



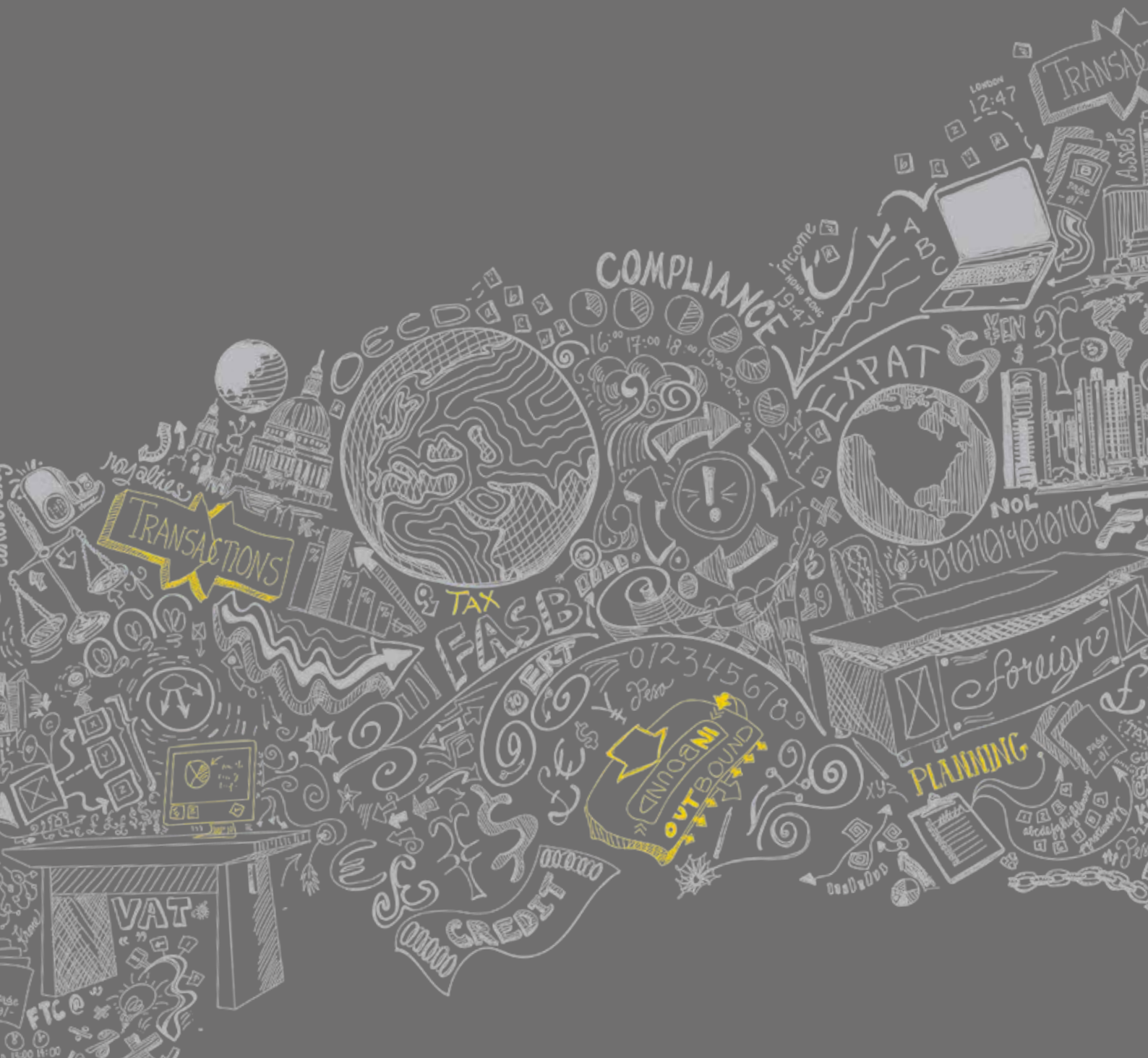
**EY Worldwide
Transfer Pricing
Reference Guide**

2017-2018



Building a better
working world

Preface



EY Worldwide Transfer Pricing Reference Guide 2017-2018

Transfer pricing rules and regulations around the world continue to grow in number and complexity. Practitioners need to have current knowledge of a complex web of country tax laws, regulations, rulings, methods and requirements.

The *EY Worldwide Transfer Pricing Reference Guide 2017-2018* is a tool designed to help international tax executives quickly identify transfer pricing rules, practices and approaches. These must be understood for a company to carry out both transfer pricing compliance and planning activities in the base erosion and profit shifting (BEPS)¹ era.

The information included in the *EY Worldwide Transfer Pricing Global Reference Guide 2017-2018* covers 119 countries. It is meant to provide an overview for the covered jurisdictions regarding their transfer pricing tax laws, regulations and rulings; Organisation for Economic Co-operation and Development (OECD) Guidelines treatment; documentation requirements; transfer pricing returns and related party disclosures; transfer pricing documentation and disclosure timelines; BEPS Action 13 requirements; transfer pricing methods; benchmarking requirements; transfer pricing penalties and relief from penalties; statutes of limitations on transfer pricing assessments; likelihood of transfer pricing scrutiny and related audits by the tax authorities; and opportunities for advance pricing agreements (APAs).

The content of the *EY Worldwide Transfer Pricing Global Reference Guide 2017-2018* is updated as of **February 2018**. This publication should not be regarded as offering a complete explanation of the matters referred to and is subject to changes in laws and other applicable rules, in addition to the overall business environment in each jurisdiction.

For a more detailed discussion of any of the country-specific transfer pricing rules, or to obtain further assistance in addressing and resolving intercompany transfer pricing issues, please contact your local EY member firm office or the relevant jurisdiction contact listed herein. A web-based version of this publication can be found at ey.com.

¹ Visit ey.com/gl/en/services/tax/ey-oecd-base-erosion-and-profit-shifting-project-by-action to follow the latest BEPS developments.

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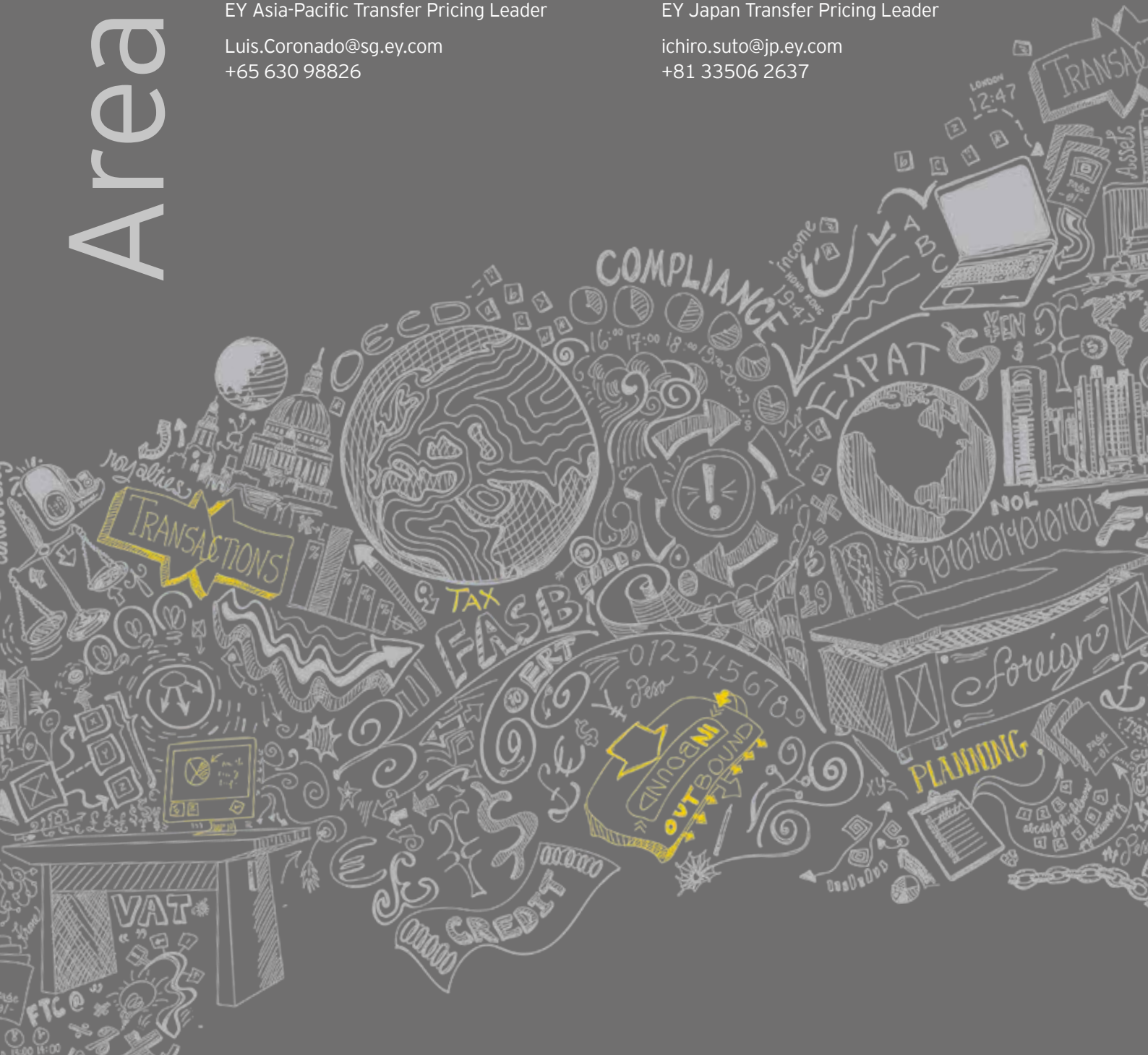
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Albania

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

General Directorate of Taxes (GDT)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

Tax laws include Law No. 8438 on Income Taxes, as amended (Income Tax Law), dated 28 December 1998.

- ▶ Effective 4 June 2014, Articles 36-36/7 were introduced, providing a more comprehensive regulatory framework on international transfer pricing (TP), aligned with the OECD Transfer Pricing Guidelines of 2010 (OECD TPG 2010).
- ▶ Article 36/5 introduces transfer pricing documentation requirements for the first time.

Law No. 9920 on Tax Procedures in the Republic of Albania (Tax Procedures Law), dated 19 May 2008:

- ▶ Article 115/1 addresses penalties related to transfer pricing.
- ▶ Double taxation treaties are enacted by Albania.

The Ministry of Finance issued Instruction No. 16, dated 18 June 2014, for the implementation of the transfer pricing legislation (Transfer Pricing Instruction), providing further guidance on the application of the arm's-length principle and the preparation of transfer pricing documentation.

The Ministry of Finance issued Instruction No. 9, dated 27 February 2015, introducing specific rules and procedures on the implementation of APAs.

▶ Section reference from local regulation

Article 2, Paragraph 4, items (a) and (b) of Law No. 8438 on Income Taxes provides for the definition of "related party" for transfer pricing purposes.

Paragraphs 3.2 and 3.3 of the Transfer Pricing Instruction elaborate more on the "related party" definition.

2. OECD guidelines treatment/reference

Albania is not a member of the OECD.

Albanian transfer pricing legislation makes reference to the OECD TPG 2010.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Yes.

▶ Does transfer pricing documentation have to be prepared annually?

Transfer pricing documentation should be prepared annually. However, taxpayers with a turnover of less than ALL50 million that use external comparable data can use the same data for three consecutive fiscal years, provided there have been no material changes in the conditions of the controlled transactions, the comparability of the external data and the relevant economic circumstances.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

No materiality limit

▶ Economic analysis

No materiality limit.

▶ BEPS master and local files

Not applicable.

▶ CbCR

Not applicable:

c) Specific requirement(s)

▶ Treatment of domestic transactions

There is no documentation obligation for domestic transactions.

▶ Local language documentation requirement

Pursuant to Paragraph 15.6 of the Transfer Pricing Instruction, the transfer pricing documentation should be submitted in English or in Albanian. If it is in English, it should be accompanied by a notarized translation into Albanian,

which should be provided within 30 days of the tax authorities' request for translation.

▶ **Safe harbor availability**

None specified.

d) BEPS Action 13 implementation overview

▶ **Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?**

No.

▶ **Coverage in terms of master and/or local files**

Not applicable.

▶ **Effective/expected commencement date**

Not applicable.

▶ **Material differences from OECD report template/format**

Not applicable.

▶ **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

Not applicable.

▶ **CbCR notification and CbC report submission requirement**

There is neither a CbCR notification nor a CbC report submission requirement in Albania.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Related party disclosures are included in the financial statements of the taxpayer pursuant to International Financial Reporting Standards (IFRS) requirements.

There are no other related party disclosures or additional forms required by the legislation.

b) Transfer pricing-specific returns

Taxpayers are required to report all controlled transactions annually by filing an annual Controlled Transaction Notice if the aggregate value of their controlled transactions, including loan balances, exceeds ALL50 million (EUR365,000).

The annual Controlled Transaction Notice should be submitted by 31 March of the following year. When determining the annual aggregate transaction value, taxpayers should take into account all intercompany transaction amounts (i.e., without offsetting credit and debit values).

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ **Corporate income tax return**

The corporate income tax return should be submitted by 31 March of the following year.

▶ **Other transfer pricing disclosures/return**

The annual Controlled Transaction Notice should be submitted by 31 March of the following year.

▶ **CbCR notification**

Not applicable.

▶ **CbC report preparation/submission**

Not applicable.

b) Documentation preparation deadline

There is no specific deadline for the preparation of the transfer pricing documentation. However, since the documentation must be submitted within 30 days upon tax authorities' request, it is recommended that it be prepared by the corporate income tax return deadline – i.e., 31 March of the following year.

c) Documentation submission deadline

▶ **Is there a statutory deadline for submission of transfer pricing documentation?**

There is no specific deadline for the submission of transfer pricing documentation. The TP documentation must be submitted within 30 days upon receipt of the tax authorities' request, which can be initiated at any time after the filing due date of the income tax return (i.e., 31 March of the following year).

▶ **Time period/deadline for submission on tax authority request**

Within 30 days from the time of the tax authorities' request.

6. Transfer pricing methods

a) Applicability

- ▶ International transactions

Under the current TP rules, all transfer pricing methods advocated by the OECD Guidelines are acceptable – namely, CUP, resale price, cost-plus, TNMM and profit split. When it can be proved that none of the approved methods can be reasonably applied, taxpayers are allowed to use other, more appropriate methods. Preference is given to the best method providing the most reliable results.

- ▶ Domestic transactions

Not applicable.

b) Priority/preference of methods

Under the current TP rules, all transfer pricing methods advocated by the OECD Guidelines are acceptable – namely, CUP, resale price, cost-plus, TNMM and profit split. When it can be proved that none of the approved methods can be reasonably applied, taxpayers are allowed to use other, more appropriate methods. Preference is given to the best method providing the most reliable results.

7. Benchmarking requirements

a) Local vs. regional comparables

Preference is given to local comparables. In the absence of local comparables, regional comparables can be used, but the differences between geographical markets and other factors affecting the financial indicator being analyzed must be taken into consideration in the comparable analysis. It is an EY country practice to first attempt local comparables, and if not available, the search can be extended in the following order: Balkans, Eastern Europe and the European Union.

b) Single-year vs. multi-year analysis

Preference is given to uncontrolled comparables belonging to the same year as the controlled transaction. However, the taxpayer can rely on immediate previous-year comparables, provided that the comparability criteria is met. It is an EY country practice to use a multi-year analysis for testing arm's length.

c) Use of interquartile range

The TP rules define the market range as a range that includes all the values of the financial indicators, such as price, markup

or any other indicator used for the application of the most suitable TP method for a number of uncontrolled transactions in which each is almost equally comparable with the controlled transaction based on a comparability analysis. The TP rules do not specifically provide for the interquartile range. However, they stipulate that in the case of adjustments by the tax authorities, the financial indicator is adjusted to the median. It is an EY country practice to use the interquartile range (from Q1 to Q3) as the acceptable range.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

The TP rules do not include any general provision in this respect. It is an EY country practice to perform a fresh benchmarking search every three to five years. The financial update is performed annually.

The TP rules provide that taxpayers with a turnover of less than ALL50 million that use external comparable data can use the same data for three consecutive fiscal years, provided there have been no material changes in the conditions of the controlled transactions, the comparability of the external data and the relevant economic circumstances

e) Simple vs. weighted average

The TP rules do not provide any specific provision regarding the use of a simple or a weighted average. In the examples provided in the Transfer Pricing Instruction, the simple average is used. However, it is an EY country practice to use both the weighted average and the simple average.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures

Failure to file the annual Controlled Transaction Notice (explained in the "Transfer pricing returns/related party disclosures" section above) is subject to a penalty of ALL10,000 for each month of delay.

- ▶ If an adjustment is sustained, can penalties be assessed?

Transfer pricing adjustments for which no documentation has been made available trigger a penalty of 0.06% of the amount of the unpaid liability for each day of delay, capped at 21.9% (equivalent of 365 days).

Albania

► Is interest charged on penalties/payable on refund?

There is no interest charged on penalties.

b) Penalty relief

Taxpayers that have submitted the transfer pricing documentation in a timely manner (i.e., within 30 days upon receipt of the tax authorities' request) are relieved from penalties in the case of a transfer pricing adjustment, and they will be liable to pay only the additional tax liability and default interest.

The taxpayer has the option of appealing the decision of the tax authorities. Initially, the appeal is addressed to the Regional Tax Directorate, further to the Tax Appeal Directorate, and, if applicable, to the administrative court after all administrative appeal methods have been exhausted.

9. Statute of limitations on transfer pricing assessments

The Statute of limitations on transfer pricing assessments is five years from the date the related corporate income tax return is filed.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► Likelihood of transfer pricing-related audits (*high/medium/low*)

The likelihood of a tax audit in Albania is high for domestic and foreign groups of companies. Usually, a tax audit covers the last three to four years. In light of the transfer pricing rules that became effective on 4 June 2014, and especially because of the recently introduced documentation requirements, transfer pricing issues are expected to continue to attract significant attention in tax audits, and it is anticipated that transfer pricing tax audits will increase rapidly.

► Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

The tax administration is unlikely to challenge the methodology applied. In principle, in examining the arm's-length character of a transaction, the tax administration should use the same transfer pricing method applied by the taxpayer, to the extent that it is the most appropriate one for that transaction.

► Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

The likelihood is medium; refer to the section above.

► Specific transactions/industries/situations, if any, more likely to undergo audit

There are no differences among transactions/industries/situations.

11. APA opportunity

► Availability (unilateral/bilateral/multilateral)

The TP rules provide for three types of APAs: unilateral, bilateral and multilateral agreements. Requests for APAs will be taken into consideration provided that the controlled transactions during the period of the agreement surpass in aggregate the amount of EUR30 million, or it is a case of a complexity and of a high commercial and economic impact for Albania.

► Tenure

The maximum proposed period of the APA is five years unless the APA is bound to a governmental agreement ratified by law.

► Rollback provisions

Taxpayers may not request a rollback. However, if the APA is signed and finalized after the first fiscal year of the proposed APA, the year during which the APA was proposed will be considered covered under the agreement.

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Algeria

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Direction General des Impôts (DGI).

According to new provisions (Article 57 of the 2018 Finance Act), the DGI is no longer the only authority to process transfer pricing (TP) documentation, as all tax inspectors are now instructed to collect and process TP documentation of affiliated entities.

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

Transfer pricing regulations and rulings include:

- ▶ Article 141 bis of the Algerian Direct Tax Code
- ▶ Article 192 of the Algerian Direct Tax Code
- ▶ Article 20 ter of the Algerian Tax Procedure Code
- ▶ Article 169 bis of the Algerian Tax Procedure Code

A decree, dated 12 April 2012, drew up a list of entities obligated to provide transfer pricing documentation and listed its content.

▶ Section reference from local regulation

Article 138 bis of the Direct Tax Code (DTC) gives the definition of related parties for local entities. It includes every group of entities in which the mother company holds 90% or more of its subsidiary.

For foreign groups and permanent establishments (no legal presence), the definition is given through Article 141 bis of the DTC. Firms are considered related/associated when a company operating in or outside Algeria participates directly or indirectly in the management, control or capital of an enterprise carried in or outside Algeria.

2. OECD guidelines treatment/reference

Algeria is not a member of the OECD. However, the Algerian transfer pricing legislation makes considerable reference to the OECD Guidelines.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Yes.

▶ Does transfer pricing documentation have to be prepared annually?

Yes, TP documentation has to be prepared annually under Algerian regulations. The minimum information requirements are set by the decree of 12 April 2012. They include information about the group and the local subsidiary, as well as an updated functional and economic analysis (plus financial information of the assessed fiscal year).

b) Materiality limit/thresholds

▶ Transfer pricing documentation

No materiality limit.

▶ Economic analysis

No materiality limit.

▶ BEPS master and local files

Not applicable.

▶ CbCR

Not applicable:

c) Specific requirement(s)

▶ Treatment of domestic transactions

Domestic transactions with related companies have to be covered by the TP documentation.

▶ Local language documentation requirement

The transfer pricing documentation needs to be submitted in the local language. The Algerian Constitution mandates the use of Arabic or French in official exchanges and documents filed with the administration.

Algeria

▶ Safe harbor availability

There are no prescribed safe harbor rules in the Algerian TP regulations.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No.

▶ Coverage in terms of master and/or local files

Not applicable.

▶ Effective/expected commencement date

Not applicable.

▶ Material differences from OECD report template/format

Not applicable.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

Yes, a BEPS Action 13 format report is sufficient to achieve penalty protection.

▶ CbCR notification and CbC report submission requirement

There is no CbCR notification requirement in Algeria.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

In the framework of a tax audit, tax inspectors are entitled to audit the possible infringement of the arm's-length principle with related parties (intercompany transactions) – as in, the existence of a commercial or financial relationship that differs from those that would be made between independent enterprises. Moreover, as per new provisions of the 2018 Finance Act, the tax administration is now allowed to ask for the group consolidated accounts (locally or abroad).

b) Transfer pricing-specific returns

Not applicable.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ Corporate income tax return

30 April.

▶ Other transfer pricing disclosures/return

30 April.

▶ CbCR notification

Not applicable.

▶ CbC report preparation/submission

Not applicable.

b) Documentation preparation deadline

By the time of lodging the tax return to achieve penalty protection (30 April of the year N+1, i.e. subsequent year to current year under consideration).

c) Documentation submission deadline

▶ Is there a statutory deadline for submission of transfer pricing documentation?

The statutory deadline for submission of TP documentation is the same as that of the corporate income tax return, 30 April. This is now required for all firms holding intragroup transactions locally and internationally with affiliated companies.

▶ Time period/deadline for submission on tax authority request

In the case of a tax audit or requisition, the taxpayer has to submit the transfer pricing documentation within 30 days of the tax authority's request.

6. Transfer pricing methods

a) Applicability

▶ International transactions

Yes.

▶ Domestic transactions

Yes.

b) Priority/preference of methods

The Algerian transfer pricing legislation does not provide an official transfer pricing method, but the Algerian tax authorities issued guidelines in 2010 referring to the OECD methods. In theory, all OECD methods could be accepted, subject to justification, but in practice, the Algerian tax authorities are focused on an approach based on comparability.

Algerian tax authorities are developing a project to gather financial databases for benchmarking purposes

7. Benchmarking requirements

a) Local vs. regional comparables

Local comparables are preferred, although regional ones are accepted because of a lack of local data.

b) Single-year vs. multi-year analysis

Multi-year analysis is preferred for testing arm's length, with the number of years being three. Single-year analysis is also accepted.

c) Use of interquartile range

Not used at this stage by the Algerian tax administration.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

Under the current legislation, there are no specific guidelines/requirements on the need to conduct a fresh benchmarking search every year or for updating the financials of a prior study.

e) Simple vs. weighted average

Simple average is preferred for arm's-length analysis.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

► Consequences of failure to submit/late submission and/or incorrect disclosures

If a company provides incomplete transfer pricing documentation or no documentation at all when filing its return, the tax administration is entitled to send a formal notice asking

for it to be completed or provided within 30 days. The penalty for not preparing it can be DZD2 million.

► If an adjustment is sustained, can penalties be assessed?

An additional penalty of 25% of the amounts deemed transferred might also apply.

► Is interest charged on penalties/payable on refund?

No interest is charged on penalties.

b) Penalty relief

No specific penalty relief is applicable to transfer pricing, but general penalty relief could apply in the framework of a transaction procedure (remise conditionnelle) provided by the Algerian Tax Procedure Code, under certain conditions.

9. Statute of limitations on transfer pricing assessments

The statute of limitations for transfer pricing adjustments is the same as for all Algerian corporate tax assessments (i.e., four years following the year for which the tax is due).

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► Likelihood of transfer pricing-related audits (high/medium/low)

The likelihood of a tax audit in Algeria is high for domestic and foreign companies. Usually, a tax audit covers a three- to four-year period continuously.

Tax audits and tax reassessments related to transfer pricing are becoming more frequent. Field auditors are not always familiar with transfer pricing concepts, and the adjustments sometimes are not only grounded in the OECD Guidelines. Also, currently, there are no local public financial databases

► Likelihood of transfer pricing methodology being challenged (high/medium/low)

Medium, depending on the quality and solidity of the method used and the TP documentation.

► Likelihood of an adjustment if transfer pricing methodology is challenged (high/medium/low)

High, given the TP environment in Algeria.

Algeria

- ▶ **Specific transactions/industries/situations, if any, more likely to undergo audit**

Oil and gas, pharmaceutical, and information and communication technology sectors and free services.

11. APA opportunity

- ▶ **Availability (unilateral/bilateral/multilateral)**

The Algerian tax legislation does not provide a specific APA procedure. However, a binding tax ruling procedure was introduced in the Algerian Tax Procedure Code recently, and in theory, it could cover transfer pricing.

- ▶ **Tenure**

Not applicable.

- ▶ **Rollback provisions**

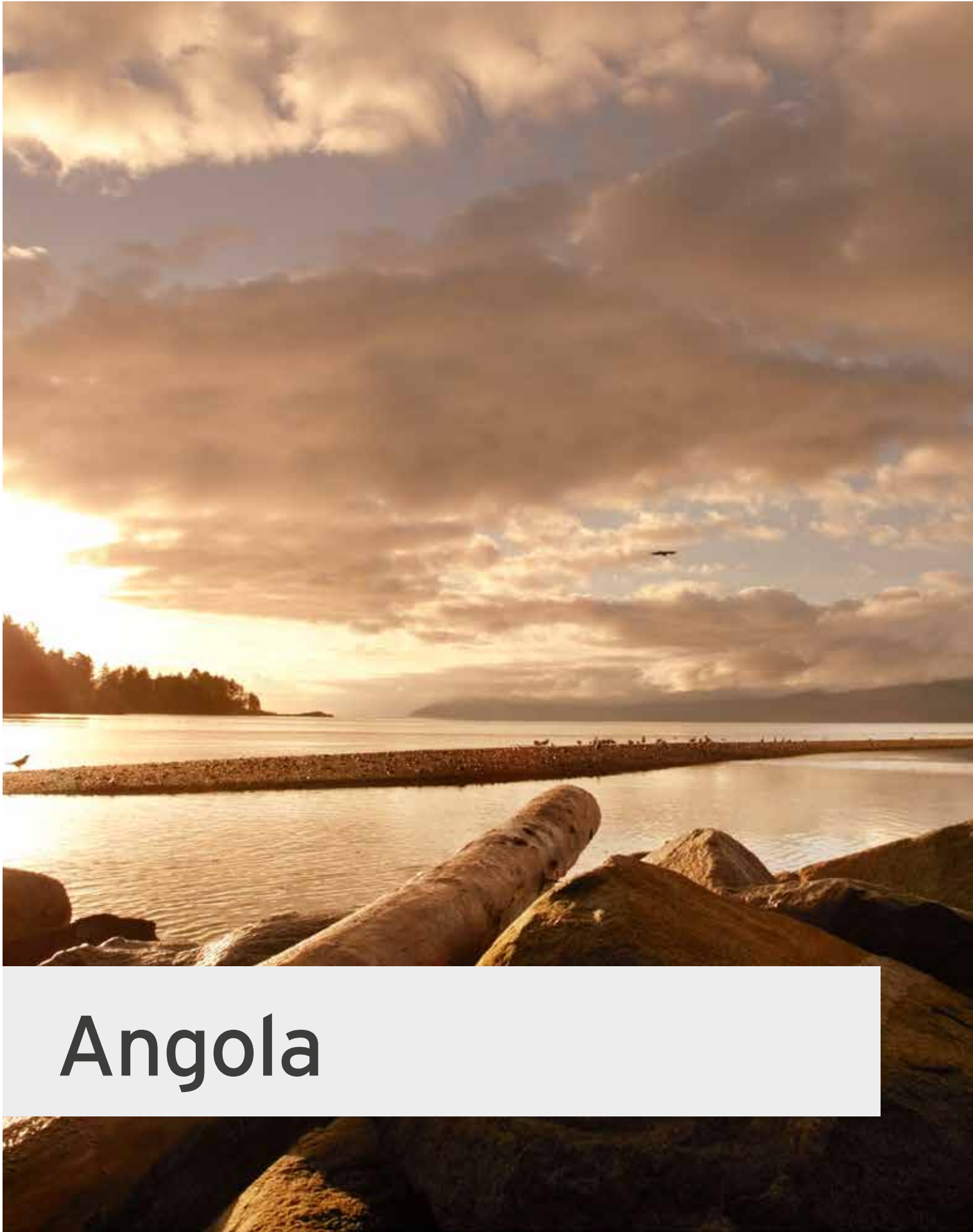
Not applicable.

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Angola

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Angola Ministry of Finance/General Tax Administration (Administração Geral Tributária).

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

Presidential Decree 147/13 of 1 October 2013 – specifically, Section II and articles 10 to 13 (Statute of Large Taxpayers) – and Article 50 of Law 19/14 of 22 October 2014 (Industrial Tax Code), applicable starting 1 January 2014.

► Section reference from local regulation

Article 11 of Chapter IV of Presidential Decree 147/13 of 1 October 2013.

2. OECD guidelines treatment/reference

Angola is not the member of the OECD. The OECD Guidelines are not adopted in the local transfer pricing (TP) regulations by Angola, although certain OECD language is included in the TP regulations enacted.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

Yes.

► Does transfer pricing documentation have to be prepared annually?

Yes. The company is required to deliver a new report with all the required sections.

b) Materiality limit/thresholds

► Transfer pricing documentation

Companies on the Large Taxpayers' List, large government-owned companies, financial institutions, oil

and gas companies and diamond companies, as well as telecommunications companies and companies reporting annual revenue in excess of AOA7 billion.

► Economic analysis

No materiality limit.

► BEPS master and local files

Not applicable.

► CbCR

Not applicable:

c) Specific requirement(s)

► Treatment of domestic transactions

There is a documentation obligation for domestic transactions. All intragroup transactions in which the company was involved must be reported (domestic and cross-border).

► Local language documentation requirement

The TP documentation need not be submitted in the local language (Portuguese).

► Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

► Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No.

► Coverage in terms of master and/or local files

Not applicable.

► Effective/expected commencement date

Even though Angola has officially joined the BEPS Inclusive Framework, it is not expected that any BEPS-related changes can be introduced into the local legislation before the end of the 2018 calendar year.

► Material differences from OECD report template/format

Angola has not adopted the master file/local file approach, and full local TP documentation is expected from each eligible taxpayer. The contents of the local TP

Angola

documentation are broadly consistent with the combined contents of the master file/local file.

► **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

Angola has not adopted the master file/local file approach, and full local TP documentation is expected from each eligible taxpayer. Consequently, only full local TP documentation can be considered to achieve penalty protection.

► **CbCR notification and CbC report submission requirement**

There is neither a CbCR notification nor CbC report submission requirement in Angola.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

No related party detailed information is disclosed to the General Tax Administration, other than the submission of entity-specific transfer pricing documentation, when applicable.

b) Transfer pricing-specific returns

Not applicable.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► **Corporate income tax return**

31 May for Group A and 30 April for Group B.¹

¹ Group A encompasses public entities, companies with a share capital equal or higher than AOA2 million and companies with annual total revenues equal to or greater than AOA500 million. Also included in Group A are associations, foundations or cooperatives whose activities generate additional revenues other than the subsidies received. Affiliations of international companies whose headquarters are not located in Angola also belong to Group A. Group B comprises all the taxpayers not included in Group A.

► **Other transfer pricing disclosures/return**

Not applicable.

► **CbCR notification**

Not applicable.

► **CbC report preparation/submission**

Not applicable.

b) Documentation preparation deadline

The transfer pricing documentation must be prepared within six months after the fiscal year-end, which for entities with a fiscal year corresponding to the calendar year means 30 June.

c) Documentation submission deadline

► **Is there a statutory deadline for submission of transfer pricing documentation?**

The transfer pricing documentation must be prepared and submitted to the tax administration within six months of the fiscal year-end, which for entities with a fiscal year corresponding to the calendar year means 30 June.

► **Time period/deadline for submission on tax authority request**

The transfer pricing documentation must be submitted by the deadline stated above, so no additional notice is given to taxpayers.

6. Transfer pricing methods

a) Applicability

► **International transactions**

Yes.

► **Domestic transactions**

Yes.

b) Priority/preference of methods

Traditional transactional TP methods – namely, the CUP, resale price and cost-plus methods – are preferred.

7. Benchmarking requirements

a) Local vs. regional comparables

There is no comparable financial data available on public databases regarding Angolan companies. There is no practical knowledge about the local tax authorities' position on this matter since the legislation was only introduced in 2014.

b) Single-year vs. multi-year analysis

There is no reference to preferences regarding single-year vs. multi-year analysis in the local legislation. The practical approach has been to apply a multi-year analysis.

c) Use of interquartile range

There is no information on the local tax authority's position on this matter. However, following leading practices, the practical approach has been to use the interquartile range calculations.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

Yes; although not specified in the legislation, doing a fresh benchmarking study is followed as a market practice.

e) Simple vs. weighted average

There is a preference for the weighted average for arm's-length analysis.

f) Other specific benchmarking criteria, if any

The local independence threshold/criteria should be used in benchmarking studies.

8. Transfer pricing penalties/relief

a) Penalty exposure

► Consequences of failure to submit/late submission and/or incorrect disclosures

The General Tax Administration notifies large taxpayers that failed to file transfer pricing documentation to pay a tax fine under the General Tax Code (namely, No. 2 of Article 198), ranging from AOA10,000 to AOA50,000. Existing notifications indicate that the maximum amount of the range is being applied. The application of penalties in this regard will imply a reputational risk to the taxpayer, as it will be considered noncompliant.

Moreover, noncompliance with TP documentation requirements will result in such taxpayers being forbidden from performing capital operations, current invisible transactions (payments for services and intangibles) or trading operations that, according to the exchange control regulations presently in place, require an intervention from the National Bank of Angola. In practice, it may completely block the day-to-day activity of any taxpayer whenever its legal name is communicated by the General Tax Administration to the National Bank of Angola with the specification of noncompliance with tax obligations.

► If an adjustment is sustained, can penalties be assessed?

If a transfer pricing adjustment is made, a penalty equivalent to 35% of the additional tax will be applied, plus delayed interest at the non-compounded rate of 1% per month (or 12% per year).

► Is interest charged on penalties/payable on refund?

Not applicable.

b) Penalty relief

Not applicable.

9. Statute of limitations on transfer pricing assessments

The statute of limitations for transfer pricing assessments is 5 years from the last day of the tax year-end or 10 years in cases of tax infringement.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► Likelihood of transfer pricing-related audits (high/medium/low)

No detailed information is currently available about the level of audit risk that exists in the transfer pricing environment. Since the transfer pricing legislation was enacted only a few years ago, no patterns of audit risk have yet been established. However, given that a new transfer pricing unit was introduced in the Angolan General Tax Administration at the end of 2017, it is expected that the number of transfer pricing-related audits will significantly increase in the near future.

