments can be assessed six years from the tax year-end plus any extensions provided by the Guernsey tax authorities for registering appeals. Should negligence or fraud be proved then there is no time limitation.

What rates and conditions apply for transfer pricing penalties? And is there penalty relief?

There are no specific transfer pricing penalties or rates.

Are there exemptions to Transfer Pricing rules in your country?

All tax returns are required to comply with the principle that all expenses claimed for tax purposes have been incurred wholly and exclusively for the trade.

Are advance pricing agreement (APA) options available?

Should it be required for a transaction then it is possible to obtain an APA. Pre-filing meetings can be organised with the Guernsey tax authorities in order to discuss the case before a formal APA request is made.

Tax audit areas

Connected party transactions are a high risk area in any tax audit. The Guernsey tax authorities would focus on the following areas: loss making routine functions, transfer of intellectual property/royalties, transactions with permanent establishments, head office activities, principal structures (including centralised functions and purchase offices), business reorganisations, captives and financial transactions.

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Hungary

Regulatory snapshot

Overview
When did transfer pricing rules start?
1992
Level of TP
Developing regime
Return disclosure
Yes
Documentation
Compulsory
Methods
Best method approach
Audit risk
High
Penalties
High
Advance Pricing Agreements (APAs)
Available

Does your country have transfer pricing rules vs. ruling, laws and guidelines?

The arm's length principle and transfer pricing documentation requirements are enacted in article 18 of the Hungarian corporate income tax act and the 22/2009 ministry of finance decree. In general, Hungary follows OECD guidelines.

Effective date of commencement of transfer pricing regulations

Transfer pricing regulations are effective since 1992 in Hungary. Transfer pricing documentation requirements are effective since 2003.

Rulings, laws and guidelines

The 22/2009 ministry of finance's decree provides detailed information on the requirements of the Hungarian tax authorities referring to transfer pricing documentation.

Is transfer pricing documentation required? If so, what information should be included?

Taxpayers are obliged to prepare transfer pricing documentation and to keep it in their accounting records. Taxpayers have the right to choose whether they use the combined documentation (master file and country specific file) or the separate country specific documentation. The transfer pricing documentation should describe how transfer prices have been determined and include information which enable the tax authorities to evaluate the arm's length nature of the transactions. Therefore the documentation must contain business description, organisational structure, functional analysis (including risk), industry analysis, contractual terms and conditions of the transactions, information on the intercompany transactions, benchmarking, substantiation of transfer pricing method and prices actually charged.



What are the deadlines for documentation preparation?

The documentation must be prepared by the day of submission of the annual corporate income tax. If the documentation is not available upon request of the tax authorities in a tax audit, the taxpayer is penalised immediately.

In which language should documentation be filed?

Transfer pricing documentation can be filed either in Hungarian or any other foreign language. If the documentation is in a foreign language, the tax authorities have the right to ask for a Hungarian translation at the taxpayer's expense.

How long is it necessary to keep transfer pricing documentation?

Transfer pricing documentation should be kept for five years from the last day of the year when the CIT return was submitted, which is the limitation period for taxes.

Are intercompany agreements recommended?

It is highly recommended that taxpayers document their intercompany transactions in written intercompany agreements.

Do you have to make disclosures about transfer pricing in the tax return? What statements or certifications are required?

Hungarian corporate income taxpayers need to mark in their annual tax returns whether they have chosen the country specific documentation or the combined documentation. The documentation itself does not need to be submitted together with the annual corporate income tax return.

The taxpayer must report related party companies to the tax authority having executed their first contract with that party within 15 days.

Which transfer pricing methods are acceptable?

The corporate income tax act lists the acceptable methods as follows: comparative price, resale price, cost and income, transactional net margin, transactional profit split and any other method if the fair market price cannot be determined by either of the before mentioned methods. Taxpayers have the possibility to choose from each these methods.

Is there a priority among the acceptable methods?

There is no priority among the acceptable methods as long as the result is at arm's length. However taxpayers must declare in the transfer pricing documentation, why they have chosen other methods instead of the five named methods.

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

Transfer pricing adjustments can be assessed five years from the end of the year when the annual tax return should have been submitted.

What rates and conditions apply for transfer pricing penalties? And is there penalty relief?

Those taxpayers, who fail to comply with the obligation of keeping records related to the determination of the arm's length price, may be sanctioned by a default penalty of two million HUF per each documentation for the first time and four million HUF per each documentation, if the infringement of the obligation is committed repeatedly. If the taxpayer further on does not meet the obligation, the maximum amount of the penalty is eight times the amount of default penalty imposed on the taxpayer in the first case. The tax authorities also adjust the tax base of the taxpayer with the difference of the market level and the transfer price and also levy a default penalty, which is the 50% of the tax lack and late penalty interest is also charged.

Are there exemptions to Transfer Pricing rules in your country?

Small enterprises are not obliged to prepare transfer pricing documentation, but they are obliged to be able to prove that the prices applied are arm's length prices. No transfer pricing documentation is required on transactions where the value is under 50 million HUF in the current year from the starting date of transaction. There is also no transfer pricing documentation required in case of recharging, in unchanged amounts, or the costs of services or goods supplied is not within the scope of the main activity of the affiliated company. This exemption is subject to the condition that neither the company providing the service nor the supplier of the goods is in affiliated company relationship with any of the related parties.

Are advance pricing agreement (APA) options available?

Unilateral, bilateral and multilateral APAs are available. The resolution is valid for a specific term, minimum of three and maximum of five years. Before submitting APA consultation can be organised with the tax authorities. The outcome of such prior negotiations shall not be binding upon the applicant or upon the competent authority in the proceedings for determining arm's length price.

The fee of APA is:

- minimum 500 thousand HUF and maximum five million HUF for unilateral proceedings, where fair market price is established by the method of comparative prices, by the method of resale prices or by the cost and income method
- minimum two and maximum seven million HUF for unilateral proceedings, where fair market price is established by any method other than mentioned in point a)
- minimum three and maximum eight million HUF for bilateral proceedings
- minimum five and maximum ten million HUF for multilateral proceedings.

If fair market price (price range) cannot be determined as a specific sum, the fee shall equal the fee minimum, depending on the type of proceedings.

Tax audit areas

Transfer pricing is a high risk area. Existence of transfer pricing documentation is always checked in a tax audit. In a tax audit not only the existence of the document, but the prices are also checked in increasing volume.

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India

Regulatory snapshot

Overview
When did transfer pricing rules start?
1 April 2001
Level of TP
Developing regime
Return disclosure
Yes
Documentation
Compulsory with threshold
Methods
Best method approach
Audit risk
High
Penalties
High
Advance Pricing Agreements (APAs)
Available

Does your country have transfer pricing rules vs. ruling, laws and guidelines?

The 2001 finance act, introduced transfer pricing law in India through sections 92A to 92F of the Indian income tax Act, 1961) and rules 10A to 10E of the 1962 Indian income tax rules (the rules), which guides computation of the transfer price and suggests detailed documentation procedures. Transfer Pricing Regulations (TPRs) are applicable to all enterprises that enter into an ‘international transaction’ with an ‘associated enterprise’. Therefore, generally it applies to all cross border transactions entered into between related parties. ‘Related parties’ is exhaustively defined and does not only includes shareholdings of more than 26%, but also other criteria resulting in control and management, which are explicitly defined.

The 2012 finance act expanded the scope of TPRs by insertion of a new section 92BA in the 1961 Indian income tax act, to include specified domestic transactions (SDTs). SDTs would include, transactions entered into by domestic related parties, or by an undertaking with another undertaking of the same tax payer. However, the threshold for this to trigger is INR 50 million (approximately USD 1 million).

When examining transfer pricing issues, India follows the arm’s length principle in determining the price of transactions between related parties. OECD guidelines are used for guidance purposes only.

Effective date of commencement of transfer pricing regulations

In India, TPRs are effective for all accounting periods ending on or after 31 March 2002.



Rulings, laws and guidelines

The transfer pricing legislation contained in the 2001 finance act is found in section 92 of the Indian income tax act and rules 10A to 10E of the Indian income tax rules.

Is transfer pricing documentation required? If so, what information should be included?

The burden of demonstrating the arm's length nature of the international transactions rests with the taxpayer. Rule 10D of the 1962 Indian income tax act, prescribes thirteen mandatory documents in this regard and requires the taxpayer to maintain documentation contemporaneously. Some of the requirements are general in nature while others are more specific to the relevant international transactions. This includes:

Principal documentation

- business and group's overview (description of the ownership structure, business of the group etc.)
- description of international transactions
- functional asset and risk analysis
- selection and application of the most appropriate method
- benchmarking and identification of comparables
- other supporting details/documents which help in demonstrating the arm's length nature of transaction.

Supporting documentation – the information would need to be supported by authentic documentation

- official publications and databases from the government of the country of residence of the associated enterprise or any other country
- market research studies brought out by institutions of national and international repute
- price publications, including stock exchange and commodity market quotations
- published accounts and financial statements, agreements and contracts between the associated enterprises.

Information is required to be maintained by taxpayers who enter into international related party transactions that are valued at more than INR 10 million.

What are the deadlines for documentation preparation?

The information and documentation specified should, as far as possible, be contemporaneous and exist by the specified date of the filing of the income tax return, which is 30 November following the end of the financial year.

In which language should documentation be filed?

Transfer pricing documentation needs to be filed in English.

How long is it necessary to keep transfer pricing documentation?

Transfer pricing documentation should be kept and maintained for at least eight years from the end of the relevant assessment year.

Are intercompany agreements recommended?

It is recommended that taxpayers document their intercompany transactions through intercompany agreements.

Do you have to make disclosures about transfer pricing in the tax return? What statements or certifications are required?

The taxpayer is required to file an accountants report in 'form 3CEB' with the income tax department within the due date of filing the return of income which, presently, is 30 November following the end of the financial year, for taxpayers subject to transfer pricing. The report provides details on the international related party transactions and provides a confirmation of the accountant on whether the required documentation has been maintained by the taxpayer.

Which transfer pricing methods are acceptable?

The arm's length price in relation to an international transaction is required to be determined by any of the following methods: comparable uncontrolled price (CUP), resale price, cost plus, profit split, transactional net margin and the other specified method.

Recently, the Central Board of Direct Taxes (CBDT) clarified the other method by saying "for determination of the arms' length price in relation to an international transaction shall be any method which takes into account the price which has been charged or paid, or would have been charged or paid, for the same or similar uncontrolled transaction, with or between non-associated enterprises, under similar circumstances, considering all the relevant facts". The other method or the sixth method is effective from 1 April 2012 i.e. from FY 11-12 onwards.

Is there a priority among the acceptable methods?

There is no priority among the acceptable methods as long as the result is at arm's length. The most appropriate method will be the method which is best suited to the facts and circumstances of each particular international transaction, and which provides the most reliable measure of an arm's length price in relation to an international transaction.

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

As per the 2012 finance act, effective 1 July 2012, the transfer pricing audit order is to be passed within three years from the end of the year in which the return is filed.

An appeal against the order of the transfer pricing audit lies with the appeals commissioner and further appeals lie with tribunal, high court and supreme court respectively. Effective from 1 October 2009, a dispute resolution panel (DRP) is constituted for speedy resolutions of disputes involving foreign companies or companies with transfer pricing dispute. The DRP is an alternate to the appeals commissioner and a direct route to reach the tribunal should the disputes continue.

What rates and conditions apply for transfer pricing penalties? And is there penalty relief?

Indian TPRs prescribes onerous penal consequences in the event of non-compliance with documentation and other obligations set out there under. The penal provisions are summarised below.

Default	Penalty	Section of TPRs
Failure in maintaining documentation	2% of the value of each international transaction	271AA
Failure to report any international transaction	2% of the value of each international transaction	271AA
Maintains or furnishes any incorrect information or documents	2% of the value of each international transaction	271AA
Failure in producing the relevant documents to the transfer pricing officer	2% of the value of each transaction for which documents cannot be furnished	271G
Failure to file accountant's report within the due date (form 3CEB)	INR 100,000	271BA
Concealment of income in the event of wilful manipulation of price	100% – 300% of amount of tax sought to be evaded	271(1)(c)(iii) read along with explanation 7

Are there exemptions to Transfer Pricing rules in your country?

No there are no exemptions to transfer pricing rules.

Are advance pricing agreement (APA) options available?

APA provisions are recently introduced by way of sections 92CC and 92CD in the 1962 income tax act. Following are the key highlights of the APA provisions:

- available to all taxpayers falling within the ambit of Indian TP legislation, no threshold limit is prescribed
- APAs to be entered by the CBDT with the approval of the central government
- the APA can be applied for a consecutive period of five previous years
- the APA has a binding force only on the taxpayer with whom it is signed and, with respect to the relevant international transaction, vis-à-vis the jurisdictional commissioner of income tax.

The detailed rules for APA are awaited which may clarify on various procedural aspects like the application, fees, threshold etc.

Tax audit areas

Transfer pricing is a high risk area. Transfer pricing is a key issue in any tax audit. The income tax authorities especially focus on the following areas: captive service providers earning low margins, intellectual property (IP) transactions (transfer of IP, royalties), management fees, loss making entities, share transfers, corporate guarantees and financing and reimbursements. The scrutiny is mandatory for all companies on a yearly basis with the special transfer pricing cell, wherein transaction value exceeds INR 150 million. Lower than this value is scrutinised by the regular assessing officer on a case by case basis.

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Ireland

Regulatory snapshot

Overview
When did transfer pricing rules start?
2011
Level of TP
Developing regime
Return disclosure
No – but upon filing corporation tax returns, the company must be satisfied that all transfer pricing legislation is complied with
Documentation
Compulsory where a company cannot avail of the SME exemption
Methods
Best method approach
Audit risk
Medium
Penalties
High to medium
Advance Pricing Agreements (APAs)
Not available

- As part of 2010 Finance Act, Ireland introduced transfer pricing legislation in respect of trading transactions, which endorses the OECD guidelines for multinational enterprises and tax administrations and adopts the arm's length principle.
- The rules regarding transfer pricing in Ireland are outlined in Sections 835A to 835H of the Taxes Consolidation Act 1997 (TCA) (the new rules apply to accounting periods beginning on or after 1 January 2011). Only new arrangements entered into on, or after 1 July 2010 are affected. Contracts or arrangements in place before that time are not affected where the terms of the agreement are 'grandfathered', i.e. agreed before 1 July 2010.
- The legislation obliges a person/company involved in a transaction, which is within the scope of the transfer pricing legislation, to have records/documentation available that may reasonably be required for the purposes of determining whether the income of that person/company has been computed at arm's length.
- There are exemptions from these rules for small and medium entities (SMEs) where a company has fewer than 250 employees and either turnover of less than €50million or assets of less than €43million on a group basis.
- There is no separate statutory regime for transfer pricing penalties. However, normal penalties which apply to the Irish self-assessment regime may apply.
- There is no priority among the acceptable methods as long as the result is at arm's length. To establish an arm's length price, the OECD guidelines will be referenced.
- Ireland does not have a formal APA procedure for Irish companies to agree prices with the Irish tax authorities for international related party transactions.



Does your country have transfer pricing rules vs. ruling, laws and guidelines?

Section 835C of the TCA sets out the main transfer pricing rules. The legislation endorses the OECD guidelines for multinational enterprises and tax administrations and adopts the arm's length principle. The tax authority's application of the rules in relation to documentation will accept both the 'EU transfer pricing documentation' guidance and Chapter V of the OECD guidelines (the OECD rules only apply insofar as they relate to trading transactions). There are also certain revenue guideline issues in respect of Irish transfer pricing and in particular, a number of e-briefs and revenue notes.