Angola

- ▶ **Likelihood of transfer pricing methodology being challenged** (*high/medium/low*)

Refer to the section above.

- ▶ **Likelihood of an adjustment if transfer pricing methodology is challenged** (*high/medium/low*)

Refer to the section above.

- ▶ **Specific transactions/industries/situations, if any, more likely to undergo audit**

Refer to the section above.

11. APA opportunity

- ▶ **Availability (unilateral/bilateral/multilateral)**

There is no APA program available in Angola.

- ▶ **Tenure**

Not applicable.

- ▶ **Rollback provisions**

Not applicable.

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Argentina



1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Internal Revenue Service (Administración Federal de Ingresos Públicos, or AFIP).

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

AFIP Dirección General Impositiva (DGI) Regulation No. 1,122 (published 31 October 2001, but applicable for fiscal years beginning on 31 December 1999 or later), as amended by several regulations: No. 1,227/02, No. 1,296/02, No. 1,339/02, No. 1,590/03, No. 1,663/04, No. 1,670/04, No. 1,918/05, No. 1,958/05, No. 1,987/05, No. 3,132/11, No. 3,149/11, No. 3,476/13, No. 3,573/13, No. 3,576/13, No. 4130-E/2017 and external notes No. 6/05 and No. 1/08.

▶ Section reference from local regulation

Exhibit III of the General Resolution 1,122

2. OECD guidelines treatment/reference

Argentina is not an OECD member country. The OECD Guidelines are not referenced in Argentina's Income Tax Law (ITL) and regulations. However, the tax authority usually recognizes the OECD Guidelines in practice, as long as they do not contradict the ITL and regulations. Several first-level court cases also recognize the use of the OECD Guidelines, insofar as they do not contradict the ITL and regulations.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Yes.

▶ Does transfer pricing documentation have to be prepared annually?

All transfer pricing documentation requirements must be prepared and filed on an annual basis. No minimum threshold applies.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

No materiality limit.

▶ Economic analysis

No materiality limit.

▶ BEPS master and local files

Not applicable.

▶ CbCR

CbCR was introduced in Argentina in 2017. The group's income for the previous fiscal year must exceed EUR750 million.

c) Specific requirement(s)

▶ Treatment of domestic transactions

There is a documentation obligation for domestic transactions.

▶ Local language documentation requirement

The transfer pricing documentation needs to be submitted in the local language (Spanish). Argentine Tax Authorities General Resolution 1122/01, Section 6, subsection b mandates the use of "local" language in transfer pricing documentation.

▶ Safe harbor availability

There are no prescribed safe harbor rules in the country's transfer pricing regulations.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Yes, but only for the CbC report.

▶ Coverage in terms of master and/or local files

Master and local files are not covered.

▶ Effective/expected commencement date

Not so far; not expected in the near future.

▶ Material differences from OECD report template/format

Not applicable.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

Not applicable.

► **CbCR notification and CbC report submission requirement**

Yes, starting in 2017. There are two notifications: up to the last business day of the third month counting from the end of the FY for the parent entity, the local entity must provide certain information about the company that will prepare and submit the CbC report. Up to 12 months after the end of the FY for the parent entity, the CbC report must be filed. Up to the last business day of the second month after the due date to file the CbC report, the local entity must give notification that the CbC report was actually submitted.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Taxpayers are required to file the following documentation with the AFIP:

- a. An annual transfer pricing study
- b. Audited financial statements for the fiscal year, in case they have not already been filed
- c. An independent certified public accountant's certification of certain contents of the transfer pricing study
- d. Transfer pricing-specific returns

b) Transfer pricing-specific returns

Taxpayers are required to file the following transfer pricing-specific returns with the AFIP:

- a. Annual Form 743
- b. Annual Form 969
- c. Form 742 (for the first six-month period of each fiscal year)
- d. Semiannual Form 741 (for commodities exports and imports with independent parties not located in tax havens)
- e. Annual Form 867 (for other exports and imports with independent parties not located in tax havens)
- f. Annual Form 4501 (for the digital filing of the transfer pricing study and certified public accountant's certification)
- g. Monthly Form 968 (transaction with local related parties)

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► **Corporate income tax return**

Mid-May.

► **Other transfer pricing disclosures/return**

Starting in November of the FY under analysis and ending in August of the following FY.

► **CbCR notification.**

Third month after FY end and second month after the CbC report filing.

► **CbC report preparation/submission**

Twelve months after FY end.

b) Documentation preparation deadline

The transfer pricing documentation must be finalized by the time of lodging the tax return to achieve penalty protection (e.g.,, where there is a contemporaneous requirement). There are specific due dates that depend on the taxpayer's fiscal ID and its fiscal year's end.

c) Documentation submission deadline

► **Is there a statutory deadline for submission of transfer pricing documentation?**

Yes.

Argentine transfer pricing (TP) filings:

- a. FY first semester (first six-month period of the fiscal year) end plus five months:
 - Semiannual TP return (Form 742) including the amounts of all cross-border intercompany transactions (or those performed by the Argentine taxpayer with entities located in countries or jurisdictions considered noncooperative for fiscal transparency purposes) during the first semester of the FY.
 - Companies trading commodities are required to file an additional semiannual TP return (Form 741 – first semester) including the commodities imports and exports with unrelated entities not located

in countries or jurisdictions considered noncooperative for fiscal transparency purposes accrued during the first semester of the FY.

- b. FY end plus five months: the income tax return is due. In that filing, the company must disclose whether a TP adjustment is needed to have arm's-length prices in its transactions with related parties and unrelated parties located in countries or jurisdictions considered noncooperative for fiscal transparency purposes. Thus, the transfer pricing analysis should be performed by that time, even though the documentation is not due until later (FY end plus eight months). Companies trading commodities are required to file an additional semiannual TP return (Form 741 – second semester (second six-month period of the fiscal year)) that includes the imports and exports of commodities with unrelated entities not located in countries/jurisdictions considered noncooperative for fiscal transparency purposes accrued during the second semester of the FY.
- c. Income tax return due date plus 15 days: TP Annual Return (Form 969) including detailed information of all cross-border intercompany transactions (or those performed by the local company with entities located in countries/jurisdictions considered noncooperative for fiscal transparency purposes).
- d. FY end plus seven months: if the local company carried out exports or imports of non commodities goods to or from unrelated parties not located in countries/jurisdictions considered noncooperative for fiscal transparency purposes for an overall amount higher than ARS1 million, an additional TP return is required (Form 867).
- e. FY end plus eight months: TP Annual Return (Form 743) including detailed information of all cross-border intercompany transactions (or those performed by the local company with entities located in countries/jurisdictions considered noncooperative for fiscal transparency purposes). Transfer Pricing Report (Regs. 1122/01), to be filed through Form 4501. A CPA certification, signed by an independent accountant, of certain procedures and information contained in the Transfer Pricing Report. Statutory financial statements for the year signed by an independent accountant. If this is the first filing, the financial statements for the two immediately preceding tax periods (if applicable) should also be filed. All applicable pieces of documentation must be filed to complete a documentation package.

► **Time period/deadline for submission on tax authority request**

The taxpayer has 10 working days to submit the transfer pricing documentation once requested by the tax authorities in an audit or enquiry.

6. Transfer pricing methods

a) Applicability

- International transactions

International transactions must be informed and analyzed.

- Domestic transactions

So far, they only need to be informed, but there are no requirements for analysis.

b) Priority/preference of methods

The ITL does not prioritize methods; Regulation No. 1,122/01 articulates the best-method rule.

The tested party must be the local entity (i.e., the entity based in Argentina). The taxpayer selects the most appropriate method, but the AFIP may oppose the selection. Pursuant to the ITL, the accepted methods for transactions with related parties and tax havens are CUP, resale price, cost-plus, profit split and TNMM.

The use of an interquartile range is mandatory. Unless there is evidence to the contrary, the market price must be used for tangible goods transactions with both related and independent parties where there is an international price in a transparent market.

For transactions involving grains, oleaginous products, other soil products, oil and gas, and all other goods with well-known prices in transparent markets, and where the local company operates through international intermediaries that are not the final consignees of the goods, the applicable price is the prevailing price in the respective market on the day when the loading of the shipment is finished (or it is the agreed-upon price, if higher than the market price). This method may not apply, however, if the local exporter can prove the substance of the operations of the consignee abroad following certain specific tests included in the regulations. The AFIP has the power to limit the application of this method or extend it to other transactions, depending on the circumstances.

Export and import transactions with independent parties not located in tax havens are subject to information requirements if the annual amount of the transaction exceeds ARS1 million, or if the transactions are exports and imports of commodities. The requirements depend on different annual transaction amounts and, in some cases, may include calculations of profit margins.

7. Benchmarking requirements

a) Local vs. regional comparables

There is no specific requirement. However, the comparable companies to be selected should be those that have publicly available information (forms 10-K, 20-F, ARS or similar and audited financial statements in Spanish or English can be found). Even though there is no specific requirement established by law for using such databases/selecting comparable companies, the AFIP has requested information with such level of comfort in the data in the context of fiscal audits (e.g., counting with a description of the comparable business activities in Spanish, the financial information in a specific format, the explanation in Spanish of comparability adjustments made). It is also important to consider that the local legislation determines the obligation of exposing the name of the database used, the date of the comparable search and the breakdown with the accepted/rejected comparable companies along with the search process.

b) Single-year vs. multi-year analysis

Single-year analysis is required.

c) Use of interquartile range

When, by application of any of the methods set forth in Income Tax Law Section 15, as revised in 1997 and as amended, and the related Administrative Order, two or more comparable transactions are determined, the median and interquartile range shall be determined for the prices, consideration amount or profit margins.

d) Fresh benchmarking search every year vs. roll-forward/up date of the financials

A fresh benchmarking search every year is required.

e) Simple vs. weighted average

Simple average is required for calculation purposes.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures

For late filing of tax returns containing international transactions involving the export or import of goods with independent parties, the taxpayer will be fined ARS9,000. For late filing of tax returns concerning other international transactions, the taxpayer will be fined ARS20,000. For penalties related to late filing or lack of filing, it does not matter whether the transactions were at arm's length.

For noncompliance with the formal duties of furnishing information requested by the AFIP, the taxpayer faces fines of up to ARS45,000. The same applies to failure to keep vouchers and evidence of prices in files on hand and failure to file tax returns upon request. If tax returns are not filed after the third request, and the taxpayer has income amounting to more than ARS10 million, the fine is increased from ARS90,000 to ARS450,000.

For unpaid taxes related to international transactions, the taxpayer is fined 100% to 400% of the unpaid tax. This fine has different levels, depending upon the level of compliance with the formal duties related to the control of taxes derived from international transactions. Penalties for fraud are 2 to 10 times the unpaid taxes.

Criminal tax law stipulates imprisonment for two to six years if the unpaid tax exceeds ARS400,000 for each tax and fiscal year. If the unpaid tax exceeds ARS4 million, the prison term will increase, ranging from three-and-a-half years to nine years.

▶ If an adjustment is sustained, can penalties be assessed?

When the tax is not paid for not filing returns or reports or for filing inaccurate returns or reports, the taxpayer shall be penalized with a fine ranging from one to four times the unpaid or un-withheld tax if the nonpayment refers to transactions entered into between local companies and any type of entity domiciled abroad, as provided by Section 45. The penalty shall be set taking into account the degree of compliance with the formal requirements established by the AFIP to control liabilities and obligations deriving from international transactions.

▶ Is interest charged on penalties/payable on refund?

Interest accrues on unpaid tax balances (as of 1 January 2011, the rate is 3% on a monthly basis and 4% upon lawsuit filing).

b) Penalty relief

Concerning underpayment and fraud, if the non-recidivist taxpayer voluntarily amends the tax returns before receiving a special notice (or vista) from the AFIP, the penalty is reduced to one-third of the minimum fine. If the tax returns are amended within 15 days of receiving the notice, the penalty is reduced

to two-thirds of the minimum fine. If the non-recidivist taxpayer accepts the adjustments assessed by the AFIP and pays the amounts due, the penalties are set at the minimum. If the taxes due do not exceed ARS1,000 and are paid voluntarily, or within 15 days from the special notice, then no penalty shall be applied.

The last income tax reform (December 29th, 2017) has incorporated the concept of MAPs in terms of taxation on income and property, which is a mechanism aimed at resolving disputes arising in those cases where there is or may be, for a particular taxpayer, an imposition not in accordance with a particular agreement. Further regulations are expected to make these changes operative.

9. Statute of limitations on transfer pricing assessments

The general statute of limitations for federal tax matters is 5 years for registered and registration-exempt taxpayers and 10 years for unregistered taxpayers. These periods begin on 1 January following the year in which the tax return is due.

The moratorium regime in place during calendar year 2009 and the voluntary declaration of the foreign exchange holding regime in place during calendar year 2013 added one additional year each to the statute of limitations period for certain fiscal years. The taxpayer must keep the transfer pricing documentation on hand and provide it upon the AFIP's request for up to five years after the period established by the statute of limitations.

10. Likelihood of transfer pricing scrutiny/ related audit by local authority

- ▶ Likelihood of transfer pricing-related audits (*high/medium/low*)

The likelihood of an annual tax audit in general can be considered high; meanwhile, given the increasing focus of the authorities on transfer pricing cases, the chance of a transfer pricing review during such an audit is estimated as medium.

- ▶ Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

Once transfer pricing has become a topic of the audit, the likelihood of the tax authority challenging the taxpayer's transfer pricing methodology is high.

- ▶ Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

It depends on the circumstances, but usually the chance is high.

- ▶ Specific transactions/industries/situations, if any, more likely to undergo audit

Pharmacy, automotive and export of commodities.

11. APA opportunity

- ▶ Availability (unilateral/bilateral/multilateral)

Currently, APAs are not specifically addressed.

- ▶ Tenure

Not applicable.

- ▶ Rollback provisions

Not applicable.

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Armenia

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

State Revenue Committee.

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

Tax Code, Chapter 73, effective from 1 January 2018.

► Section reference from local regulation

Tax Code, Chapter 73, Article 362.

2. OECD guidelines treatment/reference

Armenia is not a member of the OECD.

There is no reference to the OECD Guidelines in the Tax Code. As the transfer pricing (TP) rules enter into force from 1 January 2018, there is no practice yet on referring to or following the OECD Guidelines in this regard

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

Yes.

► Does transfer pricing documentation have to be prepared annually?

Yes, transfer pricing documentation has to be prepared annually under Armenian regulations. Transfer pricing documentation should include the following:

1. Detailed description of the taxpayer's business functions
2. Detailed description of the organizational structure of the taxpayer

3. Description of the controlled transactions

4. Description of the applied TP methods

5. The list of parties to controlled transactions

6. Description of sources of information on comparable uncontrolled transactions

7. Calculation of arm's-length range

8. Financial and any other relevant information on the tested party subject to analysis

9. Detailed information on the adjustments independently made by the taxpayer

b) Materiality limit/thresholds

► Transfer pricing documentation

AMD200 million.

► Economic analysis

No materiality limit.

► BEPS master and local files

Not applicable.

► CbCR

Not applicable:

c) Specific requirement(s)

► Treatment of domestic transactions

There is a documentation obligation for domestic transactions. Domestic transactions between related parties are considered controlled in the following cases, in which:

1. Either of the parties to the transaction is a mineral royalty payer
2. Either of the parties to the transaction enjoys tax privileges
3. Either of the parties to the transaction is an operator of a free economic zone.

► Local language documentation requirement

The transfer pricing documentation can be submitted in Russian, English and Armenian, provided that, upon the request

Armenia

of the tax authorities, such documents made in English or Russian shall be translated into Armenian and submitted to the tax authority within 10 working days following the date of the receipt of the written request.

▶ **Safe harbor availability**

None specified.

d) BEPS Action 13 implementation overview

▶ **Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?**

No.

▶ **Coverage in terms of master and/or local files**

Not applicable.

▶ **Effective/expected commencement date**

Not applicable.

▶ **Material differences from OECD report template/format**

Not applicable.

▶ **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

Not applicable.

▶ **CbCR notification and CbC report submission requirement**

There is neither a CbCR notification nor CbC report submission requirement in Armenia.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

The taxpayer shall complete the notification form on controlled transactions and file it with the tax authority no later than 20 April of the year following the tax year in which controlled transactions were concluded.

b) Transfer pricing-specific returns

Not applicable.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ **Corporate income tax return**

20 April.

▶ **Other transfer pricing disclosures/return**

20 April.

▶ **CbCR notification**

Not applicable.

▶ **CbC report preparation/submission**

Not applicable.

b) Documentation preparation deadline

Not applicable.

c) Documentation submission deadline

▶ **Is there a statutory deadline for submission of transfer pricing documentation?**

No.

▶ **Time period/deadline for submission on tax authority request**

The taxpayer has to submit the TP documentation within 30 days from the time the tax authority requests it.

6. Transfer pricing methods

a) Applicability

▶ **International transactions**

Yes.

▶ **Domestic transactions**

Yes.

b) Priority/preference of methods

The CUP, resale price, cost-plus, TNMM and profit split methods are accepted, and there is no priority/preference of methods.

7. Benchmarking requirements

a) Local vs. regional comparables

If there is a lack of information on uncontrolled transactions with an Armenian party's involvement, the use of foreign comparables shall be acceptable, where the impact of economic circumstances and/or other comparability factors on the financial indicator subject to examination by the appropriate transfer pricing method is analyzed and, where necessary, a comparability adjustment is made.

b) Single-year vs. multi-year analysis

Multi-year analysis (three years) is preferred for testing arm's length.

c) Use of interquartile range

The Government decree with detailed rules on calculating the arm's-length range was in the development stage at the time of this publication.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

Under the current legislation, there are no specific guidelines/requirements on the need to conduct a fresh benchmarking search every year or for updating the financials of a prior study.

e) Simple vs. weighted average

Guidance on calculation of the arm's-length range was being implemented at the time of this publication.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures

No penalty is defined yet for noncompliance.

- ▶ If an adjustment is sustained, can penalties be assessed?

None specified.

- ▶ Is interest charged on penalties/payable on refund?

None specified.

b) Penalty relief

Not applicable.

9. Statute of limitations on transfer pricing assessments

The Statute of limitations on transfer pricing assessments is three years.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

- ▶ Likelihood of transfer pricing-related audits (*high/medium/low*)

As the transfer pricing rules have been entered into force starting from 1 January 2018, there is no practice at the moment with regard to the likelihood and severity of a TP audit. The first TP documentation will be submitted by companies in 2019. Based on communication with the tax authorities, most probably no tax audit will be undertaken for the documentation prepared for the first tax year, 2018. The effect and likelihood of tax audits cannot be assessed yet.

- ▶ Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

Refer to the section above.

- ▶ Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

Refer to the section above.

- ▶ Specific transactions/industries/situations, if any, more likely to undergo audit

Refer to the section above.

11. APA opportunity

▶ **Availability (unilateral/bilateral/multilateral)**

There are no provisions for APA opportunities in Armenia.

▶ **Tenure**

Not applicable.

▶ **Rollback provisions**

Not applicable.

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Australia

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Australian Taxation Office (ATO)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

- ▶ Division 13 of Part III of the Income Tax Assessment Act 1936 (ITAA 1936)
- ▶ Subdivisions 815-A, B, C, D and E of the Income Tax Assessment Act 1997 (ITAA)
- ▶ Subdivision 284-E of the Tax Administration Act 1953 (TAA)
- ▶ Relevant provisions of double tax treaties

Applicability of legislation

Division 13 was enacted in 1982 and applies to income years that commenced before 1 July 2013. Division 13 applies at the discretion of the Commissioner of Taxation (Commissioner).

Subdivision 815-A was enacted in 2012 and applies to income years commencing between 1 July 2004 and 30 June 2013. It operates concurrently with Division 13 for transactions with related parties in countries that have a double taxation agreement with Australia. Subdivision 815-A applies at the Commissioner's discretion.

Subdivisions 815-B, C and D apply to taxpayers with income years commencing on or after 1 July 2013. The Commissioner can apply subdivisions 815-B, C and D, and taxpayers must self-assess them.

Overview of current legislative framework

Subdivisions 815-B, C and D were enacted in June 2013 and introduced important changes to the transfer pricing rules, including:

- ▶ A self-assessment regime, effectively requiring public officers¹ to determine whether the taxpayer has received a transfer pricing benefit to satisfy their duties in signing off on the tax return. In extreme cases, the public officers may be liable for penalties if they do not discharge this responsibility.

¹ Company officer is responsible for the signing of the company tax return and that the responses in the return are true and accurate and there are no false or misleading statements

- ▶ Penalty regime linked to documentation. The preparation of transfer pricing documentation is not compulsory. However, failure to prepare documentation contemporaneously in accordance with the new rules prevents the taxpayer from establishing a reasonably arguable position (RAP). This will typically prevent the taxpayer from accessing lower penalties if the taxpayer receives a transfer pricing adjustment that increases its tax liabilities in Australia. A failure to prepare contemporaneous documentation cannot be remedied later.
- ▶ Extensive reconstruction provision. Subdivisions 815-B through D provide the ATO with extensive powers in relation to examining the actual commercial and financial relations between a taxpayer and its international related parties and substituting them with what the ATO considers a better reflection of arm's-length commercial and financial relations. These substituted transactions then form the basis for determining the arm's-length conditions. This provision must also be self-assessed by the taxpayer.
- ▶ Compliance with the arm's-length principle is assessed on the alignment of the taxpayer's actual conditions with arm's-length conditions. Conditions are defined broadly to encompass all pricing and non-pricing aspects relevant to the economic substance of the business and its international arrangements. This effectively gives rise to a "double test," where taxpayers have to assess the overall commerciality of their arrangements as well as the pricing of individual transactions.

Subdivision 815-C provides specific rules for permanent establishments to make certain that the amount brought to tax in Australia by entities operating permanent establishments is not less than it would be if the permanent establishment was a distinct and separate entity operating independently. The rules and requirements contained in Subdivision 815-C apply in broadly the same manner as those contained in Subdivision 815-B. Subdivision 815-C does not fully align with the OECD guidance and requires an allocation of actual revenue and expenses.

Subdivision 815-D applies to partnerships and trusts using an analogous approach as found in subdivisions 815-B and 815-C.

▶ Section reference from local regulation

The ATO has issued many transfer pricing rules. Below are the key transfer pricing rulings (TR) and practice statements law administration (PS LA), and practical compliance guidelines (PCG):

- ▶ TR 92/11 – Loan arrangements and credit balances

- ▶ TR 94/14 – Basic concepts underlying the operation of Australia’s transfer pricing rules
- ▶ TR 97/20 – Pricing methodologies
- ▶ TR 98/11 – Documentation
- ▶ TR 98/16 – Penalties
- ▶ TR 1999/1 – Charging for services
- ▶ TR 2000/16 – Relief from double taxation and the mutual agreement procedure
- ▶ TR 2001/11 – Operation of Australia’s permanent establishment attribution rules
- ▶ TR 2003/1 – Thin capitalization, applying the arm’s-length debt test
- ▶ TR 2004/1 – Cost contribution arrangements
- ▶ TR 2007/1 – Effect of determinations under Division 13, including consequential adjustments
- ▶ TR 2010/7 – Interaction of Australia’s thin capitalization rules and the transfer pricing provisions
- ▶ TR 2011/1 – Application of the transfer pricing provisions to business restructurings by multinational enterprises
- ▶ TR 2014/6 – Income tax: transfer pricing – the application of section 815-130 of the Income Tax Assessment Act 1997
- ▶ TR 2014/8 – Income tax: transfer pricing documentation and Subdivision 284-E
- ▶ PCG 2017/1 – ATO compliance approach to transfer pricing issues related to centralized operating models involving procurement, marketing, sales and distribution functions
- ▶ PCG 2017/4 – (Draft) ATO compliance approach to taxation issues associated with cross-border related party financing arrangements and related transactions
- ▶ PS LA 2014/2 – Administration of transfer pricing penalties for income years commencing on or after 29 June 2013
- ▶ PS LA 2014/3 – Simplifying transfer pricing record-keeping
- ▶ PS LA 2015/4 – Advance pricing arrangements

2. OECD guidelines treatment/reference

Australia is a member of the OECD and follows OECD Guidelines in practice.

In response to key transfer pricing cases (see below) that, from the ATO’s perspective, identified certain shortcomings in the existing transfer pricing legislation, revised transfer pricing provisions were released: Subdivision 815-A was released in 2012, and subdivisions 815-B, C and D were released in 2013. These provisions refer directly to the 2010 OECD Guidelines as relevant guidance for the interpretation of the provisions. The recent federal budget mentions that the reference in relation to subdivisions 815 B, C and D will be updated to reference the 2016 OECD Guidelines. These provisions provide the ATO with powers to look beyond the pricing of particular transactions to determine whether an arrangement is consistent with the arm’s-length principle. More specifically, these revised transfer pricing provisions allow the ATO to consider whether the broader commercial context of the arrangement is arm’s-length before determining whether the pricing of such arrangement is arm’s-length.

Although there have been a number of transfer pricing cases before the courts in Australia, the following are three key cases:

- ▶ *Roche Products Pty Ltd (Roche) vs. Commissioner of Taxation* [2008] AATA 261
- ▶ *Commissioner of Taxation vs. SNF (Australia) Pty Ltd* [2011] FCAFC 74
- ▶ *Chevron Australia Holdings Pty Ltd vs. Commissioner of Taxation* [2017] FCAFC 62

Although it is beyond the scope of this discussion to discuss the details of these cases, it suffices to say that the *Roche* and *SNF* cases highlighted the fact that the existing transfer pricing legislation limited the ATO to the consideration of whether the pricing of a related party transaction was arm’s-length and did not provide the scope to consider whether the profits or other commercial context of the arrangement were also arm’s-length. In response to the *SNF* case, transfer pricing provisions were released: Subdivision 815-A was released in 2012, and subdivisions 815-B, C and D were released in 2013.

The *Chevron* case addressed the appropriate pricing for intercompany loan arrangements and introduced the “orphan concept.” Under this concept, the pricing of a loan to an entity within a global group needs to be considered in the context of that entity within the global group rather than as a stand-alone entity (i.e., the borrowing entity is not an “orphan” but rather part of the global group’s family of companies).

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

The preparation of transfer pricing documentation is not compulsory. However, taxpayers that do not prepare contemporaneous transfer pricing documentation that meets the specific requirements set out in Subdivision 284-E are precluded from establishing a RAP in the event of a transfer pricing adjustment. This will typically result in larger penalties if the taxpayer receives a transfer pricing adjustment that increases its tax liabilities in Australia.

To satisfy Subdivision 284-E, it is required that the documentation:

- ▶ Be prepared contemporaneously (i.e., before the time by which the taxpayer lodges its income tax return)
- ▶ Be prepared in English, or readily accessible and convertible into English
- ▶ Explain the particular way in which the relevant transfer pricing provisions apply (or do not apply) to the taxpayer's international related party dealings
- ▶ Explain why the application of the transfer pricing provisions to the taxpayer's international related party dealings in that way best achieves consistency with the relevant guidance materials (e.g., the 2010 OECD Guidelines)
- ▶ Allow actual conditions, arm's-length conditions, comparable circumstances and the result of the application of the subdivision to be readily ascertained

The ATO further recommends that taxpayers answer the following questions in their documentation:

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

▶ Does transfer pricing documentation have to be prepared annually?

The preparation of transfer pricing documentation is not compulsory; however, to comply with the relevant documentation requirements set out in Subdivision 284-E for penalty protection purposes (i.e., for taxpayers to have a RAP), documentation must be prepared before the income tax return is lodged.

In Australia, a taxpayer is obliged to update its documentation annually. However, if no significant changes have occurred, a short report stating the minor changes will generally be sufficient.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

None specified.

▶ Economic analysis

None specified.

▶ BEPS master and local files

The revenue threshold is annual global income of AUD1 billion or more, and this revenue threshold is per global group.

▶ CbCR

The revenue threshold is annual global income of AUD1 billion or more, and the filing date is within 12 months after the end of the income tax year.

c) Specific requirement(s)

▶ Treatment of domestic transactions

There is no documentation obligation for domestic transactions.

▶ Local language documentation requirement

The transfer pricing documentation needs to be submitted in English (local language) or readily convertible into English.

▶ Safe harbor availability

Intragroup financing arrangements

In December 2014, the ATO published online guidance regarding safe harbor interest rates applicable to low-level inbound loan arrangements between related entities. Further, on 22 February 2017, the ATO released updated guidance, PCG 2017/2, which included a simplified record-keeping

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option applicable to low-level outbound loans with related parties. This option is available for years starting on or after 1 July 2015.

The requirements for taxpayers to be eligible for the application of the safe harbor are as follows:

- ▶ Combined cross-border loan balance must be AUD50 million or less for the Australian economic group at all times during the financial year.
- ▶ The funds provided to the taxpayer are Australian dollar funds, and this is reflected in the loan agreement(s).
- ▶ Associated expenses (i.e., interest) are paid in Australian dollars.
- ▶ The taxpayer has not derived sustained losses.
- ▶ The taxpayer does not have related party dealings with entities in specified countries.
- ▶ The taxpayer has not undergone a restructure within the year.
- ▶ Taxpayer assesses compliance with the transfer pricing rules (e.g., documents eligibility for the concessional rate).
- ▶ For **low-level inbound loans**, the interest rate applicable to the loan does not exceed the Reserve Bank of Australia (RBA) indicator lending rate for "small business; variable; residential-secured; term" (available from the RBA website). Where this guidance is applied, it may still be relevant to validate that the relevant interest rate is also arm's-length from the perspective of the foreign lender's jurisdiction.
- ▶ For **low-level outbound loans**, the interest rate applicable to the loan is no less than the following rate for each of the income years in which the loan is in effect:
 - ▶ 4.91% in the 2015 income year
 - ▶ 4.37% in the 2016 income year
 - ▶ 4.34% in the 2017 income year
- ▶ The ATO specifically notes that this safe harbor does not apply to other financing arrangements (in particular, guarantees).

Small taxpayers

To apply the simplified record-keeping option for small taxpayers, the taxpayer must satisfy the following:

- ▶ The turnover for the year is under AUD25 million for the Australian economic group.
- ▶ It does not have related party dealings with entities in specified countries.
- ▶ It has not undergone a restructure within the year.
- ▶ It does not have related party dealings involving royalties, license fees or R&D arrangements.

It does not have specified service related party dealings (either as expenses or as income) greater than 15% of its turnover.

This option does not reduce the documentation requirements for international related party financial transactions (for example, loans and guarantees) and associated charges, as well as international related party dealings of a capital nature

Distributors

To apply the simplified record-keeping option for distributors, the taxpayer must satisfy the following:

- ▶ The turnover for the year is under AUD50 million for the Australian economic group.
- ▶ It does not have a profit-before-tax (PBT) ratio of less than 3% (the calculation of the PBT ratio is based on the company's tax return disclosures).
- ▶ It has not incurred sustained losses (i.e., losses for three consecutive years).
- ▶ It does not have related party dealings with entities in specified countries.
- ▶ It has not undergone a restructure within the year.
- ▶ It does not have related party dealings involving royalties, license fees or R&D arrangements.
- ▶ It has assessed its compliance with the transfer pricing rules.

This option does not reduce the documentation requirements for international related party financial transactions (for example, loans and guarantees) and associated charges, as well as international related party dealings of a capital nature.

Materiality

To apply the simplified record-keeping option based on materiality, the taxpayer must satisfy the following:

- ▶ The total international related party dealings represent less than or equal to 2.5% of the total turnover for the Australian economic group.
- ▶ It does not have related party dealings with entities in specified countries.
- ▶ It does not have related party dealings involving royalties, license fees or R&D arrangements.
- ▶ It has assessed its compliance with the transfer pricing rules.

This option does not reduce the documentation requirements for international related party dealings of a capital nature.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Australia has adopted BEPS Action 13 for transfer pricing documentation in local regulations.

▶ Coverage in terms of master and/or local files

Both master and local files are covered.

▶ Effective/expected commencement date

The effective commencement date is 1 January 2016.

▶ Material differences from OECD report template/format

The Australian format is generally in line with the format of the OECD.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

In straightforward cases, the BEPS Action 13 format report may be sufficient to achieve penalty protection (e.g.,, vanilla distributor or contract manufacturer or service provider). However, in more complex cases (e.g.,, those involving restructures, intangibles, significant intragroup financing or commercially unrealistic results), additional documentation may be required to address the specific transfer pricing legislation in Australia. More specifically, such analysis will need to consider the commercial context of such arrangements to ensure that the transfer pricing reconstruction provisions should not apply before considering the arm's-length nature of the pricing of such transactions.

▶ CbCR notification and CbC report submission requirement

The notification is provided through lodgement of the local file, due 12 months after the end of the financial year.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

The ATO requires an international dealings schedule (IDS) to be filed with the tax return. It requires taxpayers to disclose:

- ▶ Details of restructuring events involving international related parties (Question 17, which must be completed regardless of the quantum of the transactions)
- ▶ Dealings with branch operations (Question 18, which must be completed regardless of the quantum of the transactions)

In addition, if the aggregate amount of transactions or dealings with international related parties, both revenue and capital in nature, is greater than AUD2 million, the following information must be disclosed:

- ▶ Top three transactions (individually) and other transactions (combined) for the top three specified "low-tax" jurisdictions (Question 3)
- ▶ The top three transactions and other transactions for the top three non-specified jurisdictions (Question 4); historically, the list of specified countries predominantly focused on tax havens, but the list was recently expanded to include Hong Kong, Ireland, Luxembourg, Singapore, Switzerland and the Netherlands
- ▶ For all international related party transactions (Questions 5 through 13):
 - ▶ Type of transaction – e.g.,, royalties, intercompany loans, technical services, administrative services
 - ▶ The quantum per type of transaction
 - ▶ The percentage of transactions of each type covered by contemporaneous documentation that has been prepared in accordance with the four-step process (transfer pricing documentation does not need to be lodged with the tax return)
 - ▶ Transfer pricing methodologies selected and applied for each international related party transaction type
- ▶ Information on transactions for no payment or nonmonetary payment, share-based employee remuneration and cost contribution arrangements (Questions 14 through 16)

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In addition to the transfer pricing disclosures, the IDS captures information on interests in foreign companies or foreign trusts, permanent establishments and thin capitalization. Separate thresholds apply for these disclosures.

As an administrative concession, the ATO is looking to waive the requirement to lodge parts of the IDS where taxpayers complete and lodge the local file with the tax return.

b) Transfer pricing-specific returns

There is no specific return, apart from the schedule to the tax return described above.

5. Transfer pricing documentation/ disclosure timelines

a) Filing deadline

► Corporate income tax return

Within 12 months after the end of the income tax year.

► Other transfer pricing disclosures/return

With corporate tax return.

► CbCR notification

Due 12 months after the end of the financial year.

► CbC report preparation/submission

Within 12 months after the end of the income tax year.

b) Documentation preparation deadline

Transfer pricing documentation is typically required to be finalized or readily available to the taxpayer by the date the entity files its income tax return for the period.

c) Documentation submission deadline

► Is there a statutory deadline for submission of transfer pricing documentation?

There is no statutory deadline for submission of transfer pricing documentation with the ATO.

► Time period/deadline for submission on tax authority request

The taxpayer generally has to submit the transfer pricing documentation within 28 days upon request by the ATO. Although an extension of this deadline is possible from the ATO, based on recent experience, the ATO is unlikely to grant

such an extension unless there are clear, compelling reasons supporting the request.