Effective date of commencement of transfer pricing regulations

Transfer pricing regulations apply to accounting periods of companies beginning on or after 1 January 2011. Only new arrangements entered into on, or after 1 July 2010 are affected. Contracts or arrangements in place before that time are not affected.

Rulings, laws and guidelines

The rules regarding transfer pricing in Ireland are outlined in Sections 835A to 835H of the TCA. The principles in the OECD guidelines for multinational enterprises and tax administrations must be followed when analysing whether a transaction has been entered into at arm's length.

Is transfer pricing documentation required? If so, what information should be included?

The legislation obliges a person involved in a transaction, which is within the scope of the transfer pricing legislation, to have records available that may reasonably be required for the purposes of determining whether the income of that person has been computed at arm's length. The documentation must be sufficient to demonstrate a company's compliance with the transfer pricing rules. The documentation is required to contain the following:

- the associated persons that are party to the transaction
- the nature and terms of the transaction
- the terms of relevant transactions with both third-parties and associates
- the method or methods by which the pricing of the transactions were derived
- the application of the transfer pricing method and any budgets
- forecasts or other relevant papers relied on in arriving at an arm's length result.

Revenue have indicated that the compliance monitoring programme will begin with transfer pricing compliance reviews. These reviews may, at a later date, progress to full transfer pricing audits. As part of this self-review process, the following will generally be requested/reviewed:

- the group structure
- details of categories and types of related party transactions
- pricing structure and transfer pricing methodology used
- summary of functions, assets and risks of relevant parties
- summary list of relevant documentation available and reviewed
- details of the basis on which the arm's length principle is satisfied.

What are the deadlines for documentation preparation?

Documentation must be available for transactions that take place in accounting periods beginning on or after 1 January 2011. It is best practice that the documentation is prepared at the time the terms of the transaction are agreed. It is also considered best practice that the documentation exists at the time of filing the tax return, so that the company is in a position to make a correct and complete return.

The documentation requirements do not apply to a transaction, the terms of which were agreed before 1 July 2010, if:

- the terms of the agreement clearly envisage the transaction
- application of these terms delivers the price of the transaction
- an agreement to enter into a further agreement would not meet these conditions.

However, intercompany arrangements that were agreed prior to 1 July 2010, and that are re-negotiated and re-signed after 1 July 2010, are within the scope of the rules, i.e. they would no longer continue to be grandfathered.

In which language should documentation be filed?

Transfer pricing documentation must be filed either in English or Irish, with the Irish tax authorities. The documentation does not need to be prepared or kept in Ireland, but must be in a language of the state, i.e. English or Irish.

How long is it necessary to keep transfer pricing documentation?

The legislation does not provide a specific time period. However, guidance notes indicate that a company is required to have transfer pricing documentation available for inspection if requested by the Irish tax authorities. At a minimum, it should be retained for six years but it would be recommend to be retained for a longer period.

Are intercompany agreements recommended?

It is recommended that taxpayers document their intercompany transactions through intercompany agreements.

Do you have to make disclosures about transfer pricing in the tax return? What statements or certifications are required?

There are currently no requirements on return disclosures or related party disclosures.

Which transfer pricing methods are acceptable?

Section 835D(2) provides that the basic transfer pricing rules are to be interpreted in accordance with the OECD guidelines and the guidance contained within on the determination of the most appropriate method (which includes the transaction methods (comparable uncontrolled price, resale price, and cost plus) and the profit-based methods (profit split, transactional net margin method)).

Is there a priority among the acceptable methods?

There is no priority among the acceptable methods as long as the result is at arm's length. To establish an arm's length price, the OECD guidelines will be referenced. Transfer prices should be reviewed at regular intervals to determine that pricing remains at arm's length.

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

The statute of limitations is currently four years after the end of the tax year or the accounting period in which the return is made.

What rates and conditions apply for transfer pricing penalties? And is there penalty relief?

Part 35A of the TCA does not contain any specific penalty provisions with respect to a transfer pricing adjustment. In the absence of specific penalty provisions being included, the Irish tax authorities have indicated that the general corporate tax penalty provisions and the 'Code of Practice' will apply to assessments raised due to transfer pricing adjustments under the new transfer pricing rules. Under the general corporate tax penalty provisions, interest arises on underpaid tax at a daily rate of 0.0219%, which is circa 8% per annum.

Are there exemptions to Transfer Pricing rules in your country?

The law provides for an exemption from applying the transfer pricing rules where a company is a SME. Section 835E(2) defines a SME, a company with fewer than 250 employees; and either a turnover of €50 million or less, or a balance sheet total of €43 million or less, on a group basis. The balance sheet total means total assets and should not be taken as net of any liabilities.

Are advance pricing agreement (APA) options available?

Ireland does not have a formal APA procedure for Irish companies to agree prices with the Irish tax authorities for international related party transactions. However, the Irish tax authorities have been willing to negotiate and conclude bilateral APAs with treaty partners, and they are generally willing to consider entering such negotiations once a case has been successfully accepted into the APA programme of the other jurisdiction.

Tax audit areas

Transfer pricing is a medium risk area and is a key issue in any tax audit. However there are not considered to be particular related party transactions or industry sectors that could be regarded as facing a higher-than-normal risk of a transfer pricing enquiry from the Irish tax authorities. To the extent profits are being shifted from Ireland to a haven or lower tax countries, transfer pricing may be a risk area. It should be noted that under Irish legislation, revenue will only adjust profits upwards, i.e. it is a one way adjustment process.

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Italy

Regulatory snapshot

Overview
When did transfer pricing rules start?
1973 – arm's length principle
2003 – advance pricing agreements (APAs)
2010 – documentation
Level of TP
Under development
Return disclosure
Yes
Documentation
Not compulsory
Methods
Best method approach
Audit risk
High
Penalties
High
Advance Pricing Agreements (APAs)
Available

- The transfer pricing (TP) rules in force in Italy are the following:
 - article 110, paragraph 7 of the Italian tax code (Presidential decree no. 917/1986)
 - article 9, paragraph 3 of the Italian tax code (Presidential decree no. 917/1986)
 - article 1, paragraph 2 of legislative decree no. 471/1997
 - article 8 of law decree no. 269/2003
 - measure of the Italian revenue office director dated 29 September 2010. The measure makes reference both to EU code of conduct and to OECD guidelines 2010 on TP documentation for associated enterprises in the EU, approved by resolution 2006/c176/01 of 27 June 2006 from the EU council and government representatives of member states

- 58/E. The letter makes direct reference to the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, approved by the OECD Council on 22 July 2010.
- TP documentation is not mandatory for taxpayers. The measure adopted by the Italian tax authorities' director provides information about the type of documentation requested (i.e. master file or country file) and about its structure.
- TP documentation is drawn up to provide evidence of the arm's length nature of a taxpayer's TP policy. Furthermore, by drafting the TP documentation, taxpayers can take advantage of penalty protections in case of tax assessment.
- TP documentation must be filed electronically with the tax authorities, in Italian, within ten days after the tax authorities' request.
- TP documentation must be drafted on a yearly basis but for SMEs, which are entitled not to update the benchmark analysis for the two taxable periods following the one the documentation relates to, in case the comparability analysis do not incur substantial changes during the above taxable periods.



¹ SME is defined according to quantitative limits provided for the Italian Tax Authorities Director's measure adopted on 29 September 2010. Please note that holding and sub-holding companies may not qualify as SME's.

- TP documentation must disclose all the intercompany transactions, without any threshold.
- Italy applies the ‘best method approach’ for conducting TP analysis. Taxpayers are free to choose any OECD recognised TP method, as long as the method results in an arm’s length pricing of the transaction.
- TP is a high risk area, since it is a key issue in any tax audit. According to article 1 of legislative decree no. 471/1997, the applicable administrative penalties range from 100% to 200% of the higher tax or credit difference assessed. As said above, an appropriate TP documentation could lead to the non-applicability of penalties.
- Unilateral and bilateral APAs are available.

Does your country have transfer pricing rules vs. ruling, laws and guidelines?

The arm’s length principle is contained in article 110, of the Italian tax code, while TP documentation requirements about its structure and contents are contained in the measure of the Italian revenue office. In general, Italy follows the OECD guidelines for the other TP methods.

Effective date of commencement of transfer pricing regulations

The TP regulations are effective in Italy since 1973 (presidential decree no. 597/1973) with regard to the arm’s length principle. In 2003 the APA regulation was enacted, while it was not until 2010 that regulation concerning the TP documentation was introduced.

Taxpayers that prepared the TP documentation relating to taxable years prior to 2010 could communicate the possession of such documentation to the Italian tax authorities to take advantage of penalty protection in case of tax assessment.

Rulings, laws and guidelines

- article 110, paragraph 7 of the Italian tax code (presidential decree no. 917/1986)
- article 9, paragraph 3 of the Italian tax code (presidential decree no. 917/1986)
- article 1, paragraph 2-ter of legislative decree no. 471/1997
- article 8 of law decree no. 269/2003
- measure of the Italian revenue office director dated 29 September 2010. The measure makes reference both to EU code of conduct and to OECD guidelines 2010 on TP documentation for associated enterprises in the European Union (EU), approved by resolution 2006/c176/01 of 27 June 2006 from the EU council and government representatives of member states
- Circular letter dated 5 December 2010 n. 58/E. The letter makes direct reference to the OECD TP guidelines for multinational enterprises and tax administrations, approved by the OECD council on 22 July 2010.

Is transfer pricing documentation required? If so, what information should be included?

The TP documentation is not mandatory. If taxpayers decide to prepare the documentation, they are obliged to keep it in their records and show it to the tax authorities if requested by the tax authority. The TP documentation should describe how transfer prices were/are determined and include information that enable the tax authorities to evaluate the arm’s length nature of the transactions.

The measure of the Italian tax authorities director provides for two different kinds of documentation:

- a masterfile, for holding and sub-holding companies
- country-specific documentation, for holding and sub-holding companies and for those Italian subsidiaries that are part of a foreign multinational group.

Furthermore, the abovementioned measure provides the specific structure and content of said documentation. The documentation has to convey the following information: business description, organisational structure, industry analysis, functional (including risk) analysis, information on intercompany transactions, contractual terms and conditions of the transactions, benchmark analysis, TP method adopted and prices actually charged. In lieu of a sub-holding masterfile for the measure, the masterfile regarding the entire multinational group can be adopted, even though it is prepared by a taxpayer resident in another state member of the EU, subject to the condition that it is consistent with the code of conduct.

What are the deadlines for documentation preparation?

The possession of the TP documentation must be declared when the company files its annual tax return. In case of a tax authorities' request, the taxpayer has ten days to provide such documentation. If supplementary information is needed in addition to the information included in the documentation already submitted to the tax authorities, then this supplementary information must be provided within seven days from the request or in a longer time period depending on the complexity of the TP transactions under analysis.

In which language should documentation be filed?

TP documentation must be filed in Italian, with the sole exception of the Masterfile that, in some specific cases (namely, in case of a subholding), can be kept in English, the sole foreign language that is accepted by the authorities.

How long is it necessary to keep transfer pricing documentation?

According to article 43 of the presidential decree no. 600/1973, taxpayers must keep the TP documentation for all the years potentially subject to tax audit, usually five years.

Are intercompany agreements recommended?

It is recommended that taxpayers document their intercompany transactions through intercompany agreements.

Do you have to make disclosures about transfer pricing in the tax return? What statements or certifications are required?

Corporate income taxpayers are required to specify in their annual tax returns whether they have been involved in related party transactions or not, showing the total amount of intercompany revenues and costs, as well as whether they possess the documentation for that year. Furthermore, should the taxpayer be controlled by a non-resident company or control, in turn, a non-resident company, the information has to be provided.

Which transfer pricing methods are acceptable?

Taxpayers are free to choose any OECD recognised transfer pricing method as long as the method results in an arm's length pricing of the transaction. Taxpayers are not obliged to test all OECD recognised methods, though they must substantiate the method chosen.

Is there a priority among the acceptable methods?

The selection of a TP method always aims at finding the most appropriate method for each particular case. This does not mean that all the TP methods should be analysed in depth or tested in each case in arriving at the selection of the most appropriate method. It is important to highlight that where the comparable uncontrolled price method (CUP) and another transfer pricing method can be applied in an equally reliable manner, the CUP method is to be preferred. In the case the latter should not be applied, it should be explained the reason of the exclusion.

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

TP adjustments can be assessed five years from the tax year-end. This term is doubled during a tax assessment when the tax authorities contest 'criminally relevant conduct'.

What rates and conditions apply for transfer pricing penalties? And is there penalty relief?

Whenever the documentation formally complies with the proper structure required by the law but the content and information reported in the document are incomplete or not compliant with the provisions set forth by the measure or the information given in the document are not fully accurate or only partially true, the tax authorities are entitled to levy penalties higher than normal, taking into account the taxpayer's conduct.

According to article 1 of legislative decree no. 471/1997 administrative penalties are applicable from 100% to 200% of the higher tax or credit difference assessed. As said above, an appropriate TP documentation could lead to the non-applicability of penalties.

Are there exemptions to Transfer Pricing rules in your country?

N/A

Are advance pricing agreement (APA) options available?

Unilateral and bilateral APAs are available.

In particular, the unilateral APAs were enacted with a revenue office director's measure on 23 July 2003. With regard to the bilateral APAs, no specific provisions are contained in Italian domestic law. Reference is made to article 25 of OECD model tax treaty and commentary, the OECD guidelines, with particular reference to chapter four, annex four, and to the other documents elaborated by the OECD. Pre-filing meetings can be organised with the Italian tax authorities in order to discuss the case before a formal APA request is made.

Tax audit areas

Transfer pricing is a high risk area. Transfer pricing is a key issue in any tax audit. The Italian tax authorities especially focus on the following areas: loss making routine functions, Intellectual property (IP) transactions (transfer of IP, royalties), transactions with tax havens, transactions with permanent establishments, head office activities, principal structures (including centralised functions and purchase offices), business reorganisations, captives and financial transactions.

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Japan

Regulatory snapshot

Overview
When did transfer pricing rules start?
1986
Level of TP
High level
Return disclosure
Yes
Documentation
Highly recommended
Methods
Best method approach
Audit risk
Medium-high
Penalties
No specific penalty
Advance Pricing Agreements (APAs)
Available

Does your country have transfer pricing rules vs. ruling, laws and guidelines?

As a member state of the OECD, Japan's transfer pricing rules are consistent with the OECD's transfer pricing guidelines, and Japan's rules consider consistency with OECD guidelines during audits and assessments.

The Special Taxation Measures Law (STML), enacted in 1986, remains the central transfer pricing legislation in Japan. Under STML 66-4, a transaction between a domestic or foreign corporation and a foreign related person not priced in accordance with the arms-length principle will be deemed to occur at an arms-length price for corporate tax purposes.

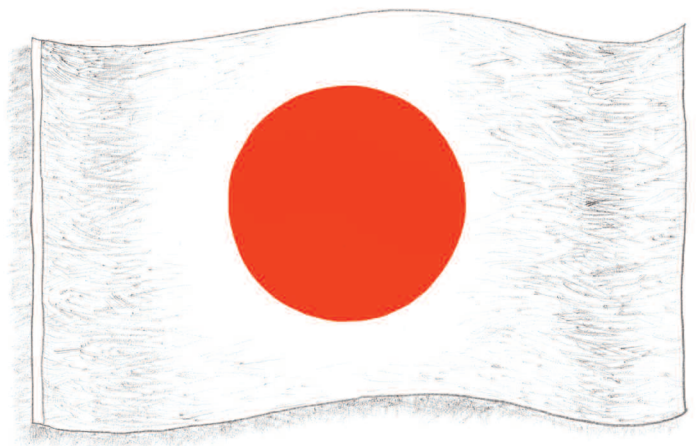
Effective date of commencement of transfer pricing regulations

Transfer pricing regulations have been effective in Japan since 1986.

Rulings, laws and guidelines

Besides legally binding articles of the STML, other key transfer pricing regulations include the STML enforcement order 39-12 and enforcement regulations 22-10, respectively laying out detailed rules on foreign related persons and transfer pricing methods, and the transfer pricing information corporations are required to report annually on schedule 17(4) of the corporate tax return.

The STML circular provides further guidance on control relationships, comparables, and transfer pricing methods. The National Tax Agency (NTA) commissioner's directive on the 'Establishment of instructions for the administration of transfer pricing matters' (the administrative guidelines) outlines the various transfer pricing administrative procedures.



Is transfer pricing documentation required? If so, what information should be included?

Taxpayers are required to disclose information about foreign affiliates and related party transactions on schedule 17-4 as part of the annual corporate tax filing.

In addition to this annual filing requirement, taxpayers are required to provide transfer pricing documents in response to a request from Japan's NTA in the case of a transfer pricing or corporate tax audit as follows:

Documents associated with the intercompany transactions:

- a list of assets and description of services
- functions performed and risks assumed by the taxpayer and related parties
- details on the intangible fixed assets and other intangible assets used by the taxpayer or related parties
- contracts or documents containing the content of the contracts
- pricing policy and details of price negotiations between the taxpayer and related parties
- profits and losses of the taxpayer and related parties with respect to the intercompany transactions (segmented financials)
- market analysis and related information
- business strategies of the taxpayer and related parties
- details on other transactions that are closely associated with the intercompany transactions, if any.

Documents including the below information used by the taxpayer to calculate arm's length price:

- the selected method for calculating the arm's length price specified in the regulations, reasons for the selection, and any other documents prepared by the taxpayer in calculating the arm's length price
- the comparable transactions selection process and details of comparable transactions adopted by the taxpayer
- if the profit split method was applied in calculating the arm's length price, documents containing details of the calculation of profits attributed
- in cases when the taxpayer aggregated multiple transactions into one to calculate arm's length price, documents containing details of each of the transactions aggregated and justification for the aggregation
- in cases when adjustments were made to comparable transactions, documents containing the adjustment method and reasons for adjustments.

What are the deadlines for documentation preparation?

In a 'timely manner', documents are required to be submitted to the tax authorities in order to evaluate arm's length price in transfer pricing audit.

In which language should documentation be filed?

Not specified. However, Japanese is preferable. In case that English one is submitted to tax authorities, they may request for a Japanese translation later.

How long is it necessary to keep transfer pricing documentation?

Not specified. Since the statute of limitation is six years then it should be kept for at least six years.

Are intercompany agreements recommended?

Taxpayers are required to submit intercompany agreements at the time of examination. Without submission of such agreements, the tax authority will be doubtful of the transactions reality.

Which transfer pricing methods are acceptable?

Arm's length price is calculated by the use of one of the following methods: comparable uncontrolled pricing (CUP), resale price, cost plus, profit split, transactional net margin and equivalent methods.

Is there a priority among the acceptable methods?

From the above methods, the most appropriate method should be selected, considering the facts and circumstances of each controlled transaction, including functions performed and risk assumed.

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

A transfer pricing assessment may go back six years, one year longer than what is allowed for corporate tax assessments.

What rates and conditions apply for transfer pricing penalties? And is there penalty relief?

Corporate tax penalties and interest are applicable to transfer pricing assessments. For tax underpayment, a flat 10% is payable on the first JPY 500,000 of the unpaid amount and 15% on any additional unpaid amount thereafter. This increases to 35% in cases of fraud. Penalties for underpayment are non-deductible for corporation tax purposes.

There are no additional transfer pricing-specific penalties, but taxpayers failing to submit documents requested by the NTA in a timely manner may be subject to presumptive taxation or be disadvantaged by the use of 'secret comparables'.

Are there exemptions to Transfer Pricing rules in your country?

Not specified.

Are advance pricing agreement (APA) options available?

Japan's APA system was instituted in April 1987. The APA guidelines are set out in section 5 of the administrative guidelines. Since 2008, the NTA has required that APA applications be submitted before the start of the fiscal year for which the APA is to apply. It is common for taxpayers to have several informal consultations with NTA examiners before submitting an APA application. According to NTA reports, bilateral APA applications have an average processing time of between two and three years. The filing of an APA application by the taxpayer does not stop a transfer pricing audit if already underway.

While the APA process can be long, obtaining a high degree of transfer pricing certainty covering three to five fiscal years, may provide an effective solution to transfer pricing risk for certain taxpayers.

Tax audit areas

Recently, audit targets in Japan are going down to fairly large or medium size companies, but not extremely large size companies. Around ten years ago, extremely large size companies like Honda, Takeda Pharmaceutical, Coca-Cola and so on were main targets of Japanese transfer pricing audit. This trend was changed as these extremely large size companies have already adopted counter-measures for transfer pricing risks like APA, global policy or global documentation and so on. It is felt that foreign companies which have more than ten million US dollar sales in Japan and Japanese companies with more than hundred million US dollar sales in foreign countries need to seriously consider the risks of a transfer pricing audit.

Transfer pricing audits can begin directly through questions asked by a transfer pricing examiner or can result from questions that arise during a general corporate tax audit. Before formally undertaking a transfer pricing audit, an examiner will typically undertake an informal inquiry to determine whether a taxpayer is an appropriate target, and if so, the examiner will follow up more formally with a meeting or information request. Taxpayers failing to supply requested information in a timely manner, risk treatment under Japan's 'presumptive taxation' rules. These rules can be disadvantageous to the taxpayer as they afford examiners broad discretion to make assessments, including the ability to apply secret comparables, and to make income adjustments or apply a transfer pricing method without consultation or input from the taxpayer.

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Jersey

Regulatory snapshot

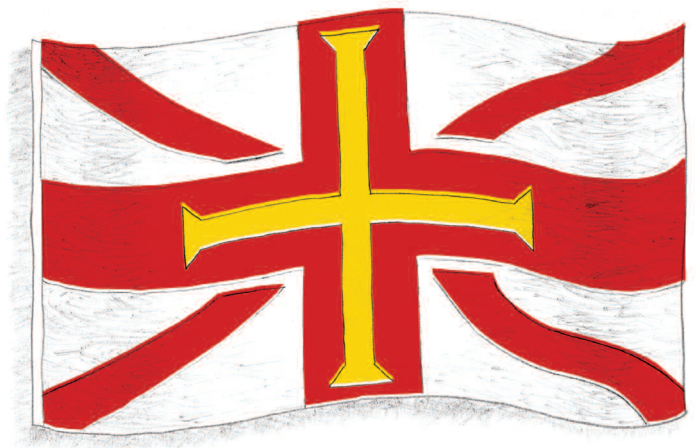
Overview
When did transfer pricing rules start?
No TP rules
Level of TP
Developing regime
Return disclosure
No
Documentation
Not compulsory
Methods
Best method approach
Audit risk
Low
Penalties
Low
Advance Pricing Agreements (APAs)
Available

- Jersey has not introduced formal transfer pricing rules into its domestic tax legislation however under certain double tax treaties, there is provision to apply generally accepted transfer pricing principles.
- There is no formal requirement to disclose intercompany transactions separately.
- Jersey uses domestic law in that all expenses must have been incurred wholly and exclusively for the purposes of trade to apply transfer pricing methodology.

- Although there is no formal requirement for transfer pricing documentation, in reality evidence will be required to justify that the expense has been incurred wholly and exclusively for the purposes of the trade. The option on how to accurately calculate this expense would fall with the claimant and any method that complies with the arms length principle would be acceptable.
- No additional charges are levied, should there be a dispute concerning whether a transaction is properly calculated within the tax computations of the entity on the understanding that the disclosure was made originally in good faith.

Does your country have transfer pricing rules vs. ruling, laws and guidelines?

Although there is no specific legislation it is expected that the arm's length principle and transfer pricing guidelines laid down by the OECD are followed.



Effective date of commencement of transfer pricing regulations

The arms length principle is enshrined in Jersey domestic law and has been in existence since the original law was enacted.

Rulings, laws and guidelines

Jersey uses an arm's length principle and applies the domestic law provisions surrounding expenses which require them to be incurred wholly and exclusively for the trade in order to apply a transfer pricing methodology. No formal guidelines have been published.

Is transfer pricing documentation required? If so, what information should be included?

In order to justify that an intercompany expense has been incurred wholly and exclusively for the trade, the claimant would need to provide (if asked) transfer pricing documentation. The transfer pricing documentation should describe how transfer prices have been determined and include information which enables the tax authorities to evaluate the arm's length nature of the transactions.

What are the deadlines for documentation preparation?

The burden of proof will rest with the taxpayer to demonstrate that the transfer prices have been calculated at arm's length. Although at the time of the transaction it is not mandatory to produce any formal documentation the taxpayer should be able to, within a reasonable time, provide such information as to justify the charge made.

In which language should documentation be filed?

English.

How long is it necessary to keep transfer pricing documentation?

Transfer pricing documentation should be kept for at least seven years.

Are intercompany agreements recommended?

It is recommended that taxpayers document their intercompany transactions through intercompany agreements.

Do you have to make disclosures about transfer pricing in the tax return? What statements or certifications are required?

No separate or formal disclosures are required.

Which transfer pricing methods are acceptable?

Taxpayers are free to choose any OECD recognised transfer pricing method as long as the method results in an arm's length pricing for the transaction. Taxpayers are not obliged to test all OECD recognised methods, though they must substantiate the method chosen.

Is there a priority among the acceptable methods?

There is no priority among the acceptable methods as long as the result is at arm's length.

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

Transfer pricing adjustments can be assessed six years from the tax year-end plus any extensions provided by the Jersey tax authorities for registering appeals. Should negligence or fraud be proved then there is no time limitation.

What rates and conditions apply for transfer pricing penalties? And is there penalty relief?

There are no specific transfer pricing penalties or rates.

Are there exemptions to Transfer Pricing rules in your country?

All tax returns are required to comply with the principle that all expenses claimed for tax purposes have been incurred wholly and exclusively for the trade.

Are advance pricing agreement (APA) options available?

Should certainty be required for a transaction it is possible to obtain an APA. Pre-filing meetings can be organised with the Jersey tax authorities in order to discuss the case before a formal APA request is made. taxpayers.

Tax audit areas

Connected party transactions are a high risk area in any tax audit. The Jersey tax authorities would focus on the following areas: loss making routine functions, transfer of intellectual property/royalties, transactions with permanent establishments, head office activities, principal structures (including centralised functions and purchase offices), business reorganisations, captives and financial transactions.

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Korea

Regulatory snapshot

Overview
When did transfer pricing rules start?
1996
Level of TP
Established regime
Return disclosure
Yes
Documentation
Not compulsory
Methods
Best method approach
Audit risk
High
Penalties
High
Advance Pricing Agreements (APAs)
Available

- The core transfer pricing (TP) rules were promulgated under the Law for the Coordination of International Tax Affairs (LCITA) of Korea which is based on the arm's length principle.
- Taxpayers with cross-border intercompany transactions must submit certain TP forms when filing corporate income tax return.
- Contemporaneous TP documentation is not compulsory.
- Best method approach is applicable for conducting TP analysis.
- Acceptable TP methods include comparable uncontrolled price (CUP), resale price, cost plus, transactional net margin, profit split and other methods which comply with the arm's length principle.
- TP audit can be targeted at any cross-border intercompany transaction.
- Advance Pricing Agreement (APA) is available.

Does your country have transfer pricing rules vs. ruling, laws and guidelines?

The TP rules in Korea are governed by the LCITA of Korea, which is based on the arm's length principle. Before the LCITA was enacted, the corporate income tax law of Korea governed transfer price charged for the transactions conducted between foreign related parties.

The LCITA, which is generally consistent with the OECD transfer pricing guidelines, states that in intercompany transactions between foreign related parties, if the price is either below or above an arm's length price, the tax authorities may determine or recalculate taxable income and tax of the resident based on the arm's length price.

Effective date of commencement of transfer pricing regulations

The LCITA was enacted in 1995 and took effect from 1996, in an effort to conform the Korean TP regulations to internationally recognised rules.



Rulings, laws and guidelines

The Korean tax authorities have issued relevant TP rulings since the LCITA took effect in 1996, however, these would not be legally binding.

Is transfer pricing documentation required? If so, what information should be included?

TP documentation is not required. However, taxpayers engaged in intercompany transactions with its foreign related parties are generally required to submit (with threshold), when filing their corporate income tax return:

- the transfer pricing method selected with a brief explanation on the reason for its selection
- the statement of inter-company transactions
- the summarised income statement of the foreign related parties.

What are the deadlines for documentation preparation?

TP documentation is not compulsory. However, the Korea tax authorities may, at any time of the year, request the taxpayer to submit relevant TP documents. Upon the request of the tax authorities, the taxpayer is required to submit the concerned information within 60 days of a request. If the taxpayer fails to comply with the tax authorities' request for submission of the requested documents, it will be subject to the penalty up to KRW 100 million (approximately US\$ 90,000) for each instance.

In which language should documentation be filed?

No specific requirement under the LCITA. However, in practice, the tax authorities generally request for the submission documents to be in Korean.

How long is it necessary to keep transfer pricing documentation?

TP documents should be kept for at least five years.

Are intercompany agreements recommended?

It would be recommendable that taxpayers document their intercompany transactions through intercompany agreements.

Do you have to make disclosures about transfer pricing in the tax return? What statements or certifications are required?

Taxpayers engaged in intercompany transactions with its foreign related party are generally required to submit (with a threshold), when filing the corporate income tax return:

- the transfer pricing method selected with a brief explanation on the reason for its selection
- the statement of inter-company transactions
- the summarised income statement of the foreign related parties.

Which transfer pricing methods are acceptable?

The LCITA states that an arm's length price should be calculated by the most reasonable transfer pricing method given the facts and circumstances. Also, the LCITA describes several different methods that the taxpayer can use for TP analysis. These methods can be classified into two general categories: primary methods and other reasonable methods. For the primary methods, the LCITA specifies three methods: the comparable uncontrolled price (CUP), resale price, cost plus. On the other hand, other reasonable methods are specified under the presidential enforcement decree to the LCITA, which includes the profit split method and the transactional net margin methods. The LCITA also permits the application of the other unspecified methods.

Is there a priority among the acceptable methods?

There is no priority among the acceptable methods as long as the result is at arm's length.

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

In general, TP adjustments can be assessed every five years.

What rates and conditions apply for transfer pricing penalties? And is there penalty relief?

For TP adjustments, an underreporting penalty of 10% will apply of the additional corporate tax and the underpayment penalty of 10.95% per annum. In this regard, the underreporting penalty could be waived if the taxpayer demonstrates an arm's length nature of its TP through the mutual agreement procedure (or the APA) or if contemporaneous TP documentation is maintained.

Are there exemptions to Transfer Pricing rules in your country?

Not applicable..

Are advance pricing agreement (APA) options available?

Unilateral and bilateral APAs are available. Pre-filing meetings can be organised with the Korean tax authorities to discuss the case before a formal APA request is made.