6. Transfer pricing methods

a) Applicability

► International transactions

Yes.

► Domestic transactions

Not applicable.

b) Priority/preference of methods

The legislation requires taxpayers to adopt the “most appropriate” transfer pricing method and refers to the OECD Guidelines in this regard. Methods include traditional transaction methods (CUP, resale price and cost-plus) and traditional profit-based methods (profit split and TNMM), and any other method that results in an arm’s-length outcome is also acceptable. However, other methods should only be used where one of the other traditional transaction or profit-based methods cannot be reliably applied.

7. Benchmarking requirements

a) Local vs. regional comparables

Although there is no legal or formal requirement for local country comparables, the ATO generally has a strong preference for local comparables. However, the ATO will generally accept foreign comparables if it can be demonstrated that reliable local comparables are not available.

b) Single-year vs. multi-year analysis

Although multiple-year (five years) testing is generally acceptable, based on recent experience, the ATO has been challenging profit profiles where there are a number of very low-profit or -loss years that are well below the range that are combined with higher-profit years to achieve an overall arm’s-length result.

c) Use of interquartile range

There are no formal guidelines on the determination of the appropriate point in the range. However, interquartile ranges, calculated using Excel Quartile formulas, are generally acceptable, but there may still be challenges in terms of the most appropriate point within the interquartile range (i.e., it is not necessarily accepted that if the tested party results fall

within the interquartile range, it may automatically be concluded that this demonstrates that such results are consistent with the arm's-length principle).

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

There is no specific requirement to update the comparable benchmarking search annually. Generally, such benchmarking may be relied upon for an additional one or two years where there has not been significant changes in the industry or the functional profile of the tested party and the financial results of the tested party are not at the low end of the comparable benchmark range.

e) Simple vs. weighted average

Generally, weighted rather than simple averages are used in determining averages over a period.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

► Consequences of failure to submit/late submission and/or incorrect disclosures

- Penalties for non-timely filing
 - Before 1 July 2017 – penalty unit² is \$180
 - From 1 July 2017 – penalty unit is \$210

Entity	Days/penalty unit				
	28 or fewer	29 to 56	57 to 84	85 to 112	More than 112
General case	1	2	3	4	5
Medium entity	2	4	6	8	10
Large entity	5	10	15	20	25
Significant global entity	500	1,000	1,500	2,000	2,500

² Simplified way of scoring

► Penalties for incomplete or incorrect filing

Does taxpayer have a RAP?	Does Commissioner consider that sole or dominant purpose of arrangements was to obtain a transfer pricing benefit?	Base penalty amount applicable penalty (as % of shortfall)
No	Yes	50%
No	No	25%
Yes	Yes	25%
Yes	No	10%

- The following penalties are for false or misleading statements that don't result in a shortfall amount:

Penalty units	Current	Increase after 1 July 2017
Intentional disregard	60 penalty units (AUD10,800)	120 penalty units (AUD25,200)
Recklessness	40 penalty units (AUD7,200)	80 penalty units (AUD16,800)
No reasonable care	20 penalty units (AUD3,600)	40 penalty units (AUD8,400)

► If an adjustment is sustained, can penalties be assessed?

Yes. The specific rates will depend on the facts and circumstances, including whether adequate documentation has been prepared (refer to the above discussion).

► Is interest charged on penalties/payable on refund?

Interest can also be charged in connection with the shortfall and timing of the underpayment of tax. The rate will once again depend on the specific facts and circumstances of the case.

b) Penalty relief

- Where the taxpayer has contemporaneous documentation (i.e., prepared prior to, or at the time of, filing the company's annual tax return and international dealings schedule) to support a RAP, the penalty may be reduced.
- In addition, penalties will be reduced by 20% for voluntary disclosure after notification of an audit, or by 80% for voluntary disclosure before notification of an audit.
- A taxpayer with an APA will typically not incur penalties. Exceptions to this include non-arm's-length dealings that are not covered by the APA, or for noncompliance with the terms and conditions of the APA.

- ▶ The Commissioner has discretion to remit penalties:
 - ▶ Under PS LA 2008/18, the Commissioner may impose penalties for both a scheme shortfall and a false or misleading statement, but he or she has the discretion to remit the penalty in part or in total. The practice statement provides some very restrictive examples in which penalties are to be remitted. In relation to penalties with respect to failure to have a reasonably arguable position, given the specific nature of Subdivision 284-E, it would seem unlikely that the Commissioner would remit penalties in the future unless the prescribed documentation exists.

9. Statute of limitations on transfer pricing assessments

Under subdivisions 815-B, C and D, amendments can be made within seven years following the date on which a notice of assessment is issued to the taxpayer.

Historically, there has been no statute of limitations with respect to transfer pricing adjustments. The tax legislation applicable for financial years starting before 1 July 2013 specifically empowers the Commissioner to make amendments to tax assessments in any year for transfer pricing adjustments under Division 13. As such, years starting before 1 July 2013 remain open to challenge indefinitely.

Adjustments can be made under Subdivision 815-A for any financial years starting between 1 July 2004 and 30 June 2013 (inclusive). Similar to Division 13, there is no limitation on when adjustments can be made.

In addition, some of Australia's double tax agreements, including those with New Zealand and Japan, specify time limits for adjustments that can create potential double taxation with no recourse for relief under mutual agreement procedures.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

- ▶ **Likelihood of transfer pricing-related audits**
(high/medium/low)

The likelihood of an annual tax audit in Australia would be assessed as medium in general. However, if taxpayers exhibit the risk factors indicated above, the likelihood of a review or audit increases significantly. In addition, if the taxpayer enters into a material level or percentage of international related party transactions, the likelihood that transfer pricing would be reviewed as part of any general tax audit is very high.

We also note that the top 1,000 companies in Australia are now on a scheduled audit plan, so the risk of some form of review increases to 100%. The risk of an audit for such companies will depend on the specific facts and circumstances. We also note that the ATO has also recently targeted companies for audits in the pharmaceutical and technology industries as well as taxpayers with significant intragroup financing.

- ▶ **Likelihood of transfer pricing methodology being challenged**
(high/medium/low)

It is generally the application of the transfer pricing method that is challenged (i.e., comparables selected and selection of point in the range). However, there have been recent cases within the technology industry where the selection of a cost-plus method to remunerate a marketing service function has been rejected in favor of an EBIT (earnings before income and taxes) to revenue to determine the remuneration for this function. There has also been recent experience in which the ATO has attempted to apply the profit split method to determine the remuneration of a local marketing, sales and distribution entity where it has been concluded that such entity provides a unique and valuable contribution to the overall supply chain.

- ▶ **Likelihood of an adjustment if transfer pricing methodology is challenged**
(high/medium/low)

The chance of some adjustment is medium to high, given the ATO risk selection guidelines for an audit (i.e., only those cases where the ATO believes there is a relatively high probability that taxable income has been understated).

- ▶ **Specific transactions/industries/situations, if any, more likely to undergo audit**

In determining whether an Australian taxpayer's transfer pricing arrangement should be reviewed or audited, the ATO generally considers the size and nature of the related party dealings, the quality of any transfer pricing documentation and whether the taxpayer's results appear to be commercially realistic. The ATO has developed a sophisticated risk engine that considers these factors, along with other financial and industry data, to determine which taxpayers to review. Related party transactions undertaken in connection with the following may receive particular attention by the ATO:

- ▶ Centralized business models with activity in low-tax jurisdictions, including principals, marketing hubs and procurement companies in low-tax jurisdictions
- ▶ Low levels of profitability, or losses
- ▶ Financing arrangements, including interest-free loans (for outbound taxpayers), high interest-bearing loans (for inbound taxpayers) and guarantee fees

- ▶ Business restructuring (particularly where profitability is reduced, or valuable Intangible property is transferred to a low-tax jurisdiction)
- ▶ Transactions with recognized tax haven jurisdictions
- ▶ Payments made in connection with intangible property, including royalties or other licensing arrangements
- ▶ Management service fees that significantly impact overall profitability and/or are paid to a low-tax jurisdiction

More recently, the ATO has also been focusing on BEPS scenarios involving one or more of the above risk indicators and commencing risk reviews on such companies

11. APA opportunity

▶ Availability (unilateral/bilateral/multilateral)

There is an APA program available in Australia. APA regulations in Australia support unilateral, bilateral and multilateral APAs. The ATO's APA program is outlined in ATO PS LA 2015/4.

▶ Tenure

An APA in which the ATO is involved is generally for three to five years.

▶ Rollback provisions

There is a rollback provision available subject to the ATO's agreement and the taxpayer's facts. Typically, the rollback period is for no more than two years and requires that the functional profile, market conditions and financial profile during the rollback period are consistent with those factors in the APA period.

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Austria

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Ministry of Finance (MF).

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

Transfer Pricing Documentation Law (TPDL) and the related regulation for implementation of the law – applicable for fiscal years starting on or after 1 January 2016:

- a. Transfer Pricing Guidelines (BMF-010221/2522-IV/4/2010, 28 October 2010)
- b. TPDL and the related regulation for implementation of the law
- c. Section 6 (6), Income Tax Act
- d. Sections 8 and 12 (1) 10, Corporate Income Tax Act
- e. Income Tax Guidelines 6.13.3, 2511-2513
- f. Corporate Income Tax Guidelines 14.8.2, 1147
- g. Sections 115, 119, 124, 131 and 138, Federal Tax Code (FTC)
- h. Section 118, FTC regarding unilateral APAs
- i. Section 49b, Criminal Tax Law (CTL)
- j. Several opinions (public rulings called Express Answering Service, or EAS) published by the MF regarding selected transfer pricing issues

► Section reference from local regulation

Section 6 (6) of the Income Tax Act and Income Tax Guidelines 2515.

2. OECD guidelines treatment/reference

Austria is a member of the OECD and recognizes the OECD Guidelines, which provide support for domestic use but do not constitute binding law in Austria.

According to the Austrian Transfer Pricing Guidelines, the tax authorities also observe the OECD Report on the Attribution of Profits to Permanent Establishments (AOA), although the AOA is currently not fully applicable, as none of Austria's

current double tax treaties include the new Article 7. The Austrian tax authorities are fully aware of and recognize the OECD BEPS developments (e.g., BEPS Action 13 was considered as the basis for the implementation of the TPDL).

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

Yes. In 2016, the TPDL was published. It is applicable for fiscal years beginning on or after 1 January 2016.

Further guidance is provided in the Austrian Transfer Pricing Guidelines (ATPG). They serve as interpretative guidance for the application of the arm's-length principle embedded in Austrian income tax law. Their purpose is to facilitate and ensure the implementation of the OECD Guidelines and any updates thereto in Austria. Basically, the ATPG provide an overview of the Austrian tax authorities' administrative practice relating to various transfer pricing issues

► Does transfer pricing documentation have to be prepared annually?

Yes, Austria requires preparing transfer pricing documentation annually under its local country regulations. The regulation for implementation of the TPDL states that the master file and local file requirements can be fulfilled by referencing information already available. However, in such cases, the referenced information needs to be attached to the transfer pricing documentation.

The documentation obligations for fiscal years prior to FY 2016 are based on the FTC's general provisions concerning bookkeeping, record-keeping and the disclosure requirement for tax purposes. Regarding the content of a transfer pricing documentation, the ATPG in general refer to the OECD Guidelines (in the current version, i.e., for FY 2016, Annex II to Chapter V of the OECD Guidelines 2017 = BEPS Action 13 standard).

b) Materiality limit/thresholds

► Transfer pricing documentation

The Austrian transfer pricing regulations (TPDL as well as

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ATPG) do not provide materiality thresholds. In general, all cross-border intercompany transactions need to be documented. However, materiality thresholds are often applied in practice, which follow the OECD approach outlined in BEPS Action 13. If applied, such materiality thresholds may be questioned by the Austrian tax authorities.

► Economic analysis

There is no materiality limit.

► BEPS master and local files

The TPDL covers the master and local files.

The master and local files have to be prepared by constituent entities resident in Austria if their turnover in each of the previous two fiscal years exceeded EUR50 million. The obligation to prepare the master and local files ceases in a given year if the turnover of the constituent entities is below EUR50 million for two previous consecutive years.

Constituent entities resident in Austria that do not exceed the stipulated turnover threshold have to file a master file if a group entity resident in another state is required to prepare a master file according to the respective domestic law of its resident state.

Furthermore, the TPDL clarifies that documentation obligations existing in addition to the TPDL (e.g., accounting and filing obligations according to the FTC) are not affected by the TPDL. Consequently, transfer pricing documentation also needs to be prepared by constituent entities not exceeding the turnover threshold.

The content requirements for the master and local files are stipulated in the regulation for implementation of the TPDL

► CbCR

The TPDL covers CbCR; a CbC report has to be prepared if the total turnover generated by the multinational group stated in the consolidated annual financial statements of the previous fiscal years amounts to at least EUR750 million. The term "turnover" should be understood as the sum of the revenues generated from activities on the market.

The tables to be used for the CbC report are in line with the tables provided in the OECD Guidelines

c) Specific requirement(s)

► Treatment of domestic transactions

The TPDL does not stipulate that domestic transactions do not need to be documented. However, guidance is expected to be provided by the Austrian tax authorities shortly. Irrespective of the documentation obligations, it needs to be noted that the transfer prices applied to domestic transactions need to be in line with the arm's-length principle and may be questioned in the course of a tax audit:

► Local language documentation requirement

The TPDL stipulates that the entire documentation has to be prepared in a language officially permitted for tax proceedings (typically German) or English. The regulation of the implementation of the TPDL states that Appendix 3 of the CbC report has to be prepared in English.

► Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

► Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Yes.

► Coverage in terms of master and/or local files

Both master and local files are covered.

► Effective/expected commencement date

The TPDL is applicable for fiscal years beginning on or after 1 January 2016.

► Material differences from OECD report template/format

None.

► Sufficiency of BEPS Action 13 format report to achieve penalty protection

A BEPS Action 13 format report is typically sufficient to achieve penalty protection.

However, the TPDL does not define specific penalties with regard to the master file and local file. See the "Transfer pricing penalties/relief" section below

► CbCR notification and CbC report submission requirement

There is a CbCR notification and CbC report submission requirement for Austria. The Austrian constituent entity

has to inform the competent tax office about the identity and residence of the reporting entity by the last day of the fiscal year for which a CbC report is filed.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

No specific continuous disclosure is required in the annual tax return.

In the case of a tax audit, the auditors usually ask for a description of major related party transactions, as well as disclosure of all contracts in place with related parties and transfer pricing documentation available. In an increasing number of cases, an extensive transfer pricing questionnaire is discussed

b) Transfer pricing-specific returns

No transfer pricing-specific returns have to be filed along with the annual tax returns.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► Corporate income tax return

The corporate income tax (CIT) returns have to be filed by 31 March of the second calendar year following the balance sheet date at the latest, if represented by an Austrian tax advisor. If not represented by an Austrian tax advisor, CIT returns have to be filed by 30 June of the calendar year following the balance sheet date at the latest, if filed electronically (CIT returns for permanent establishments need to be filed by 30 April at the latest).

► Other transfer pricing disclosures/return

No transfer pricing-specific returns have to be filed along with the annual tax returns.

► CbCR notification

The TPDL stipulates that a constituent entity resident in Austria needs to inform the competent tax office about the identity and residence of the reporting entity by the last day of the fiscal year for which a CbCR is filed.

► CbC report preparation/submission

The filing due date for the CbCR depends on the fiscal year-end of the reporting entity (usually the group's fiscal year-end). If the Austrian constituent entity is the reporting entity, the CbCR has to be filed electronically (via FinanzOnline) with the competent tax office within 12 months after the end of the respective fiscal year.

b) Documentation preparation deadline

In line with the TPDL, the required documentation (the master file and local file, as well as the CbC report) generally has to be prepared for fiscal years starting from 1 January 2016. In cases where a constituent entity was officially designated by notice as the surrogate parent entity for submission of the CbC report, the submitted information can refer to fiscal years starting from 1 January 2017.

Master and local files prepared in line with the TPDL have to be submitted upon request of the competent tax office within 30 days after the constituent entity files its tax return (i.e., the earliest deadline for the submission of the master file and the local file is 30 days after filing the tax return of the respective year). Consequently, it is highly recommended to have the master file and local file prepared when the tax return is filed. According to a published opinion of the Austrian Ministry of Finance (EAS 3198), transfer pricing documentation should be available when the tax returns are filed.

c) Documentation submission deadline

The CbC report has to be filed electronically with the competent tax office within 12 months after the end of the respective fiscal year. Both the master file and the local file have to be submitted upon the request of the competent tax office within 30 days after the constituent entity files its tax return (i.e., the earliest deadline for the submission of the master file and the local file is 30 days after filing the tax return of the respective year).

► Is there a statutory deadline for submission of transfer pricing documentation?

No statutory submission deadline exists for transfer pricing documentation that is not falling under the master file/local file approach stipulated in the TPDL. Such transfer pricing documentation is usually requested by the competent tax auditor in the course of a tax audit. The submission deadlines can vary from case to case.

► **Time period/deadline for submission on tax authority request**

Before implementation of the TPDL, transfer pricing documentation (master file and local file) was usually requested by the competent tax auditor at the beginning of a tax audit. A submission deadline was determined, which could vary greatly from case to case (e.g., from only one week to several weeks). Upon the tax auditor's consent, an extension of the deadline was possible. Based on the TPDL, the deadline for submission of the transfer pricing documentation (master file and local file) is 30 days upon the request of the competent tax office after the constituent entity files its tax return. An extension of the deadline should still be possible.

6. Transfer pricing methods

a) Applicability

- International transactions – Yes.
- Domestic transactions – Not applicable (guidance was pending from authorities at the time of this publication).

b) Priority/preference of methods

Based on the OECD Guidelines and the Austrian Transfer Pricing Guidelines, the MF accepts the CUP, resale-minus, cost-plus, TNMM and profit split methods.

The MF follows the replacement of the hierarchy of transfer pricing methods, according to the 2010 update of Chapters I to III of the OECD Guidelines. Particularly, the TNMM and the profit split method are no longer considered methods of last resort. According to the Austrian Transfer Pricing Guidelines, the method that provides the highest degree of certainty for the determination of an arm's-length transfer price has to be selected.

7. Benchmarking requirements

a) Local vs. regional comparables

The TPDL does not include regulations regarding benchmark studies. Generally, local comparables are preferred. However, for Austrian purposes, usually regional Pan-European Amadeus benchmark studies (EU 15/EU 28 + Iceland, Norway, Switzerland) are accepted. When preparing a benchmark study, the five comparability factors must be considered in identifying/determining the set of comparables.

b) Single-year vs. multi-year analysis

Multi-year analysis is used regarding the financials of comparables. However, for the tested party, usually each separate year should be within the interquartile range identified by a benchmark study, and specific reasoning should be provided in case of deviations.

c) Use of interquartile range

Yes, interquartile range calculation using Excel Quartile formulas is acceptable.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

New benchmark studies should be prepared after three years. Updates of the financials used in the analysis should be performed annually (in line with the OECD approach).

e) Simple vs. weighted average

There is a clear preference for the weighted average for arm's-length analysis. In practice, three-year weighted average arm's-length ranges are frequently calculated.

f) Other specific benchmarking criteria, if any

- Independence: Rejection of companies owned by at least one shareholder (25% threshold) and companies owning at least one subsidiary (25% threshold)
- Type of accounts: Unconsolidated

8. Transfer pricing penalties/relief

a) Penalty exposure

- **Consequences of failure to submit/late submission and/or incorrect disclosures**

At the time of this publication, there was only one specific regulation dealing with transfer pricing penalties in Austria.

Section 49b of the CTL stipulates that anyone who does not file the CbC report in time, does not file it at all or incorrectly files the required items in the tables in Appendices 1 to 3 of the TPDL due to intent commits a tax offense. The CTL stipulates penalties of up to EUR50,000 for intent and up to EUR25,000 for gross negligence. While penalties are to be imposed, legal prosecution (by courts) for such tax offenses is excluded by the CTL.

However, the TPDL does not define specific penalties with regard to the master and local files. Therefore, the general regulations of Section 111 FTC (penalties) apply. According to Section 111 FTC, a fine of up to EUR5,000 per offense can be levied by the tax authorities after they provide the taxpayer with a warning/notification that includes the amount of the fine and an appropriate deadline for taking the required action. In addition, Section 51 (1) lit. a CTL (tax offenses) could be applicable, which stipulates a monetary penalty of up to EUR5,000 for an intentional violation of the tax law disclosure obligations. Additionally, if no proper transfer pricing documentation is prepared, the risk rises that transfer prices will be considered not in line with the arm's-length principle and adjusted by the Austrian tax authorities.

► **If an adjustment is sustained, can penalties be assessed?**

No specific penalties are stipulated. Withholding tax may be levied depending on the circumstances and facts.

In case of material adjustments, penalties according to the CTL can be assessed in case of intent or gross negligence (usually a percentage of unpaid taxes).

► **Is interest charged on penalties/payable on refund?**

If the taxable income is increased because the arm's-length criterion has not been met, nondeductible late-payment interest in the amount of 2 percentage points above the base rate (published by the European Central Bank) is levied on the corporate income tax payments for any additional prior year for up to 48 months.

b) Penalty relief

There are no penalty relief provisions available.

If the taxpayer provides insufficient documentation, the tax authorities nonetheless are obliged to base their consideration upon such documentation. Late-payment interest will become due on any corporate income tax payments for an additional prior year, regardless of whether the documentation is sufficient.

If adjustments are proposed/made by the tax authority in the course of a tax audit, the taxpayer can either file an appeal or a request for a mutual agreement procedure, or both

9. Statute of limitations on transfer pricing assessments

The statute of limitations on a transfer pricing adjustment is usually 6 years after the end of the calendar year in which the relevant fiscal year ends. If the CTL is to be applied, the statute of limitations is 10 years, not 6 years. In case a tax audit starts within the 6-year period, the statute of limitations is extended. The term may be extended up to 10 years.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood of an annual tax audit (i.e., every fiscal year being examined) is very high, and transfer pricing is highly likely to be reviewed as part of that audit.

► **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood of a transfer pricing methodology being challenged is medium to high, depending on the specific circumstances of the case.

► **Likelihood of an adjustment if transfer pricing methodology is challenged (high/medium/low)**

High, as the tax auditors are often very aggressive and have demanding requests regarding the arm's-length evidence. Changes in stances are difficult, even if good technical arguments are available.

► **Specific transactions/industries/situations, if any, more likely to undergo audit**

Intercompany services transactions, royalty payments, intercompany financing arrangements, as well as business restructurings and change of transfer pricing policy leading to a reduction of profits have a higher likelihood to undergo audit. The likelihood depends more on transaction types than on the industry a multinational enterprise is belonging to.

11. APA opportunity

► **Availability (unilateral/bilateral/multilateral)**

Based on Section 118 of the FTC, it is possible to apply for a unilateral, binding, appealable advance ruling issued by the competent tax office on the tax treatment of a particular (but yet-to-occur) transfer pricing issue. The administrative fee to be paid to the tax authorities for filing an APA request is up to EUR20,000.

Under specific circumstances, it is possible to ask the Austrian tax authorities to participate in negotiations of a bilateral or multilateral APA on the basis of Article 25 (3) of the respective double tax treaty

► **Tenure**

In Austria, no official APA program exists. Usually, APAs based on Section 118 of the FTC are granted for a period of three to five years.

► **Rollback provisions**

None specified.

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Azerbaijan



1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Ministry of Taxes of the Republic of Azerbaijan.

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

The transfer pricing (TP) regulations are contained in:

- The Tax Code of the Republic of Azerbaijan, following amendments by Law of the Republic of Azerbaijan No. 454-VQD, dated 16 December 2016, "Amendments to the Tax Code of the Republic of Azerbaijan," effective 1 January 2017 (the Tax Code)
- Decision of the Ministry of Taxes of the Republic of Azerbaijan No. 171705000006200, dated 27 January 2017, "Determination and Application of Transfer Prices," effective 8 February 2017 (the Transfer Pricing Rules or the Rules)

As such, major transfer pricing regulations are contained in articles 14-1 (introduced by Law No. 454-VQD), 16.1.4 and 18 of the Tax Code.

Jurisdictions with preferential taxation are defined in Presidential Decree of the Republic of Azerbaijan No. 1505, dated 11 July 2017, "Approval of the List of Countries and Territories with Preferential Taxation."

► Section reference from local regulation

Article 14-1 of the Tax Code regards the parties undertaking the controlled transactions as subject to the TP regulations. In particular, the regulations define the transactions as ones in which:

- One party is a resident person and the other party is a nonresident, both qualifying as related parties under Article 18
- One party is a nonresident's permanent establishment in Azerbaijan and the other party is that nonresident or any of its representative or branch offices or other divisions located in other countries
- One party is a resident person and/or a nonresident that has a permanent establishment in Azerbaijan and the other party is a subject incorporated (registered) in jurisdictions with preferential taxation (offshore jurisdictions).

2. OECD guidelines treatment/reference

Azerbaijan is not a member of the OECD.

The local transfer pricing regulations include fundamental principles stipulated by the OECD Guidelines. Given that 2017 is the first year of implementation of the Transfer Pricing Rules, there is no established practice of application of the regulations.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

Yes, there are transfer pricing regulations on the submission of the Notification on the Controlled Transactions (the Notification).

► Does transfer pricing documentation have to be prepared annually?

The Notification must be submitted annually. The Tax Code prescribes that taxpayers must submit the Notification on the Controlled Transactions that exceed AZN500,000 (approximately USD295,945) annual turnover per each counterparty, by 31 March of the year following the reporting year.¹

Transfer pricing documentation is not required by the regulations. However, in practice, it is recommended that the taxpayers maintain contemporaneous documentation to support their positions. The existence of documentation need not be either disclosed on, or provided with, the return. The regulations prescribe that the supporting documentation consist of detailed descriptions of terms and conditions of the controlled transactions and comparable uncontrolled transactions, basis and justification for selecting such transactions and the applied method.²

b) Materiality limit/thresholds

► Transfer pricing documentation

The Notification is the only mandatory reporting requirement for submission. The annual threshold per counterparty is AZN500,000. There is no mandatory standardized transfer pricing documentation requirement. Taxpayers could prepare documents/a study to support pricing positions

¹ Article 16.1.4 of the Tax Code.

² Section 10.2 of the Transfer Pricing Rules.

Azerbaijan

▶ Economic analysis

This should be part of the supporting study.

▶ BEPS master and local files

Not applicable.

▶ CbCR

Not applicable.

c) Specific requirement(s)

▶ Treatment of domestic transactions

Domestic transactions are not subject to the transfer pricing regulations.

▶ Local language documentation requirement

Local tax authorities require documents in a foreign language to be translated into Azerbaijani. In practice, however, the authorities allow maintaining documents in two languages (Azerbaijani being one).

The Notification must be prepared in Azerbaijani

▶ Safe harbor availability

The local TP rules do not prescribe any specific safe harbor rules. However, Article 110 of the Tax Code prescribes a procedure of calculation of income on debt interests obtained from related entities located abroad. As such, it states that the actual amount of interest on debts obtained from abroad, and also paid to each other by related persons, shall be deducted from the profit within the period for which interests are applied, at the same currency and at the amount not exceeding 125% of the average interest on interbank trade on credits with similar periods, or, if no trade was conducted – on interbank credits published by the Central Bank of the Republic of Azerbaijan.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No.

▶ Coverage in terms of master and/or local files

Not applicable.

▶ Effective/expected commencement date

Not applicable.

▶ Material differences from OECD report template/format

Not applicable.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

The BEPS Action 13 format report is not sufficient to achieve penalty protection.

▶ CbCR notification and CbC report submission requirement

There is neither a CbCR notification nor CbC report submission requirement in Azerbaijan.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Profit tax return requirements do not prescribe any special TP-related disclosures. For Notification submission requirements, please see the "Materiality limit/thresholds" section above.

b) Transfer pricing-specific returns

Apart from the Notification requirements described above, there are no other transfer pricing-specific return requirements.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ Corporate income tax return

31 March of the year following the reporting year.

▶ Other transfer pricing disclosures/return

31 March of the year following the reporting year.

▶ CbCR notification

Not applicable.

▶ CbC report preparation/submission

Not applicable.

b) Documentation preparation deadline

The regulations do not prescribe a preparation deadline for TP documentation purposes.

c) Documentation submission deadline

- ▶ Is there a statutory deadline for submission of transfer pricing documentation?

No.

- ▶ Time period/deadline for submission on tax authority request

Taxpayers should be prepared to present the supporting documentation to the tax authorities at the time of the desk or on-site audit. An on-site audit could be ordinary or extraordinary. If supporting documentation is requested during the desk audit, the documentation must be provided within 30 days from the date of submitting the Profit Tax Report.³ If the supporting documentation is requested during the on-site audit, a taxpayer should be ready to present the documents within 15 days from the request.⁴ If supporting documentation is requested during the extraordinary audit, a taxpayer should present the documents within five days from the request.

6. Transfer pricing methods**a) Applicability**

- ▶ International transactions

Yes.

- ▶ Domestic transactions

Not applicable.

b) Priority/preference of methods

The Transfer Pricing Rules prescribe five methods:⁵

- ▶ CUP
- ▶ Resale price
- ▶ Cost-plus
- ▶ Transactional profit method
- ▶ Profit split

³ Section 37.2 of the Tax Code of Azerbaijan.

⁴ Section 42.1 of the Tax Code of Azerbaijan.

⁵ Section 5 of the Transfer Pricing Rules.

The Rules state that the CUP method⁶ is the most preferred method. If the CUP is not available, the Rules prescribe that the resale price and cost-plus methods are preferred

7. Benchmarking requirements**a) Local vs. regional comparables**

The Transfer Pricing Rules do not specify preference between local or regional comparables. Moreover, there is no local data available. However, the regulations envisage comparability factors, including geographical location of the appropriate market and country of origin of the goods, services or works, as the key requirements to determine the search strategy of a comparable. Therefore, determination of a region highly depends on the facts and circumstances of the transaction.⁷

b) Single-year vs. multi-year analysis

The Transfer Pricing Rules prescribe that when selecting comparable uncontrolled transactions, their performance in the same period with the controlled transaction should be taken into account.⁸

c) Use of interquartile range

Transfer pricing regulations do not provide for the interquartile range. The acceptance price range is an interval between the lowest and the highest price of prices, margins and ratios defined with respect to uncontrolled transactions observed as a result of a comparability analysis.⁹

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

Given the fact that the transfer pricing regulations require submitting the Notification annually and identifying comparable uncontrolled transactions in the period of the controlled transactions, a fresh benchmarking search every year is required.

e) Simple vs. weighted average

If several comparable transactions are identified, the transfer price is calculated on the numerical simple average of the respective indicators (price, margin, ratio/weight) of the comparable transactions.¹⁰

⁶ Section 5.2 of the Transfer Pricing Rules.

⁷ Section 4.3 of the Transfer Pricing Rules.

⁸ Section 4.3 of the Transfer Pricing Rules.

⁹ Section 2.0.9 of the Transfer Pricing Rules.

¹⁰ Section 6.3 of the Transfer Pricing Rules.

f) Other specific benchmarking criteria, if any

The TP rules prescribe independence and other important criteria for the benchmarking study.

8. Transfer pricing penalties/relief**a) Penalty exposure**

- ▶ **Consequences of failure to submit/late submission and/or incorrect disclosures**

A potential penalty of AZN500 could apply for failure to submit the Notification.

- ▶ **If an adjustment is sustained, can penalties be assessed?**

A financial sanction of 50% of the potential understatement of profit tax due to a price adjustment by the tax authorities can be assessed.

- ▶ **Is interest charged on penalties/payable on refund?**

The Rules do not prescribe for charging interest on penalties.

b) Penalty relief

The Rules do not prescribe for specific defenses with respect to penalties. However, the taxpayers may still rely on the ordinary defenses prescribed by the Tax Code (e.g., running of the statute of limitations).¹¹

If a taxpayer does not agree with the transfer price determined by the tax authority, it can supply the tax authority with evidence certifying determination of transfer prices in a different manner.¹² In such a case, if the tax authority comes to a substantiated conclusion that evidence presented by the taxpayer for making adjustments to the applied transfer price is insufficient, the taxes shall be calculated and paid based on the transfer price determined by the tax authority.¹³

Moreover, taxpayers have the right to appeal the tax authority's decision in the manner prescribed by the Tax Code of Azerbaijan.

9. Statute of limitations on transfer pricing assessments

The statute of limitations for tax assessments (including TP) is three years from the moment of violation of the Tax Code.¹⁴

10. Likelihood of transfer pricing scrutiny/related audit by local authority

- ▶ **Likelihood of transfer pricing-related audits (high/medium/low)**

A transfer pricing-related audit takes place as part of profit tax audits.

The desk tax audit must be conducted within 30 working days from the day the taxpayer submits a tax return to the tax authority.¹⁵ Furthermore, the consecutive on-site audit may be conducted no more than one time in a calendar year.¹⁶

- ▶ **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

Given that 2017 is the first year of implementation of the Transfer Pricing Rules, we assess there to be a high likelihood that the local tax authorities would take a challenging approach. For that reason, it is imperative that the taxpayers maintain their own supporting documentation of the transfer pricing study to defend their position.

- ▶ **Likelihood of an adjustment if transfer pricing methodology is challenged (high/medium/low)**

In the case of challenges of the taxpayer's methodology on the basis that the taxpayer's applied methodology is incorrect, the tax authorities will present their own applied methodology and assessments of the correct applied transfer price.

¹¹ Sections 54 and 55 of the Tax Code.

¹² Section 11.1 of the Transfer Pricing Rules.

¹³ Section 11.2 of the Transfer Pricing Rules.

¹⁴ Article 56.1 of the Tax Code

¹⁵ Article 37.2 of the Tax Code.

¹⁶ Article 38.2 of the Tax Code.

► **Specific transactions/industries/situations, if any, more likely to undergo audit**

Given that 2017 is the first year of implementation of the Transfer Pricing Rules, there are no specific transactions/industries/situations that have a higher likelihood to undergo an audit.

11. APA opportunity

► **Availability (unilateral/bilateral/multilateral)**

The Transfer Pricing Rules support unilateral APAs.¹⁷ However, there is no mechanism elaborated on at this point.

► **Tenure**

None specified.

► **Rollback provisions**

None specified.

¹⁷ Section 9 of the Transfer Pricing Rules.

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Bahrain

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Ministry of Finance.

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

There were no transfer pricing regulations and rulings in Bahrain at the time of this publication. However, Bahrain has entered into double taxation treaties with approximately 44 countries that have an article that resembles Article 9 of the OECD Model Treaty (on associated enterprises).

▶ Section reference from local regulation

Refer to the section above.

2. OECD guidelines treatment/reference

Bahrain is not an OECD member country, and there are no local transfer pricing regulations.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

No.

▶ Does transfer pricing documentation have to be prepared annually?

No.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

No materiality limit.

▶ Economic analysis

No materiality limit.

▶ BEPS master and local files

Not applicable.

▶ CbCR

Not applicable.

c) Specific requirement(s)

▶ Treatment of domestic transactions

There is no documentation obligation for domestic transactions.

▶ Local language documentation requirement

Transfer pricing documentation need not be submitted in the local language.

▶ Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No.

▶ Coverage in terms of master and/or local files

Not applicable.

▶ Effective/expected commencement date

Not applicable.

▶ Material differences from OECD report template/format

Not applicable.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

Not applicable.

▶ CbCR notification and CbC report submission requirement

There is no CbCR notification or CbC report submission requirement in Bahrain.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Not applicable.

b) Transfer pricing-specific returns

Not applicable.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ Corporate income tax return

The due date for filing the income tax return is the 15th day of the 3rd month of the taxable year (advanced payment method). Bahrain income tax is levied only on entities engaged in oil and gas exploration and production.