Tax audit areas

Transfer pricing is a high risk area and a key issue in any tax audit for foreign invested companies and branches of a foreign company.

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The Netherlands

Regulatory snapshot

Overview
When did transfer pricing rules start?
Yes
Return disclosure
No
Documentation
Compulsory
Methods
Best method approach
Audit risk
High
Penalties
High
Advance Pricing Agreements (APAs)
Available

- the core Transfer Pricing (TP) rules were promulgated under the decrees 2001/295m and 2004/680m
- taxpayers with intercompany transactions must prepare transfer pricing documentation
- thresholds: OECD definition (direct or indirect participation in management, control or capital)
- documentation is generally expected to be complete when the taxpayer enters into a transaction. If the transfer pricing documentation is not available upon the tax authority request, taxpayers are granted at least four weeks to prepare the documentation. This period may be extended up to three months, depending on the complexity of the intercompany transactions in which the taxpayer is engaged
- there is no priority amongst transfer pricing methods. Transfer pricing methods however have to be motivated and to result into an arm's length outcome

- acceptable TP methods include: Comparable Uncontrolled Price (CUP), resale price, cost plus, transactional net margin, profit split and other methods that comply with the arm's length principle
- TP audits are selected based on risk assessments by the Dutch revenue, changes and drops in income, business reorganisations, Intellectual Property (IP) transactions, loans, transactions with tax havens; captives, profit allocation to permanent establishments and centralised purchase companies
- in the absence of sufficient documentation, the penalty is that the burden of proof will shift from the Dutch tax authorities to the taxpayer to demonstrate that the transfer prices are at arm's length
- transfer pricing adjustments can be subject to penalties, levy interest, withholding tax and double taxation
- unilateral, bilateral, multilateral, and combined APA/ATRs are available to all taxpayers. An effective APA can cover four years.



Does your country have transfer pricing rules vs. ruling, laws and guidelines?

The arm's length principle and transfer pricing documentation requirements are enacted in article 8b of the Dutch corporate income tax act. In general, the Netherlands follows OECD guidelines¹. Various decrees² have been issued to explain the policy and to provide guidance. Transfer pricing regulations apply to all related party transactions without a threshold in which an entity subject to Dutch corporate income tax is involved.

Effective date of commencement of transfer pricing regulations

Transfer pricing regulations are effective since 2002 in the Netherlands.

Rulings, laws and guidelines

Besides legally binding articles of the Dutch tax law, several decrees provide insight into the position of the tax authorities without a legally binding effect. These decrees regard to general guidance on the application of the OECD Guidelines (IFZ2001/295M); intercompany services, valuation of intangibles, contract R&D (IFZ2004/680M); advance pricing agreements (IFZ2004/124M); financing companies (IFZ2004/126M and IFZ2004/127M); mutual agreement procedures (IFZ2008/248M); and attribution of profits to permanent establishments (IFZ2010/457M).

Is transfer pricing documentation required? If so, what information should be included?

Taxpayers are obliged to prepare transfer pricing documentation and to keep it in their accounting records. The transfer pricing documentation should describe how transfer prices have been determined and include information which enable the tax authorities to evaluate the arm's length nature of the transactions. Parliamentary history provides the following examples for the content of such documentation: business description, organizational structure, functional (including risk) analysis, industry analysis, contractual terms and conditions of the transactions, financial performance, information on the intercompany transactions, substantiation of transfer pricing method and prices actually charged.

1 OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, 1995 and subsequent updates

2 APA decree, IFZ2004/124M; ATR decree, IFZ2004/125M; Decree regarding financial service activities, IFZ2004/126M; Questions and answers on the decree regarding service entities and grandfather regime ruling policy, IFZ2004/127M; Decree on advance certainty and good faith versus treaty partners, DGB2004/1337M; Decree on APAs, advance tax rulings (ATRs), financial services entities, interposed holdings, contact point potential foreign investors, organization and competency rules, DGB2004/1338M; Implementation decree regarding the Coordination Group Transfer Pricing, DGB2004/1339M; Adjustments to the transfer pricing decree of 30 March 2001, application of the arm's length principle and the OECD guidelines, IFZ2004/680M; Accelerated Mutual Agreement Procedure decree, IFZ2008/248M decree on profit allocation to permanent establishments (PEs), IFZ2010/457M.

What are the deadlines for documentation preparation?

The documentation should be available at the time when the company enters into a transaction. Absent (sufficient) documentation the burden of proof will shift from the Dutch tax authorities to the taxpayer to demonstrate that the transfer prices are at arm's-length. However, if the documentation is not available upon request of the tax authorities, the taxpayer has four weeks to prepare such documentation. This period can be extended to three months depending on the complexity of the intercompany transactions.

In which language should documentation be filed?

Transfer pricing documentation can be filed either in Dutch or in English at the Dutch tax authorities.

How long is it necessary to keep transfer pricing documentation?

Transfer pricing documentation should be kept for at least 7 years. In case of international transactions, it is recommended to keep documentation for 12 years.

Are intercompany agreements recommended?

It is recommended that taxpayers document their intercompany transactions through intercompany agreements.

Do you have to make disclosures about transfer pricing in the tax return? What statements or certifications are required?

Dutch corporate income taxpayers are need to specify annually in their annual tax returns whether they have been involved in related party transactions. The specific transactions needs to be detailed in the corporate income tax return.

Which transfer pricing methods are acceptable?

Taxpayers are free to choose any OECD recognized transfer pricing method as long as the method results in an arm's length pricing for the transaction. Taxpayers are not obliged to test all OECD recognized methods, though they must substantiate the method chosen.

Is there a priority among the acceptable methods?

There is no priority among the acceptable methods as long as the result is at arm's length. The Dutch tax authorities prefer traditional transaction methods over transactional profit methods.

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

Transfer pricing adjustments can be assessed five years from the tax year-end plus any extensions provided by the Dutch tax authorities for filing tax returns. In certain (international) cases, this period can be extended to twelve years.

What rates and conditions apply for transfer pricing penalties? And is there penalty relief?

Penalties apply not specifically for non-compliance with documentation requirements, but for an intentional act to manipulate transfer prices under the circumstance of an incorrect income tax return. In case of a pure intentional act, the tax may be increased with a maximum of 100% of the tax due, plus interest. It is unlikely to have transfer pricing/tax penalties if there is proper transfer pricing documentation in place.

Are advance pricing agreement (APA) options available?

Unilateral, bilateral and multilateral APAs are available. Pre-filing meetings can be organised with the Dutch tax authorities in order to discuss the case before a formal APA request is made.

Tax audit areas

Transfer pricing is a high risk area. Transfer pricing is a key issue in any tax audit. The Dutch tax authorities especially focus on the following areas: loss making routine functions, IP transactions (transfer of IP, royalties), transactions with tax havens, transactions with permanent establishments, head office activities, principal structures (including centralised functions and purchase offices), business reorganisations, captives and financial transactions.

Contact us

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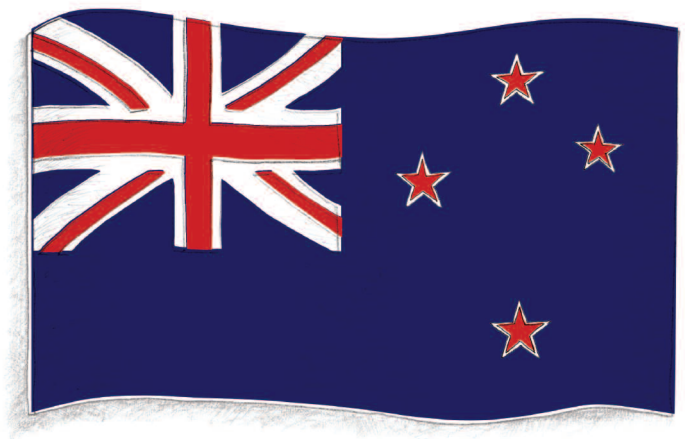
New Zealand

Regulatory snapshot

Overview
When did transfer pricing rules start?
1996/7
Level of TP
Established regime
Return disclosure
No
Documentation
Not compulsory
Methods
Best method approach
Audit risk
Normal
Penalties
High
Advance Pricing Agreements (APAs)
Available

- A comprehensive transfer pricing (TP) regime was introduced by legislation in 1995, with an effective date from the 1996/97 income year.
- The inland revenue subsequently released transfer pricing guidelines in October 2000, which cover the application of New Zealand’s TP rules and a general overview of the framework.
- Limited high level intercompany and cross border transaction disclosures are required by an entity as part of the annual income tax return completion.
- There is no statutory requirement for taxpayers to prepare transfer pricing documentation, however the burden of proof to demonstrate that consideration is consistent with the arm’s length principle is on the taxpayer. Penalties will apply if no documentation is prepared and a tax shortfall is determined.

- New Zealand’s TP rules are based on the arm’s length principle, and follow the OECD guideline principles
- The arm’s length price is calculated using the method that produces the most reliable method (or a combination of the methods) which include: the comparable uncontrolled price (CUP), resale price, cost plus, profit split and comparable profits.
- High level risk reviews may be undertaken by the issuing of TP questionnaires to taxpayers, requiring disclosure of things like financial performance, groups financial performance, cross-border association party transactions etc.
- Specified penalties may be applied in addition to adjustments arising from transfer pricing issues and can range from 20% up to 150% of the tax shortfall. Determination of the penalties focuses on culpability and can also reflect the level of co-operation by the taxpayer. Interest will also be charged on any tax shortfall.
- APA’s are available to taxpayers and can either be bilateral or unilateral APA’s. An effective APA can cover three to five years and may be renewed on an on-going basis.



Does your country have transfer pricing rules vs. ruling, laws and guidelines?

New Zealand transfer pricing rules are contained within section GC of the current New Zealand income tax act. In October 2000 the New Zealand inland revenue also released transfer pricing guidelines. These guidelines are not enforced by law in New Zealand and are intended to supplement the OECD guidelines by providing additional information on how to comply with New Zealand transfer pricing rules.

Effective date of commencement of transfer pricing regulations

Extensive transfer pricing regulations came into effect from the 1996/97 income year in New Zealand.

Rulings, laws and guidelines

In addition to New Zealand transfer pricing legislation and guidelines, taxpayers also have the ability to apply for bilateral or unilateral advance pricing agreements. Taxpayers are also directed to seek guidance if required from the guidelines issued by the Australian Taxation Office (ATO) and the United States s482 regulations. If required the New Zealand courts and the inland revenue can also take guidance from New Zealand and overseas case law involving transfer pricing issues.

Is transfer pricing documentation required? If so, what information should be included?

There is no statutory requirement for taxpayers to prepare transfer pricing documentation, however the burden of proof is on the taxpayer to demonstrate that consideration is consistent with the arm's length principle. Therefore the inland revenue expect that taxpayers prepare some form of documentation in order to record how their transfer prices have been determined and how they are consistent with the above principle, with the level of detail dependent upon the transfer pricing tax at risk. It is suggested that at the very least the following minimum documentation should exist:

- an identification of the cross-border transactions for which the taxpayer has a transfer pricing exposure
- a broad functional analysis of the taxpayer's operations to identify the critical functions being performed
- an estimate of the business risk of not undertaking and documenting a more detailed transfer pricing analysis
- an estimate of the costs of complying with the transfer pricing rules.

What are the deadlines for documentation preparation?

Not applicable.

In which language should documentation be filed?

English, taxpayers wishing to maintain records in a foreign language must apply to the commissioner of the inland revenue for discretion to do so.

How long is it necessary to keep transfer pricing documentation?

Business records are required to be kept for a period of seven years after the end of the income year to which they relate.

Are intercompany agreements recommended?

It is recommended that taxpayers document their intercompany transactions through intercompany agreements.

Do you have to make disclosures about transfer pricing in the tax return? What statements or certifications are required?

New Zealand corporate income taxpayers are required to specify annually in their annual tax returns whether they have been involved in related party transactions, however details of these transactions are not required to be disclosed.

Which transfer pricing methods are acceptable?

New Zealand legislation provides five transfer pricing methods available in New Zealand to determine arm's length consideration being, comparable uncontrolled price, resale price, cost plus, profit split, and the comparable profits method.

Is there a priority among the acceptable methods?

There is no priority among the acceptable methods as long as taxpayers choose the method that produces the most reliable measure (or a combination of the methods).

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

Transfer pricing adjustments can be assessed up to four years following the end of tax year in which the tax return was filed. If there is fraud or an omission of the mention of taxable income of a particular nature or a particular source, then there is no time limit.

What rates and conditions apply for transfer pricing penalties? And is there penalty relief?

Specified penalties may be applied to adjustments arising from transfer pricing issues. These penalties range from 20% up to 150% of the tax shortfall. Determination of the penalties focuses on culpability and can also reflect the level of co-operation by the taxpayer. Interest will also be charged on any tax shortfall and tax payments not made on time will also incur late payment penalties.

Are there exemptions to Transfer Pricing rules in your country?

Not applicable.

Are advance pricing agreement (APA) options available?

Unilateral and bilateral APAs are available.

Tax audit areas

The New Zealand inland revenue considers transfer pricing to be one of the most important issues arising in international tax and therefore actively focus on this area. Audits or investigations may be performed specifically for transfer pricing issues or alternatively combined with normal tax audits. The inland revenue use transfer pricing questionnaires as a high level risk review and are generally used as the first (information gathering) phase of a formal transfer pricing review. These questionnaires allow the inland revenue to evaluate the significance of cross-border associated party transactions/dealings, assess key performance indicators and identify any unusual or one-off items.

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Portugal

Regulatory snapshot

Overview
When did transfer pricing rules start?
1998
Level of TP
Long standing and established regime
Return disclosure
No
Documentation
Compulsory with threshold
Methods
Best method approach
Audit risk
Medium
Penalties
Medium
Advance Pricing Agreements (APAs)
Available

- Transfer pricing in Portugal was introduced in 1998 and at that time was one of the Europe's most aggressive legislations, covering a wide range definition of related parties and being applicable not only to international transactions but also to domestic transactions.
- Originally, transfer pricing dealt only with imposing arm's length prices for goods and services provided under international agreement between related parties. Today, it's a much wider concept and many of the European transfer pricing laws are now introducing a larger scope in order to also cover domestic transactions.
- Transfer pricing laws generally prescribe that related party transactions be undertaken to a commercially justifiable arm's length basis in order to not to shift taxable profit from one jurisdiction/company to another. The rules potentially apply to the movement of all goods and services, including the use in tangible assets.
- Generally, Portuguese law follows the OECD models and guidelines.
- Advanced Pricing Agreements (APAs) are a mechanism foreseen in the Portuguese transfer pricing legislation.
- Tax authorities have formed a specific audit department to deal with transfer pricing issues, but these questions can also be raised by any tax inspector. In view of that, it is essential that Portuguese businesses are prepared for any challenges by tax authorities.
- Under Portuguese transfer pricing regulation, any Portuguese company with a turnover higher than three million euros must prepare a transfer pricing file, including all relevant information in respect of the transfer price method chosen, supported by any documents, reports, studies, contracts, benchmarking, etc.
- But even for companies that are not obliged to have a proper file (because their turnover is less than three million euros) transfer pricing policy is still required and companies must justify their prices. If companies are unable to do so when challenged by the tax authorities they may have their tax situation corrected.



- Portuguese business must also gather enough documentation, evidencing arm's length, whenever there are cost sharing agreements and rendering of intra-group services.
- Major transfer prices methods (such as comparable uncontrolled price (CUP), resale minus, cost plus or profit split) are acceptable under Portuguese regulation, but it is also possible to use a typical method for determining a price as long as it is possible to demonstrate that it is at 'arm's length'.