▶ Other transfer pricing disclosures/return

Not applicable.

▶ CbCR notification

Not applicable.

▶ CbC report preparation/submission

Not applicable.

b) Documentation preparation deadline

The transfer pricing file must be finalized by the time it is submitted upon request.

c) Documentation submission deadline

▶ Is there a statutory deadline for submission of transfer pricing documentation?

No.

▶ Time period/deadline for submission on tax authority request

Not applicable.

6. Transfer pricing methods

a) Applicability

▶ International transactions

Not applicable.

▶ Domestic transactions

Not applicable.

b) Priority/preference of methods

Not applicable.

7. Benchmarking requirements

a) Local vs. regional comparables

Not applicable.

b) Single-year vs. multi-year analysis

Multi-year analysis is used (three years).

c) Use of interquartile range

Acceptable.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

There is no need to conduct a fresh benchmarking search or update of the financials of a prior study every year.

e) Simple vs. weighted average

There is a preference for the weighted average for arm's-length analysis.

f) Other specific benchmarking criteria, if any

None.

8. Transfer pricing penalties/relief

a) Penalty exposure

▶ Consequences of failure to submit/late submission and/or incorrect disclosures

Not applicable.

- ▶ If an adjustment is sustained, can penalties be assessed?

Not applicable.

- ▶ Is interest charged on penalties/payable on refund?

Not applicable.

b) Penalty relief

Not applicable.

9. Statute of limitations on transfer pricing assessments

Not applicable.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

- ▶ Likelihood of transfer pricing-related audits (*high/medium/low*)

Not applicable; there is no transfer pricing audit in Bahrain so far.

- ▶ Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

Same as the above section.

- ▶ Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

Same as the above section.

- ▶ Specific transactions/industries/situations, if any, more likely to undergo audit

Same as the above section.

11. APA opportunity

- ▶ Availability (unilateral/bilateral/multilateral)

Not applicable.

- ▶ Tenure

Not applicable.

- ▶ Rollback provisions

Not applicable.

Contact

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Bangladesh

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

National Board of Revenue (NBR).

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

Sections 107A to 107J of the Income Tax Ordinance, 1984 (the Ordinance), and Rules 70 to 75A of the Income Tax Rules, 1984.

▶ Section reference from local regulation

Section 107A (2) of the Ordinance.

2. OECD guidelines treatment/reference

Bangladesh is not a member of the OECD.

Bangladeshi legislation is broadly based on the OECD Guidelines. Five of the six methods prescribed in the Bangladeshi legislation to compute arm's-length prices conform with the OECD Guidelines

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Yes.

▶ Does transfer pricing documentation have to be prepared annually?

Yes. The minimum requirement to achieve this is determined through transaction values and benchmarking analysis.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

There is an applicable materiality limit in Bangladesh for the purpose of preparing transfer pricing (TP) documentation based on transaction values of BDT30 million.

▶ Economic analysis

Not applicable.

▶ BEPS master and local files

Not applicable.

▶ CbCR

Not applicable.

c) Specific requirement(s)

▶ Treatment of domestic transactions

There is no documentation obligation for domestic transactions.

▶ Local language documentation requirement

The TP documentation need not be submitted in the local language.

▶ Safe harbor availability

None specified.

d) BEPS action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No.

▶ Coverage in terms of master and/or local files

Not applicable.

▶ Effective/expected commencement date

Not applicable.

▶ Material differences from OECD report template/format

Not applicable.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

Not applicable.

▶ CbCR notification and CbC report submission requirement

There is neither a CbCR notification nor CbC report submission requirement in Bangladesh.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

No specified disclosures, other than the ones prescribed above, are required to be filed with the income tax return.

b) Transfer pricing-specific returns

Under Section 107EE of the Ordinance, every person who has entered into an international transaction shall furnish, along with the return of income, a statement of international transactions in the form and manner as may be prescribed.

Under Section 107F, the Deputy Commissioner of Taxes may, by written notice, ask for an accountant's report certifying that the documents and information maintained by a taxpayer are in line with Bangladesh's TP regulations, provided that the taxpayer is entering into an international transaction in which the aggregate value of the books of accounts exceeds BDT30 million.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► Corporate income tax return

Every company (resident or nonresident) is required to file a return of income by the 15th day of the 7th month following the end of the income year or 15 September following the end of the income year where the said 15th day falls before 15 September.

► Other transfer pricing disclosures/return

Along with the corporate tax return.

► CbCR notification

Not applicable.

► CbC report preparation/submission

Not applicable.

b) Documentation preparation deadline

The transfer pricing documentation needs to be finalized by the time of submitting upon request.

c) Documentation submission deadline

► Is there a statutory deadline for submission of transfer pricing documentation?

No.

► Time period/deadline for submission on tax authority request

This is not known, as assessments are yet to begin. Typically, 7 to 10 days may be expected.

6. Transfer pricing methods

a) Applicability

► International transactions

Yes.

► Domestic transactions

Not applicable.

b) Priority/preference of methods

Bangladeshi legislation prescribes the following methods: CUP, resale price, cost-plus, profit split, TNMM and any other method.

When it can be demonstrated that none of the first five methods can be reasonably applied to determine the arm's-length price for an international transaction, Section 107C allows the use of any other method that can yield a result consistent with the arm's-length price.

To determine a comparable uncontrolled transaction, Rule 71(3) provides that data pertaining only to the relevant financial year should be used. However, the rule permits the use of data before the relevant financial year if it can be substantiated that such data bears facts that could influence the analysis of comparability.

7. Benchmarking requirements

a) Local vs. regional comparables

Since no local benchmarks are available, regional benchmarking is undertaken. This is a country-specific practice due to the unavailability of a Bangladesh-specific database.

b) Single-year vs. multi-year analysis

Bangladesh TP legislation has not provided any preference for single-year or multi-year testing. Since Bangladesh TP regulations are broadly based on the OECD Guidelines, it is generally suggested that multiple-year data be used.

c) Use of interquartile range

Bangladesh TP regulations are silent on the use of the mean/median/range to determine the arm's-length price. As per the OECD Guidelines, the use of the interquartile range may be preferred.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

A fresh benchmarking search is to be conducted every year. The regulations do not explicitly provide guidance in relation to the use of contemporaneous data. Since the transfer pricing guidelines are aligned with India, we are of the view that a fresh benchmarking search is required every year.

e) Simple vs. weighted average

There is a preference for the weighted average.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief**a) Penalty exposure****► Consequences of failure to submit/late submission and/or incorrect disclosures**

The details of the penalty provisions are provided below:

- a. For failure to keep, maintain or furnish any information or documents as required by Section 107E of the Ordinance, the taxpayer faces a penalty not exceeding 1% of the value of the international transaction.
- b. For failure to comply with the notice or requisition under Section 107C of the Ordinance by the Deputy Commissioner of Taxes, the taxpayer faces a penalty not exceeding 1% of the value of the international transaction.
- c. For failure to file a Statement of International Transactions, there is a penalty of 2% of the value of the international transaction under Section 107EE of the Ordinance.
- d. For not furnishing an accountant's certificate, the taxpayer is fined an amount not exceeding BDT300,000.

► If an adjustment is sustained, can penalties be assessed?

Not applicable.

► Is interest charged on penalties/payable on refund?

Interest at the rate of 7.5% per year shall be payable to the assessed taxpayer on the amount of refund from the month following the stipulated two months to the date of issue of the refund.

b) Penalty relief

No penalty relief regulation has been provided as of the time of this publication.

An aggrieved assessee has the option to appeal an adjustment in the following order:

- First appellate authority – Commissioner of Taxes (Appeals)
- Final fact-finding authority – Taxes Appellate Tribunal
- High Court Division
- Final authority – Supreme Court

9. Statute of limitations on transfer pricing assessments

When a transfer pricing assessment has been initiated, no order of assessment shall be made after three years have passed from the end of the assessment year in which the income was first assessable.

10. Likelihood of transfer pricing scrutiny/related audit by local authority**► Likelihood of transfer pricing-related audits (high/medium/low)**

Not applicable; the first round of audits in Bangladesh is expected to commence soon.

► Likelihood of transfer pricing methodology being challenged (high/medium/low)

Refer to the section above.

Bangladesh

- ▶ **Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)**

Refer to the section above.

- ▶ **Specific transactions/industries/situations, if any, more likely to undergo audit**

Refer to the section above.

11. APA opportunity

- ▶ **Availability (unilateral/bilateral/multilateral)**

Bangladesh does not have a formal APA program.

- ▶ **Tenure**

Not applicable.

- ▶ **Rollback provisions**

Not applicable.

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Belarus

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Ministry of Taxes and Duties of the Republic of Belarus (MTD).

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

Article 30-1 of the Tax Code (introduced in 2012; the current version of transfer pricing (TP) rules, which introduced the obligation for taxpayers to prepare the relevant transfer pricing reporting, came into effect on 1 January 2016).

► Section reference from local regulation

Article 20 of the Tax Code defines related parties and associated enterprises in Belarus.

2. OECD guidelines treatment/reference

Belarus is not a member of the OECD.

Belarusian law is generally in line with the OECD Guidelines. However, Belarusian TP rules do not refer to the OECD Guidelines. Practical application of transfer pricing rules may, therefore, be different from the OECD Guidelines.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

Yes.

► Does transfer pricing documentation have to be prepared annually?

Yes. The Belarusian legislation does not envisage the direct requirements on the frequency of updating TP documentation. But technically, a TP report can be requested by the tax authorities on a quarterly basis, and they may ask for updates to the data in the report on a quarterly basis, as well.

b) Materiality limit/thresholds

► Transfer pricing documentation

BYN1 million (approximately EUR460,000) for a calendar year for foreign trade transactions of large taxpayers or transactions with strategic goods; BYN100,000 (approximately EUR46,000) for a calendar year for other transactions, except for transactions related to the sale/purchase of immovable property and housing bonds. There is no threshold for transactions related to the sale/purchase of immovable property and housing bonds.

► Economic analysis

Refer to the section above.

► BEPS master and local files

Not applicable.

► CbCR

Not applicable.

c) Specific requirement(s)

► Treatment of domestic transactions

There is a documentation obligation for domestic transactions, but only with regard to domestic transactions related to the sale/purchase of immovable property and housing bonds and domestic transactions with related parties (including involvement of independent intermediaries with no substantial functions) that are exempt from taxation due to the application of special taxation regimes.

► Local language documentation requirement

The TP documentation needs to be submitted in the local language. According to Item 1-1 of Article 22 of the Tax Code, documents submitted to the tax authorities prepared in a foreign language should be accompanied by a translation into Belarusian or Russian. The validity of the translation or the authenticity of the signature of the translator must be certified either by a notary or by another official authorized to perform such notarial acts.

► Safe harbor availability

A 20% variance from the arm's-length range is acceptable. If the variance goes beyond 20%, tax liabilities are to be adjusted to the lowest/highest range value.

Intragroup financing is not a subject for transfer pricing rules in Belarus.

Belarus

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Belarus has not adopted BEPS Action 13 for transfer pricing documentation. But the issue is under consideration by the Belarusian tax authorities.

▶ Coverage in terms of master and/or local files

Not applicable.

▶ Effective/expected commencement date

Not applicable.

▶ Material differences from OECD report template/format

Not applicable.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

A BEPS Action 13 format report is not sufficient to achieve penalty protection.

▶ CbCR notification and CbC report submission requirement

There is no CbCR notification or CbC report submission requirement in Belarus.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Effective from 1 July 2016, taxpayers are required to inform the tax authorities about their controlled transactions undertaken during a respective tax period – a calendar year.

Details of controlled transactions should be reported to the tax authorities on a monthly basis. The general deadline is the 10th day of the month following the reporting month, while in particular cases it can differ. The reporting has to be done on a transaction-by-transaction basis by means of electronic value-added tax (VAT) invoices (schet-factura) that need to be filed through a web portal of the MTD.

Details of related parties/foreign founders of a Belarusian entity should be provided to the tax authorities in the annual corporate income tax return. The deadline is 20 March of the year following the tax period.

b) Transfer pricing-specific returns

There are no specific transfer pricing returns in Belarus. Belarusian TP rules require submission of information disclosing controlled transactions of a taxpayer on an ongoing basis (at least monthly) regardless of whether the volume of transactions exceeds the established thresholds. Refer to the section above for more details.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ Corporate income tax return

On a quarterly basis (20 April, 20 July, 20 October and, for the fourth quarter, 20 March of the year following the tax period).

▶ Other transfer pricing disclosures/return

The reporting on controlled transactions (notifications by means of electronic VAT invoices) – 10th day of the month following the reporting month.

▶ CbCR notification

Not applicable.

▶ CbC report preparation/submission

Not applicable.

b) Documentation preparation deadline

TP documentation should be finalized by the time of submitting upon the request of tax authorities.

c) Documentation submission deadline

▶ Is there a statutory deadline for submission of transfer pricing documentation?

No. Transfer pricing documentation should not be provided along with the corporate income tax return but may be requested by the tax authorities on a quarterly basis.

▶ Time period/deadline for submission on tax authority request

10 working days from the request for a desk tax audit and 5 working days from the request for a field tax audit.

6. Transfer pricing methods

a) Applicability

- ▶ International transactions

Yes.

- ▶ Domestic transactions

Yes.

b) Priority/preference of methods

The Belarusian transfer pricing rules call for five methods to be applied in a strict hierarchical order:

- ▶ CUP
- ▶ CPM
- ▶ Resale price
- ▶ TNMM
- ▶ Profit split

The CUP method prevails, whereas the profit split is a method of last resort.

Belarus has very limited information available for comparability analysis. The legislation requires searching for local comparable data, although there is a lack of local databases available in the market. At the same time, the law allows tax authorities to use secret comparables (customs information, peer analysis, etc.).

7. Benchmarking requirements

a) Local vs. regional comparables

The legislation requires searching for local comparable data, although there is a lack of local databases available in the market. At the same time, the law allows tax authorities to use secret comparables (customs information, peer analysis, etc.).

b) Single-year vs. multi-year analysis

Single-year testing – the same year as the year of the controlled transactions. If the data for the analyzed year is not available, in practice, data for three years preceding the analyzed year may be used. However, there are no direct requirements in Belarusian TP regulations for the number of analyzed years in such a case.

c) Use of interquartile range

Full range applied, with an allowable 20% deviation of actual results from this range instead of the interquartile range.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

A fresh benchmarking search every year is preferable; however, there are no official clarifications from the Belarusian tax authorities in this respect.

e) Simple vs. weighted average

The weighted average is used as a practice; however, no preference is specified as such.

f) Other specific benchmarking criteria, if any

Local search criteria for comparables:

1. Independence criteria – Level of participation is 20%
2. Permanent losses criteria – Comparable companies should not report losses in each year of the analyzed period
3. Net assets criteria – Net assets of potentially comparable companies should be positive in each year of the analyzed period

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures

Belarusian law does not set out any special penalties for violation of transfer pricing rules.

Penalties will be imposed if a taxpayer's income is adjusted as a result of a tax audit and if the taxpayer did not provide the TP documentation supporting the prices in a controlled transaction.

- ▶ If an adjustment is sustained, can penalties be assessed?

Notwithstanding, the penalty for non-submission of required documents (including electronic VAT invoices with information about controlled transactions) is up to 30 basic amounts (up to BYN690).

The penalty of 20% on the additional tax payable is also applied.

Belarus

► Is interest charged on penalties/payable on refund?

Yes, 1/360 of the refinancing rate of the National Bank of the Republic of Belarus, which was in force during the relevant periods of nonfulfillment of the tax obligation.

b) Penalty relief

Penalties cannot apply if a taxpayer has adjusted its tax return and paid the outstanding tax liability before a tax audit.

The taxpayer has the right to submit written objections to the tax authorities. If the objections are rejected, the taxpayer has a right to apply to the court for dispute resolution.

9. Statute of limitations on transfer pricing assessments

The general rule is that the tax authority may audit a taxpayer for any number of years that are not covered by a prior tax audit. As a rule, the average periodicity of tax audits is five years.

From 1 January 2018, the tax authority can perform the tax audit for the five-year period and the other audit for the three-year period. Please note that transfer pricing issues are audited within standard tax audits (there are no special transfer pricing audits in Belarus).

10. Likelihood of transfer pricing scrutiny/ related audit by local authority

► Likelihood of transfer pricing-related audits (*high/medium/low*)

Medium. For those companies that are listed by tax authorities as top priority for TP audits, the likelihood is high.

► Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

If transfer pricing is reviewed as part of the audit, the probability that transfer pricing methodology will be challenged is unknown because of the novelty of the legislation and the absence of practical experience in Belarus.

► Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

The likelihood of an adjustment is unknown because of the novelty of the legislation and the absence of practical experience in Belarus.

► Specific transactions/industries/situations, if any, more likely to undergo audit

The MTD has published the list of taxpayers that are a top priority for TP audits:

1. Loss-making companies (i.e., companies that report losses for two or more years in a row)
2. Affiliates of multinational companies (i.e., companies that have foreign related parties)
3. Companies that report insignificant profit together with significant revenue for two or more years in a row (assuming that such distortion is not a result of specific industry trends)
4. Companies for which profitability for the relevant tax period is lower than industry average profitability, as published by the National Statistical Committee of the Republic of Belarus
5. Companies that sell real estate to related parties
6. Companies engaged in cross-border transactions with a foreign party, if the jurisdiction of the foreign party envisages a lower tax level than in Belarus, or if the foreign party applies beneficial tax regimes, etc.

11. APA opportunity

► Availability (unilateral/bilateral/multilateral)

Currently, no APA opportunities are foreseen.

► Tenure

Not applicable.

► Rollback provisions

Not applicable.

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Belgium

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Belgian Administration of Direct Taxes, part of the Federal Public Service Finance.

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

The arm's-length principle – Article 185, Section 2 of the Belgian Income Tax Code (ITC) (entered into force on 19 July 2004).

Transfer pricing (TP) documentation rules are embedded in the Belgian ITC (articles 321/1-321/7 and 445, Section 3) through the law of 1 July 2016 and the Royal Decree of 2 December 2016.

Articles 26; 49; 54; 55; 79; 198, 10°; 207; 307, Section 1, s. 3; 344; and 345 of the Belgian ITC also relate to transfer pricing.

► Section reference from local regulation

Belgian tax legislation does not properly define a related party. Article 26 of the Belgian ITC states that two parties are related if one of them participates directly or indirectly in the management, control or share capital of both parties. The Royal Decree of 10 August 2009 refers to International Accounting Standard 24 for further definitions of related parties.

2. OECD guidelines treatment/reference

Belgium is a member country of the OECD.

The Belgian transfer pricing legislation is in line with the OECD Guidelines. In its administrative guidelines, the tax authority indicates that taxpayers generally should follow the guidance mentioned in the OECD Guidelines to implement the arm's-length principle (as embedded in Article 185, Section 2). Although the tax authority has made no formal confirmation as to the applicable version of the OECD Guidelines, in practice, it is generally considered that the most recent version is applicable in Belgium. While Belgium considers its transfer pricing laws and regulations to be consistent with the OECD Guidelines, through historical practice coupled with case law, as with many other countries, the Belgian interpretation of certain transfer pricing elements differs from other

countries' interpretations. Therefore, it should be expected that the Belgian tax authority will follow the revised guidance and on occasion also argue it to be applicable to transactions entered into before 23 May 2016

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

Yes.

► Does transfer pricing documentation have to be prepared annually?

Transfer pricing documentation has to be prepared and submitted annually under local country regulations. The minimum requirement to achieve this is to update the mandatory local file TP form (form 275.LF) due with the tax return; the master file form (275.MF), as well as the CbC report and CbCR notifications; and transaction values in the local file TP report (because these local file TP forms ask to confirm the existence of said transfer pricing documentation reports, such reports should also be updated on yearly).

b) Materiality limit/thresholds

► Transfer pricing documentation

For companies not exceeding the below-mentioned thresholds but having intercompany transactions, the old guidance issued by the Belgian tax authority remains applicable. In the case of a TP audit, the Belgian companies/permanent establishments must provide TP documentation demonstrating that their intercompany transactions take place at arm's length, within 30 days of the request of the Belgian tax authorities. In this respect, the 1999 guidelines recommend that such documentation include, at a minimum:

- Activities of the group, including competitive position, level of market, economic circumstances and business strategies
- Identification and characterization of intercompany transactions and contractual relationships among affiliates
- Functional analysis, including an overview of the functions, risks and intangibles
- Economic analysis sections regarding the transfer pricing methods used

Belgium

► Economic analysis

There is no materiality limit, but in the absence of an economic analysis, the TP documentation will likely be considered incomplete.

► BEPS master and local files

Belgian tax resident companies or permanent establishments that exceed one of the following criteria in their (statutory) financial accounts of the prior year have to submit master file TP form (275.MF) and general local file TP form (parts A and C of 275.LF): operating and financial income equal to or exceeding EUR50 million (excluding nonrecurring items); balance sheet total (i.e., total assets) equal to or exceeding EUR1 billion; or average annual number of full time employees of 100 (in total). In addition, a detailed local file TP form (part B of 275.LF), containing transaction-specific information, will be required for business units of the Belgian entity of which the cross-border transactions with affiliates exceed EUR1 million in the last accounting year. A detailed local file TP form will be required for every business unit of the Belgian entity for every intercompany cross-border transaction in excess of EUR25,000.

► CbCR

The ultimate parent company of an MNE group with a consolidated group turnover equal to or exceeding EUR750 million that is a Belgian tax resident. There is a specific CbCR notification requirement (275.CBC NOT) for any Belgian constituent entity or permanent establishment of an MNE group with a consolidated group turnover equal to or exceeding EUR750 million.

c) Specific requirement(s)

► Treatment of domestic transactions

TP documentation has to be prepared even though the Belgian company/permanent establishment only has domestic transactions. In the latter case, the TP documentation documents the intercompany transactions taking place between Belgian entities and/or Belgian branches of foreign entities. In addition, if the company is part of a multinational group and falls within the thresholds for preparation of a master file TP form and local file TP forms, it must submit them even though it is only engaged in local intercompany transactions.

► Local language documentation requirement

The TP documentation and TP forms need not be submitted in the local language. They can be submitted in one of the Belgian official languages (i.e., French, Dutch, German) or in English.

► Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

► Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Yes.

► Coverage in terms of master and/or local files

It covers both the master and local files.

► Effective/expected commencement date

The master file TP form (275.MF) and general local file TP form (parts A and C of 275.LF) are applicable for financial years beginning on or after 1 January 2016. A detailed local file TP form (Part B of 275.LF) is applicable for financial years beginning on or after 1 January 2017.

► Material differences from OECD report template/format

There are no material differences between the OECD report template/format and Belgium's regulations. However, specific forms are to be completed and filed through a dedicated platform in a specific electronic format.

► Sufficiency of BEPS Action 13 format report to achieve penalty protection

A BEPS Action 13 format TP local country report and master file are typically sufficient.

► CbCR notification and CbC report submission requirement

Yes, there is a CbCR notification and CbC report submission requirement in Belgium.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

The reporting requirement introduced through Article 307, Section 1, s. 3 of the Belgian ITC relates to payments of more than EUR100,000 per taxable period made by resident or nonresident entities (Belgian permanent establishments) to persons established in tax havens on or after 1 January 2010. Tax havens are defined with reference to a "blacklist" determined through a Royal Decree (it currently contains

around 30 jurisdictions that either do not levy corporate income tax or have a nominal corporate income tax rate that is lower than 10%). A mandatory form (No. 275 F) for reporting direct or indirect payments to persons established in tax havens is to be attached to the tax return. Failure to report payments results in nondeductibility of such payments. In addition, these tax deductions are acceptable only when proof is presented by the Belgian taxpayer that these payments relate to actual and bona fide transactions at arm's length with persons other than artificial constructions.

Furthermore, the Belgian accounting rules introduced through the Royal Decree of 10 August 2009 require that companies provide certain additional information that relates to transfer pricing in the notes or annex section of their statutory annual accounts, as follows:

- ▶ Companies must provide information regarding the nature and business purpose of their relevant, off-balance sheet arrangements; if underlying risks and benefits are considered material; and when the disclosure is necessary to correctly assess the financial position of the company. This requirement is applicable in cases of intragroup guarantees, pledges, factoring liabilities, transactions with special-purpose entities (whether transparent or not) and offshore entities.
- ▶ Companies must disclose their material transactions with affiliated parties that are considered not to be at arm's length. Depending on the type of company, a different scope of information is to be provided, ranging from merely listing such transactions to mentioning the amounts involved, alongside all other information necessary for a correct view of the company's financial position.

While this rule is not included in the Belgian Tax Code, it creates a requirement for the relevant entities to review and document the arm's-length nature of their intercompany transactions. Noncompliance may result in director liability. In addition, any such disclosures are an excellent source of information for a tax inspector to initiate a (targeted) transfer pricing audit.

b) Transfer pricing-specific returns

There are specific transfer pricing returns in Belgium, including the CbCR (275.CBC) and master file forms (275.MF), both of which have to be filed, at the latest, 12 months after the last day of the group's financial year to which they relate, as well as the local file TP forms (275.LF) that have to be filed with the corporate tax return for the financial year to which they relate.

In addition, companies that are part of a multinational group of companies subject to CbCR also have to notify the Belgian tax authority of the name of the entity and the country of its tax residence that will submit the CbC report before the end of the group's financial year.

5. Transfer pricing documentation/ disclosure timelines

a) Filing deadline

▶ Corporate income tax return

For a company with a calendar financial year, typically the end of September (the exact date is specified by the Belgian tax authorities each year).

▶ Other transfer pricing disclosures/return

Local file TP forms (275.LF): with the corporate tax return, i.e., for a company with a calendar financial year, typically by the end of September (the exact date is specified by the Belgian tax authorities each year).

Master file TP form (275.MF): within 12 months after the last day of the group's financial year to which they relate.

▶ CbCR notification

By the end of the financial year of the group.

▶ CbC report preparation/submission

Within 12 months after the last day of the group's financial year to which they relate, i.e., for a group with a calendar financial year, by 31 December.

b) Documentation preparation deadline

For the master file TP form (275.MF) and local file TP forms (275.LF), please see the above section.

The transfer pricing local file report must be available upon the request of the Belgian tax authorities (e.g., in case of a transfer pricing audit).

c) Documentation submission deadline

▶ Is there a statutory deadline for submission of transfer pricing documentation?

There is no obligation to submit the local file TP report.

Belgium

However, as mentioned above, the local file TP report must be available upon the request of the Belgian tax authorities (e.g., in case of a transfer pricing audit). In addition, if the Belgian company or permanent establishment of an MNE group falls within the thresholds to prepare and submit the local file TP forms, since the latter asks to confirm the existence of said local file transfer pricing documentation reports, the existence of such reports also needs to be mentioned.

► **Time period/deadline for submission on tax authority request**

The taxpayer has to submit the transfer pricing documentation report within one month upon request. This can be extended for justified reasons.

6. Transfer pricing methods

a) Applicability

- International transactions

In principle, taxpayers are free to choose any OECD transfer pricing method as long as it results in arm's-length pricing for the transaction. Yes.

- Domestic transactions

Same as in the above section.

b) Priority/preference of methods

Transaction-based methods are often preferred over profit-based methods.

Taxpayers are not required to use more than one method or demonstrate that multiple methods were considered, but such documented reviews strongly support their position to apply a particular method upon an audit.

7. Benchmarking requirements

a) Local vs. regional comparables

There is no legal requirement for local country comparables, and Pan-European comparables are accepted.

b) Single-year vs. multi-year analysis

Single-year testing.

c) Use of interquartile range

Excel Quartile is used as the best practice; however, no legal regulations in this respect are available.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

The Belgian tax authorities typically accept the validity of the benchmark for up to three years. No legal regulation is available. However, in practice, it is generally necessary to annually update the financials of the comparable companies selected in the final set of the benchmark.

e) Simple vs. weighted average

There is a preference for the weighted average for arm's-length analysis. No legal regulations exist in this regard.

f) Other specific benchmarking criteria, if any

Not applicable; however, based on experience, there is a well-established expectation of certain specific benchmarking criteria of the Belgian tax authorities. Examples of some of these specific benchmarking criteria include:

- Selection of companies with unconsolidated accounts only
- Selection of independent companies (owning no subsidiaries and not owned by any shareholders)
- Rejection of start-up companies (i.e., companies active for less than 3 years) etc.

8. Transfer pricing penalties/relief

a) Penalty exposure

- **Consequences of failure to submit/late submission and/or incorrect disclosures**

In accordance with the new transfer pricing legislation, failure to submit the CbC report, CbCR notification, master file form (275.MF) or local file TP forms (275.LF) will result in an administrative penalty ranging from EUR1,250 to EUR25,000. This penalty will apply as of the second infringement. Furthermore, noncompliance with the transfer pricing documentation obligations increases the likelihood of a transfer pricing audit.

In addition, the absence of the mandatory transfer pricing documentation required to be filed with the tax return (local file transfer pricing forms) results in an incomplete or inaccurate tax return, which may lead to the reversal of the burden of proof.

► **If an adjustment is sustained, can penalties be assessed?**

The general tax penalty framework applies to transfer pricing adjustments. These penalties vary from 10% to 200% (in exceptional cases). The rate depends on the degree of intent to avoid tax or the degree of the company's gross negligence.

Furthermore, for late payments, interest is due on additional tax assessments (including assessments resulting from a transfer pricing adjustment).

► **Is interest charged on penalties/payable on refund?**

None specified.

b) Penalty relief

With respect to the application of the general tax penalty framework, although the burden of proof of non-arm's-length pricing lies principally with the tax authority, the taxpayer needs to provide all information necessary to allow the tax authority to verify the company's tax position.

Therefore, because additional tax assessments largely depend on the degree of intent to avoid taxes or on the company's gross negligence, penalties may be reduced or eliminated if the taxpayer can demonstrate its intent to establish transfer prices in accordance with the arm's-length principle, which would generally be the case through the availability of detailed local documentation reports.

Mutual Agreement Procedures ("MAPs") or the EU Arbitration Convention are available to resolve tax disputes with the Belgian tax authorities. Alternatives include initiating administrative appeal procedures or proceedings in court.

9. Statute of limitations on transfer pricing assessments

The general rules regarding the statute of limitations apply to transfer pricing assessments. Therefore, the tax authority is entitled to make additional assessments for a period of three years, starting from the closing of the accounting year.

However, in the case of fraud being considered, the tax authority has the right to adjust the income during a seven-year period, provided that the taxpayer received prior notice of serious indications of fraud. In the case of tax losses, the statutes of limitations do not run until these tax losses are effectively used to offset taxable income. Some other exceptional statutes of limitations also exist for specific situations.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► **Likelihood of transfer pricing-related audits (high/medium/low)**

In Belgium, the likelihood of a tax audit may be regarded as medium to high due to a significant number of TP audit questionnaires sent by the Belgian tax authorities to Belgian companies/permanent establishments (i.e., about 200 to 300 TP audit questionnaires sent each year) and the significant staffing and reinforcement of the Belgian TP Audit Cell. The Belgian tax authorities also use systematic data mining techniques to identify/target Belgian companies and permanent establishments for transfer pricing audits.

► **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

Depending on the robustness of the TP methodology and support available, as well as on the type of the intercompany transactions under review, the likelihood that transfer pricing methodology will be challenged may be regarded as medium to high. This is due to the significant sophistication of the Belgian tax authorities in transfer pricing.

► **Likelihood of an adjustment if transfer pricing methodology is challenged (high/medium/low)**

Depending on the robustness of the TP methodology and support available, the likelihood of an adjustment may be regarded as medium to high.

► **Specific transactions/industries/situations, if any, more likely to undergo audit**

In practice, a transfer pricing audit is often triggered by situations such as:

- Structural losses.
- Sudden decrease of profitability.
- Business reorganizations.
- Migration of businesses.
- The use of tax havens or low-tax-rate countries.
- Back-to-back operations.

Belgium

- ▶ Circular structures.
- ▶ Invoices for services sent at the end of the year (i.e., management services).
- ▶ Changes in number of employees.
- ▶ In particular, business restructurings attract specific attention, as well as intangibles related and financial transactions, for example

11. APA opportunity

- ▶ **Availability (unilateral/bilateral/multilateral)**

There is an APA program available in Belgium for unilateral, bilateral and multilateral APAs.

- ▶ **Tenure**

The APAs are generally granted for a five-year term, which is the legal maximum.

- ▶ **Rollback provisions**

Rollbacks are not allowed, except for exceptional circumstances to be agreed upon with the Belgian Service for Advance Decisions or the Belgian Competent Authority. Rollbacks can only be permitted if the applicable time limits (such as the tax assessment terms) allow this. For Belgium, this means that rollbacks can be applied provided that the relevant facts and circumstances of the previous years are identical and the tax assessment terms for those years have not expired yet.

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Bolivia

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Internal Taxes Service (Servicio de Impuestos Nacionales)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

- ▶ Act Nos. 516 and 549
- ▶ Supreme Decree No. 2227 and No. 2993
- ▶ Normative Resolution No. 10-0008-15 and No. 10700000001

▶ Section reference from local regulation

Refer to the section above.

2. OECD guidelines treatment/reference

Bolivia is not a member of the OECD.

OECD rules are not expressly accepted, but the current transfer pricing regime is based on the OECD Guidelines.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Yes, Bolivia has had transfer pricing rules since 2015.

▶ Does transfer pricing documentation have to be prepared annually?

Yes, transfer pricing (TP) documentation has to be prepared annually under Bolivia's local country regulations.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

There is no materiality limit.

▶ Economic analysis

There is no materiality limit.

▶ BEPS master and local files

No BEPS rules have been implemented in Bolivia.

▶ CbCR

No CbCR rules have been implemented in Bolivia.

c) Specific requirement(s)

▶ Treatment of domestic transactions

There is no documentation obligation for treatment of domestic transactions.

▶ Local language documentation requirement

There is a requirement for the TP documentation to be submitted in the local language. All information to the tax authority must be presented in Spanish.

▶ Safe harbor availability

There is no specific requirement for safe harbor availability.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Bolivia has not adopted BEPS Action 13 for TP documentation in its local country regulations.

▶ Coverage in terms of master and/or local files

No BEPS rules in Bolivia.

▶ Effective/expected commencement date

Not applicable.

▶ Material differences from OECD report template/format

Not applicable.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

Not applicable.

▶ CbCR notification and CbC report submission requirement

Not applicable; there is no CbCR notification and CbC report submission requirement for Bolivia.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Not defined. Normative Resolution No. 10-0008-15 of April 2015 does not describe them.

b) Transfer pricing-specific returns

Form 601.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

- ▶ Corporate income tax return

30 April

- ▶ Other transfer pricing disclosures/return

30 April

- ▶ CbCR notification

Not applicable.

- ▶ CbC report preparation/submission

Not applicable.

b) Documentation preparation deadline

The TP documentation needs to be finalized by the time of submitting upon request.

c) Documentation submission deadline

- ▶ Is there a statutory deadline for submission of transfer pricing documentation?

The TP documentation needs to be submitted each year. It is necessary to send Form 601 when the transactions are higher than USD1.08. A transfer pricing study must be presented when the transactions are higher than USD2.16 million. But in all cases, it is necessary for companies to have the report.

- ▶ Time period/deadline for submission on tax authority request

The taxpayer has to submit the TP documentation within 5 to 20 days, depending on the request.

6. Transfer pricing methods

a) Applicability

- ▶ International transactions

Yes.

- ▶ Domestic transactions

Not applicable.

b) Priority/preference of methods

The best method must be used (CUP, resale price, cost-plus or TNMM). For commodities, the price in transparent markets must be used.

7. Benchmarking requirements

a) Local vs. regional comparables

Bolivia is not an OECD member. However, some methods have been applied in a similar way, and Bolivian rules add another method (sexto método argentino). Also, Bolivia does not use interquartiles; there is an arithmetical formula.

b) Single-year vs. multi-year analysis

It is not a rule, but in practice, multi-year testing is preferred in testing the arm's-length analysis.

c) Use of interquartile range

Not applicable; an arithmetical formula has to be used.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

Fresh benchmarking needs to be submitted every year. Bolivian rules do not mention anything about an update of financial statements. But in practical terms, all companies are performing new research or, at minimum, they are updating the financial statements. In any case, a complete report is needed each year.

e) Simple vs. weighted average

The simple average is preferred while testing the arm's-length analysis.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures

USD1,472 for not filing transfer pricing information or tax returns and USD736 for an uncompleted filing.

- ▶ If an adjustment is sustained, can penalties be assessed?

No defined procedures.

- ▶ Is interest charged on penalties/payable on refund?

No interest is charged.

b) Penalty relief

No defined procedures.

9. Statute of limitations on transfer pricing assessments

In June 2016, Act No. 812, set the statute of limitations at eight years.

Furthermore, transfer pricing audits can be performed within a period of two years.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

- ▶ Likelihood of transfer pricing-related audits (*high/medium/low*)

There is no experience regarding this, as the transfer pricing regime is being enforced from FY 2015. However, transfer

pricing audits were initiated in FY 2017 for a few companies in Bolivia. No results are in from those audits yet.

- ▶ Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

Refer to the section above.

- ▶ Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

Refer to the section above.

- ▶ Specific transactions/industries/situations, if any, more likely to undergo audit

None.

11. APA opportunity

- ▶ Availability (unilateral/bilateral/multilateral)

This is not defined in the current law.

- ▶ Tenure

Not applicable.

- ▶ Rollback provisions

Not applicable.

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Bosnia and Herzegovina

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Tax Authority of the Federation of Bosnia and Herzegovina (FBiH) in the Federation of Bosnia and Herzegovina; Tax Administration of Republic of Srpska in the Republic of Srpska.

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

Federation of Bosnia and Herzegovina

Articles 44 through 46 of the Corporate Income Tax (CIT) Law define the arm's-length principle, the acceptable methods, and the obligation to prepare and file transfer pricing (TP) documentation and are available at the official website of the Tax Authority of the FBiH.

The Rule Book on transfer pricing provides further details about methods for the determination of arm's-length prices in intragroup transactions, and prescribes obligatory content and the filing deadline of the transfer pricing documentation, related party/associated enterprise criteria, safe harbor transactions, etc. The Rule Book on transfer pricing is available at the official website of the Tax Authority of the FBiH.

Republic of Srpska

Articles 31 through 35 of the CIT Law prescribe the related party definition, arm's-length principle, acceptable methods and the obligation to prepare and file transfer pricing documentation, and articles 59 through 61b of the CIT Law define the arm's-length principle, the acceptable methods, and the obligation to prepare and file transfer pricing documentation (latest update effective from 1 January 2016), and are available on the official website of the Tax Administration of Republic of Srpska.

The Rule Book on transfer pricing and methods for the determination of arm's-length prices in intragroup transactions provides further details about these and prescribes obligatory content of the transfer pricing documentation (effective from 7 May 2016).

► Section reference from local regulation

Federation of Bosnia and Herzegovina

Article 6 of the Rule Book on transfer pricing defines related parties and associated enterprises.

Republic of Srpska

Article 31 of the CIT Law defines related parties and associated enterprises.

2. OECD guidelines treatment/reference

Bosnia and Herzegovina and all its tax jurisdictions (i.e., Federation of Bosnia and Herzegovina and Republic of Srpska) are not members of the OECD.

Transfer pricing legislation in the Federation of Bosnia and Herzegovina and the Republic of Srpska is generally based on the OECD Guidelines.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

The Rule Book on transfer pricing provides rules for transfer pricing documentation.¹

► Does transfer pricing documentation have to be prepared annually?

A transfer pricing report has to be prepared annually under local country regulations in the Federation of Bosnia and Herzegovina and the Republic of Srpska.

Every section of the transfer pricing report should be updated with the latest available information.

b) Materiality limit/thresholds

► Transfer pricing documentation

No materiality limit.

► Economic analysis

No materiality limit.

► BEPS master and local files

Not applicable.

¹ Please note that the mentioned Rule Books are separate bylaws in the Federation of Bosnia and Herzegovina and the Republic of Srpska.

Bosnia and Herzegovina

► CbCR

Groups with consolidated revenue above approximately EUR750 million.

c) Specific requirement(s)

► Treatment of domestic transactions

There is a documentation obligation for domestic transactions.

► Local language documentation requirement

The transfer pricing report should be submitted in the local language (i.e., Bosnian, Croatian or Serbian).

Federation of Bosnia and Herzegovina

If required, a master file could be submitted in English, but the local tax authority does not waive the right to request the translation.

Republic of Srpska

No specific requirements.

► Safe harbor availability

Federation of Bosnia and Herzegovina

TP legislation in the Federation of Bosnia and Herzegovina prescribes safe harbor for specific administrative and support services, such as accounting and IT services.

Republic of Srpska

TP legislation in the Republic of Srpska does not prescribe safe harbor for controlled transactions.

d) BEPS Action 13 implementation overview

► Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

The Federation of Bosnia and Herzegovina and the Republic of Srpska implemented BEPS Action 13 to a certain extent through local TP legislation; the Republic of Srpska prescribed only the CbC report in local legislation.

► Coverage in terms of master and/or local files

Federation of Bosnia and Herzegovina

TP legislation in the Federation of Bosnia and Herzegovina covers the master file and/or local file.

Republic of Srpska

Not applicable.

► Effective/expected commencement date

Federation of Bosnia and Herzegovina

The effective date for the preparation of a local file (i.e., TP report) is 27 August 2016, whereas the effective date for the master file is set to 1 January 2018.

Republic of Srpska

None specified.

► Material differences from OECD report template/format

Federation of Bosnia and Herzegovina

The TP report in the Federation of Bosnia and Herzegovina requires particular information prescribed for the master file in the OECD report template/format.

Republic of Srpska

Not applicable.

► Sufficiency of BEPS Action 13 format report to achieve penalty protection

Federation of Bosnia and Herzegovina

The BEPS Action 13 format for the local file would not suffice, whereas particular information prescribed for the master file in the OECD report template/format would be required.

Republic of Srpska

Not applicable.

► CbCR notification and CbC report submission requirement

Federation of Bosnia and Herzegovina

TP legislation in the Federation of Bosnia and Herzegovina does not prescribe CbCR notification, whereas CbC report submission is prescribed.

Republic of Srpska

TP legislation in the Republic of Srpska does not prescribe CbCR notification, whereas CbC report preparation is mandatory for all entities with group consolidated revenues above EUR750 million.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Federation of Bosnia and Herzegovina

Taxpayers are obligated to disclose in their annual CIT return revenues and expenses resulting from transactions with related parties, as well as disclose tax-based adjustments based on the transfer pricing analysis.

In addition, related party disclosures and details of transactions are to be documented through an obligatory transfer pricing report, which needs to be prepared on the prescribed deadline.

Additionally, taxpayers with a total amount of controlled transactions above approximately EUR250,000 are obliged to submit a TP-902 form by 31 March for the previous fiscal year.

Republic of Srpska

Taxpayers are obligated to disclose in their annual CIT return revenues and expenses resulting from transactions with related parties, as well as disclose tax-based adjustments based on the transfer pricing analysis.

In addition, related party disclosures and details of transactions are to be documented through an obligatory transfer pricing report, which needs to be prepared by the prescribed deadline.

b) Transfer pricing-specific returns

Federation of Bosnia and Herzegovina

Taxpayers are obligated to submit the TP-900 form by 31 March for the previous fiscal year if they fulfill the prescribed requirements for a transfer-pricing-adjustment waiver.

Republic of Srpska

Taxpayers are obliged to submit an annual report of controlled transactions if the total amount of their controlled transactions is above approximately EUR350,000.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► Corporate income tax return

30 days from the deadline for submission of financial

reports (e.g., for 2016, the deadline for the CIT return was 30 March 2017) in the Federation of Bosnia and Herzegovina, and 31 March of a current fiscal year for the previous fiscal year in the Republic of Srpska.

► Other transfer pricing disclosures/return

31 March for the previous fiscal year for the TP-900 and TP-902 forms in the Federation of Bosnia and Herzegovina, and 31 March of a current fiscal year for the previous fiscal year in Republic of Srpska.

► CbCR notification

Not applicable.

► CbC report preparation/submission

Needs to be prepared and submitted no later than 31 March of a current year for a previous year in the Federation of Bosnia and Herzegovina, whereas a CbC report should be prepared by 31 March of a current fiscal year for the previous fiscal year in the Republic of Srpska.

b) Documentation preparation deadline

Federation of Bosnia and Herzegovina

The deadline for preparation of the transfer pricing report is 30 March of a current fiscal year for the previous fiscal year.

Republic of Srpska

The deadline for preparation of the transfer pricing report is 31 March of a current fiscal year for the previous fiscal year.

c) Documentation submission deadline

► Is there a statutory deadline for submission of transfer pricing documentation?

Transfer pricing legislation in the Federation of Bosnia and Herzegovina and the Republic of Srpska does not prescribe a statutory deadline for submission of transfer pricing documentation.

► Time period/deadline for submission on tax authority request

Federation of Bosnia and Herzegovina

45 days upon tax authority request.

Republic of Srpska

30 days upon tax authority request.

Bosnia and Herzegovina

6. Transfer pricing methods

a) Applicability

- ▶ International transactions

Federation of Bosnia and Herzegovina

Traditional transaction methods have priority for the application in transfer pricing in the Federation of Bosnia and Herzegovina, with CUP defined as the most preferable method. Taxpayers are allowed to select other specified methods that could be considered reasonable, assuming that previously mentioned methods could not be applied.

Selection of the most appropriate method is based on the following criteria:

- ▶ Nature of controlled transactions, conducted via functional analysis
- ▶ Level of comparability between controlled and uncontrolled transactions
- ▶ Completeness and accuracy of data on controlled and uncontrolled transactions
- ▶ Reliability of assumptions
- ▶ The level of unreliable data and assumptions on conducted adjustments

Republic of Srpska

The taxpayer is required to select the most appropriate method for determining that the transaction price is at arm's length.

Selection of the most appropriate method is based on the following criteria:

- ▶ Pros and cons of the chosen method
- ▶ Nature of transactions that are subject to the analysis
- ▶ Availability and reliability of data for the analysis
- ▶ Level of comparability between controlled and uncontrolled transactions

The taxpayer is also allowed to use any other unspecified method that is reasonable to apply in a given circumstance, assuming that the specified methods cannot be applied.

Foreign companies are accepted for the purpose of a benchmark analysis if no local companies can be identified.

- ▶ Domestic transactions

Transfer pricing legislation in the Federation of Bosnia and Herzegovina and the Republic of Srpska does not prescribe specific transfer pricing methods for domestic transactions.

b) Priority/preference of methods

Federation of Bosnia and Herzegovina

Traditional transaction methods have priority for the application in transfer pricing in the Federation of Bosnia and Herzegovina, with CUP defined as the most preferable method.

Republic of Srpska

TP legislation in the Republic of Srpska does not prescribe priorities in the application of methods.

7. Benchmarking requirements

a) Local vs. regional comparables

Foreign comparables are accepted for the purpose of a benchmark analysis if no local comparables could be identified in the Federation of Bosnia and Herzegovina and the Republic of Srpska.

b) Single-year vs. multi-year analysis

There is a preference for multi-year analysis in the Federation of Bosnia and Herzegovina; use of multi-year analysis is recommended in the Republic of Srpska.

c) Use of interquartile range

Use of the interquartile range is mandatory in the Federation of Bosnia and Herzegovina, whereas use of the interquartile range in the Republic of Srpska is recommended.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

There is no need to conduct a fresh benchmarking search every year.

TP documentation has to be prepared annually, and there is no need to conduct a fresh benchmarking search every year – i.e., a rollforward (update of financials of comparable companies) of the previous year's benchmarking analysis could be acceptable, too. Furthermore, the financials of a taxpayer should be updated every year in accordance with financial statements for that year.

e) Simple vs. weighted average

Application of the weighted average is mandatory in the Federation of Bosnia and Herzegovina, whereas application of the weighted average is recommended in the Republic of Srpska.

f) Other specific benchmarking criteria, if any

Independence of a company is evaluated by related party rules stating that an entity shall be considered a related party if it has 25% of shares or votes of the taxpayer. Also, a related party is considered to be a person closely related to the taxpayer.

Specifically, TP legislation in the Federation of Bosnia and Herzegovina prescribes that companies that incurred a loss should be excluded from a benchmarking analysis.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit, late submission and or incorrect disclosures

Federation of Bosnia and Herzegovina

The taxpayer is obligated to possess a TP report at the time of submission of the CIT return. Penalties in the amount of BAM3,000 to BAM100,000 (approximately EUR1,500 to EUR50,000) could be imposed if the taxpayer doesn't possess the TP report on the due date of the CIT return. Additionally, penalties in the amount of BAM2,500 to BAM10,000 (approximately EUR1,250 to EUR5,000) could be imposed on a responsible person in the company for the previously mentioned.

Republic of Srpska

The range of penalties for eventual noncompliance (e.g., not having a prepared TP report on the day of submission of the annual CIT return or missing the deadline for submitting TP documentation after receiving a request from the relevant tax authorities) is between approximately EUR10,000 and approximately EUR30,000 for the legal entity and between approximately EUR2,500 and approximately EUR7,500 for the responsible individual in the legal entity.

- ▶ If an adjustment is sustained, can penalties be assessed?

In addition, the possible adjustment of taxable income on a transfer pricing basis may result in increased interest for late tax payments.

- ▶ Is interest charged on penalties/payable on refund?

Federation of Bosnia and Herzegovina

Legislation in the Federation of Bosnia and Herzegovina prescribes that the interest is charged on penalties/payable on refund at a daily rate of 0.04%.

Republic of Srpska

Legislation in the Republic of Srpska prescribes that the interest is charged on penalties/payable on refund at a daily rate of 0.04%.

b) Penalty relief

Not applicable.

9. Statute of limitations on transfer pricing assessments

The general statute-of-limitations period of five years for taxes in the Federation of Bosnia and Herzegovina and the Republic of Srpska can be applied to transfer pricing assessments.

10. Likelihood of transfer pricing scrutiny/ related audit by local authority

- ▶ Likelihood of transfer pricing-related audits (*high/medium/low*)

Medium, although audits by tax authorities are not conducted regularly, and audited periods are not considered irrevocably closed. Typically, audits take place only once every three to five years, and they cover all taxes. Transfer pricing is likely to be within the scope of most tax audits.

Bosnia and Herzegovina

► **Likelihood of transfer pricing methodology being challenged (*high/medium/low*)**

Medium; at the moment, the tax authorities have a limited level of sophistication in transfer pricing methodology, given the lack of practice, but they have raised this question in certain previous situations.

► **Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)**

Medium; refer to the section above.

► **Specific transactions/industries/situations, if any, more likely to undergo audit**

Not applicable.

11. APA opportunity

► **Availability (unilateral/bilateral/multilateral)**

Advance rulings and APAs are not available in the Federation of Bosnia and Herzegovina or the Republic of Srpska.

► **Tenure**

Not applicable.

► **Rollback provisions**

Not applicable.

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Brazil



1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Federal Revenue Department (Receita Federal do Brasil)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

- ▶ Law 9.430/1996 amended by Law 12.715/2012.
- ▶ Law 12.766/2012 introduced further changes to the Brazilian transfer pricing rules for interest paid to related parties.
- ▶ Regulatory Instruction (IN RFB 1.312/12) gives detailed regulations about the TP rules.

▶ Section reference from local regulation

Related party and associate enterprise are defined in Art. 2 of IN RFB 1.312/12.

2. OECD guidelines treatment/reference

Brazil is not a member of the OECD.

Brazil's transfer pricing rules deviate significantly from international standards, including the OECD Guidelines, as there are no profit-based methods and the concept of a functional and risk analysis is not included.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Brazil has transfer pricing documentation rules.

▶ Does transfer pricing documentation have to be prepared annually?

Transfer pricing (TP) documentation has to be prepared annually under local country regulations. TP analysis must be prepared for all intercompany transactions (goods, services, rights, Interest in loan) without exception.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

Not applicable.

▶ Economic analysis

Not applicable.

▶ BEPS master and local files

Not applicable.

▶ CbCR

BRL2.26 billion.W

c) Specific requirement(s)

▶ Treatment of domestic transactions

There is no documentation obligation for domestic transactions.

▶ Local language documentation requirement

The TP documentation needs to be submitted in Portuguese as per Law 9.430/96, Law 12.715/12 and IN RFB 1.312/12.

▶ Safe harbor availability

Safe harbor limits are applicable only on export transactions. Exports are exempt from applications of the transactional transfer pricing rules if they meet one of the three safe harbor conditions: export net revenue that does not exceed in the calendar year 5% of total net revenue; profit in export transactions to related companies, on a three-year average, is at least 10% and, also, the intercompany export transactions cannot exceed 20% of total net export transactions; and when the average price of exports, per item, is at least 90% of the average domestic sales price.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Yes.

▶ Coverage in terms of master and/or local files

It does not cover the master file or local file.

▶ Effective/expected commencement date

31 July 2017.

Brazil

► Material differences from OECD report template/format

Yes, there are material differences between the OECD report template/format and Brazil's regulations.

► Sufficiency of BEPS Action 13 format report to achieve penalty protection

Brazilian BEPS Action 13 is quite similar to the standard report; however, the information must be in Portuguese and must be included in Block W of the electronic income tax return.

► CbCR notification and CbC report submission requirement

There is no CbCR notification requirement in Brazil, but the CbC report must be submitted by 31 July.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

The electronic income tax return (ECF) contains five specific forms that require taxpayers to disclose detailed information regarding their main intercompany import and export transactions.

Taxpayers need to disclose the total transaction values of the most-traded products, services or rights; the names and locations of the related trading partners; the methodology used to test each transaction; the calculated benchmark price; the average annual transfer price; and the amount of any resulting adjustment.

b) Transfer pricing-specific returns

Taxpayers are expected to have the calculations and documentation necessary to support the information filed as part of the annual tax declaration, and it should be ready for the tax authority to potentially inspect when the declaration is filed.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► Corporate income tax return

31 July.

► Other transfer pricing disclosures/return

31 July.

► CbCR notification

Not applicable.

► CbC report preparation/submission

31 July.

b) Documentation preparation deadline

The transfer pricing file must be prepared by the time of lodging the tax return on 31 July.

c) Documentation submission deadline

► Is there a statutory deadline for submission of transfer pricing documentation?

Yes, the deadline is 31 July.

► Time period/deadline for submission on tax authority request

Taxpayers have to deliver the transfer pricing documents within 30 days upon request from the tax authorities.

6. Transfer pricing methods

a) Applicability

► International transactions

Brazilian rules provide for the following methods for imports and exports of assets, goods and services.

Imports:

1. Comparable independent price method (PIC), defined as the weighted-average sales price for similar products or services for unrelated parties or between unrelated parties
2. Resale price minus gross profit method (PRL), defined as the weighted-average sales price minus certain adjustments, less a statutory gross profit margin
3. Production cost-plus profit method (CPL), defined as the weighted-average actual costs incurred during the year to produce the same or similar products or services, plus taxes and a gross profit mark-up of up to 20%
4. Quotation price on import method (PCI) – exclusively required for import transactions of commodities that have a quote in a commodities exchange

Exports:

1. Export sales price method (PVE_x), defined as the weighted-average sales price for other customers or between unrelated parties during the same year
2. Resale price method, defined as the weighted-average sales prices in the country of destination under similar payment terms, minus taxes imposed by that country and a gross profit margin of 15% (PVA) for wholesale or 30% (PVV) for retail
3. Purchase or production cost method (CAP), defined as the weighted-average cost of acquisition or production increased by taxes and duties imposed by Brazil, plus a gross profit markup of at least 15% on the sum thereof
4. Quotation price on export method (PCE_x) – exclusively required for export transactions of commodities that have a quote in a commodities exchange

- ▶ Domestic transactions

Not applicable.

b) Priority/preference of methods

As a first step in the transfer pricing documentation process, Brazilian companies importing from abroad usually apply the Brazilian PRL to document a company's transfer prices. This is mainly because the method relies entirely on import cost, local production cost and resale price information available in Brazil, relieving the company of the burden of soliciting data from its foreign related suppliers. This approach provides an estimate of the Brazilian taxpayer's potential transfer pricing exposure. As a second step, because the Brazilian transfer pricing regulations do not have a most-appropriate-method concept, taxpayers often apply one of two other methods to reduce the potential transfer price exposure. Taxpayers may choose whichever method suits them best. This approach provides taxpayers with the opportunity to focus on those products and transactions that generate the highest adjustments under the PRL method and then apply one of the alternative methodologies (i.e., CPL or PIC for each of these products or transactions, reducing or avoiding the adjustment). The other methods often are more favorable, as the result is more likely to be in line with international expectations. The only condition is that taxpayers must be able to document the chosen method properly. The Brazilian tax authorities usually challenge the application of the CPL and PIC methods; consequently, it is crucial for the Brazilian taxpayer to prepare robust documentation to support the application of the PIC and CPL methods.

Brazilian companies exporting abroad – except for commodities under the new rules – often apply the safe-harbor rules to avoid applying additional transfer pricing methods.

For transactions of products considered to be commodities, the safe harbor is Not applicable.

It is important to note that, under the new rules introduced by Law 12.715/2012, the taxpayer is bound to the transfer pricing method chosen, and a change of method during a tax audit is accepted only for years 2012 onward if the tax auditor applies a different method.

7. Benchmarking requirements

a) Local vs. regional comparables

There is a legal requirement for local country comparables. Local comparable transactions should represent a minimum of 5% of total intercompany transactions related to specific goods, services or rights when applying the local comparable method.

b) Single-year vs. multi-year analysis

Comparable transactions performed with third parties in the same Calendar Year or previous Calendar Year can be used as a comparable to test the intercompany prices.

c) Use of interquartile range

Not applicable.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

There is no need to conduct a fresh benchmarking search every year.

e) Simple vs. weighted average

There is a preference for weighted average for arm's-length analysis.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures

Brazil

The regulation imposes potentially heavy penalties for noncompliance with the CbCR rules. Transactions and financial operations that are not fully reported in the CbC report give rise to a penalty of up to 3% of the underlying value of the transactions.

► **If an adjustment is sustained, can penalties be assessed?**

Because there are no special penalties for transfer pricing, general tax penalties are applicable. The amount of the penalty may be up to 20% of the omitted tax (or 0.33% per day) if the taxpayer pays the related taxes late but before an audit. Meanwhile, if the tax authority assesses the taxpayer as part of a transfer pricing audit, the applicable penalties may range from 75% to 225% of the omitted taxes.

► **Is interest charged on penalties/payable on refund?**

Payables and refunds are updated by the official Brazilian interest rate, called SELIC, when applicable.

b) Penalty relief

Currently, no penalty relief is available. The taxpayer may appeal to administrative court. If there is no resolution at this level, the dispute goes to other courts.

9. Statute of limitations on transfer pricing assessments

A general statute of limitations applies, which is five years from the first day of the following fiscal year. In the case of filing amended tax returns, the statute starts with the filing of the latest amended return.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood of transfer pricing being reviewed as part

of an audit is characterized as medium because the tax authorities have access to a wide range of accounting and fiscal information in electronic databases that make it easier for them to monitor any discrepancy of tax information.

► **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

Medium to high; since the companies have to submit the income tax return in electronic format, the tax authorities have increased the number of fiscal assessments.

► **Likelihood of an adjustment if transfer pricing methodology is challenged (high/medium/low)**

High. Considering that the Brazilian methodology is different from the OECD's, it is very common to have TP adjustments in Brazil, which have to be added in the corporate income tax basis.

► **Specific transactions/industries/situations, if any, more likely to undergo audit**

For certain industries – e.g., automotive, pharmaceutical, chemical, oil and gas, and intragroup services into Brazil (services, cost allocations) – the likelihood of a transfer pricing audit is high. The risk of a transfer pricing audit is high if the tax authorities identify inconsistencies in the information filed electronically (e.g., customs declaration, financial statements and other filing requirements, such as SISCOMEX/SISCOSERV).

11. APA opportunity

► **Availability (unilateral/bilateral/multilateral)**

An APA program is not available in Brazil.

► **Tenure**

Not applicable.

► **Rollback provisions**

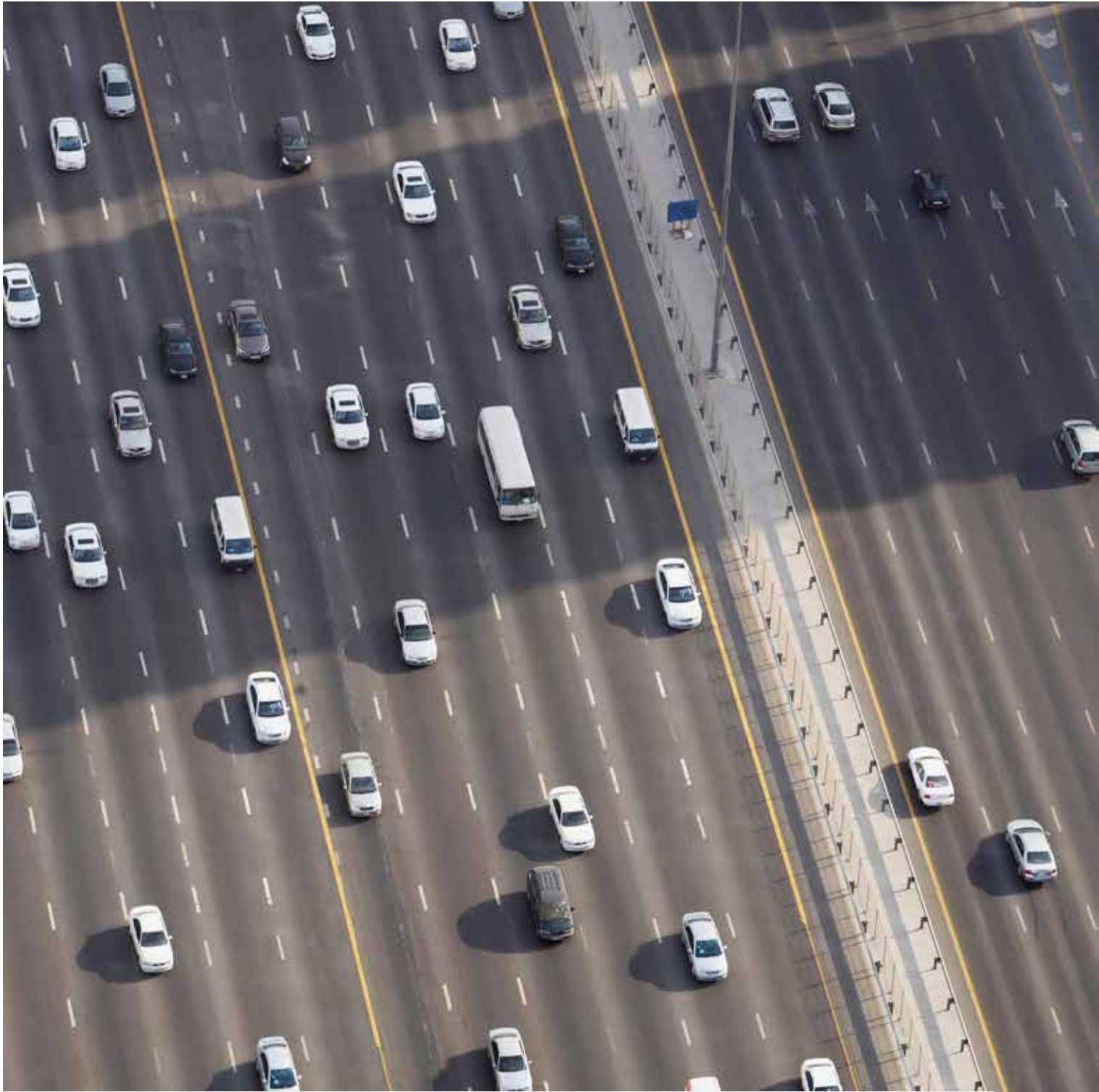
Not applicable.

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Bulgaria



1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

National Revenue Agency (NRA).

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

- Corporate Income Tax Act (CITA), promulgated in State Gazette (SG) Issue 105, 22 December 2006
- Tax and Social Insurance Procedure Code (TSIPC), promulgated in SG Issue 105, 29 December 2005
- Ordinance N 9, 14 August 2006, about methods for determining market prices, promulgated in SG Issue 70, 29 August 2006
- Double taxation treaties enacted by Bulgaria

► Section reference from local regulation

According to Article 15 of the CITA, when related parties enter into transactions whose commercial and financial terms differ from those of unrelated party transactions, resulting in a different taxable base than what would have been achieved in unrelated party transactions, the tax authorities will adjust the taxable base accordingly.

Specifically, under Article 16 of the CITA, when one or more transactions, including between unrelated parties, have been concluded under terms in which the fulfillment leads to lower or no taxation, the taxable base will be determined without taking notice of these transactions, certain terms or their legal form. Instead, the taxable amount that will be considered would be obtained in a market-customary way of the relevant type at market prices and is intended to achieve the same economic result without leading to lower or no tax.

For the definition of "related parties," the Bulgarian CITA refers to the provisions of the Tax and Social Security Procedure Code (TSSPC).

The methods applied in determining the arm's-length prices have been introduced by the TSIPC and Ordinance N 9.

The NRA released its Manual on Transfer Pricing Audits (the Manual) in 2008. By introducing a chapter on transfer pricing (TP) documentation requirements in the Manual in 2010, the NRA approved the documents that transfer pricing auditors would require during their investigations.

The Manual is not technically part of the law; however, it is generally followed by both the taxpayers and the tax administration. In this respect, it is in the taxpayers' interest to comply with the Manual, because it defines what the NRA usually requires during a transfer pricing audit. Compliance with the Manual is expected to significantly narrow the scope of disputes over transfer pricing matters during tax audits.

2. OECD guidelines treatment/reference

Bulgaria is not a member of the OECD.

Although there is no specific reference in the Bulgarian transfer pricing legislation and the relevant soft law, they generally follow the OECD Guidelines. However, there are certain differences because the 2010 and 2017 editions of the OECD Guidelines have not been incorporated in local transfer pricing legislation and in the Manual. For example, domestic regulations still provide for the hierarchy of methods that was abolished in the OECD Guidelines. Furthermore, Bulgarian transfer pricing rules do not explicitly deal with business restructuring.

The Manual is expected to be aligned with the most recent edition of the OECD Guidelines in the near future.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

Yes, there are transfer pricing documentation guidelines. These are not binding but are generally followed by both the transfer pricing auditors and the taxpayers.

► Does transfer pricing documentation have to be prepared annually?

Bulgarian transfer pricing legislation does not prescribe mandatory preparation of documentation. However, the TSSPC contains a general requirement that obliges the taxable entities to demonstrate the arm's-length nature of the remuneration determined in their related party dealings. This is usually done by means of completing and presenting the local file and master file as described in the Code of Conduct on transfer pricing documentation in the EU. In this respect, transfer pricing documentation does not have to be prepared annually under local country regulations. However, the Manual recommends

that the TP documentation be updated annually but does not provide any references to the minimum requirements to achieve this. As a good practice, it is recommended that the economic and financial analyses be updated based on the most recent financial data available. In addition, it is necessary to confirm that the main characteristics of the related party arrangements remain unchanged.

b) Materiality limit/thresholds

► Transfer pricing documentation

Based on the NRA TP Manual, microenterprises (enterprises employing less than 10 people on average, with an annual turnover of less than BGN3.9 million (i.e., approximately EUR1.994 million) and/or assets of less than BGN3.9 million) may not prepare transfer pricing documentation files.

In addition, the preparation of simplified transfer pricing documentation files is possible if the value of the transaction concluded with a related party does not exceed the below thresholds annually:

- a. BGN200,000 (approximately EUR102,000) applicable to supplies of goods
- b. BGN200,000 applicable to supplies of services
- c. BGN400,000 (approximately EUR205,000) applicable to transactions related to intangibles
- d. BGN400,000 applicable to interest income/expense accrued on related party financing arrangement

In the simplified transfer pricing documentation file, information on comparative transactions is not specifically required and could be included only if such data is readily available.

► Economic analysis

Not applicable.

► BEPS master and local files

Not applicable.

► CbCR

A Bulgarian ultimate parent entity with consolidated revenue above BGN100 million (approximately EUR51 million) or a Bulgarian constituent entity with consolidated revenue exceeding BGN1,467 million (EUR750 million).

c) Specific requirement(s)

► Treatment of domestic transactions

Bulgarian legislation and the relevant soft law do not distinguish between domestic and cross-border related party transactions. The same rules for documenting apply to them.

► Local language documentation requirement

Based on the TSSPC provisions, any documents presented to the tax authorities should be prepared in Bulgarian language or translated by a sworn translator. In this respect, the transfer pricing documentation needs to be submitted in the local language. According to the provisions of the Manual, the group's master file may be prepared in another language. However, the taxpayer should be able to provide a translated version of the document (or the parts requested by the tax authorities) performed by a sworn translator. In case the translated documentation is not provided by the deadline, the tax authorities may translate the document at the expense of the taxpayer.

► Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

► Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Bulgaria has adopted BEPS Action 13 for TP documentation in the local regulations only in terms of CbCR.

► Coverage in terms of master and/or local files

The master and local files are not covered.

► Effective/expected commencement date

The law is applicable for the fiscal years beginning on or after 1 January 2016.

► Material differences from OECD report template/format

No, there are no material differences.

► Sufficiency of BEPS Action 13 format report to achieve penalty protection

The penalties in case no transfer pricing documentation is prepared and presented when requested are insignificant. Generally, master files and local files prepared in the BEPS 13 format report should be sufficient to show the arm's-length nature of the related party transactions reviewed.

► CbCR notification and CbC report submission requirement

There is a CbCR notification and CbC report submission requirement in Bulgaria. CbCR notification should be submitted by the end of the respective fiscal year. As mentioned above, the first mandatory filing period is for FY 2016. The CbC report should be submitted within 12 months from the end of the fiscal year of the multinational group of entities.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Taxpayers are required to submit as part of their annual corporate income tax package summarized information about transactions with domestic and nonresident related parties, as well as with offshore companies. This includes a statement of the total annual income and expenses arising from controlled dealings, as well as balances (i.e., payables and receivables) outstanding at the end of the year.

Furthermore, taxpayers are required by the National Accounting Standards (and the International Financial Reporting Standards) to disclose in their financial statements relationships between related parties, regardless of whether there have been transactions between them, as well as the related party transactions

b) Transfer pricing-specific returns

In Bulgaria, there is no transfer pricing specific-return.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► Corporate income tax return

31 March of the following year. Therefore, the CIT return for FY 2017 should be filed by 31 March 2018.

► Other transfer pricing disclosures/return

31 March of the following year. Therefore, the CIT return and the relevant disclosures related to TP for FY 2017 should be filed by 31 March 2018.

► CbCR notification

The end of the respective fiscal year – i.e., a notification for the fiscal year ended on 31 December 2017 should be submitted by 31 December 2017.