Does your country have transfer pricing rules vs. ruling, laws and guidelines?

The arm's length principle and transfer pricing documentation requirements are enacted in article 63 of the Portuguese corporate income tax law and in a specific decree (Portaria 1446-C/2001). In general, Portugal follows the OECD Guidelines¹. Transfer pricing regulations apply to all companies. However, the obligation to have a proper transfer pricing file is only applicable to companies with a turnover higher than €3 million that engage in related party transactions.

Effective date of commencement of transfer pricing regulations

Transfer pricing regulations have been effective since 1998 in Portugal.

Rulings, laws and guidelines

Besides legally binding articles of the Portuguese tax law, a specific decree (Portaria 1446-C/2001) provides insight into the position of the tax authorities. This decree regards to general guidance on the application of the OECD guidelines; transfer pricing methods, cost sharing agreements, intercompany services agreements, supporting documentation and correlative adjustments.

Is transfer pricing documentation required? If so, what information should be included?

Taxpayers are obliged to prepare transfer pricing documentation and to keep it in their accounting records. The transfer pricing documentation should describe how transfer prices have been determined and include information which enable the tax authorities to evaluate the arm's length nature of the transactions. The above mentioned decree provides the following examples for the content of such documentation: business description, organisational structure, functional (including risk) analysis, industry analysis, contractual terms and conditions of the transactions, financial performance, information on the intercompany transactions, substantiation of transfer pricing method and prices actually charged.

¹ OECD transfer pricing guidelines for multinational enterprises and tax administrations, 1995 and subsequent updates.

What are the deadlines for documentation preparation?

The documentation should be available at the time when the company enters into a transaction. However, if the documentation is not available upon request of the tax authorities, the taxpayer has a certain period to disclose such documentation. This period can usually be negotiated with the tax authorities depending on the complexity of the intercompany transactions.

In which language should documentation be filed?

Transfer pricing documentation should be filed preferentially in Portuguese. Where the documentation is in another language a translation may be required.

How long is it necessary to keep transfer pricing documentation?

Transfer pricing documentation should be kept for at least ten years.

Are intercompany agreements recommended?

It is recommended that taxpayers document their intercompany transactions through intercompany agreements.

Do you have to make disclosures about transfer pricing in the tax return? What statements or certifications are required?

Portuguese corporate income taxpayers need to specify annually in their annual tax returns whether they have been involved in related party transactions. The specific transaction amounts needs to be detailed in the corporate income tax return.

Which transfer pricing methods are acceptable?

Taxpayers are free to choose any OECD recognised transfer pricing method as long as the method results in an arm's length pricing for the transaction. Taxpayers are not obliged to test all OECD recognised methods, though they must substantiate the method chosen.

Is there a priority among the acceptable methods?

There is no priority among the acceptable methods as long as the result is at arm's length.

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

Transfer pricing adjustments can be assessed four years from the tax year which is also the general tax statute of limitations in Portugal.

What rates and conditions apply for transfer pricing penalties? And is there penalty relief?

The only penalty specifically defined for transfer pricing is that related to the non-compliance with the obligation to possess a transfer pricing file. This fine varies between €1,000 and €10,000.

Penalties may also be applicable for late or no payment of tax due (in this case as a consequence of manipulation of transfer prices). These penalties vary between 30% and 100% of the tax due plus compensatory interest at 4%.

Are there exemptions to Transfer Pricing rules in your country?

As mentioned before, Transfer pricing rules apply to all companies that engage in related party transactions. However the obligation to have a specific transfer pricing file only applies to companies with a turnover higher than €3 million that engage in such related party transactions.

Are advance pricing agreement (APA) options available?

Starting 1 January 2008, the Portuguese transfer pricing legislation allows for the establishment of APA's between the tax authorities and the taxpayers. The process starts with a written request by the taxpayer where the operations, participants, methods used, duration and any other relevant information are explained. Once analysed and agreed upon by the tax authorities the APA will enter into force for a maximum period of three years.

Tax audit areas

There is no specific policy defined in this regard. However, as there is a special audit group within the tax authorities tax audit department, dedicated only to transfer pricing issues, it is likely that they decide on the companies to inspect based in economic factors, namely the amount of taxable income that is influenced by related party transactions.

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Russia

Regulatory snapshot

Overview
When did transfer pricing rules start?
2012
Level of TP
Developing regime
Return disclosure
No
Documentation
Compulsory with threshold
Methods
Best method approach
Audit risk
Low
Penalties
Low
Advance Pricing Agreements (APAs)
Available

- The core transfer pricing (TP) rules were promulgated in July 2011 (law no. 227-FZ) with an effective date from 1 January 2012.
- In general TP rules in Russia are similar to OECD rules, but have certain specifics.
- Preparation of comprehensive TP documentation files on controlled transactions by companies is required.
- TP documentation is compulsory on request of tax authorities with relevant threshold.
- Acceptable TP methods include comparable uncontrolled price (CUP), resale price, cost plus, transactional net margin, profit split.
- Russia applies a ‘quasi-priority’ approach for the choice of TP methods.
- A TP audit can be targeted at any controlled transaction if it results in a reduction of Russia’s tax due.
- Additional tax assessment and penalties are imposed due to not complying with the TP rules.
- APA is available only to so-called ‘large taxpayers’.

Does your country have transfer pricing rules vs. ruling, laws and guidelines?

The new transfer pricing rules in Russia were enacted by the federal law no. 227-FZ of 18 July 2011 (the law) and came into force starting from 1 January 2012. According to the law the companies which fall under the scope of TP rules are obliged to disclose controlled transactions as well as to provide the Russian tax authorities on their request with TP documentation proving prices applied. In general, Russian TP rules are similar to OECD principles but OECD guidelines are not officially enacted.

The law provides for the following list of controlled transactions:

- related parties cross-border transactions (no volume threshold is defined)
- foreign trade transactions with commodities with total income exceeding RUR 60 million (approximately USD 2 million) per calendar year
- transactions with companies incorporated or residing in offshore jurisdictions (including non-related parties). A threshold of RUR 60 million (approximately USD 2 million) per calendar year has been established for such transactions



- transactions between related parties carried out via unrelated intermediary companies, provided such intermediary companies do not perform any additional functions, assume any risks and employ any assets
- Domestic transactions between related parties will be subject to control in the following cases:
 - if the amount of such transactions exceeds certain limit (RUR 3 billion for 2012 (approximately USD 100 million), RUR 2 billion for 2013, RUR 1 billion starting 2014)
 - if a party of a transaction is a taxpayer of mineral extraction tax, unified agricultural tax, unified imputed income tax, resident of special economic zone or eligible for 0% profits tax. The law provides for certain minimal thresholds and effective dates for defining such transactions as controlled.

Effective date of commencement of transfer pricing regulations

The new transfer pricing rules in Russia were enacted by the Federal Law No. 227-FZ of 18 July 2011 and came into force starting from 1 January 2012.

Rulings, laws and guidelines

TP rules are included in the tax code. Rulings or guidelines are expected, although not yet available. Russian TP rules are similar to OECD principles but OECD guidelines are not officially enacted.

Is transfer pricing documentation required? If so, what information should be included?

Transfer pricing documentation can be requested for all controlled transactions. Exemptions are provided for 2012 when for the controlled transactions with turnover less than RUB 100 million (approximately USD 3 million) documentation is not required. The same exemption is applicable for 2013 with the threshold of RUB 80 million in 2013 (approximately USD 3 million).

The statutory form of documentation is not defined but its main features are generally outlined in the tax code.

The documentation shall include the following information:

- description of the controlled transaction, its parties and conditions, including the description of the pricing method (if any) and other information on the transaction
- information on transaction parties' functions (if functional analysis is carried out by the taxpayer), assets employed (related to the controlled transaction) and commercial risks borne.
- if a taxpayer uses methods, established by the tax code, the following information should also be provided:
 - the ground for choice and applicability of the method used
 - the sources of data
 - calculation of the market prices interval (margin interval) used for the benchmarking
 - the grounds for choice and applicability of comparables
 - information about other facts, which had influence on the controlled transaction price (margin), etc.

What are the deadlines for documentation preparation?

Taxpayers must report to the tax authorities on the controlled transactions no later than 20 May of the calendar year following a year when the specific controlled transaction took place. TP documentation shall be provided to the tax authorities within 30 days from the date of request issued by tax authorities but not earlier than 1 June of the following year.

In which language should documentation be filed?

TP documentation has to be filed to the Russian tax authorities in Russian.

How long is it necessary to keep transfer pricing documentation?

There are no special provisions in the Russian TP rules in respect to the length of time to keep transfer pricing documentation. However, there are general requirements of the tax code saying that accounting and tax data and other documents necessary for calculation and payment of taxes shall be kept within four calendar years.

Are intercompany agreements recommended?

Yes, intercompany invoicing has to be based on the intercompany agreements.

Do you have to make disclosures about transfer pricing in the tax return? What statements or certifications are required?

There are no TP disclosures in profit tax returns. However, companies must separately report to the tax authorities on the controlled transactions no later than 20 May of the calendar year following a year when the controlled transaction took place.

Which transfer pricing methods are acceptable?

The Russian TP rules set five methods for determining the transaction price: comparable uncontrolled price (CUP), resale price, cost plus, transactional net margin and profit split.

Is there a priority among the acceptable methods?

The CUP method is named as a preferred method. If it is not applicable a company may use the most appropriate method of the others. However, there are certain provisions in the law which stipulate other methods as preferable ones in certain cases. If the above mentioned methods do not allow to define the price of an individual transaction it can be determined through an independent valuation.

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

Transfer prices are audited by tax authorities in the course of a separate TP audit with certain transitional provisions prescribed by the tax code. In particular, an audit for the year 2012 may only be initiated before 31 December 2013, while a 2013 audit may only be initiated before 31 December 2015. After the above provisions expire, a TP audit may cover three years preceding the year when the audit is initiated.

What rates and conditions apply for transfer pricing penalties? And is there penalty relief?

The Russian TP rules exempt any transactions that occur during the years 2012 and 2013 from transfer pricing penalties. A penalty of 20% will apply to transactions occurring during the period 2014–2016. Starting from 2017, a 40% penalty will be imposed in cases of a transfer pricing adjustment. Submission of TP documentation protects a taxpayer from penalties even if an adjustment is made. For a late payment, interest on the amount of the assessment is approximately 10% per annum.

Are there exemptions to Transfer Pricing rules in your country?

There are some exemptions prescribed by the Russian TP rules, in particular:

- cross-border transactions with turnover less than RUB 100 million (approximately USD 3 million) for 2012 are not subject to TP rules. The same exemption is applicable for 2013 with the threshold of RUB 80 million in 2013 (approximately USD 3 million). Starting 2012 no minimal threshold applies for the cross-border transactions
- domestic transactions between related parties are not subject to control if the amount of such transactions does not exceed certain limits, in particular RUR 3 billion for 2012 (approximately USD 100 million), RUR 2 billion for 2013, RUR 1 billion starting 2014).

Are advance pricing agreement (APA) options available?

Taxpayers may be entitled to conclude an APA. This is only possible for Russian companies registered as the 'largest taxpayers'. To conclude an APA a taxpayer should prepare an application with a description of methods, sources of information, etc. and pay a state duty in the amount of RUR 1.5 million (approximately USD 50 000). An APA protects the company from potential tax assessments, penalties and late payment interest.

Tax audit areas

Transfer prices are audited by tax authorities in the course of a separate TP audit with certain transitional provisions prescribed by the tax code. In particular, an audit for the year 2012 may only be initiated before 31 December 2013, while a 2013 audit may only be initiated before 31 December 2015. After the above provisions expire, a TP audit may cover three years preceding the year when the audit is initiated. The Russian TP rules provide for the presumption that market prices applied by the company are in line with the market level. Thus, Russian tax authorities still have to prove that prices of controlled transactions do not correspond to the market level.

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Slovak Republic

Regulatory snapshot

Overview
When did transfer pricing rules start?
2009
Level of TP
Developing regime
Return disclosure
No
Documentation
Compulsory
Methods
OECD
Audit risk
High
Penalties
High
Advance Pricing Agreements (APAs)
Available

- The core transfer pricing (TP) rules were laid down in ‘act no. 595/2003 coll.’ on income tax (income tax act) with an effective date of 1 January 2009. Required content of TP documentation is stipulated in guidance no. MF/8288/2009-72 of the Slovak ministry of finance. TP rules generally conform with the OECD guidelines.
- There is no obligation to enclose the TP documentation to the tax return. However, the transactions between the Slovak entity and foreign related parties must be disclosed in the financial statement notes.
- TP documentation is compulsory for transactions between the Slovak entity and foreign related parties. Tax payers should submit TP documentation within 60 days of the Slovak tax authorities request.

- According to the income tax act, accepted TP methods include: fair market price, subsequent sale, increase costs (methods based on a comparison of prices), profit split and net margin (methods based on a comparison of profits). Preferred methods are methods based on a comparison of prices.
- A penalty of €60 - €3,000 may be imposed if the TP documentation is not submitted to the tax authorities within 60 days of the request and the penalty may be imposed repeatedly. Other penalties may be imposed for unpaid or understated tax liability.
- The taxpayer may request approval of the Slovak tax authorities for the selected TP method.

Does your country have transfer pricing rules vs. ruling, laws and guidelines?

The arm’s length principle and the obligation to keep TP documentation is enacted in article 18 of the Slovak income tax act. Requirements relating to the content and the rules for preparing the TP documentation are stipulated in guidance of the Slovak ministry of finance no. MF/8288/2009-72. Currently a very limited number of rulings exist.



Effective date of commencement of transfer pricing regulations

Transfer pricing regulations are effective since 2009 in the Slovak Republic.

Rulings, laws and guidelines

Besides legally binding articles of the Slovak tax law, the ministry of finance published in the financial newsletter the OECD transfer pricing guidelines. These are not legally binding; however, the tax authorities should follow them practically.

Is transfer pricing documentation required? If so, what information should be included?

Entities which are obliged to prepare financial statements under IFRS must maintain full scope TP documentation, which consist of a master file and country file. The master file is supposed to include information relating to the whole group and the country file provides information about the Slovak entity. The country file should include a transfer pricing study.

Taxpayers which are not obliged to prepare financial statements under IFRS are allowed to keep simplified TP documentation which proves compliance with the arm's length principle for significant controlled transaction with foreign entities.

Entities which do not perform any controlled transactions with foreign related parties are currently not obliged to prepare TP documentation.

What are the deadlines for documentation preparation?

TP documentation must be submitted to the tax authorities within 60 days after being requested.

In which language should documentation be filed?

TP documentation should be filed in Slovak language.

How long is it necessary to keep transfer pricing documentation?

Not specifically stated in the Slovak income tax act.

Are intercompany agreements recommended?

It is recommended that taxpayers document their intercompany transactions through intercompany agreements.

Do you have to make disclosures about transfer pricing in the tax return? What statements or certifications are required?

There is no obligation to enclose the TP documentation to the annual tax return. However, notes to the financial statements must disclose transactions between the Slovak entity and foreign related parties in euros without any further details.

Which transfer pricing methods are acceptable?

Taxpayers may use OECD TP methods – fair market price, subsequent sale, increase costs (methods based on a comparison of prices); profit split, net margin (methods based on a comparison of profits).

Is there a priority among the acceptable methods?

Taxpayers may use preferably methods based on the comparison of prices. If such methods are practically not possible they may use methods based on the comparison of profit.

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

Generally five years from the year for which the tax return was filed, in cases where double taxation agreements have been applied then ten years.

What rates and conditions apply for transfer pricing penalties? And is there penalty relief?

A penalty of €60 - €3,000 can be imposed by the tax authorities for not submitting the TP documentation within 60 days of the tax authority's request. A penalty may be imposed repeatedly if the TP documentation is not filed within the agreed period. Other penalties may be imposed for unpaid or understated tax liability. The penalty in this case is three times the current basic interest rate of the European Central Bank but not less than 10%.

Are there exemptions to Transfer Pricing rules in your country?

N/A

Are advance pricing agreement (APA) options available?

Unilateral APAs. According to the Slovak income tax act the taxpayer can request approval of the Slovak tax authorities for selected TP methods.

Tax audit areas

Tax authorities are currently developing a special task force for transfer price issues. The likelihood is that taxpayers with transactions to foreign related parties will increasingly be subject to a tax audit.

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Spain

Regulatory snapshot

Overview
When did transfer pricing rules start?
2006
Level of TP
Established regime
Return disclosure
Yes
Documentation
Compulsory with threshold
Methods
Hierarchy
Audit risk
High
Penalties
High
Advance Pricing Agreements (APAs)
Available

The main characteristics of the Spanish transfer pricing rules in force since December 2006 are:

- Spain is an OECD member so the rules follow its guidelines regarding applicable methods
- the use of external comparables is possible, generally provided by international database suppliers
- if a related party transaction price or margin falls into the inter-quartile range, there is no adjustment on the price and the transaction is deemed to be on an arm's length basis
- potential adjustments are calculated by the difference between the real price and some point (not specified) in the range
- related party transactions are understood to include, among others, those operations between:
 - an entity and its shareholders or partners (5% of the shares)
 - an entity and its administrators or directors
 - two entities belonging to the same group
 - two entities where one holds an indirect interest in the other of at least 25% of the share capital or the net equity.

- transfer pricing analysis must be done for local transactions and not only for foreign transactions
- taxpayers should prepare transfer pricing documentation
- the AEAT (Spanish tax authorities) could request the transfer pricing report. Taxpayers need to address 14 points in their transfer pricing reports, and for every point that the taxpayer omits, a penalty could be applied
- specific legislation on secondary adjustments. In particular, secondary adjustments are seen as automatic once a primary adjustment is proposed in all cases
- prior to 2007, the burden of proof was on the side of the Spanish tax authorities
- in the corporate income tax return, the company must disclose related party transactions
- the threshold for not preparing the transfer pricing documentation amounts is €250,000 for transaction performed with the same related party
- every taxpayer must have its own documentation.



Does your country have transfer pricing rules vs. ruling, laws and guidelines?

Article 16 of the Spanish Corporate Income Tax Law (CITL) and modified by law 36/2006, shifted the burden of proof to the taxpayer and introduced the obligation of transfer pricing documentation applicable for fiscal years commencing on or after 1 December 2006. Although article 16 established that related-party transactions should be priced under the arm's length principle, the formal documentation requirements were only published on 18 November 2008; in the royal decree 1793/2008. This specifies the compulsory elements that Spanish transfer pricing documentation should contain from 19 February 2009 onwards.

Previously, the regulation of transfer pricing among related companies was characterised by the following premises:

- only the tax administration could realise adjustments to market prices, therefore, the burden of proof fell on the administration. Consequently, experience demonstrates that in cases of administrative regularisation for transfer pricing, sanctions are not usually imposed, but the administration only demands the tax debt, if it has not been paid, plus interests for delayed payment.
- the contributor did not have the obligation to prepare documentation, except in the case of management support services contracts and contributions for research and development activities.

The law of reform for the prevention of tax fraud raises an important reform regarding the regulation, relative to the related operations in general and especially transfer pricing, its principal innovations are:

- the valuation at market prices of the operations among related entities, for both domestic as well as cross-border transactions, becomes an obligation of the contributor; therefore, the possibilities of imposing sanctions increase
- the existence of the contributor's obligation to justify the valuation, with the necessary documentation.

Effective date of commencement of transfer pricing regulations

Transfer pricing regulations have been effective since 2006 in Spain.

Rulings, laws and guidelines

Tax administration; corporate income tax act (royal legislative decree 4/2004) and non-residents tax act (royal legislative decree 5/2004). Article 16 of CITA (royal legislative decree 4/2004) governing transfer pricing rules has been changed significantly by the tax fraud prevention act published on 30 November 2006 (law 36/2006). Royal decree 1793/2008 develops the corporate income tax regulation.

Additionally, new regulations were approved in 2010: Royal decree 6/2010 on the simplification of the documentation requirements for small and medium-sized enterprises, and royal decree 897/2010, which develops the simplification of the taxpayer documentation in general.

Royal decree 1793/2008, effective from 19 February 2009, provides detailed documentation rules, penalty procedures, tax audit transfer pricing process, secondary adjustments, and APA-specific procedure.

Rulings: formal consultations to tax authorities. Royal decree 1794/2008, governing the mutual agreement procedure and EU arbitration convention (EU/90/436) from a Spanish domestic perspective.

Is transfer pricing documentation required? If so, what information should be included?

Taxpayers carrying out related party transactions have to prepare the documentation that supports the application of the arm's length principle.

Article 16.2 of the CITL establishes a general rule, stating that related persons or entities must keep available documentation as from the end of the voluntary return or assessment period in question for the tax authorities. The royal decree implements this statutory requirement by drawing on the principles contained in the EU code of conduct on transfer pricing documentation. There are two sets of documents that have to be prepared:

- documentation concerning the group to which the taxpayer belongs – This documentation should include among other matters, the following:
 - a general description of the organisational structure of the group
 - the type amounts and flow of the transactions carried out
 - a general description of the functions, benefits and risks for each of the parties that intervene in the transaction.

- documentation relating to the taxpayer – This documentation will include, among other questions, the following:
 - the identity of the taxpayer and the related persons or entities involved in the transaction
 - a comparison analysis leading to the correct application of the transfer pricing methodology
 - an explanation concerning the selection of the chosen transfer pricing methodology
 - the details of the range of valuations arising from that methodology.

What are the deadlines for documentation preparation?

The described documentation covers the related-party transactions carried out by the taxpayer from 19 February 2009 onwards; and needs to be available by the end of the voluntary period for filing the corporation tax return; notwithstanding this, the tax authorities may ask for the correspondent fair market value analysis for those transactions carried out since 1 December 2006.

For following years documentation should be updated/prepared annually by the end of the period for filing voluntary declarations. The transfer pricing study or documentation is contemporaneous with the filing of the corresponding corporate income tax return, which is generally due in six months and 25 days from the fiscal year-end. (i.e. for FY ending 31 December 2010, the due date is 25 July 2011).

There is no deadline to submit documentation, but the tax authorities may request it even the day after filing the annual corporate tax return. Upon a tax audit, the tax inspector will determine the submission deadline on a case-by-case basis with a minimum period of ten business days counting from the business day subsequent to the request.

In which language should documentation be filed?

There are no specific rules in this regard. Documentation should be acceptable in line with the recommendations of the EU joint transfer pricing forum. In an ordinary tax audit, the tax auditor may accept the transfer pricing documentation in other languages, but a translation into Spanish still may be requested. In litigation, any document used must be written in Spanish or in the official language of the autonomous region of the taxpayer, that is, Catalan, Basque, Galician, or Valencian.

How long is it necessary to keep transfer pricing documentation?

The statute of limitations on assessment of transfer pricing adjustments is up to a four year period.

Are intercompany agreements recommended?

It is recommended that taxpayers document their intercompany transactions through intercompany agreements, however it is not compulsory.

Regarding the cost-sharing agreements, tax deductibility of the amounts paid is admitted as long as it is supported by a written agreement.

Do you have to make disclosures about transfer pricing in the tax return? What statements or certifications are required?

In the CIT form, taxpayer's related party transactions must be disclosed by indicating the company name, the fiscal code of the people or entities with which the operation is carried out, as well as a description of their nature, characteristics and amount of transactions with each related party. Also, methods used to determine an arm's length principle will need to be disclosed in the form filed for tax returns.

Also, in the financial statements the taxpayers must provide information about the transfer pricing policy.

Which transfer pricing methods are acceptable?

Market value will be determined by comparative analysis. The circumstances surrounding related party transactions will be compared with those between independent entities or persons that are comparable. Comparable uncontrolled price (CUP), resale price, cost plus, profit split and transactional net margin methods are all acceptable.

Is there a priority among the acceptable methods?

CUP, resale price and cost plus methods have priority. Profit-based methods (profit split and net margin) should only be applied if the use of transaction based methods are not possible due to the complexity or the information of the transactions.

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

The last four years from the due date or from the filing date of the last tax return.

What rates and conditions apply for transfer pricing penalties? And is there penalty relief?

The Spanish documentation requirements have 14 points that tax payers need to address in their transfer pricing reports, and for every point that the taxpayer omits, a penalty could be applied.

Based on the new penalty regime introduced by law 36/2006, and applicable from 19 February 2009 onwards, penalties linked to the formal requirements of the documentation – are also enforceable and may apply to both (i) the adjustments performed and to (ii) the lack of support of the related-party transactions performed by the taxpayer, thus establishing the following two types of penalties:

- when there is no transfer pricing adjustment, a fixed fine of €1,500 per data and €15,000 per group of omitted, inaccurate or misleading data might be imposed on the taxpayer due to faults in the documentation provided
- when a transfer pricing adjustment is proposed by the tax authorities, a penalty of 15% of the additional tax base is applicable in addition to the tax due, the corresponding delay payment interest and the minimum fine will be twice the fine that would result from the application of the preceding section.

In addition, for transactions between a partner/shareholder and an entity, a secondary adjustment has been created. This may result in taxable income for the relevant tax being adjusted for the difference between the value agreed between the parties and the market value, which will be treated as taxable income for the related parties.

It is important to highlight that, regarding self-initiated adjustments, the general tax directorate has publicly expressed its distaste for self-initiated adjustments, because they could mean the taxpayer has not fulfilled the ‘fair value’ accounting compulsory principle, however this position could evolve.

Are there exemptions to Transfer Pricing rules in your country?

The documentation will not be required when the consideration of all transactions with the same related party does not exceed the amount of €250,000 (market value), nor will be required for small size entities when the total related party operations do not exceed the aggregate amount of €100,000 (market value). It should be noted that the obligation to apply market values is applicable in all cases even when there is no obligation to prepare documentation.

At the same time, the regulations establish reduced documentation obligations for related party transactions involving small companies (net revenues for the consolidated group of less than €10 million in the previous tax year) and individual persons. It should be noted that documentation is required for transactions with entities, related party or not, resident in tax havens.

Are advance pricing agreement (APA) options available?

Spanish law provides taxpayers with a statutory right to seek APAs; regulation includes the procedure for processing and deciding on unilateral, bilateral or multilateral APAs, involving other tax authorities.

Tax audit areas

Transfer pricing issues, until recently, have been considered to be part of a general tax audit and not the subject of special investigations. However, with the new legislation, transfer pricing audit activity has increased significantly.

Special attention has been directed towards the management fees and royalties. In addition, the Spanish tax authorities are quite sensitive to ‘business restructuring’ and may assert that a permanent establishment exists of a foreign party to which significant business functions have been transferred.

Regarding management fees, the Spanish tax authorities expect to see the application of rational and continuous cost-allocation criteria and actual evidence of the benefits received from the services.

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Sweden

Regulatory snapshot

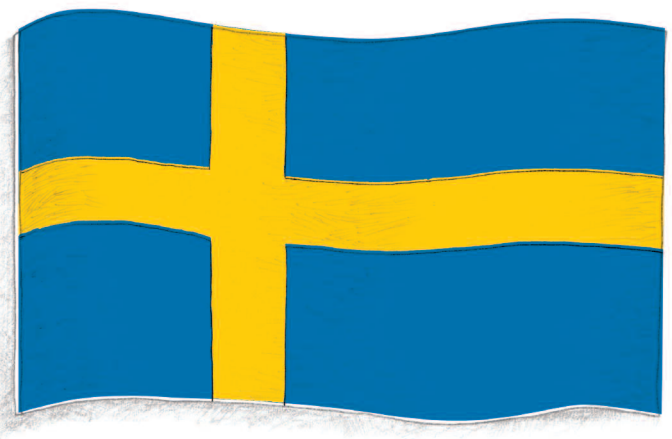
Overview
When did transfer pricing rules start?
1928/2007
Level of TP
Long standing/Developing regime
Return disclosure
No
Documentation
Compulsory with thresholds
Methods
Best method approach
Audit risk
High
Penalties
High
Advance Pricing Agreements (APAs)
Available

- The Transfer Pricing (TP) rules were elaborated from 1916 and effective from 1928 (arm's length principal)
- Taxpayers with intercompany transactions must document the transaction details as described by regulations issued by the Swedish Tax Agency (STA), effective from 1 January 2007
- Contemporaneous TP documentation is compulsory with thresholds. The thresholds regard comparability analysis to be included (in the documentation) or not
- Sweden applies the 'best method approach' for conducting TP analysis however any method can be used as long as the result is at arm's length
- Acceptable TP methods include comparable uncontrolled price (CUP), resale price, cost plus, transactional net margin, profit split and other methods that comply with the arm's length principle

- TP audit can be targeted at any transaction if it results in reduction of Sweden's tax revenue, and is more prone to IP-valuation, interest rates and recently restructuring issues
- TP audit adjustments are subject to a 40% (maximum) penalty surcharge on the tax levied by the adjustment plus an 'interest surcharge' on the tax debt
- Advance Pricing Agreements (APAs) are available to large taxpayers but only if they are mutually agreed between the tax agencies. No unilateral agreement APAs are allowed, only bilateral or multilateral agreements. An APA is usually effective after two years of procedure. The APA is associated with a fee to the STA.

Does your country have transfer pricing rules vs. ruling, laws and guidelines?

The arm's length principle and transfer pricing documentation requirements are enacted in chapter 14, paragraph 19 of the Swedish income tax act. In general, Sweden follows OECD guidelines¹. Transfer pricing regulations apply to all related parties that shares economic interest. If share capital exceeds 50%, the taxpayer is obliged to document the transactions according to Swedish documentation rules (with certain exceptions).



¹ OECD transfer pricing guidelines for multinational enterprises and tax administrations, 1995 and subsequent updates

Effective date of commencement of transfer pricing regulations

TP regulations (arm's length principle) have been effective since 1928. Documentation regulations have been effective since the 1 January 2007 in Sweden.

Rulings, laws and guidelines

Besides legally binding articles of the Swedish tax law, a notification of the STA provides insight into the position of the STA without a legally binding effect. This notification regards general guidance on the application of the implementation of the legally binding articles regarding rules of documentation in the Swedish Procedural Law. The notification also gives good insight on the STAs view on the arm's length principle.

Is transfer pricing documentation required? If so, what information should be included?

Taxpayers are obliged to prepare transfer pricing documentation. The transfer pricing documentation should describe how transfer prices have been determined and include information which enables the tax authorities to evaluate the arm's length nature of the transactions. The documentation rules provides the following examples for content of such documentation: business description, organisational structure, functional analysis (including assets used and risk assumed), industry analysis, contractual terms information on the intercompany transactions, choice of transfer pricing method and comparability analysis.

What are the deadlines for documentation preparation?