► CbC report preparation/submission

The CbC reports should be submitted within 12 months of the end of the fiscal year for the MNE. Thus, a CbC report of a multinational group of entities with a fiscal year that ended on 31 December 2017 should be submitted by 31 December 2018.

b) Documentation preparation deadline

There is no statutory deadline/recommendation for preparation of TP documentation. As a good practice, to avoid transfer pricing adjustments, it is recommended that the file be completed by the time the corporate income tax return for the respective year should be submitted).

c) Documentation submission deadline

► Is there a statutory deadline for submission of transfer pricing documentation?

There is no statutory deadline for submission of transfer pricing documentation. TP documentation is not required to be provided along with the tax return. It only needs to be presented upon request by the tax authorities.

► Time period/deadline for submission on tax authority request

TP documentation should usually be submitted within 7 to 14 days upon request. However, the taxpayer can request an extension of up to 3 months.

6. Transfer pricing methods

a) Applicability

► International transactions

Yes.

► Domestic transactions

Yes.

b) Priority/preference of methods

Under Bulgarian transfer pricing legislation, one of the following methods should be applied to determine the market price:

Bulgaria

- a. CUP
- b. Resale price
- c. Cost-plus
- d. Profit split
- e. TNMM

The hierarchy of methods criterion should be used for the application of transfer pricing methods.

The TSIPC introduced the methods applicable for determining the arm's-length price, while Ordinance N 9 regulates the order of consideration, and applying the traditional transfer pricing methods is preferred. Moreover, the CUP method is considered the most direct and reliable measure of an arm's-length price for controlled transactions. The TNMM and profit split methods are used only in cases in which applying the traditional methods produces an unsatisfactory result.

7. Benchmarking requirements

a) Local vs. regional comparables

In terms of the procedural search approach to conduct comparable searches, the NRA Manual states that comparable data could be obtained both from internal and external transactions and the source database should be publicly available. In addition, according to the Manual, exemplary sources of comparable transactions data could be the National Statistical Institute, local industry associations, Amadeus, Orbis and others.

It is the NRA transfer pricing auditors' recent practice to challenge benchmarking analysis for the lack of Bulgarian data and analysis of the local market players. In such cases, the revenue authority performs its own benchmark analysis and test of the profitability of the local entities based on local business intelligence databases. In this respect, it is highly recommended that the benchmark analysis contained in the TP documentation of the taxpayer reviews Bulgarian comparables and considers them with priority.

b) Single-year vs. multi-year analysis

There is no specific guidance in legislation or the Manual; however, as a country practice, multiple-year testing is used (usually three years).

c) Use of interquartile range

Local transfer pricing legislation requires the use of interquartile ranges in case the TNMM method is applied.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

A fresh benchmarking search is to be conducted every year. According to the Manual, the TP documentation should be prepared for the fiscal period when the analyzed intercompany transactions were concluded. Any TP documentation prepared for preceding fiscal years may be used for the following years, provided that no changes in the organization and functions of the company or changes of any other factors that may affect the pricing of the controlled transactions are present. Actualization of the TP documentation should be made in relation to these changes for the respective year.

e) Simple vs. weighted average

None are specified in the legislation.

f) Other specific benchmarking criteria, if any

No specific benchmarking criteria are contained in the local legislation and the relevant soft law. However, the Bulgarian tax legislation provides for a broad definition of "related parties." For instance, for accounting purposes, related parties should be parties in which one exercises control over the other, whereas for tax purposes, parties will be related not only in case of control, but also even in the case in which one of the parties holds 5% of the voting shares of the other party. In this regard, an independence criteria between 25% and 100% might not always be relevant.

8. Transfer pricing penalties/relief

a) Penalty exposure

► Consequences of failure to submit/late submission and/or incorrect disclosures

If the taxpayer fails to provide documentation when requested by the tax authorities, a fine for not cooperating could be imposed. However, this fine is insignificant (i.e., in the range of BGN250 to BGN500, or approximately EUR128 to EUR256). Therefore, the main consequence for the entity would be the adjustment of its taxable profit if the tax auditors conclude that the price applied in controlled transactions is not at arm's length.

Furthermore, a taxable person involved in a "hidden profit distribution" would be subject to an administrative sanction amounting to 20% of the expense and classified as a hidden profit distribution (unless voluntarily disclosed to the tax authorities). Both the expense classified as a hidden profit distribution and the sanction would be nondeductible

for corporate income tax purposes. In addition, the expense would be considered a deemed dividend and, thus, subject to a 5% withholding tax.

Business expenses may be classified as a hidden profit distribution if an entity has:

- ▶ Accrued, paid or distributed to the benefit of the entity's shareholders or their related parties amounts that are not business-related or are in excess of market price levels
- ▶ Accrued interest costs on debt financing if at least three of the following criteria are met:
 - a. The loan principal exceeds the equity of the borrower as of 31 December of the preceding year
 - b. The repayment of the principal or the interest on the loan is not limited by a fixed time period
 - c. The loan repayment or interest payment depends on whether the borrower ended on a profit position
 - d. The repayment of the loan depends on satisfaction of other creditors' claims or on payment of dividends
- ▶ **If an adjustment is sustained, can penalties be assessed?**

Refer to the section above.

- ▶ **Is interest charged on penalties/payable on refund?**

On refund, default interest (i.e., 10% plus the base interest of the Bulgarian National Bank) could be claimed on the amounts unduly paid by a taxpayer.

b) Penalty relief

A voluntary disclosure of hidden profit distribution relieves taxpayers of the administrative penalty, which is 20% of the hidden profit. This allows taxpayers to self-adjust any overpriced group transactions with no threat of penalties.

If, in the course of a tax audit, the tax auditors challenge the transfer pricing methodology and propose an adjustment, the local taxpayer may file an objection along with any relevant evidence. Then, based on all documents collected in the course of the audit, the tax auditors will come up with a final assessment, which, if not in the taxpayer's favor, could be appealed before the Appeals Directorate of the NRA. The latter may confirm or cancel the assessment or assign a new audit. In case the assessment is confirmed by the Appeals Directorate, the taxpayer may initiate a court appeal. Bulgaria is also a party to the Arbitration Convention.

9. Statute of limitations on transfer pricing assessments

In Bulgaria, documentation may be required for any open tax year, as well as for tax obligations not covered by the statute-of-limitations period. As a general rule, the statute-of-limitations period for corporate income tax is five years from the year following the year of expiration of the statutory term granted for filing corporate income tax returns. The Bulgarian statutory term for both filing the annual corporate income tax return and remittance of the amount due is 31 March of the following year. For example, FY 2012 is open for tax audits until the end of FY 2018, because the corporate income tax return for FY 2012 should have been filed by 31 March 2013.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

- ▶ **Likelihood of transfer pricing-related audits**
(*high/medium/low*)

In general, the likelihood of an annual tax audit is characterized as low. The likelihood that transfer pricing documentation will be reviewed as part of that audit is characterized as high, because of the high probability that the tax authorities would request to analyze all related party transactions. Normally, a taxpayer is audited for its corporate tax compliance at least once every five periods.

- ▶ **Likelihood of transfer pricing methodology being challenged**
(*high/medium/low*)

The likelihood that the transfer pricing methodology will be challenged is characterized as medium. The revenue authorities may scrutinize cases where the local entity has sizable operations yet is earning limited margins or generating losses. Routine service arrangements are normally not challenged as long as the actual rendering of the service is evidenced.

- ▶ **Likelihood of an adjustment if transfer pricing methodology is challenged** (*high/medium/low*)

The likelihood is high when the taxpayer is not able to provide reasonable justification of its intercompany pricing arrangement.

► **Specific transactions/industries/situations, if any, more likely to undergo audit**

Currently, the NRA is not challenging the TP methodologies of particular industries as more risky than others. Based on our observations, local affiliates of multinationals that report recurring losses or low profitability in high-margin sectors may be scoped in for tax audits focused on transfer pricing. Large employers that participate in group stock incentive plans have recently been subject to audits on their pricing policies.

11. APA opportunity

► **Availability (unilateral/bilateral/multilateral)**

No binding ruling or APA opportunities are currently applicable.

Taxpayers are allowed to file a request for a written opinion from the NRA or the Minister of Finance on the interpretation and application of the tax law with regard to a specific tax issue. However, the value of the position of the tax authorities on a particular tax aspect is very limited, because the tax authorities refuse to provide any opinion about transactions that have not yet been structured and documented.

► **Tenure**

Not applicable.

► **Rollback provisions**

Not applicable.

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Cambodia



1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

General Department of Taxation.

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

Prakas 986 – “Rules and procedures for income and expense allocation between related parties”.

▶ Section reference from local regulation

Article 56 of the Law on Taxation and Section 7.3 in the Prakas on Tax on Profit define a related party for transfer pricing purposes.

2. OECD guidelines treatment/reference

Cambodia is not a member of the OECD; however, it follows the OECD Guidelines.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Yes, there are transfer pricing documentation rules.

▶ Does transfer pricing documentation have to be prepared annually?

Yes, the transfer pricing documentation needs to be prepared annually, and a transfer pricing memo should also include benchmarking.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

None specified.

▶ Economic analysis

None specified.

▶ BEPS master and local files

None specified.

▶ CbCR

None specified.

c) Specific requirement(s)

▶ Treatment of domestic transactions

None specified.

▶ Local language documentation requirement

None specified.

▶ Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Cambodia has not adopted/implemented BEPS Action 13 for transfer pricing documentation in its local regulations.

▶ Coverage in terms of master and/or local files

Not applicable.

▶ Effective/expected commencement date

Not applicable.

▶ Material differences from OECD report template/format

Not applicable.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

Yes.

▶ CbCR notification and CbC report submission requirement

Not applicable.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Yes, there is a requirement.

b) Transfer pricing-specific returns

None specified.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ Corporate income tax return

90 days after the end of the financial year-end.

▶ Other transfer pricing disclosures/return

90 days after the end of the financial year-end.

▶ CbCR notification

Not applicable.

▶ CbC report preparation/submission

Not applicable.

b) Documentation preparation deadline

There is no specified deadline for the preparation of transfer pricing documentation.

c) Documentation submission deadline

▶ Is there a statutory deadline for submission of transfer pricing documentation?

Not applicable.

▶ Time period/deadline for submission on tax authority request

Seven working days.

6. Transfer pricing methods

a) Applicability

▶ International transactions

Yes.

▶ Domestic transactions

Not applicable.

b) Priority/preference of methods

All five recognized OECD methodologies are accepted in Cambodia, and there is no priority/preference of methods.

7. Benchmarking requirements

a) Local vs. regional comparables

Finding local comparables is extremely difficult because of a lack of publicly available databases and local stock exchange. Accordingly, regional comparables are accepted.

b) Single-year vs. multi-year analysis

Multiple-year analysis is acceptable.

c) Use of interquartile range

Interquartile range calculation using Excel Quartile formulas is acceptable.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

Rollforward study is acceptable.

e) Simple vs. weighted average

Simple average is acceptable.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ **Consequences of failure to submit/late submission and/or incorrect disclosures**

Withdrawal of the taxpayer's certificate of tax compliance:

- ▶ **If an adjustment is sustained, can penalties be assessed?**

Yes; from 10% to 40% of the under-declared amount depending on the quantum of the under-declared amount to the tax amount actually declared.

- ▶ **Is interest charged on penalties/payable on refund?**

Yes, at 2% per month.

b) Penalty relief

Relief from penalties may be negotiated between the taxpayer and the tax authority. While an administrative appeals tribunal was recently set up, to date no taxpayers have approached the tribunal to settle a tax dispute.

9. Statute of limitations on transfer pricing assessments

This is 3 years, which may be extended to 10 years if fraud or obstruction of the implementation of the law is involved.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

- ▶ **Likelihood of transfer pricing-related audits (high/medium/low)**

Medium, as Cambodia only introduced its transfer pricing regulations in October 2017 and its transfer pricing

audit capabilities are still being developed. Furthermore, and while a dedicated transfer pricing audit team has been established within the tax authority, its current resources do not allow it to conduct multiple transfer pricing audits simultaneously.

- ▶ **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

Medium (same reason as above).

- ▶ **Likelihood of an adjustment if transfer pricing methodology is challenged (high/medium/low)**

Medium (same reason as above).

- ▶ **Specific transactions/industries/situations, if any, more likely to undergo audit**

Historically, the garment industry has been targeted by the revenue authority for transfer pricing audits.

11. APA opportunity

- ▶ **Availability (unilateral/bilateral/multilateral)**

None specified.

- ▶ **Tenure**

Not applicable.

- ▶ **Rollback provisions**

Not applicable.

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Cameroon

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

General Director of Taxation.

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

Article 18-3 of the New Finance Law 2014 specifies the documentation requirements.

▶ Section reference from local regulation

Section 19 and Section M 19 (a).

2. OECD guidelines treatment/reference

Cameroon is not a member of the OECD.

The OECD Guidelines on transfer pricing may be relied upon to determine the arm's-length nature of international transactions, and supporting documentation should be prepared.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Yes.

▶ Does transfer pricing documentation have to be prepared annually?

Yes; the minimum requirement is to present operations that are carried out during the year and subject to transfer pricing rules.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

No materiality limit.

▶ Economic analysis

No materiality limit.

▶ BEPS master and local files

Not applicable.

▶ CbCR

Not applicable.

c) Specific requirement(s)

▶ Treatment of domestic transactions

There is no documentation obligation for domestic transactions.

▶ Local language documentation requirement

The transfer pricing documentation needs to be submitted in the local language (French or English), as per the General Administrative Law.

▶ Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No.

▶ Coverage in terms of master and/or local files

Not applicable.

▶ Effective/expected commencement date

Not applicable.

▶ Material differences from OECD report template/format

Not applicable.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

Not specified.

▶ CbCR notification and CbC report submission requirement

There is no CbCR notification or CbC report submission requirement in Cameroon.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Taxpayers must disclose related party transactions. The provisions of Article 18-3 indicate that a company must provide a description of transactions with other affiliates, including the nature and amount of flows, such as fees. These disclosures are to be included in the transfer pricing documentation submitted with the return.

b) Transfer pricing-specific returns

There are no specific templates for transfer pricing documentation, but the tax administration provided a template that relates to a specific declaration of information form that must be filed when submitting the report. Moreover, transfer pricing documentation shall be filed in electronic (Excel sheet) and paper form.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ Corporate income tax return

15 March.

▶ Other transfer pricing disclosures/return

15 March.

▶ CbCR notification

Not applicable.

▶ CbC report preparation/submission

Not applicable.

b) Documentation preparation deadline

To achieve penalty protection, documentation should be finalized by the time of lodging the tax return.

c) Documentation submission deadline

▶ Is there a statutory deadline for submission of transfer pricing documentation?

The transfer pricing documentation must be submitted each year, along with the annual tax return, no later than 15 March

for companies under the department in charge of large enterprises that are held directly or indirectly or that hold directly or indirectly more than 25% of the shares or voting rights of a company abroad.

For the other companies, if the tax administration, during a general tax audit, has evidence to presume that such companies had indirectly transferred profit abroad, the latter could be requested to provide information and transfer pricing documentation within 30 days. This deadline may be extended without exceeding two months, on the request of the taxpayer.

▶ Time period/deadline for submission on tax authority request

Refer to the previous section.

6. Transfer pricing methods

a) Applicability

▶ International transactions

Not applicable.

▶ Domestic transactions

Not applicable.

b) Priority/preference of methods

Not applicable.

7. Benchmarking requirements

a) Local vs. regional comparables

Not specified.

b) Single-year vs. multi-year analysis

Not specified.

c) Use of interquartile range

Not specified.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

A fresh benchmarking search is not necessary to be conducted every year; update of the financials is permissible.

e) Simple vs. weighted average

Not specified.

f) Other specific benchmarking criteria, if any

Not specified.

8. Transfer pricing penalties/relief**a) Penalty exposure**

- ▶ **Consequences of failure to submit/late submission and/or incorrect disclosures**

The taxpayer will be liable to a fixed fine of up to XAF50 million.

- ▶ **If an adjustment is sustained, can penalties be assessed?**

Yes, penalties vary from 30%, 100% to 150% in the cases of good faith, bad faith and fraud, respectively.

- ▶ **Is interest charged on penalties/payable on refund?**

Yes, 1.5% interest in arrears per month, up to a maximum of 50%.

b) Penalty relief

A taxpayer can request total or partial remittance of the penalties.

If an adjustment is proposed by the tax authority, dispute resolution options are available: an administrative claim before the General Director of Taxation and then the Minister of Finance, and, finally, petition before the court. Also, the taxpayer could proceed via compromise to obtain moderation of all or part of the taxes.

9. Statute of limitations on transfer pricing assessments

There is no statute of limitations specific to transfer pricing matters. Nonetheless, pursuant to Section M34 of the Cameroonian Tax Procedure Handbook, the tax authorities may correct the statute of limitations applicable to total or partial omissions up to the end of the fourth year.

after the one in which the taxes were due. Thus, this limitation period should be applicable to transfer pricing assessments as well.

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10. Likelihood of transfer pricing scrutiny/related audit by local authority

- ▶ **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood of an annual tax audit in general is high. The likelihood that transfer pricing will be reviewed as part of that general tax audit is also high.

- ▶ **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood that the transfer pricing methodology will be challenged is high because of recent trends in tax audits by the tax administrators.

- ▶ **Likelihood of an adjustment if transfer pricing methodology is challenged (high/medium/low)**

See the above section.

- ▶ **Specific transactions/industries/situations, if any, more likely to undergo audit**

None specified.

11. APA opportunity

- ▶ **Availability (unilateral/bilateral/multilateral)**

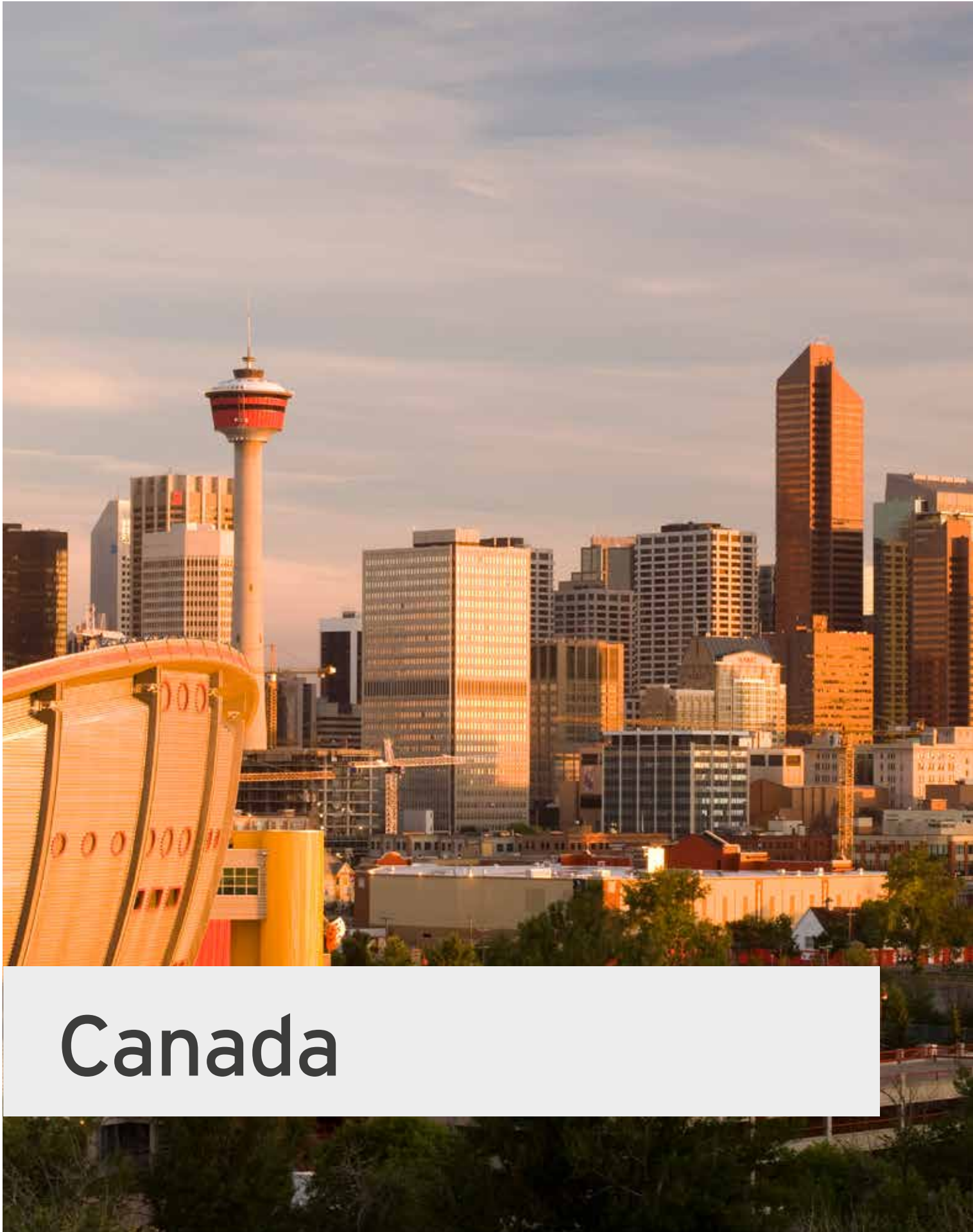
The relevant tax law in Cameroon is silent on APAs. However, based on Section M34 of the Manual of Tax Procedures, before a contract is concluded or a transaction is performed, a taxpayer can request a tax ruling (rescrit fiscal) from the tax authorities to get their position on the potential tax implications.

- ▶ **Tenure**

Not applicable.

- ▶ **Rollback provisions**

Not applicable.



Canada

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Canada Revenue Agency (CRA)

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

Section 247 of the Income Tax Act (Canada) (ITA) received Royal Assent on 18 June 1998 and is generally applicable to tax years that began after 1997. For transactions after 28 March 2012, new sections 247(12) to (15) were added to the transfer pricing (TP) provisions to streamline and rationalize the withholding tax implications of transfer pricing adjustments.

The CRA provides its administrative interpretations and guidance with respect to Section 247 and its application through the release of Information Circulars (ICs), Transfer Pricing Memoranda (TPMs) and pronouncements at public conferences, symposia and conventions.

The CRA's current key pronouncements on transfer pricing are:

1. IC87-2R, International Transfer Pricing, 27 September 1999
2. IC94-4R, International Transfer Pricing: Advance Pricing Arrangements (APAs), 16 March 2001
3. IC94-4R (special release), Advance Pricing Arrangements for Small Businesses, 18 March 2005
4. IC71-17R5, Guidance on Competent Authority Assistance Under Canada's Tax Conventions, 1 January 2005
5. Currently 14 different TPMs

► Section reference from local regulation

Refer to the section above.

2. OECD guidelines treatment/reference

Canada is a member of the OECD.

While no mention is made of the OECD Guidelines in Section 247 of the ITA, the legislative provision is intended to reflect the arm's-length principle as set out in the OECD Guidelines. The CRA has also endeavored to harmonize its administrative guidance and approach to transfer pricing with the OECD

Guidelines. As noted in IC87-2R, the "circular sets out the Department's views on transfer pricing and also provides the Department's position with respect to the application of the OECD Guidelines."

When dealing with transfer pricing issues domestically, the relevant Canadian statutory provisions are relied upon. The CRA's related ICs and other administrative guidance are considered instructive but not binding. The OECD Guidelines and other OECD reports are not formally recognized as authoritative; however, courts and other dispute resolution channels (e.g., competent authorities) will usually consider the OECD's international principles and standards in reaching a decision.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

Yes

► Does transfer pricing documentation have to be prepared annually?

Yes, transfer pricing documentation has to be prepared annually under local country regulations. TP documentation should completely and accurately describe material changes in the year (if documentation was previously prepared).

b) Materiality limit/thresholds

► Transfer pricing documentation

Not applicable.

► Economic analysis

Not applicable.

► BEPS master and local files

Not applicable.

► CbCR

EUR750 million

c) Specific requirement(s)

► Treatment of domestic transactions

Canada

There is no documentation obligation for domestic transactions.

▶ **Local language documentation requirement**

The TP documentation is acceptable in English or French; however, there is no specific mandate by tax law.

▶ **Safe harbor availability**

Not applicable.

d) BEPS Action 13 implementation overview

▶ **Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?**

Canada has not adopted/implemented BEPS Action 13 for transfer pricing documentation in its local regulations but relies on the transfer pricing documentation framework outlined in Section 247(4)(a)(i) to (vi) of the ITA.

▶ **Coverage in terms of master and/or local files**

Not applicable.

▶ **Effective/expected commencement date**

Not applicable.

▶ **Material differences from OECD report template/format**

Not applicable.

▶ **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

Not applicable.

▶ **CbCR notification and CbC report submission requirement**

There is no CbCR notification requirement in Canada. Canada does have a CbC report submission requirement.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Taxpayers are required to file a T106 information return annually, reporting the transactions undertaken with non-arm's-length nonresidents during the taxation year. The T106 is a separate information return, but it is usually filed together with the corporate tax return (although there are separate penalties if the T106 information return is filed

late). Data from the T106 is entered into a CRA database and is used to screen taxpayers for international tax audits.

b) Transfer pricing-specific returns

Refer to the section above.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ **Corporate income tax return**

Six months after year-end for corporations and five months after year-end for partnerships.

▶ **Other transfer pricing disclosures/return**

Six months after year-end for corporations and five months after year-end for partnerships.

▶ **CbCR notification**

Not applicable.

▶ **CbC report preparation/submission**

No later than 12 months after the last day of the fiscal year to which the CbC report relates.

b) Documentation preparation deadline

Transfer pricing documentation should be completed by the time of lodging the tax return, six months after year-end for corporations and five months after year-end for partnerships.

c) Documentation submission deadline

Not applicable, unless the transfer pricing documentation is requested by the CRA – at which time the taxpayer will have three months to provide the documentation to the CRA.

▶ **Is there a statutory deadline for submission of transfer pricing documentation?**

No.

▶ **Time period/deadline for submission on tax authority request**

Taxpayers must provide documentation to the CRA within three months of the issuance of a written request under Subsection 247(4).

6. Transfer pricing methods

a) Applicability

- ▶ International transactions

The CRA accepts the transfer pricing methods recommended in the OECD Guidelines when such methods are applied correctly and result in an arm's-length price or allocation. The transfer pricing methods specified in IC87-2R include CUP, resale price, cost-plus, profit split (residual and contribution) and TNMM.

- ▶ Domestic transactions

Not applicable.

b) Priority/preference of methods

Traditionally, the CRA considered that, even though Section 247 does not so stipulate, the above-noted transfer pricing methods form a natural hierarchy, with the CUP method providing the most reliable indication of an arm's-length transfer price or allocation. Traditionally, the CRA did not require or impose a "best method" rule.

The CRA believes that the most appropriate method to be used in any situation will be that which provides the highest degree of comparability between transactions, following an analysis of the hierarchy of methods.

In 2012, following the 2010 revisions to the OECD Guidelines, which it endorsed, the CRA published TPM-14. While not wholly abandoning the concept of a natural hierarchy of methods, it indicated that accepting the preferred method in a particular circumstance would depend on the degree of comparability available under each of the methods and the availability and reliability of the data.

7. Benchmarking requirements

a) Local vs. regional comparables

Local benchmarks are preferred following the jurisdiction of the tested party. For Canada, Canadian benchmarks are preferred, but generally, North American companies are acceptable as comparables.

b) Single-year vs. multi-year analysis

Single-year testing is required.

c) Use of interquartile range

The full range of comparable results is relevant for testing transfer prices; quartile results are not critical but may be presented for information purposes along with the median.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

It is not necessary for a fresh benchmarking search to be conducted every year; rollforward/update of the financials of a prior study is acceptable.

e) Simple vs. weighted average

The taxpayer's results are tested on a single-year basis. Nonetheless, comparable company data is often presented for multiple years using a weighted average.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures

Subsection 247(3) of the ITA imposes a penalty of 10% of the net upward transfer pricing adjustments. These penalties are applicable if such adjustments exceed the lesser of 10% of the taxpayer's gross revenue for the year or CAD5 million, and if the taxpayer has not made reasonable efforts to determine and use arm's-length transfer prices.

As set out in TPM-13, all proposed reassessments involving potential transfer pricing penalties must be referred to the Transfer Pricing Review Committee (TPRC) for review and recommendation for final action. The TPRC, after considering the facts and circumstances and the taxpayer's representations, will conclude whether a transfer pricing penalty is justified.

A taxpayer will be deemed not to have made reasonable efforts to determine and use arm's-length transfer prices or allocations unless the taxpayer has prepared or obtained records or documents that provide a description that is complete and accurate, in all material respects, for the items listed in Subsection 247(4) of the ITA (see

“Transfer pricing documentation requirements” section above), and such documentation exists as of the tax filing due date. For corporations, such documentation must exist six months after the year-end. For partnerships, the due date is five months after the year-end. Further, a taxpayer will be deemed not to have made reasonable efforts to determine and use arm’s-length transfer prices or allocations if the taxpayer does not provide the records or documents to the CRA within three months of the issuance of a written request to do so.

► **If an adjustment is sustained, can penalties be assessed?**

Transfer pricing-related penalties are assessed without reference to the taxpayer’s income or loss for the relevant reporting year and are not tax-deductible.

► **Is interest charged on penalties/payable on refund?**

Yes, interest is payable from the date of assessment, at 5%; if refunded, the interest would be reversed.

b) Penalty relief

If a taxpayer is deemed to have made reasonable efforts to determine and use arm’s-length transfer prices or allocations with respect to adjusted, non-arm’s-length transactions, no penalty is assessed. No transfer pricing penalties under Subsection 247(3) of the ITA should arise with respect to transactions covered by an APA, as long as the APA remains in effect and the taxpayer complies with its terms and conditions.

When the CRA has reassessed a transfer pricing penalty and the Canadian competent authority and relevant foreign counterpart negotiate a change to the amount of the transfer pricing adjustment, the CRA will adjust the amount of the Canadian transfer pricing penalty accordingly. If the result of the change is that the adjustment no longer exceeds the penalty threshold, the penalty is rescinded.

9. Statute of limitations on transfer pricing assessments

Under Subsection 152(4) of the ITA, the minister ordinarily cannot reassess a taxpayer after the normal reassessment period, as defined in Subsection 152(3.1) of the ITA. For most multinational taxpayers, that period is four years beginning after the earlier of the day of mailing a notice of an original assessment for the year or the day of mailing an original notification that no tax is payable for the year. The time limit applies unless the taxpayer has made misrepresentations, committed fraud or filed a waiver, in which case the minister may reassess a taxpayer at any time.

With respect to transactions involving non-arm’s-length dealings with nonresidents, the reassessment period is extended by an additional three years – i.e., to seven years. This time period may be further extended if the taxpayer provides the CRA with a waiver (authorization from the taxpayer to the CRA to waive the time limit for reassessment). The taxpayer may provide waivers within the seven-year extended reassessment period. A number of Canada’s tax treaties restrict the time for Canada to make an adjustment to a period less than the seven years allowed under the ITA.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► **Likelihood of transfer pricing-related audits**
(high/medium/low)

For large corporations, the likelihood of an annual tax audit is high, as is the likelihood of transfer pricing being reviewed as part of the audit.

► **Likelihood of transfer pricing methodology being challenged**
(high/medium/low)

The likelihood of a transfer pricing methodology being challenged, if transfer pricing comes under audit, is also high, as the local tax authority does challenge methodology depending on the facts.

► **Likelihood of an adjustment if transfer pricing methodology is challenged** *(high/medium/low)*

If the methodology is challenged, then the likelihood of an adjustment is high.

► **Specific transactions/industries/situations, if any, more likely to undergo audit**

None.

11. APA opportunity

► **Availability (unilateral/bilateral/multilateral)**

The CRA launched its APA program in July 1993. As set out in IC94-4R, it allows taxpayers to pursue unilateral, bilateral or multilateral APAs. In addition, the CRA has made a small-business APA program available to Canadian taxpayers under certain conditions. The CRA charges taxpayers only travel costs it incurs in the completion of an APA.

An APA request can cover a taxation year if the request is made before the filing due date for that year.

► **Tenure**

Typically appears to be five years, but terms can vary.

► **Rollback provisions**

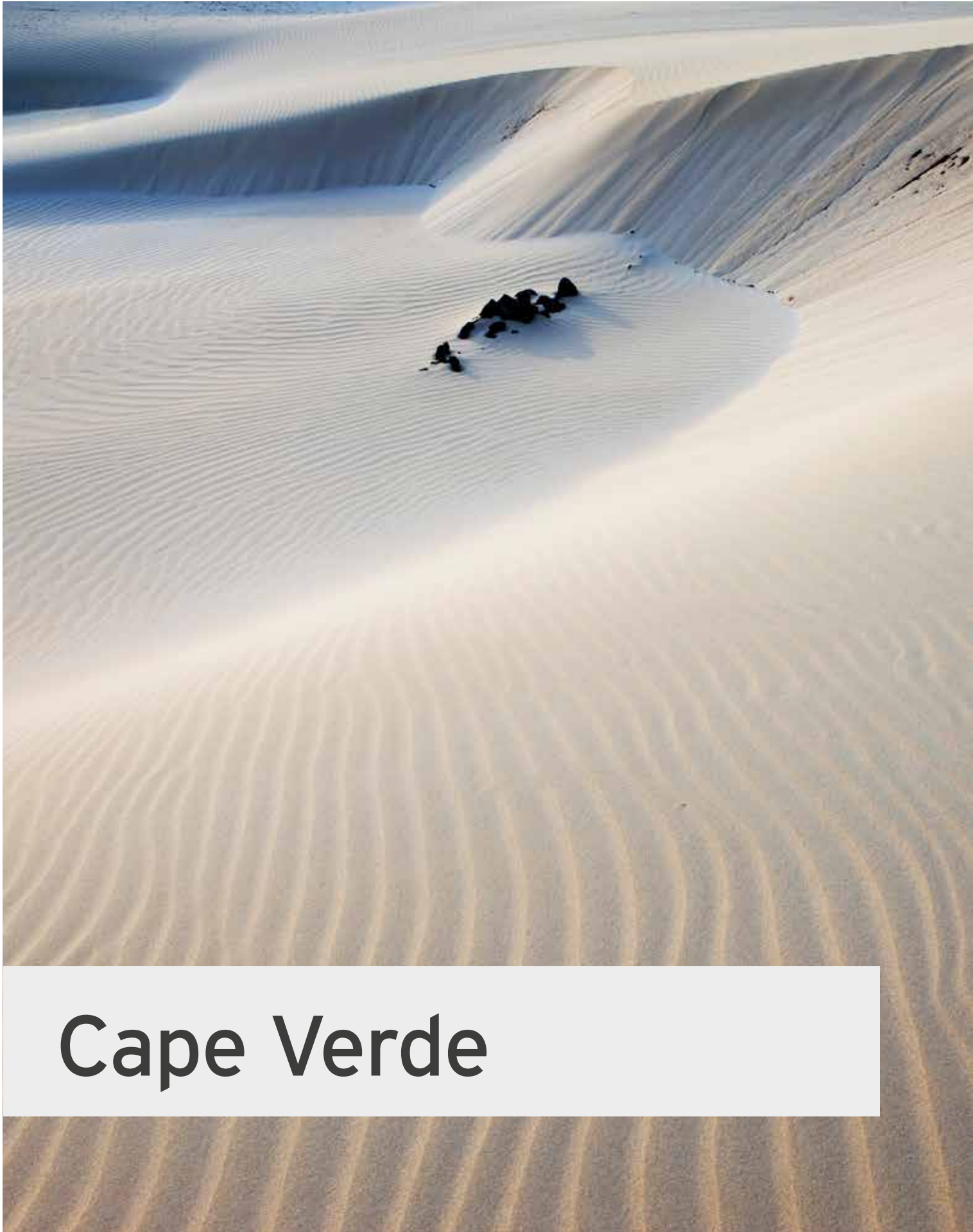
TPM-11 discusses the CRA policy with respect to rolling an APA back to prior years, with the main limitation being that APAs may not be rolled back to years for which a request for contemporaneous documentation under Section 247 has been issued. Effectively, this means that APAs cannot be rolled back to tax years that are currently undergoing a transfer pricing audit.