The documentation should be available at the time of the STAs request (generally within 30 days). Absent or insufficient documentation will demise the STAs burden of proof to demonstrate that the transfer prices are not at arm's-length. This can be extended from the initial 30 days depending on the complexity of the intercompany transactions; however documentation that has been created after a commencement of a transfer pricing audit will generally be considered as less reliable compared to one that has been previously established.

In which language should documentation be filed?

Transfer pricing documentation can be filed either in Swedish, Norwegian, Danish or English.

How long is it necessary to keep transfer pricing documentation?

For tax purposes, transfer pricing documentation should be kept for at least six years. For accounting purposes the time frame is ten years.

Are intercompany agreements recommended?

It is recommended that taxpayers document their intercompany transactions through intercompany agreements.

Do you have to make disclosures about transfer pricing in the tax return? What statements or certifications are required?

Swedish taxpayers do not need to annually specify in their annual tax returns whether they have been involved in intercompany transactions.

Which transfer pricing methods are acceptable?

Taxpayers are free to choose any OECD recognised transfer pricing method as long as the method results in an arm's length pricing for the purposes of the intercompany transaction. Taxpayers are not obliged to test all OECD recognised methods, although they must substantiate the method chosen.

Is there a priority among the acceptable methods?

There is no priority among the acceptable methods as long as the result is at arm's length. The Swedish department of finance prefers traditional transaction methods over transactional profit methods. The STA does not have a specific TP method preference, as long as it leads to arm's length results.

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

Transfer pricing adjustments can be assessed five years from the tax year-end.

What rates and conditions apply for transfer pricing penalties? And is there penalty relief?

Penalties do not apply specifically for non-compliance with the documentation requirements. Tax penalties are applied for acts leading to an incorrect income tax return (i.e. results that are not arm's length), intent does not matter. In a case of a pure intentional act, criminal charges can be applied. In such cases the STA reports to either the Swedish economic crimes bureau or to the public prosecutor.

Are there exemptions to Transfer Pricing rules in your country?

TP documentation requirements regarding transactions between a permanent establishment and its head office (the same company) are not mandatory under the law, although the arm's length principle still applies. However, permanent establishments' transactions with other group companies must be documented in the same way as between companies.

Are advance pricing agreement (APA) options available?

Bilateral and multilateral APAs are available. Pre-filing meetings can be organised with the Swedish tax authorities in order to discuss the case before a formal APA request is made. In Sweden the APA is associated with a cost to the STA.

Tax audit areas

Transfer pricing is a high risk area. The STA especially focus on the following areas: loss making routine functions, Intellectual property (IP) transactions (transfer of IP, royalties), transactions with tax havens, interest rates and business restructurings.

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Taiwan

Regulatory snapshot

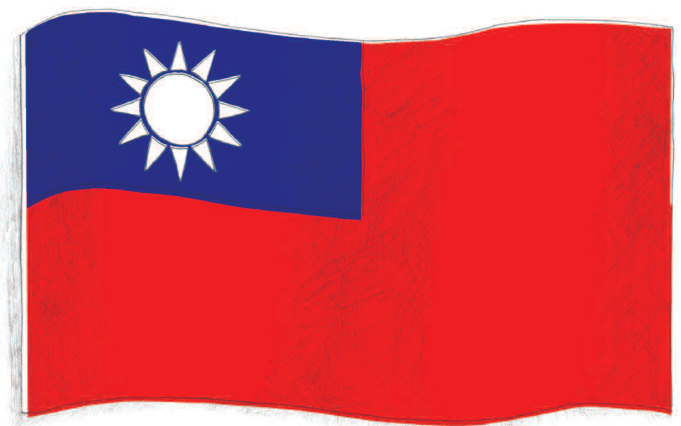
Overview
When did transfer pricing rules start?
2004
Level of TP
Established regime
Return disclosure
Yes
Documentation
Compulsory with threshold
Methods
Best method approach
Audit risk
High
Penalties
High
Advance Pricing Agreements (APAs)
Available

- Taiwan's 'Regulations Governing Assessment of Profit-seeking Enterprise Income Tax on Non-Arm's Length Transfer Pricing' have been effective since 28 December 2004 and enacted pursuant to the provisions set out in paragraph 5, article 80 of the Income Tax Act.
- Profit-seeking enterprises are required to disclose significant related party transactions in the annual tax return.
- Transfer Pricing (TP) documentation is compulsory with prescribed threshold.
- Taiwan applies the 'best method approach' for conducting TP analysis.
- Acceptable TP methods include: Comparable Uncontrolled Price (CUP), resale price, cost plus, comparable profit, profit split, comparable uncontrolled transaction, and other arm's length methods approved by the Ministry of Finance (MoF). However, specific types of transactions may not allow certain method types.

- Profit-seeking entities with annual revenue exceeding TWD 300 million together with related party transaction amounts of more than TWD 200 million are required to have TP reports available at the time of filing a corporation income tax return and be presented within one month when prompted by the tax authority.
- The maximum fine is three times the underpayment of corporation income tax liabilities dependent upon audit results. Failure to present TP documentation when prompted by the tax authority is subject to a fine ranging from TWD 3,000 to TWD 30,000 dependant upon discretion of the tax office.
- Advance Pricing Agreement (APA) options are available in Taiwan. Once the APA is granted, an APA can be effective for 3 to 5 years from the year of application.

Does your country have transfer pricing rules vs. ruling, laws and guidelines?

Yes, transfer pricing regulations in Taiwan are called 'Regulations Governing Assessment of Profit-seeking Enterprise Income Tax on Non-Arm's Length Transfer Pricing' (TP audit regulations). Several transfer pricing related tax rulings have also been issued by MoF.



Effective date of commencement of transfer pricing regulations

In Taiwan, the TP audit regulations have been effective since 28 December 2004. The regulations are enacted pursuant to the provisions set out in paragraph 5, article 80 of the Income Tax Act.

Rulings, laws and guidelines

The MoF finalised and published the TP audit regulations, enacted by paragraph 5, article 80 of Income Tax Act in 2004. TP audit regulations were promulgated by the Taiwan MoF, taking into consideration OECD transfer pricing guidelines and related legislations published by other major countries, especially the USA.

Is transfer pricing documentation required? If so, what information should be included?

TP documentation, including a TP report, should be prepared by taxpayers and be ready for inspection at the time of corporation income tax return filing if there are significant related party transactions carried out during the year.

In this regard, a business entity meeting one of the following criteria can elect to use alternative supporting documents to justify its transfer price instead of preparing a full TP report:

- combined operating revenue and non-operating income is less than TWD 300 million for the filing year
- combined operating revenue and non-operating income is more than TWD 300 million but less than TWD 500 million, and the business entity has not claimed any tax credits in excess of TWD 2 million, has not offset against any net operating losses in excess of TWD 8 million for the tax filing year and has no related enterprises outside of Taiwan
- total value of related party transactions carried out is less than TWD 200 million per annum.

In addition to the above, after taking OECD TP guidelines into consideration, the Taiwan MoF then publishes safe harbor rules under MoF tax ruling number 09704555160, which provides relief to certain controlled transactions to allow alternative supporting document instead of a full TP report. Certain controlled transactions specified in safe harbor rules are:

- one of the participants in the controlled transactions is a government agency or a state-run enterprise
- in the controlled transactions, all of the participants located within the Republic of China do not claim any tax credits, nor do they offset against any net operating losses aggregated from the past five years

- controlled transactions are categorised as either operating revenues or operating expenses and the same type of controlled transactions amounts to less than a threshold of TWD 10 million per annum; for the controlled transactions not categorised as operating revenues or operating expenses, the threshold amount is then divided by two
- a profit-seeking entity whose controlled transactions, within the Republic of China, belong to items of operating revenues or operating expenses, does not claim any tax credits, nor do they offset against any net operating losses aggregated from the past five years, its reported gross margin is above the mean of other enterprises in the same industry, and the same type of controlled transactions amounts to less than a threshold of TWD 20 million per annum; for the controlled transactions not belonging to operating revenues or operating expenses, but reported profit margin is above the mean of other enterprises in the same industry, the threshold amount is then divided by two.
- controlled transactions categorised as 'Uses of Fund' type, when the reported income by the fund provider is greater than the amount of fund provided at the Taiwan bank prime rate on 1 January of the same year and the amount of fund is below TWD 300 million; when the reported costs or expenses by the user is less than the amount of fund used at the Taiwan bank prime rate on 1 January of the same year and the amount of fund used is below TWD 300 million.

A TP report should include the following contents: background information and industry overview, functional and risk analysis of all the transacting parties, evaluation of each controlled transaction based on prescribed rules, selection of comparable parties based on certain criteria, analysis of degrees of comparability, selection of the most appropriate method, disclosure of pricing strategy and other relevant information regarding other participants in the controlled transactions, and determination whether the controlled transactions are within arm's length range.

What are the deadlines for documentation preparation?

A business entity needs to indicate on its corporation income tax return, whether a TP report has been prepared at the time of filing corporation income tax return. Accordingly, it's recommended that companies prepare and have a TP report ready prior to filing corporation income tax return.

In which language should documentation be filed?

Documentation needs to be prepared or translated to Mandarin.

How long is it necessary to keep transfer pricing documentation?

Transfer pricing documentation should be kept for at least seven years since statute of limitation runs for seven years.

Are intercompany agreements recommended?

It is recommended that taxpayers document their intercompany transactions through intercompany agreements.

Do you have to make disclosures about transfer pricing in the tax return? What statements or certifications are required?

Profit-seeking enterprises are required to disclose significant related party transactions in the annual tax return in prescribed formats. In other words, a business entity that meets one of the following criteria can be exempted from disclosing related party transactions in its corporation income tax return and hence does not need to prepare a TP report:

- combined operating revenue and non-operating income is less than TWD 30 million for the filing year
- has generated total combined operating revenue and non-operating income less than TWD 300 million per annum while having no related entities outside of Taiwan, not claiming any tax credits in excess of TWD 500,000 per annum and not offsetting against net operating losses aggregated from past ten years in excess of TWD 2 million per annum.

Enterprises not meeting the disclosure exemption rules above

If a non-exempt business entity carries out transactions with all related enterprises in aggregate amount of more than TWD 50 million per annum or with the same related enterprise in aggregate amount of more than TWD 12 million, the transactions are deemed significant and required to be disclosed accordingly. Whereas, in the case of a non-exempt business entity carrying out transactions with related people instead of related enterprises, transactions with all related people in aggregate amount of more than TWD 25 million per annum or with the same related person in aggregate amount of more than TWD 6 million, the transactions are regarded significant and required to be disclosed. The definition of related enterprises and related people are defined in the TP audit regulations.

Regulations do not require taxpayers to obtain special certification over disclosed information.

Which transfer pricing methods are acceptable?

Acceptable TP methods include: Comparable Uncontrolled Price (CUP), resale price, cost plus, comparable profit, profit split, comparable uncontrolled transaction and other arm's length methods approved by the MoF. However, certain types of transactions may not be evaluated using certain types of methods.

Is there a priority among the acceptable methods?

Taiwan TP audit regulations adopt the best method approach. There is no priority among the acceptable methods as long as the method is the most appropriate arm's length method for the controlled transactions. Taiwan tax authorities generally prefer traditional transaction methods over transactional profit methods.

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

As per article 21 of the tax collection act, if a timely return is filed and the tax due paid in full, and there is no intention to defraud the tax office, the general statute of limitations is five years. If the return is not filed timely or there is an intention to defraud the tax office, then the statute of limitation runs for seven years.

What rates and conditions apply for transfer pricing penalties? And is there penalty relief?

If the required TP documentation is not presented when prompted by the tax authority, a fine ranging from TWD 3,000 to TWD 30,000 will be assessed dependant upon discretion of the tax office.

In addition, article 34 of the assessment rules asserts that from taxable year 2005, a transfer pricing penalty will be assessed if a taxpayer misstates its income tax as a result of not following the transfer pricing rules when filing its tax return. Such penalty will be assessed and calculated based on article 110 of Taiwan Income Tax Act which allows a maximum penalties of two times the resulting underpayment of income tax liabilities.

Are there exemptions to Transfer Pricing rules in your country?

Yes, there are exemption rules relating to disclosure as well as the necessity of providing any TP documentation. A business entity meeting one of the following criteria is exempted from disclosing related party transactions carried out in its corporation income tax return and hence does not need to prepare a TP report:

- combined operating revenue and non-operating income is less than TWD 30 million for the filing year.
- has no related entities outside of Taiwan and has not claimed any tax credits in excess of TWD 500,000 per annum, has not offset against net operating losses aggregated from past ten years in excess of TWD 2 million per annum and has generated a total combined operating revenue and non-operating income less than TWD 300 million per annum.

As outlined by Taiwan MoF tax ruling number 09704555180 and in addition to the disclosure exemption rules above, in the event that a non-exempt business entity carries out transactions with a state-run enterprise, an agent or a distributor and a monopolistic enterprise (defined under the fair trade act), the underlined transactions falling under any of the following (as outlined under number 3 through 5, item 8, article 3 of TP Audit Regulations) are exempted from providing any transfer pricing documentation but disclosure in the tax return is still required. Given that a non-exempt business entity and the counter party are not in a controlling and subordinate relationship when conducting transactions:

- a non-exempt business entity cannot commence its production and business activities without the other enterprise's provision of patent, trademark, copyright, secret formula, proprietary technology or any franchises and such production and business activities account for 50% or more of the total sales of a non-exempt business entity in the same tax year
- a non-exempt business entity's purchasing price and terms of raw materials, components and goods are controlled by the other enterprise, and such purchases account for 50% or more of the total purchases of raw materials, components and goods by the non-exempt business entity in the same tax year
- sales of a non-exempt business entity are controlled by the other enterprise and the underlined sales account for 50% or more of the total sales of the non-exempt business entity in the same tax year.

Are advance pricing agreement (APA) options available?

Yes, APA options are available in Taiwan. Before the end of the accounting period that the transactions occur in, the profit-seeking enterprise meeting all of the criteria below can apply for APA with prescribed forms:

- its aggregate controlled transaction amount has exceeded TWD 1 billion or controlled transaction amount for the current tax year is over TWD 500 million
- no significant tax evasions were committed by the applicant in the past three years
- documentation including a TP report as required under article 24 of the TP audit regulations is well prepared
- other criteria approved by the MoF.

Generally, within one month, a written notice will be delivered to the applicant stating whether the tax authority accepts the APA application. If the tax authority accepts the application, the applicant should present required documentation within one month upon the receipt of the written notice. In the event of the applicant being unable to present the documentation within one month, the applicant can file for an extension, however the extension can not exceed one month. Once the APA is granted, an APA is effective for three to five years from the year of application.

Tax audit areas

Taiwan tax authorities generally focus on the following areas: low profit margin transactions, transactions carried out that are not in line with ordinary business arrangements, cross border transactions, surety and loans granted to related parties etc.

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United Kingdom

Regulatory snapshot

Overview
When did transfer pricing rules start?
1915
Level of TP
Established regime
Return disclosure
Transfer pricing documentation is not included within the tax return but should be available upon request
Documentation
Required if certain criteria are met
Methods
Most appropriate method detailed in the OECD guidelines
Audit risk
Medium
Penalties
High
Advance Pricing Agreements (APAs)
Available

- The UK has had transfer pricing rules since 1915 and the regulations were incorporated into the UK's self-assessment regime for accounting periods ending on or after July 1999. The rules can be found at TIOPA¹ 2010 Part 4.
- Small and medium sized enterprises are exempt from transfer pricing requirements, although there are a few exceptions to this general rule. There is also an exemption for some dormant companies.
- HMRC consider transfer pricing documentation to include primary accounting records, tax adjustment records, records of related-party transactions and evidence of an arm's length result.
- Acceptable transfer pricing methods are based on the OECD guidelines and should provide the most reliable measure of an arm's length policy.