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Cape Verde

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

National Directorate of State Revenues (Direcção Nacional de Receitas do Estado).

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

Articles 65 and 66 of the Corporate Income Tax Code (CITC) define the arm's-length concept, the eligible transfer pricing (TP) methods, the definition of special relations and declarative requirements.

Ministerial Order No. 75/2015, published by Cape Verde's Financial and Planning Ministry on 31 December 2015 (TP Ministerial Order).

▶ Section reference from local regulation

Article 66 of the CITC.

2. OECD guidelines treatment/reference

Cape Verde is not a member of the OECD. It has adopted general concepts of the OECD Guidelines in its local regulations (as mentioned in the beginning of the TP Ministerial Order).

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Yes.

▶ Does transfer pricing documentation have to be prepared annually?

As per the TP Ministerial Order, taxpayers must maintain contemporaneous information and documentation regarding the transfer pricing policy adopted in the determination of transfer prices on an annual basis.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

Entities classified as "Large Taxpayers" – entities with a turnover greater than CVE200 million, or with a global value of paid tax greater than CVE15 million, or entities with a high level of risk associated.

Additionally, there are other entities subject to preparation of the transfer pricing documentation – namely, entities benefiting from the privileged taxation regime, as defined in the General Tax Code, permanent establishments of nonresident entities and entities specifically designated by the tax authorities for this purpose.

▶ Economic analysis

The same as those identified above. Economic analysis should be a part of the TP documentation, and there are no separate criteria for this obligation.

▶ BEPS master and local files

Not applicable.

▶ CbCR

Not applicable.

c) Specific requirement(s)

▶ Treatment of domestic transactions

They have to be reported and respect the arm's-length principle.

▶ Local language documentation requirement

The documentation should be in Portuguese. Nonetheless, the local tax authority might exempt the taxpayer from the translation if it has a sufficient level of understanding of the language in which the referred document was prepared. Article 16, No. 3 of the TP Ministerial Order foresees that any documentation filed with the local tax authorities should, in principle, be translated into Portuguese.

▶ Safe harbor availability

Not explicitly addressed in the legislation.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Cape Verde has not adopted BEPS measures in its TP legislation, not even the Inclusive Framework.

Cape Verde

► **Coverage in terms of master and/or local files**

Not applicable.

► **Effective/expected commencement date**

Not applicable.

► **Material differences from OECD report template/format**

There are differences, since Cape Verde did not adopt the master file/local file approach. However, Cape Verde local transfer pricing legislation does not outline a specific structure that the TP report should follow. Instead, it lists (in Article 15 of the TP Ministerial Order) the information that the report should include, which is in line with the OECD Transfer Pricing Guidelines.

► **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

Not applicable.

► **CbCR notification and CbC report submission requirement**

There is no CbCR notification or CbC report submission requirement in Cape Verde.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

The main disclosure requirements at this level are contained in the Annual Tax and Accounting Information Return (Declaração anual de informação contabilística e fiscal), in which a taxpayer should, on a yearly basis, indicate whether it has engaged, during that tax year, in intragroup transactions with entities in which it is in a situation of special relation, as well as:

- Identify the related entities
- Identify and declare the amount of transactions conducted with each of the related parties
- Declare if it has organized, by the time the transactions took place, and maintains, the documentation relating to the transfer prices applied

The deadline for the submission of such return corresponds to the end of the seventh month after the corresponding tax year-end.

b) Transfer pricing-specific returns

There are no specific transfer pricing returns (other than the one described above).

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► **Corporate income tax return**

The end of the seventh month after the corresponding tax year-end.

► **Other transfer pricing disclosures/return**

The end of the seventh month after the corresponding tax year-end.

► **CbCR notification**

Not applicable.

► **CbC report preparation/submission**

Not applicable.

b) Documentation preparation deadline

In the absence of provisions covering the deadline to prepare transfer pricing documentation, it is reasonable to assume that it corresponds to the deadline of submission of the Annual Tax and Accounting Information Return: the end of the seventh month after the corresponding tax year-end.

c) Documentation submission deadline

► **Is there a statutory deadline for submission of transfer pricing documentation?**

There is no statutory deadline for submission of transfer pricing documentation, but it should be submitted upon request.

► **Time period/deadline for submission on tax authority request**

This is not specified in the legislation, and we do not have any historical data because no tax audit has taken place yet.

6. Transfer pricing methods

a) Applicability

- ▶ International transactions

Yes.

- ▶ Domestic transactions

Yes.

b) Priority/preference of methods

All five widely accepted methods recognized among TP administrators and practitioners are acceptable under the local regulations: CUP, resale price, CPM, profit split and TNMM.

It is foreseen that the most appropriate method should be applied to a controlled transaction or to a series of transactions to determine whether those transactions comply with the arm's-length principle.

This principle reflects a "best method" rule. It implies that a taxpayer is expected to use the method or methods most suitable to each case, explaining not only the reason a certain method is considered as the most appropriate to test whether the controlled transactions comply with the transfer pricing rules, but also why other methods are rejected.

Moreover, according to Article 5 of the TP Ministerial Order, the traditional transfer pricing methods have a priority when the most appropriate method is selected for defining the arm's-length price in a controlled transaction. This means that the profit split method and the TNMM can only be applied when it is demonstrated that it is impossible to apply the traditional methods.

7. Benchmarking requirements

a) Local vs. regional comparables

None specified; nothing on this is explicitly defined in the law, and there is no best-practice history on the local tax authority's preferences because no tax audits have taken place yet.

b) Single-year vs. multi-year analysis

Refer to the section above.

c) Use of interquartile range

Refer to the section above.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

Refer to the section above.

e) Simple vs. weighted average

Refer to the section above.

f) Other specific benchmarking criteria, if any

Refer to the section above.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures

There are no specific transfer pricing penalties provided in the transfer pricing regulations in Cape Verde; therefore, general rules for tax penalties apply (i.e., Chapter VI, "Tax Offenses," of the General Tax Code of Cape Verde).

- ▶ If an adjustment is sustained, can penalties be assessed?

The TP Ministerial Order only states that the adjustment should be adequate to reflect the corrections necessary in the taxpayer's profit determination.

- ▶ Is interest charged on penalties/payable on refund?

None specified.

b) Penalty relief

None specified.

9. Statute of limitations on transfer pricing assessments

The statute of limitations in Cape Verde is five years, counting from the beginning of the fiscal year after the one in which the tax issue was raised.

10. Likelihood of transfer pricing scrutiny/ related audit by local authority

▶ Likelihood of transfer pricing-related audits (*high/medium/low*)

Low; no tax audit related to transfer pricing issues has happened yet. Nonetheless, this is becoming a topic of greater interest in this country.

▶ Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

There is no experience on this issue because no tax audit has ever happened.

▶ Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

There is no experience on this issue because no tax audit has ever happened.

▶ Specific transactions/industries/situations, if any, more likely to undergo audit

There is no experience on this issue because no tax audit has ever happened.

11. APA opportunity

▶ Availability (unilateral/bilateral/multilateral)

There is no APA program in Cape Verde.

▶ Tenure

Not applicable.

▶ Rollback provisions

Not applicable.

Contact

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Chile

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Internal Tax Service (Servicio de Impuestos Internos, or SII)

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

Article 41E of the Income Tax Law (ITL) establishes that any cross-border transaction held with a related party, or with an entity domiciled in a tax haven, in a back-to-back transaction or any transaction resulting from a restructuring process is subject to transfer pricing regulations.

► Section reference from local regulation

Article 41E defines situations where parties are deemed to be related – for example, when the counterparty is domiciled or resident in a country or territory considered as a preferential tax regime. For this purpose, any Country or Territory included by SII in the list of Article 41 H of the ITL would be considered as a Preferential Tax Regime.

Additionally, the natural persons will be considered related parties if they are spouses or have a kinship by consanguinity or affinity up to the fourth degree, inclusive.

2. OECD guidelines treatment/reference

Chile has been a member of the OECD since May 2010.

Although the transfer pricing (TP) rules do not mention the OECD Guidelines, the SII applies the OECD Guidelines as a source on transfer pricing audits.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

Yes.

► Does transfer pricing documentation have to be prepared annually?

Transfer pricing documentation does not need to be prepared annually under local country regulations; nevertheless, it is

usually required under a TP audit by the SII, which gives only 10 to 30 days to answer its inquiries.

b) Materiality limit/thresholds

► Transfer pricing documentation

Not applicable.

► Economic analysis

Taxpayers should prepare a transfer pricing study that includes the economic analysis done in order to prove the prices, values or margins obtained in transactions with foreign related parties.

► BEPS master and local files

So far, Chile has not implemented master or local files in accordance with OECD BEPS Action 13.

► CbCR

Since 1 January 2016, Chilean parent companies or controllers of MNE groups with revenues higher than EUR750 million or its equivalent amount in Chilean pesos (CLP) must prepare the CbCR form (Affidavit No. 1937).

c) Specific requirement(s)

► Treatment of domestic transactions

Although Chilean transfer pricing rules do not include a formal obligation to analyze transactions between Chilean related parties, there is a general rule in the Chilean Tax Code that gives the SII authority to assess whether these transactions were carried out according to market prices. In practice, a TP team of the SII assesses transactions between Chilean related parties.

► Local language documentation requirement

The TP documentation is not required in Spanish, but in the event of a TP audit, all information requested should be prepared in Spanish.

► Safe harbor availability

The Tax Law establishes that a royalty rate cannot exceed 4% of the company's sales when said transaction has been held with a related party, and other specific conditions need to be in place.

d) BEPS Action 13 implementation overview

► Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No.

Chile

► **Coverage in terms of master and/or local files**

Not applicable.

► **Effective/expected commencement date**

Not applicable.

► **Material differences from OECD report template/format**

Not applicable.

► **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

Not applicable.

► **CbCR notification and CbC report submission requirement**

Only the ultimate parent company that consolidates the financial statements in Chile will be in charge of submitting a CbC report (Affidavit No. 1937). According to the Chilean rules, a different entity may be appointed to submit this report. In such a case, the Chilean entity appointed by the foreign ultimate parent entity has to notify the SII of such appointment within 30 days prior to the expiration date on 30 June.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

The TP return (Affidavit No. 1907) must be filed by the last business day of June with respect to the information of the prior fiscal year (a three-month extension may be obtained, one time only).

All transactions with foreign related parties have to be reported, but only transactions greater than CLP200 million in annual basis (approximately USD300,000) must include details about TP methodology for analysis.

Taxpayers that meet any of the following conditions must file the TP return (Affidavit No. 1907):

1. Companies considered medium or large size as of 31 December of the commercial year to be disclosed
2. Companies that entered into transactions with parties domiciled in a country or territory considered a preferential tax regime (according to Article 41H of the ITL)
3. Small companies that have entered into transactions of more than CLP500 million (approximately USD725,000

or the equivalent in a foreign currency) with non-domiciled related parties as of 31 December of the commercial year to be disclosed.

Transactions with related parties must be registered by type of transaction and by related entity. The SII also requires technical aspects to be filed, such as:

1. Transfer pricing method used
2. PLI applied
3. Global or segmented analysis
4. Tested party and its result in the transaction analyzed
5. Operating margin of the Chilean entity

b) Transfer pricing-specific returns

Taxpayers listed in the Large Business Division (Grande Contribuyente) must file another Affidavit No. 1913, "Global Taxpayers Characterization," which must be submitted before the annual income tax return in any case before 30 April.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► **Corporate income tax return**

30 April.

Global taxpayer characterization (Affidavit 1913) – 30 April.

► **Other transfer pricing disclosures/return**

Transfer pricing return (Affidavit No. 1907) – 30 June (or 30 September if an extension is obtained, one time only)

► **CbCR notification**

Chilean entity designated a surrogate entity – from 1 June to 30 June .

► **CbC report preparation/submission**

Affidavit No. 1937-30 June (or 30 September if an extension is obtained, one time only).

b) Documentation preparation deadline

The TP documentation must be prepared contemporaneously for penalty protection and provided upon request. It is highly

recommended that the TP study be prepared in Spanish in case the SII requests during an audit.

c) Documentation submission deadline

► Is there a statutory deadline for submission of transfer pricing documentation?

No.

► Time period/deadline for submission on tax authority request

The SII allows 10 to 30 days for delivery from the time of the request.

6. Transfer pricing methods

a) Applicability

► International transactions

Yes.

► Domestic transactions

They are applicable by analogy but not specifically stated in the law.

b) Priority/preference of methods

The transfer pricing methods accepted are the same as those established by the OECD Guidelines. Additionally, a sixth, or "other," method is acceptable when applied in any reasonable economic analysis for a case in which none of the other methodologies is applicable.

TP rules in Chile consider the "best method," meaning taxpayers must choose the method that best reflects the transaction's economic reality to determine its market value. The taxpayer should be able to demonstrate or sustain the applicability of such a method over the others.

7. Benchmarking requirements

a) Local vs. regional comparables

Foreign comparable entities/transactions are accepted in the absence of local comparable entities/transactions as long as they are similar in functions, assets and risks of the tested party or tested transaction.

b) Single-year vs. multi-year analysis

Single-year testing is recommended.

c) Use of interquartile range

Although the Chilean TP Rule (ITL Article 41E) does not state a formal parameter to compare the prices, values or margins obtained by the tested party with the interquartile range, its use is highly recommended because the SII usually applies this criteria on TP Audits.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

The Chilean TP Rule does not specify; nevertheless, the practice follows the OECD recommendations, considering both options.

e) Simple vs. weighted average

The weighted average is usually used; however, it is not mandatory.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

► Consequences of failure to submit/late submission and/or incorrect disclosures

The monetary penalty for not having TP Affidavit 1907, submitting it late or filing it with mistakes is between 10 Chilean Annual Tax Units and 50 Chilean Annual Tax Units – approximately USD8,540 to USD42,702 – but no more than an amount equal to 15% of the equity of the taxpayer.

► If an adjustment is sustained, can penalties be assessed?

Regarding TP adjustments, price, value or profit margin differences that result from applying Chilean TP rules are subject to a single tax penalty of 40% (before January 2017, the rate was 35%) of the adjustment determined.

If the SII determines the TP adjustment as a result of a TP audit, an additional 5% will be applied, unless the taxpayer furnished the information and documentation required during the inspection process by the SII, as determined by the former in a notification.

► **Is interest charged on penalties/payable on refund?**

Interest and readjustments for inflation are determined under the application of Article 53 of the Chilean Tax Code.

b) Penalty relief

There is no prescribed penalty relief for not preparing and submitting TP documentation. However, maintaining contemporary TP documentation would be accepted by the tax authority as an important proof of the taxpayer's "good faith." In these cases, the transfer pricing penalty applicable to potential adjustments may be reduced.

9. Statute of limitations on transfer pricing assessments

The general statute of limitations is three years from the latest date at which the tax was due. It could be extended to six years if no return is filed, or if the authorities consider that the returns are false.

In Chile, the TP Rule is considered to be "substance over form." In this sense, the tax authorities can challenge not only the arm's-length principle but also the effectiveness of the transaction and its economic substance.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► **Likelihood of transfer pricing-related audits**
(*high/medium/low*)

Currently, there is a high probability that the tax authority will audit transfer pricing (most likely if the company has expenses related to services received, royalties paid or interest paid and/or is in a loss position).

► **Likelihood of transfer pricing methodology being challenged**
(*high/medium/low*)

Medium, because the TP audit generally is focused on the comparable entities/transactions rather than methodologies.

► **Likelihood of an adjustment if transfer pricing methodology is challenged** (*high/medium/low*)

High, if the methodology is challenged the IRS would probably get a different result than the taxpayer. They usually challenge the method resulting in an adjustment.

► **Specific transactions/industries/situations, if any, more likely to undergo audit**

In Chile, there are particular programs that assess transfer pricing rules in the mining industry. The transactions that the SII assesses in a TP audit are intragroup services (management, technical, routine services), payment of royalties, interest accrued, payments for reimbursement of expenses, commodity transactions, etc., from different industries.

11. APA opportunity

► **Availability (unilateral/bilateral/multilateral)**

Taxpayers can propose APA procedures in relation to their transactions. To this end, it is necessary to submit a request and a TP study. The SII, within six months of the taxpayer sharing the necessary information, can accept all or part of the taxpayer's request or refuse it. The SII could subscribe to unilateral or multilateral APAs. The decision of the SII cannot be challenged through a legal or administrative process.

► **Tenure**

The APA, once stipulated, can last up to four commercial years, after which it can be extended with a prior agreement between the parties involved. This term could be reduced if economic circumstances change drastically from one year to another.

► **Rollback provisions**

None specified.

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China



1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

State Administration of Taxation (SAT)

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

As of 31 December 2017, there are four SAT releases that form the overall framework for transfer pricing enforcement in Mainland China:

- Bulletin Gonggao [2017] No. 6 (Bulletin 6) – *Bulletin on Supervisory Measures for Special Tax Investigation Adjustments and Mutual Agreement Procedures*
- Bulletin Gonggao [2016] No. 64 (Bulletin 64) – *Bulletin on Issues Related to Improving the Administration of Advance Pricing Arrangements*
- Bulletin Gonggao [2016] No. 42 (Bulletin 42) – *Bulletin on Improving Administration of Related party Transaction Reporting and Contemporaneous Documentation*
- Circular Guoshuifa [2009] No. 2 (Circular 2) – *Implementation Measures for Special Tax Adjustments (Trial Implementation)*

Other relevant SAT releases include:

- Circular Guoshuifa [2012] No. 13 – *Notice on Internal Procedures of Special Tax Adjustments (Trial Implementation)*: Sets out the guidelines for different tax authorities across China to coordinate work on tax investigations
- Circular Guoshuifa [2012] No. 16 – *Notice Regarding Procedural Guidelines for Joint Review of Significant Special Tax Adjustments Cases (Trial Implementation)*: Sets up a joint panel review mechanism for cases involving large taxpayers (capital over RMB100 million or revenues from main operations over RMB1 billion) to ensure consistency
- Bulletin Gonggao [2013] No. 56 – *Bulletin on the Implementation Measures for Tax Treaty Mutual Agreement Procedures*: Supplements Circular 2 guidance on MAPs under tax treaties – relevant regulations and rulings

- Bulletin Gonggao [2015] No. 45 – *Bulletin on Strengthening the Follow-Up Monitoring of Cost Sharing Arrangements*: Modifies Circular 2 by eliminating preapproval requirements for entering into a cost sharing arrangement while strengthening follow-up monitoring

► Section reference from local regulation

According to Bulletin 42, a related party relationship is defined as follows:

The enterprise directly or indirectly owns 25% or more of the shares of the other enterprise; a third party directly or indirectly owns 25% or more of the shares of both the enterprise and the other enterprise.

Where one enterprise owns shares of the other enterprise through an intermediary and the enterprise owns 25% or more of the shares of the intermediary, the percentage of indirectly owned shares is deemed to be the same as the percentage of the other enterprise's shares owned by the intermediary.

Where more than two individuals who are spouses, lineal relatives by blood or under other custodianship/family maintenance relationships co-own the shares of one enterprise, the percentage of owned shares shall be jointly calculated.

1. Where one enterprise owns the shares of another enterprise or a third party owns the shares of both enterprises but the percentages of the shares being owned does not meet the threshold set out debt between the enterprise and the other enterprise accounts for 50% or more of total paid-in capital of any of the two enterprises, or 10% or more of one enterprise's debt is guaranteed by the other enterprise (other than loans or guarantees between independent financial institutions).
2. Where one enterprise owns the shares of another enterprise or a third party owns the shares of both enterprises but the percentages of the shares being owned does not meet the threshold set out in (1), one enterprise's business operations depend on the other enterprise's patents, non-patented know-how, trademarks, copyrights or other concessions.
3. Where one enterprise owns the shares of another enterprise or a third party owns the shares of both enterprises but the percentages of the shares being owned does not meet the threshold set out in (1), one enterprise's business operations, such as the purchase, sales, receipt of services or provision of services, are controlled by the other enterprise.

4. More than half of the board members or senior management (including board secretary of a listed company, general manager, vice general manager, chief finance officer and other personnel stipulated in the articles of association) of one enterprise are appointed or delegated by the other enterprise; such personnel of one enterprise simultaneously act as board members or senior management of the other enterprise; or such personnel of both enterprises are appointed by a third party.
5. Two individuals who are spouses, lineal relatives by blood or under other custodianship/family maintenance relationship have one of the (1)-(5) relationships with one enterprise and the other enterprise respectively.
6. The two parties have other common interests in substance.

Except for conditions under (2), when the related party relationships change over the fiscal year, the related party relationships should be recognized based on the actual duration of such relationships.

Two parties that have one of the (1)-(5) relationships above merely because their shares are owned by the state, or board members or senior management who are appointed by the departments administering state-owned assets, should not be regarded as related parties.

2. OECD guidelines treatment/reference

China is not a member of the OECD.

The Chinese transfer pricing framework is generally consistent with the framework established by the OECD Guidelines. The SAT has observer status on the OECD's transfer pricing working group and has been deeply involved in the OECD/G20 BEPS project, including the revisions to the OECD Guidelines relating to risks and intangibles. Still, while reference may be made to the OECD Guidelines, the SAT does not see itself as bound by them. The SAT has also been deeply involved in the development of the United Nations Practical Manual on Transfer Pricing for Developing Countries (UN Manual) and has contributed one of the four sections in Chapter 10 on country practices. The UN Manual is largely consistent with the OECD Guidelines but has some differences.

Key areas in which the Chinese approach may differ from other countries' understanding of the OECD Guidelines approach are location-specific advantages (LSAs) or other local market features, local intangibles and intragroup services, as follows:

- ▶ The SAT places considerable emphasis on LSAs and takes the view that profits in China should be higher because of characteristics of the local market, such as location savings and market premiums. Under Bulletin 42, specific documentation of the role of LSAs is a required component of the local file. Under Bulletin 64, the role of LSAs is also a required topic to be addressed in APA application.
- ▶ The SAT believes that local contributions to intangibles are often quite significant. China's "Country Practices" section of the UN Manual, for example, emphasizes the role played by Chinese affiliates in developing marketing intangibles and manufacturing process improvements. Bulletin 6 retains the framework with respect to the functions that are relevant in determining the allocation of profits from use of intangible property. After BEPS reforms, the OECD Guidelines identify five relevant functions: development, enhancement, maintenance, protection and exploitation (so-called DEMPE functions). Bulletin 6 adds a sixth function: promotion (i.e., DEMPEP functions). While promotion functions can likely be subsumed under the other DEMPE functions in an OECD framework, the identification of promotion as a separate function demonstrates the importance China places on value created through marketing activities by Chinese companies.
- ▶ The SAT takes a skeptical view of charges made for headquarters services, requiring vigorous application of the benefits test. Bulletin 6 follows the internationally accepted and OECD-sanctioned "benefit test." That is, an intragroup service is recognized if the activities of the service provider provide the service recipient with economic and commercial value that will enhance its commercial position and if an independent enterprise, in comparable circumstances, would be willing to pay a third party to perform the activity or to do it itself.

3. Transfer pricing documentation requirements

a) Applicability

- ▶ **Does your country have transfer pricing documentation guidelines/rules?**

Yes, there are transfer pricing documentation rules.

- ▶ **Does transfer pricing documentation have to be prepared annually?**

Yes, transfer pricing documentation has to be prepared annually. There is no minimum requirement. In practice, taxpayers should prepare or update the full report.

b) Materiality limit/thresholds**▶ Transfer pricing documentation**

Refer to the master file and local file thresholds below.

▶ Economic analysis

None specified.

▶ BEPS master and local files

The master file thresholds are as follows:

- a. There are cross-border related party transactions during the year, and the ultimate holding company of the MNE group has prepared a master file

Or

- b. Annual related party transactions exceed RMB1 billion

The local file thresholds are as follows:

- a. Tangible asset transfers exceed RMB200 million (in case of toll manufacturing, value should be based on annual import and export values for customs purposes)

- b. Financial asset transfers exceed RMB100 million

- c. Intangible asset transfers exceed RMB100 million

Or

- d. The aggregate amount of other related party transactions exceeds RMB40 million (including service transactions, intangibles licensing, tangible property rentals and interest on loans)

▶ CbCR

Chinese resident taxpayers that are the ultimate parent company of a group whose consolidated revenue in the previous year exceeded RMB5.5 billion are required to file a CbC report. China will also accept "surrogate" filings by a Chinese resident taxpayer that is so designated by its group. Since China has an extensive tax treaty and information exchange network, the SAT will be receiving and actively reviewing CbC reports filed by groups with ultimate parent companies in other jurisdictions. While there is no local filing requirement, Article 8 of Bulletin 42 provides that Chinese tax authorities may request that a Chinese taxpayer provide its group's CbC report in the course of an investigation if the ultimate parent company is required by its home jurisdiction to prepare a CbC report but China has been

unable to receive the report because of the parent company's failure to file, the lack of a treaty or exchange mechanism between China and that jurisdiction, or the failure of such an exchange mechanism to work in practice.

Special item files – Bulletin 42 also provides documentation requirements for "special item files" with respect to cost sharing arrangements and thin capitalization, if applicable.

c) Specific requirement(s)**▶ Treatment of domestic transactions**

There is a documentation obligation for domestic transactions. However, taxpayers that deal only with domestic related parties can be exempted from documentation.

▶ Local language documentation requirement

The transfer pricing documentation needs to be submitted in the local language. Article 21 of Bulletin 42 mandates the use of Chinese language in transfer pricing documentation.

▶ Safe harbor availability

Not applicable.

d) BEPS Action 13 implementation overview**▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?**

China adopted BEPS Action 13 for transfer pricing documentation effective 1 January 2016.

▶ Coverage in terms of master and/or local files

It covers both master and local files.

▶ Effective/expected commencement date

Effective 1 January 2016.

▶ Material differences from OECD report template/format

For the master file, Bulletin 42 requests more detailed information, such as details on industrial structure adjustments (Article 12-(2)), and information on the main functions, risks, assets and personnel of the group's major R&D facilities (Article 12 (3)). In addition, the master file should state which entity within the group should prepare and file the CbC report (Article 12-(5)).

China

For the local file, Bulletin 42 requires a detailed analysis of location-specific factors and the value chain, as well as location-specific factors' contributions to the value chain (Article 14-(3)-a/b); detailed disclosure of related service transactions (Article 14-(3)-e); disclosure of foreign investment (Article 14-(3)-c); disclosure of related party share transfer (Article 14-(3)-d); and disclosure of APAs in other countries or regions (Article 14-(3)-f).

► **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

The master file and local file should be prepared in accordance with the requirements under Bulletin 42, and those additional items identified above should be addressed for compliance purposes.

► **CbCR notification and CbC report submission requirement**

There is no CbCR notification requirement in China. However, taxpayers should state in the master file which entity within the group should prepare and file the CbC report (Article 12-(5)). The CbC report should be prepared and submitted by 31 May of the following year.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Under the authority of Article 43 of the Corporate Income Tax Law (CITL), Article 1 of Bulletin 42 requires that taxpayers complete and submit a set of comprehensive Related party Transaction Annual Reporting forms (RPT forms) along with their annual tax filing on or before 31 May of the following calendar year. For taxable years before 2016, there were nine RPT forms. For taxable year 2016 and after, there are up to 22 RPT forms that a taxpayer may need to prepare. Three of the RPT forms implement the CbCR requirement, if applicable; an additional three are English translations of these three. The other 16 RPT forms are:

1. Enterprise Information Return
2. Summary of Annual Related party Transactions Form
3. Related party Relationships Form
4. Ownership Transfer of Tangible Asset Transactions Form
5. Ownership Transfer of Intangible Asset Transactions Form
6. Use Right Transfer of Tangible Asset Transactions Form
7. Use Right Transfer of Intangible Asset Transactions Form
8. Financial Asset Transactions Form
9. Financing Transactions Form
10. Related party Service Transactions Form
11. Equity Investment Form
12. Cost Sharing Agreement Form
13. Outbound Payment Form
14. Overseas Related party Information Form
15. Financial Analysis of Related party Transactions Form (unconsolidated)
16. Financial Analysis of Related party Transactions Form (consolidated)

b) Transfer pricing-specific returns

China does not have transfer pricing-specific returns. However, the return disclosures described above are very extensive.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► **Corporate income tax return**

31 May.

► **Other transfer pricing disclosures/return**

31 May.

► **CbCR notification**

Not applicable.

► **CbC report preparation/submission**

31 May.

b) Documentation preparation deadline

The local file and special item files should be ready by 30 June of the following year. The master file should be ready within 12 months after the financial year-end of the ultimate parent company.

c) Documentation submission deadline

► **Is there a statutory deadline for submission of transfer pricing documentation?**

There is no statutory deadline.

► **Time period/deadline for submission on tax authority request**

The documentation should be submitted within 30 days upon request.

6. Transfer pricing methods

a) Applicability

► International transactions

Yes.

► Domestic transactions

Not applicable.

b) Priority/preference of methods

Under Bulletin 6, there is no priority among transfer pricing methods. All the methods identified by the OECD Guidelines are considered reasonable: CUP, resale price, cost-plus, TNMM and profit split (including both contributory profit split and residual profit split). Other methods are also acceptable if they are consistent with the arm's-length principle. Bulletin 6 identifies three methods that are frequently used for asset valuation as allowable other methods: the cost method, the market method and the income method. This is consistent with the OECD Guidelines after BEPS reforms (although the OECD Guidelines provide a great deal more specific guidance on application of the income method). Bulletin 6 provides that TNMM is not appropriate in transactions where significant intangible assets are involved but does not clearly define what intangibles would be considered significant. For TNMM, while all profit-level indicators are recognized in principle, the ones most often used in practice are operating margin and markup on total costs.

In applying TNMM, database searches for comparable companies are generally expected to be limited to publicly traded companies. In any event, nonpublic Chinese companies are not required to publicly file their financial statements, so there are no country-specific databases available.

Bulletin 6 is generally consistent with current practice with respect to toll manufacturing. If comparable companies cannot be found that have the same business model, the value of materials and equipment provided by the principal must be added back to the cost base when applying a cost-plus method. While working capital adjustments are not allowed in any other case, they are allowed in toll manufacturing cases if the adjustment is no more than 10%.

7. Benchmarking requirements

a) Local vs. regional comparables

Pan Asia-Pacific or Chinese companies are acceptable as comparables. Tax authorities have a clear preference for local Chinese comparables but, given the limited number of potential comparables, will accept regional sets of comparables if necessary. Where foreign comparables are used, tax authorities will seek to make adjustments for LSAs. Article 24 of Bulletin 6 makes clear that publicly available data is preferred. In addition, Bulletin 6 explicitly authorizes tax authorities to use non-publicly available information (i.e., secret comparables); such nonpublic information is used in practice, especially in a risk assessment context.

b) Single-year vs. multi-year analysis

Multi-year testing (three years) is acceptable.

c) Use of interquartile range

Interquartile range calculation using Excel Quartile formulas is acceptable.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

Fresh benchmarking search is the suggested practice; however, there is no specification from the regulation.

e) Simple vs. weighted average

There is a preference for weighted average for arm's-length analysis in practice. However, Bulletin 6 provides a wide latitude to tax authorities to use arithmetic means, weighted averages or interquartile ranges in examinations.

f) Other specific benchmarking criteria, if any

Not applicable.

8. Transfer pricing penalties/relief

a) Penalty exposure

► Consequences of failure to submit/late submission and/or incorrect disclosures

General penalties applicable to tax record maintenance and tax filing requirements also apply to transfer pricing matters. Under Article 62 of the Tax Collection and Administration Law, taxpayers failing to fulfill tax filing obligations may be fined between RMB2,000 and RMB10,000. This would apply to failure to file transfer pricing disclosure forms with the annual tax return. Under Article 60, taxpayers failing to maintain accounting books and other relevant information, or failing to provide such information to tax authorities upon request, may be fined between RMB2,000 and RMB10,000. This would apply to failure to maintain or provide contemporaneous documentation. Under the CITL and implementation regulations, if a taxpayer continues to refuse to provide information or provides false information, the tax authorities can assess taxable income on a deemed basis (rather than on the basis of transfer pricing results).

► If an adjustment is sustained, can penalties be assessed?

While there are no penalties on transfer pricing adjustments, there is a 5% interest surcharge if the taxpayer did not file transfer pricing disclosure forms or fails to meet the contemporaneous documentation requirements. To meet these requirements, in addition to preparing the documentation described below, the taxpayer must provide it to tax authorities within 30 days of the request (prior to 2016, within 20 days of the request). In all events, whether there is an interest surcharge or not, interest will be applied to the underreported tax resulting from transfer pricing adjustments based on the base RMB lending rate published by the People's Bank of China.

► Is interest charged on penalties/payable on refund?

Refer to the above section.

b) Penalty relief

As discussed above, the 5% interest surcharge can be avoided if transfer pricing disclosure forms are filed and contemporaneous documentation requirements are met.

9. Statute of limitations on transfer pricing assessments

This is 10 years. For example, if the tax authorities initiate a transfer pricing audit in 2017, the covered period could be from 1 January 2007 to 31 December 2016.

Article 24 of Bulletin 42 states that contemporaneous documentation should be maintained for 10 years.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► Likelihood of transfer pricing-related audits (*high/medium/low*)

High, because Chinese tax authorities would screen and select the transfer pricing audit targets every year based on the information collected from the tax filing systems and other sources. They use big data analysis and internet information to conduct risk assessments and categorize taxpayers by risk levels – high, medium and low – to identify audit targets.

► Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

High, because Chinese tax authorities take more aggressive views on local contributions/locally developed intangibles and often challenge the TNMM, which is commonly used to compensate the local subsidiaries.

► Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

High; even though the transfer pricing method can be sustained, the profit margins would usually be adjusted upward. There were almost no transfer pricing audit cases concluded without any adjustments during the past five years.

► Specific transactions/industries/situations, if any, more likely to undergo audit

In recent years, the SAT has put in place a taxpayer monitoring system, leveraging big data capabilities, to differentiate low-risk taxpayers from high-risk taxpayers, based on their demonstrated willingness to comply with tax requirements and aggressiveness of tax positions taken. High-risk taxpayers

are much more likely to face formal tax audits. Two industries that are currently under intensified scrutiny by tax authorities are pharmaceuticals and luxury goods. This focus illustrates the degree of importance the SAT places on LSAs, as the SAT considers both industries to enjoy substantial market premiums. In addition to LSAs, the tax authorities recently have been paying close attention to outbound payments of royalties and service fees. With respect to royalties, tax authorities have focused on the extent to which the Chinese taxpayer has made contributions to the value of licensed intangibles and possibly developed local intangibles, thereby suggesting royalty rate reductions are appropriate. For services, tax authorities have sought authentication that services were actually provided, and that costs were appropriately captured and allocated based on actual benefits received.

11. APA opportunity

► Availability (unilateral/bilateral/multilateral)

APAs are available in China, including unilateral, bilateral and multilateral APAs. Guidance regarding the APA process and procedures is provided in Bulletin 64. Requirements for APA applicants are that their related party transaction volume should be in excess of RMB40 million for each of the past three years; they must have duly filed RPT forms with their tax returns; and they must have met contemporaneous documentation requirements. There is no application fee.

► Tenure

The duration of an APA is generally three to five years.