- Acceptable OECD methods to demonstrate compliance with the arm's length standard are required.
- Both a fixed penalty and a tax geared penalty could be levied should documentation not be available.
- Where it is deemed that the inter-company transaction does not produce an arm's length result, an upward adjustment can be made by HMRC.
- Taxpayers can go to Competent Authority under a double tax treaty in perceived cases of double taxation, and where a double taxation agreement exists, MAP can be sought. For forward looking agreements on Transfer Pricing, APAs can be entered into.
- Thin capitalisation is also part of the UK transfer pricing regime. Any interest on debt borrowed from a related party above the level that could be borrowed by an independent party acting in its own interest is non-deductible. For UK-UK debt funding, a corresponding adjustment can be claimed in the lending company.



¹ Taxation (International and Other Provisions) Act 2010

Does your country have transfer pricing rules vs. ruling, laws and guidelines?

The UK's current transfer pricing legislation is to be found at TIOPA part 4, and is based on the arm's length principle as stated in Article 9 of the OECD Model Tax Convention on Income and Capital, which forms the basis of the OECD Transfer Pricing Guidelines. The rules are not heavily formulaic but instead are principles based.

The rules apply to UK taxpayers, including UK branches of overseas companies.

Effective date of commencement of transfer pricing regulations

Transfer pricing rules were first introduced to the UK in 1915.

Rulings, laws and guidelines

Besides UK tax legislation in TIOPA 2010 which in turn refers to the OECD Transfer Pricing Guidance, July 2010, HMRC has an International Manual providing guidance on its view of transfer pricing matters.

Is transfer pricing documentation required? If so, what information should be included?

Yes, documentation is required. For filing purposes, there are four types of documentation that should be kept:

- Primary accounting records;
- Tax adjustment records;
- Record of transactions with associated businesses; and
- Documentation to demonstrate an arm's length result.

The documentation requirements are not prescriptive. HMRC's view is that transfer pricing documentation should usually include a background to the company, a group structure, an outline of the key intercompany transactions under analysis, an analysis of the key functions, assets and risks of the company, an industry analysis and an economic analysis including supporting evidence such as comparables, if required.

What are the deadlines for documentation preparation?

For corporation tax purposes, it is necessary to keep primary accounting records and all supporting documents needed to deliver a correct and complete tax return.

The accounting records are created during the year period in question. Tax adjustment records, records of inter-company transactions and documentation demonstrating an arm's length result do not need to be prepared at the same time as the accounting records.

At the time of filing, the taxpayer need not have assembled its evidence to support that the transactions are at arm's length, but it does need to have reached a conclusion and needs to have a basis of reaching that conclusion. If requested by HMRC, taxpayers usually have a maximum of 30 days to produce transfer pricing documentation. It is recommended that documentation should be updated every two to three years or upon change to the business structure or functional analysis.

In which language should documentation be filed?

English.

How long is it necessary to keep transfer pricing documentation?

Transfer pricing documentation must be preserved until the latest of six years from the end of the accounting period, the date on which any enquiry into the return is completed, or the date on which HMRC is no longer able to open an enquiry.

Are intercompany agreements recommended?

Yes.

Do you have to make disclosures about transfer pricing in the tax return? What statements or certifications are required?

The UK has a self-assessment regime, where the onus is on the taxpayer to ensure that transfer pricing regulations are adhered to. There is a 'tick box' on the tax return form for taxpayers to confirm their eligibility for the small and medium sized enterprise exemption from the transfer pricing rule, and a second 'tick box' for taxpayers to claim corresponding adjustments (for UK-UK transactions). HMRC require taxpayers to make computational adjustments in cases where transactions, as recorded in the statutory accounts, are not on an arm's length basis and the taxpayer is potentially advantaged in respect of UK tax by the actual provision.

Which transfer pricing methods are acceptable?

The most appropriate pricing method should be selected on a transaction by transaction basis, providing the most reliable measure of an arm's length result in each case. The current OECD methods are categorised as traditional transaction methods (Comparable Uncontrolled Price (CUP), Resale Price and Cost Plus) and transactional profit methods (Profit Split and Transactional Net Margin method). Other methods can also be used if justifiable and appropriate.

Is there a priority among the acceptable methods?

There is no hierarchy as the UK legislation refers to the 2010 OECD Transfer Pricing Guidelines, although in practice the CUP or adjusted CUP may be viewed favourably in the UK.

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

An enquiry into a tax return by HMRC may be made up to 12 months from the date on which the return was filed, providing it was filed on time (unless the company is part of a group which is not small, in which case the HMRC can enquire into the tax return up to 12 months from the due filing date of the tax return). If the return is filed late, the enquiry can be made anytime up to the quarter date following the first anniversary of the date on which the return was filed. The quarter dates are 31 January, 30 April, 31 July and 31 October. If no enquiry notice is issued then the tax return may be considered as closed. Any adjustment and further assessment of profits subject to tax will usually be made on completion of the enquiry.

HMRC may in certain circumstances make an enquiry on a company which is not a self-assessment (a discovery assessment) under the following circumstances:

- if they discover that an amount which ought to have been assessed has not been assessed
- an assessment is or has become insufficient
- relief has been given which is or has become excessive.

From 1 April 2010, discovery assessments can be raised where the loss of tax is classified as follows:

- not due to careless or deliberate behaviour – up to 4 years
- careless behaviour of the taxpayer or its agent – up to 6 years
- deliberate behaviour of the taxpayer or its agent – up to 20 years.

What rates and conditions apply for transfer pricing penalties? And is there penalty relief?

Penalties in relation to transfer pricing documentation relate directly to the general record-keeping requirements. Under these rules, two types of penalties may apply; penalty for failure to keep or produce documentation and a tax geared penalty for a careless or deliberate error. At the time of writing, the fixed penalty for failure to keep or produce documentation is £3,000. The tax geared penalty is dependent on whether the inaccuracy is considered to be:

- careless (maximum penalty of 30% of potential lost revenue (PLR))
- deliberate but not concealed by the taxpayer (maximum penalty of 70% of PLR)
- deliberate and concealed by the taxpayer (maximum penalty of 100% of PLR).

Where a transfer pricing adjustment reduces a loss (or turns a loss into a profit), then the PLR will be calculated to include any tax due as a result of changing the original loss to the correct amount. If the loss has been used to reduce a liability (ie by carry back or group relief), then the PLR will be based on this additional amount due. Where there is a reduction in the amount of losses carried forward, a penalty of 10% of the reduction may be due, depending on the likelihood of utilisation of the losses.

A business may receive a mitigation to a penalty if it had made a reasonable attempt to demonstrate an 'arm's length' result but it was subsequently established that the appropriate 'arm's length' result was different from that reflected in its tax return.

Are there exemptions to Transfer Pricing rules in your country?

There are exemptions from transfer pricing documentation for small and medium sized enterprises (SMEs), dormant companies (which have been dormant since 31 March 2004 and continue to be), charities and life assurance companies. It should be noted that for the SME exemption only applies if the transactions are between a UK taxpayer and a related party in a qualifying territory, which is broadly a territory which is not a tax haven.

The exemption criteria are based on EU recommendation 2003/361/EC as follows:

- small: Less than 50 employees, and either turnover or gross assets not exceeding €10m
- medium: less than 250 employees and either turnover not exceeding €50m or gross assets of less than €43m.

HMRC can direct that medium sized enterprises should apply transfer pricing rules, though this is uncommon in practice.

Are advance pricing agreement (APA) options available?

APAs may be agreed on a unilateral, bilateral or multilateral basis. Bilateral and multilateral APAs will only be entered into with countries which the UK has a double taxation agreement in force with a mutual agreement procedure clause. APAs are entered into at the discretion of HMRC and it may decline a taxpayer an APA programme. APAs usually address complex transfer pricing issues or those for which there is a serious doubt as to the manner by which the transfer pricing rules should be applied.

Where companies are debt funded, an Advance Thin Capitalisation Agreement (ATCA) can be used to agree an appropriate amount of intra-group debt. This will determine the amount of interest that will be treated as deductible. ATCAs are typically unilateral agreements.

Tax audit areas

In the UK, tax audits comprise of a mixture of selected audits and random audits, but most enquiries are based on the risk profile of the business. HMRC are likely to enquire into the transfer pricing of a UK business when a UK company shows the following in its statutory accounts or tax return:

- losses
- tax planning structures involving low tax jurisdictions or tax havens
- high levels of debt funding
- business restructurings, particularly where they give rise to a tax advantage
- transactions in valuable or unique intangible assets.

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United States

Regulatory snapshot

Overview
When did transfer pricing rules start?
1934
Level of TP
Established regime
Return disclosure
Yes
Documentation
Not compulsory, but highly recommended
Methods
Best method approach
Audit risk
High
Penalties
High
Advance Pricing Agreements (APAs)
Available

- The final Transfer Pricing (TP) regulations were promulgated under Internal Revenue Code (IRC) 482 in July 1994, which was applicable to taxable years beginning after 6 October 1994.
- Taxpayers with intercompany transactions must disclose detailed information on controlled transactions with foreign entities via forms 5471 and 5472 which are submitted along with their tax returns.
- Contemporaneous documentation is required for penalty protection under Reg. § 1.6662-6.
- The United States apply the best method approach for conducting TP analysis.
- Acceptable TP methods for tangible and intangible property transfers include Comparable Uncontrolled Price (CUP)/Comparable Uncontrolled Transaction (CUT), resale price, cost plus, comparable profit, profit split and unspecified methods that comply with the arm's length principle.

- Acceptable TP methods for the provision of services include services cost, comparable uncontrolled services price, gross services margin, cost of services plus, comparable profits, profit split, and unspecified methods.
- The penalty on transfer pricing assessment is 20% or 40% of additional tax resulting from adjustments exceeding objective thresholds. Interest is also assessed from the due date of the original filing and the interest payable is determined under US domestic tax rules.
- Multilateral, bilateral and unilateral APAs are available under rev. proc. 2006-9. The APA filing fees are varied based on the size of the business as well as whether the APA is an original or renewed one. An effective APA can cover five years with longer terms being considered as appropriate.



Does your country have transfer pricing rules vs. ruling, laws and guidelines?

Yes, the predecessor to IRC 482 was issued in 1934 which was later amended in the tax reform act of 1986. Since then, the IRS has introduced several proposed and temporary regulations to sec. 482, including the 1994 final regulations, which are currently in effect. Most recently, the IRS has adopted final cost sharing regulations under reg. §1.482-7, which became effective on 19 December 2011 and final services regulations under reg. §1.482-9, which became effective 17 August 2009.

Effective date of commencement of transfer pricing regulations

The final transfer pricing regulations are effective as of July 1994 in the US.

Rulings, laws and guidelines

IRC §482, reg. §1.482, and reg. §1.6662-6. Revenue Procedure (Rev. Proc.) 2006-54, Rev. Proc. 99-32, and Rev. Proc. 2006-9

Is transfer pricing documentation required? If so, what information should be included?

No. Submitting a contemporaneous transfer pricing documentation study to the tax authority is used only for penalty protection purposes. However, failure to prepare contemporaneous documentation can result in penalties of 20% to 40% of any adjustment levied.

In order to achieve penalty protection, certain principal documents are required, and those are: an overview of the taxpayers business, a description of the organisational structure, documents explicitly required by the regulations, a description of the method selected and an explanation of why that method was selected, a description of the alternative methods that were considered and an explanation of why they were not selected, a description of the controlled transactions and any internal data used to analyse them, a description of the comparables and comparability considerations used, an explanation of the economic analysis and projections relied upon in developing the method, a description or summary of any relevant data that the taxpayer obtains after the end of the tax year and before filing a tax return and finally a general index of the principal and background documents.

What are the deadlines for documentation preparation?

The study should be prepared contemporaneously with the filing of the US tax return for the fiscal year under consideration to qualify for penalty protection. In the event that the tax authority requests documentation, it must be presented within 30 days of the request.

¹ The IRS considers its transfer pricing laws and regulations to be wholly consistent with OECD transfer pricing guidelines (OECD guidelines). However, for domestic use, the OECD guidelines do not provide support, and would not be directly relevant, to the application of any pricing methods.

In which language should documentation be filed?

TP documentation should be filed in English.

How long is it necessary to keep transfer pricing documentation?

TP documentation should be kept for the three most recent tax years open for assessment under the IRS statute of limitations.

Are intercompany agreements recommended?

It is recommended that taxpayers document their intercompany transactions and transfer pricing policies through intercompany agreements.

Do you have to make disclosures about transfer pricing in the tax return? What statements or certifications are required?

Yes, taxpayers are required to complete form 5471 and 5472, providing detailed information on controlled transactions with foreign entities. Additionally, 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 (UTP) is required for certain taxpayers beginning with 2010 tax returns.

Which transfer pricing methods are acceptable?

Tangible property transfers: CUP method, resale price method, cost plus method, profit split methods (comparable and residual), comparable profits method (comparable to the OECD transactional net margin method), and unspecified methods.

Intangible property transfers: CUT method, comparable profits method, profit split method, and unspecified methods. For platform contribution payments: the CUT method, income method, acquisition price method, market capitalisation method, and unspecified methods are allowed.

Provision of 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.

Is there a priority among the acceptable methods?

There is no priority among the acceptable methods as long as the result is at arm's length and the method most appropriately measures the transaction based on the facts and circumstances of the case.

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

Transfer pricing adjustments can be assessed three years from the original due date or filing date of the tax return, whichever is later. For substantial omissions of income, the period is extended to six years. In cases of non-filing or fraud, the period is unlimited.

What rates and conditions apply for transfer pricing penalties? And is there penalty relief?

Taxpayers may be liable for either a 20% or 40% penalty for underpayment of tax, as a percentage of the underpayment, or the penalty may apply to a valuation misstatement. There is no penalty for failure to have documentation; however, documentation may help avoid penalty under reg. §1.6662-6. Documentation does not assist in avoiding adjustments, but rather in avoiding the additional 20% to 40% penalty that may result from adjustment along with challenge by the IRS in the event of an audit.

Is there penalty relief?

Yes, penalties may be avoided by disclosure on IRS form 8275, of disregarding rules or regulations and of a substantial understatement of income tax.

Are there exemptions to Transfer Pricing rules in your country?

No. Any firm with controlled international operations and intercompany transactions is subject to the TP regulations. For TP purposes, the definition of control, includes all kinds of control, direct or indirect, whether legally enforceable or not. The reality of the control is decisive, not the form in which it is exercised.

Are advance pricing agreement (APA) options available?

Unilateral, bilateral and multilateral APAs are available. Pre-filing meetings can be organised with the Advance Pricing and Mutual Agreement (APMA) Program personnel in order to discuss the case before a formal APA request is made. These meetings may occur on an anonymous basis, but the taxpayer must disclose its identity upon applying for an APA.

Tax audit areas

Transfer pricing is typically a key issue in any tax audit. In general, risk for transfer pricing scrutiny during an audit is high, particularly when international transactions are considerable. The US tax authority has also classified CSAs and intellectual property transactions as tier 1, or high-risk, transactions requiring additional scrutiny during an audit. Documentation will often be requested at the onset of any audit related to international issues, but experience has shown that adequate documentation will often reduce further challenges from the tax authority.

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