► Rollback provisions

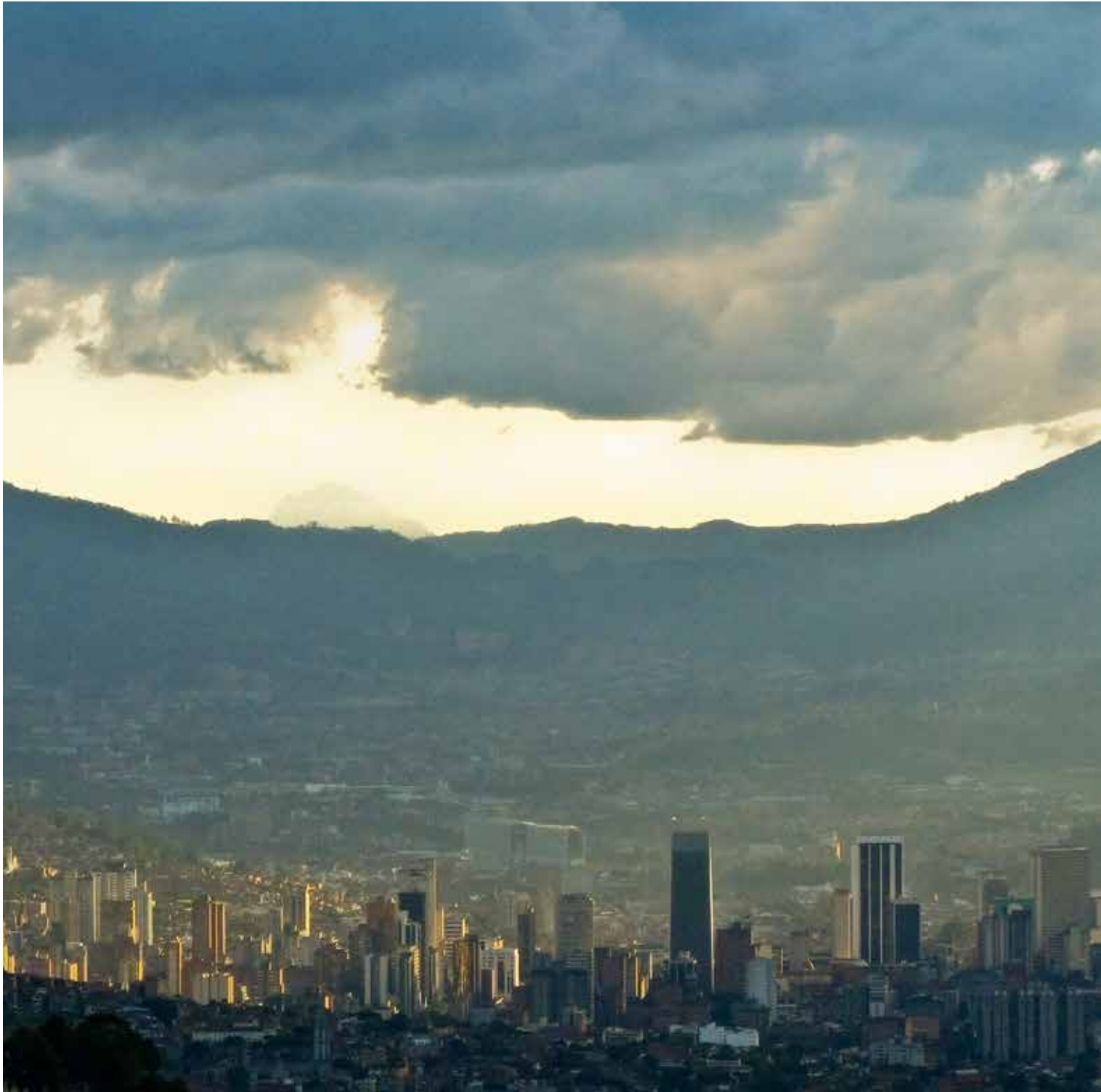
There is a rollback provision in China.

Contact

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Colombia



1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Directorate of National Taxes and Customs (Dirección de Impuestos y Aduanas Nacionales, or DIAN)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

Articles 260-1 through 260-11 of the Colombian Tax Code and Regulatory Decree 2120 of 2017. The transfer pricing (TP) regime has been in force since 2004; however, the decree applies as of 1 January 2017.

▶ Section reference from local regulation

Article 260-1 of the Colombian Tax Code.

2. OECD guidelines treatment/reference

Colombia is not a member of the OECD; however, the OECD Guidelines may be used as reference criteria.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Yes.

▶ Does transfer pricing documentation have to be prepared annually?

Yes, transfer pricing documentation has to be prepared annually under local country regulations. Taxpayers must prepare a local file that includes the analysis of the transactions subject to study complying with the local regulation requirements in articles 260-1 through 260-11 of the Colombian Tax Code and Regulatory Decree 2120 showing that the transactions were carried out at arm's length. The master file must be filed with the local file.

The documentation has to be updated annually. In that regard, it must include updates to all of the following: transactions and amounts, financial information of the comparable set, economic analysis and functional analysis.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

For the transfer pricing return, for gross equity equal to or greater than 100,000 tax value units (UVT) (COP3,185,900,000 for FY 2017), or gross revenues equal to or greater than 61,000 UVT (COP1,943,399,000 for FY 2017), and have carried out intercompany transactions or with tax havens.

▶ Economic analysis

Same as below; must be included in the local file.

▶ BEPS master and local files

Should be filed for transactions greater than 45,000 UVT (COP1,433,655,000 for FY 2017).

▶ CbCR

For Colombian multinational groups with revenues greater than COP2.3 billion. Must be presented also in Colombia when local constituent entities jointly have a participation equal to or higher than 20% of the group's consolidated revenue.

Taxpayers that are part of an MNE must file CbC notification, indicating whether the MNE is required to submit the CbC report; if so, it must include who the reporting entity is and what its tax residence is.

c) Specific requirement(s)

▶ Treatment of domestic transactions

There is a documentation obligation for domestic transactions. Transactions performed between entities located in free trade zones in Colombia and other subsidiaries in Colombia are subject to transfer pricing obligations.

▶ Local language documentation requirement

The local file needs to be submitted in the local language, Spanish, as mandated by law.

The master file may be provided in either English or Spanish. However, at any time during their review, tax authorities might request an official translation of a master file provided in English.

▶ Safe harbor availability

There are no formal safe harbors in Colombia. Companies that exceed the thresholds detailed before must comply with formal obligations and demonstrate that intercompany transactions were carried out in compliance with the arm's-length principle.

d) BEPS Action 13 implementation overview**▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?**

Yes.

▶ Coverage in terms of master and/or local files

Yes, it covers both the master file and local file.

▶ Effective/expected commencement date

It is effective from FY 2017.

▶ Material differences from OECD report template/format

The master file and CbC reports follow the OECD approach. The local file is the equivalent to the previous transfer pricing study presented by taxpayers until FY 2016.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

Not applicable, as there is no penalty protection in Colombia.

▶ CbCR notification and CbC report submission requirement

Regulatory Decree 2120, from December 2017, introduced the obligation to submit the CbCR notification (effective from FY 2016).

4. Transfer pricing return/related party disclosures**a) Related party disclosures/transfer pricing-related appendices**

There are no specific transfer pricing disclosures to be included in the corporate income tax return. All TP disclosures are to be included in the transfer pricing informative return.

b) Transfer pricing-specific returns

As part of the transfer pricing return, taxpayers must disclose information about related parties, such as whether they are a foreign or local related party (free trade zone), the country of residence and tax identification number. Information about transactions carried out in tax haven jurisdictions also must be disclosed.

Other information disclosed on the transfer pricing return includes the type of intercompany transaction, the amount

of the transaction, the transfer pricing methodology applied, the company assessed, the price or margin obtained in the transaction and the arm's-length range.

It is also necessary to include information regarding comparability adjustments, the designation of the tested party, the amount of the adjustments included in the income tax return (if any) and the financial information that was used (segmented or complete information).

5. Transfer pricing documentation/disclosure timelines**a) Filing deadline****▶ Corporate income tax return**

For FY 2017, it will be in April 2018.

▶ Other transfer pricing disclosures/return

Usually due by July; however, for FY 2017, these will be in September 2018 (local file, master file and TP return).

▶ CbCR notification

For FY 2016, the deadline was 19 January 2018. For FY 2017, the deadline will be September 2018.

▶ CbC report preparation/submission

For FY 2016, February 2018; for FY 2017, December 2018.

b) Documentation preparation deadline

TP obligations (local file, master file and TP return) are usually due by July, and submission is mandatory. However, for FY 2017, the due dates will be in September 2018. The exact due date will depend on the last digit of the taxpayer's tax ID.

c) Documentation submission deadline**▶ Is there a statutory deadline for submission of transfer pricing documentation?**

Refer to the "Documentation preparation deadline" section.

▶ Time period/deadline for submission on tax authority request

Taxpayers must file the transfer pricing documentation no later than the dates annually published by tax authorities (e.g., September 2018 for FY 2017).

6. Transfer pricing methods

a) Applicability

- ▶ International transactions

Yes.

- ▶ Domestic transactions

Yes.

b) Priority/preference of methods

For the analysis of both international and domestic transactions (the latter referring only to transactions with local related parties located in a free trade zone), Colombian tax law has established five transfer pricing analysis methods, which follow the OECD TP guidelines: CUP, resale price, cost-plus, TNMM and profit split (which can be applied either in the form of a contribution analysis or a residual analysis).

Method selection should be based on the characteristics of the transaction under analysis. The selected method should be the one that best reflects the economic reality of the transaction, provides the best information and requires the fewest adjustments.

7. Benchmarking requirements

a) Local vs. regional comparables

There is no legal requirement or tax authority preference for local country comparables, and all countries could be included in the benchmarking study.

b) Single-year vs. multi-year analysis

Single-year testing (1x1) is recommended. Multi-year analysis could be used in special circumstances, but its use must be strongly supported in the report from technical and economical standpoints.

c) Use of interquartile range

Yes, interquartile range calculation using Excel Quartile formulas is acceptable.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

There is no need to conduct a fresh benchmarking search every year; however, the comparability factors of the comparable

companies should be evaluated in order to confirm whether the comparables still comply with those characteristics.

e) Simple vs. weighted average

A weighted average for arm's-length analysis is preferred.

f) Other specific benchmarking criteria, if any

None specified; however, the common practice is to use financial information of public companies not affected by controlled transactions.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures

Transfer pricing documentation

- ▶ Late filing: Within the five days following the deadline, 0.05% of the total amount of the transactions subject to analysis, with a limit of 417 UVT (COP13,285,000 for FY 2017). After the five days, it will be 0.2% of the same base, with a limit of 20,000 UVT (COP637,180,000 for FY 2017).
- ▶ Information inconsistencies: 1% of the value of the transactions reported with inconsistencies that were carried out with related parties, limited to 5,000 UVT (COP159,295,000 for FY 2017).
- ▶ No submission: 4% of the total amount of the transactions subject to analysis, with a limit of 25,000 UVT (COP796,475,000 for FY 2017).
- ▶ Omitted information (transactions): 2% of the value of the omitted transactions carried out with related parties, limited to 5,000 UVT; additionally, rejection of cost and expense related to omitted operations may apply.
- ▶ Omitted information (related parties located in tax havens): 4% of the total value of the transactions carried out with related parties, limited to 10,000 UVT (COP318,590,000 for FY 2017); additionally, rejection of cost and expense related to omitted operations may apply.
- ▶ Amendment of transfer pricing documentation: 1% of the amount of the amended transactions, with a limit of 5,000 UVT.

Colombia

Transfer pricing return

- ▶ Late filing: Within the five days following the deadline, 0.02% of the total amount of the transactions subject to analysis, with a limit of 313 UVT (COP9,972,000 for FY 2017). After the five days, it will be 0.1% of the same base, with a limit of 15,000 UVT (COP477,885,000 for FY 2017).
- ▶ Information inconsistencies: 0.6% of the total amount of the transactions reported with inconsistencies that were carried out with related parties, limited to 2,280 UVT (COP72,639,000 for FY 2017).
- ▶ Omitted information (transactions): 1.3% of the value of the omitted transactions carried out with related parties, limited to 3,000 UVT (COP95,577,000 for FY 2017); additionally, rejection of cost and expense related to omitted operations may apply.
- ▶ Omitted information (related parties located in tax havens): 2.6% of the total value of the transactions carried out with related parties, limited to 6,000 UVT (COP191,154,000); additionally, rejection of cost and expense related to omitted operations may apply.
- ▶ Non-filing of transfer pricing return: 4% of the total value of the transactions carried out with related parties, limited to 20,000 UVT.

The penalties mentioned above do not include additional fines and penalties that taxpayers incur for the amendment of income tax returns or transfer pricing adjustments.

▶ If an adjustment is sustained, can penalties be assessed?

A penalty of up to 160% of the additional tax could apply.

▶ Is interest charged on penalties/payable on refund?

Rate changes quarterly; in the last three years, it has been, on average, around 30%.

b) Penalty relief

Transfer pricing documentation

Reduced penalty (before the tax authority's penalty order):

- ▶ When the taxpayer amends its transfer pricing documentation for inconsistencies or omissions before the tax authority issues its penalty order, the penalty will be reduced to 50% of the amount determined in the official assessment.

Transfer pricing return

Reduced sanction (before the tax authority's penalty order):

- ▶ When the taxpayer amends its transfer pricing return for inconsistencies or omissions before the tax authority issues its penalty order, the penalty will be reduced to 50% of the amount determined in the official assessment.
- ▶ The transfer pricing return can be voluntarily amended for two years from the original date of the filing.

For a self-assessment or acceptance of the challenges made by the tax authorities, the fine could be decreased to 10%.

9. Statute of limitations on transfer pricing assessments

Since FY 2017, the statute of limitations for transfer pricing assessments has been six years.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

▶ Likelihood of transfer pricing-related audits (*high/medium/low*)

Medium, because not all taxpayers are audited; only those that are part of specific programs launched by tax authorities are audited.

▶ Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

Same as the above section.

▶ Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

Same as the above section.

▶ Specific transactions/industries/situations, if any, more likely to undergo audit

Since 2004, the tax authorities have improved their audit processes, focusing on the oil and gas, mining and pharmaceutical industries. In addition, tax authorities challenge the benefits and actual rendering of general services (such as accounting, administrative and marketing). During an audit, the tax authorities have required companies to prove that the usefulness, non-duplication, benefits and more of the aforementioned services comply with Article 107 of the Colombian Tax Code.

Local tax authorities currently are challenging special transactions (such as services and intercompany loans), economic and/or extraordinary adjustments, or unusual approaches for analysis, irrespective of industry.

11. APA opportunity

▶ **Availability (unilateral/bilateral/multilateral)**

There is a unilateral APA program available in Colombia.

▶ **Tenure**

The APA agreement will be valid for the year it is subscribed to, the year before and up to three taxable years after.

▶ **Rollback provisions**

Refer to the section above.

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Costa Rica

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Tax Administration of Costa Rica (Dirección General de Tributación, or DGT)

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

Executive Decree No. 37898-H (the TP Executive Decree), which adopts transfer pricing regulations applicable to individuals or business entities that conduct related party transactions, came into effect on 13 September 2013, upon publication in the *Official Gazette* on 13 September 2013.

On 13 September 2016, the DGT issued DGT-R-44-2016, the transfer pricing information return regulations that complement Article 8 of the TP Executive Decree. However, on 5 June 2017, the Costa Rican tax authorities published Resolution DGT-R-28-2017 in the *Official Gazette*; this resolution modifies Article 4 of regulations DGT-R-44-2016 and suspends the term for the submission of transfer pricing information until further notice.

On 21 April 2017, the Costa Rican tax authorities published, in the *Official Gazette*, Resolution DGT-R-16-2017, which adds the master file and local file to the existing transfer pricing documentation requirements, in accordance with BEPS Action 13.

Costa Rican taxpayers that have transactions during the relevant fiscal year with associated enterprises must prepare a master file and a local file and retain them for four years. Taxpayers will only need to submit this information if requested by the tax authorities. If requested, taxpayers will have 10 working days to submit this information.

The TP Executive Decree N° 37898-H is supplemented, but not replaced, by Resolution DGT-R-16-2017, and continues to be in effect.

► Section reference from local regulation

Refer to the section above.

2. OECD guidelines treatment/reference

Costa Rica is not a member of the OECD but is being evaluated for admission.

Costa Rican transfer pricing provisions are mainly based on the OECD Guidelines and apply to all the transactions conducted by Costa Rican taxpayers with related entities resident abroad and within Costa Rica. In addition, the OECD Guidelines have been mentioned and used as a reference in official audits and court resolutions.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

Yes (Executive Decree 37898-H, Resolution DGT-R-44-2016 and Resolution DGT-R-16-2017).

► Does transfer pricing documentation have to be prepared annually?

Transfer pricing documentation has to be prepared annually under local country regulations. The TP report and return must be prepared annually, with updates to all the information that allows a correct TP analysis. The local tax authorities require the most recent available financial information for the comparables and the tested party.

b) Materiality limit/thresholds

► Transfer pricing documentation

No materiality limit.

► Economic analysis

No materiality limit.

► BEPS master and local files

No materiality limit.

► CbCR

None specified.

c) Specific requirement(s)

► Treatment of domestic transactions

There is a documentation obligation for domestic transactions.

► Local language documentation requirement

The TP documentation needs to be submitted in Spanish.

Costa Rica

Executive Decree 37898-H, Article 9 mandates the use of local language in TP documentation.

▶ **Safe harbor availability**

None specified.

d) BEPS Action 13 implementation overview

▶ **Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?**

Yes.

▶ **Coverage in terms of master and/or local files**

Yes, both are covered.

▶ **Effective/expected commencement date**

It is effective from 2017.

▶ **Material differences from OECD report template/format**

There are no material differences between the OECD report template/format and the country's regulations.

▶ **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

Yes, this will be sufficient.

▶ **CbCR notification and CbC report submission requirement**

On 27 October 2017, the Costa Rican tax authority published draft rules implementing CbCR. According to the draft rules, all Costa Rican tax resident constituent entities that are ultimate parent entities (UPEs) of an MNE group with annual consolidated group gross revenue equal to or exceeding EUR750 million during the reporting fiscal year would need to prepare a CbC report. The draft rules do not contain local filing rules, but MNE groups from other jurisdictions can appoint a constituent entity in Costa Rica to prepare a CbC report as the surrogate parent entity (SPE). For a reporting fiscal year commencing at any point in 2017, CbC reports shall be filed no later than 31 December 2018. For subsequent reporting fiscal years, a CbC report shall be filed no later than 31 December of the year following the last day of the reporting fiscal year. Moreover, any constituent entity tax resident in Costa Rica shall notify the tax authorities whether it is the UPE or SPE by the last day of the reporting fiscal year. Lastly, failure to submit any of the information contained in the draft rules would trigger monetary penalties of 2% of gross income up to a maximum amount of approximately USD80,000 pursuant to Article 83 of the Income Tax Code.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Related party disclosures have to be made in specific transfer pricing returns. No related party disclosures need to be made on general income tax returns.

b) Transfer pricing-specific returns

Taxpayers are obligated to file a transfer pricing information return annually when both of the following conditions are met: (i) the taxpayer conducts cross-border and local related party transactions and (ii) such taxpayer falls under the category of "large taxpayers" ("grandes contribuyentes") or "large regional companies" ("grandes empresas territoriales") or is an individual or entity operating under the Free Trade Zone Regime.

However, on 5 June 2017, the Costa Rican tax authorities published Resolution DGT-R-28-2017, which suspends the term for the submission of transfer pricing information until further notice, in the *Official Gazette*.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ **Corporate income tax return**

Two months and 15 days after the end of the fiscal year.

▶ **Other transfer pricing disclosures/return**

The tax authorities suspended the term for the submission of transfer pricing information until further notice.

▶ **CbCR notification**

This is currently under the tax authorities' review.

▶ **CbC report preparation/submission**

This is currently under the tax authorities' review.

b) Documentation preparation deadline

Taxpayers must prepare and maintain transfer pricing documentation annually. The TP Executive Decree does not state a deadline. The documentation must be at the disposal of the DGT upon request.

c) Documentation submission deadline

- ▶ Is there a statutory deadline for submission of transfer pricing documentation?

There is no statutory deadline for submission of transfer pricing documentation.

- ▶ Time period/deadline for submission on tax authority request

10 working days.

6. Transfer pricing methods

a) Applicability

- ▶ International transactions

Yes.

- ▶ Domestic transactions

Yes.

b) Priority/preference of methods

The specified methods are CUP, resale price, cost-plus, profit split and TNMM, and the valuation of goods with international quotations method that can be applied as an alternative to the CUP method. The TP Executive Decree requires the application of the most appropriate transfer pricing method.

7. Benchmarking requirements

a) Local vs. regional comparables

There are no benchmarking requirements for local and regional comparables, considering the lack of financial information available on local comparables. Thus, international comparables are accepted by the tax authorities.

b) Single-year vs. multi-year analysis

Multiple-year testing for comparables only. In practice, the number of years is three.

c) Use of interquartile range

This is not specified, but the Excel Quartile calculation is preferred and common in practice.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

A fresh benchmarking search every year over update of the financials of a prior study is required. A TP report must be prepared annually, updating all the information that allows a correct TP analysis. In practice, local tax authorities expect to see the most recent comparable information and to use the most recent available financial information for the comparables and the tested party.

e) Simple vs. weighted average

Weighted average is the common practice.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures

No express monetary penalties are applied when taxpayers fail to maintain contemporaneous transfer pricing documentation or the transfer pricing information return. Nevertheless, the monetary penalties for noncompliance set forth in the Tax Code of Standards and Procedures should apply by default.

- ▶ If an adjustment is sustained, can penalties be assessed?

Refer to the section above.

- ▶ Is interest charged on penalties/payable on refund?

In the case of a transfer pricing income adjustment, surcharges and penalty interest apply, per the general provisions of the Tax Code of Standards and Procedures.

b) Penalty relief

No penalty relief regime is in place.

9. Statute of limitations on transfer pricing assessments

The standard four-year statute of limitations on general tax assessments should apply. This statutory period is extended to 10 years for unregistered taxpayers, fraudulent returns

Costa Rica

filed and failure to file. The term is extended in cases of amended returns.

The statute of limitations starts 1 January following the due date of the tax return.

10. Likelihood of transfer pricing scrutiny/ related audit by local authority

► Likelihood of transfer pricing-related audits (*high/medium/low*)

The likelihood of a general tax audit is categorized as high, especially for taxpayers characterized as large taxpayers and multinational companies with related transactions. The likelihood of transfer pricing assessments as part of a general tax audit is considered high as well. For taxpayers characterized as large taxpayers, the DGT designates a fiscal auditor in charge of supervising the entity's tax information, giving the DGT greater visibility of the taxpayer and triggering audits in case minor changes occur (e.g., decrease in operating income).

► Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

In case transfer pricing is scrutinized, the likelihood that the transfer pricing methodology will be challenged is also high. In the past, the DGT aggressively tried to apply only the CUP method. Although in recent years the DGT has accepted the use of the TNMM, it prefers the use of the CUP method whenever internal comparables exist.

► Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

High; in practice, the resolution in most cases results in an adjustment.

► Specific transactions/industries/situations, if any, more likely to undergo audit

The companies that are characterized as large taxpayers have a higher likelihood of being audited.

11. APA opportunity

► Availability (unilateral/bilateral/multilateral)

APAs are contemplated under the provisions of the TP Executive Decree. However, the corresponding regulations have not yet been enacted.

► Tenure

The duration of an APA is a maximum of three years.

► Rollback provisions

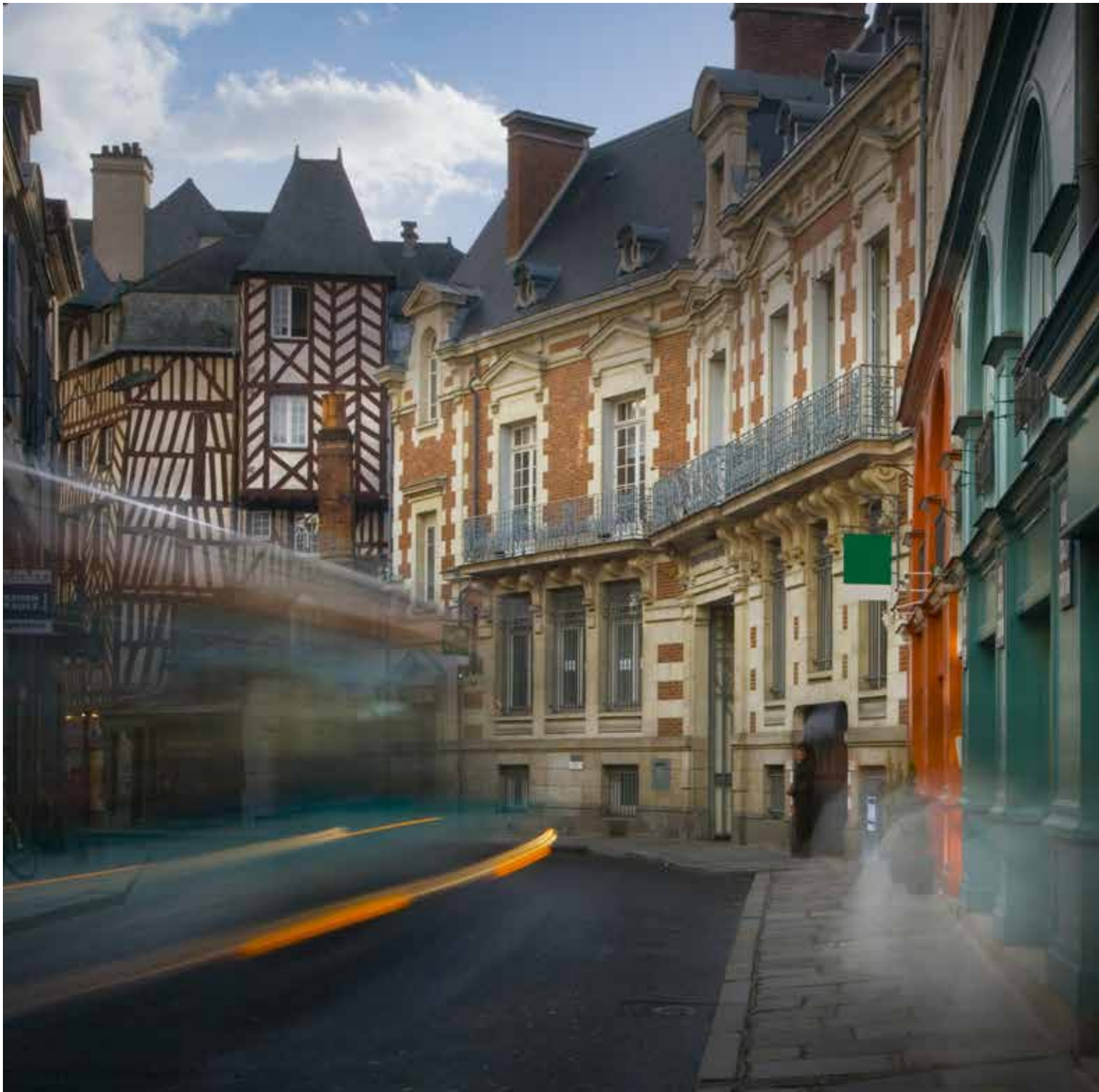
None specified

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Cote d'Ivoire

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Direction Générale des Impôts.

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

- ▶ Article 38 of the General Tax Code, Article 50 bis of the Tax Procedure Book, Article 15 of the Tax Exhibit of the 2017 Finance Law, Article 14 of the Tax Exhibit of the 2018 Finance Law
- ▶ Article 15 of the 2017 Finance Law requires companies to file a transfer pricing (TP) return and put in place TP documentation.
- ▶ Article 14 of the 2018 Finance Law requires companies to file a CbC return and introduces thin capitalization rules

▶ Section reference from local regulation

Article 15 of the 2017 Finance Law and new Article 38 of the General Tax Code.

2. OECD guidelines treatment/reference

Cote d'Ivoire is not a member of the OECD; however, it follows the OECD Guidelines.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Yes, there are transfer pricing documentation rules and requirements to file the CbC return.

▶ Does transfer pricing documentation have to be prepared annually?

Yes. The minimum requirement to achieve this is updating transaction values and preparing a memo that confirms and lists changes to prior year content.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

No materiality limit.

▶ Economic analysis

No materiality limit.

▶ BEPS master and local files

No materiality limit.

▶ CbCR

Aggregated value of sales of EUR750 million or more.

c) Specific requirement(s)

▶ Treatment of domestic transactions

There is a documentation obligation for domestic transactions for Cote d'Ivoire.

▶ Local language documentation requirement

The TP documentation needs to be submitted in French.

▶ Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Cote d'Ivoire has adopted BEPS Action 13 for transfer pricing documentation in terms of the local file and CbCR.

▶ Coverage in terms of master and/or local files

Only the local file is covered.

▶ Effective/expected commencement date

For tax years ending 31 December 2016 and later.

▶ Material differences from OECD report template/format

There are no material differences.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

A BEPS Action 13 format report typically is sufficient to achieve penalty protection.

► **CbCR notification and CbC report submission requirement**

There is a CbCR notification and CbC report submission requirement in Cote d'Ivoire.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Refer to the section below.

b) Transfer pricing-specific returns

"Etat des transaction intragroupe" is the TP return that should be filed to disclose related third parties and non-arm's-length transactions.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► **Corporate income tax return**

30 June, if required to file a certified financial statement; 30 May for all other companies.

► **Other transfer pricing disclosures/return**

30 June, if required to file a certified financial statement; 30 May for all other companies.

► **CbCR notification**

30 June, if required to file a certified financial statement; 30 May for all other companies.

► **CbC report preparation/submission**

30 June, if required to file a certified financial statement; 30 May for all other companies.

b) Documentation preparation deadline

Transfer pricing documentation must be submitted at the time of lodging the tax return to achieve penalty protection (e.g., where there is a contemporaneous requirement).

c) Documentation submission deadline

► **Is there a statutory deadline for submission of transfer pricing documentation?**

30 June for companies required to provide a certified financial statement; 30 May for all the other companies.

► **Time period/deadline for submission on tax authority request**

Taxpayers have to submit TP documentation within one month of request. This is renewable one time for a maximum period of two months.

6. Transfer pricing methods

a) Applicability

► **International transactions**

Yes.

► **Domestic transactions**

Yes.

b) Priority/preference of methods

None specified.

7. Benchmarking requirements

a) Local vs. regional comparables

There is a legal requirement for local country comparables, and other regions may be considered based on the discretion of the tax authorities.

b) Single-year vs. multi-year analysis

Three-year testing is acceptable.

c) Use of interquartile range

There is no specific guidance on the use of the interquartile range.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

There is no need to conduct a fresh benchmarking search every year; updates are acceptable.

e) Simple vs. weighted average

The simple average for arm's-length analysis is preferred.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief**a) Penalty exposure**

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures

Denial of deductibility of expenses.

- ▶ If an adjustment is sustained, can penalties be assessed?

Yes, ranging from 30% to 60%.

- ▶ Is interest charged on penalties/payable on refund?

10% for the first month and 1% per additional month.

b) Penalty relief

Voluntary disclosure will automatically waive the penalties. Companies can request a penalty waiver before the Director General of the tax administration. Taxpayers can appeal a decision before the Minister of Finance, address the issue before a bipartisan committee or go to court.

9. Statute of limitations on transfer pricing assessments

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

10. Likelihood of transfer pricing scrutiny/related audit by local authority

- ▶ Likelihood of transfer pricing-related audits (*high/medium/low*)

Medium; this is a new issue that requires focus during the next three years.

- ▶ Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

Same as the above section.

- ▶ Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

Same as the above section.

- ▶ Specific transactions/industries/situations, if any, more likely to undergo audit

None specified.

11. APA opportunity

- ▶ Availability (unilateral/bilateral/multilateral)

There is no APA program available in Cote d'Ivoire.

- ▶ Tenure

Not applicable.

- ▶ Rollback provisions

Not applicable.

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Croatia



1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Ministry of Finance.

b) Relevant transfer pricing section reference

- ▶ Name of transfer pricing regulations/rulings and effective date of applicability
 - ▶ Article 13 of the Corporate Income Tax (CIT) Act (in force as of 2005, latest update as of 1 March 2012)
 - ▶ Article 14 of the CIT Act (in force as of 2005, latest update as of 1 January 2017)
 - ▶ Article 14a of the CIT Act (in force as of 1 January 2017)
 - ▶ Article 37 of the CIT Bylaw (in force as of 2005, latest update as of 3 March 2017)
 - ▶ Article 40 of the CIT Bylaw (in force as of 2005, latest update as of 1 June 2012)
 - ▶ Bylaw for concluding APA (as of 29 April 2017)
- ▶ Section reference from local regulation

Article 13 of the CIT Act defines related parties as parties in which one participates directly or indirectly in the management, supervision or capital of the other party, or in which both parties participate directly or indirectly in the management, supervision or capital of the company.

2. OECD guidelines treatment/reference

Croatia is not a member of the OECD; however, the provisions of relevant Croatian tax legislation are generally based on the OECD Guidelines. Furthermore, the Ministry of Finance issued instructions for the tax officials performing transfer pricing (TP) audits, which are also based on the OECD Guidelines.

3. Transfer pricing documentation requirements

a) Applicability

- ▶ Does your country have transfer pricing documentation guidelines/rules?

Yes.

- ▶ Does transfer pricing documentation have to be prepared annually?

Transfer pricing documentation needs to be prepared annually under local country regulations. The TP documentation or new benchmark study should be prepared in case there are material changes in facts and circumstances of the transactions.

b) Materiality limit/thresholds

- ▶ Transfer pricing documentation

No materiality limit.

- ▶ Economic analysis

No materiality limit.

- ▶ BEPS master and local files

Not applicable.

- ▶ CbCR

Annual consolidated group gross revenue equal to or exceeding EUR750 million.

c) Specific requirement(s)

- ▶ Treatment of domestic transactions

There is a documentation obligation for domestic transactions in case one party is in a favorable tax position (i.e., pays corporate income tax at lower rates or has tax losses carried forward from previous periods).

- ▶ Local language documentation requirement

The TP documentation needs to be submitted in the local language (i.e., Croatian).

- ▶ Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

- ▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Croatia has adopted BEPS Action 13 only in relation to CbCR as of 1 January 2017; no master file or local file rules have been adopted as of the time of this publication.

- ▶ Coverage in terms of master and/or local files

The master and local files are not covered.

Croatia

▶ **Effective/expected commencement date**

Not applicable.

▶ **Material differences from OECD report template/format**

Not applicable.

▶ **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

Not applicable.

▶ **CbCR notification and CbC report submission requirement**

There is a CbCR notification and CbC report submission requirement in Croatia.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

A form outlining relevant information on transactions with related parties (PD-IPO form) will need to be submitted with the CIT return.

b) Transfer pricing-specific returns

Other than PD-IPO return, the Croatian CIT Act and CIT Bylaw do not prescribe specific requirements for separate returns (including information returns) for related party transactions.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ **Corporate income tax return**

30 April.

▶ **Other transfer pricing disclosures/return**

30 April.

▶ **CbCR notification**

30 April.

▶ **CbC report preparation/submission**

12 months after end of the fiscal year for which the report should be prepared.

The filing deadline dates above (except for CbC report preparation/submission, for which a deadline of 12 months applies) are applicable in cases when the fiscal year corresponds to the calendar year. If the fiscal year is different, the filing deadline is within four months after the fiscal year-end.

b) Documentation preparation deadline

There is no TP documentation preparation deadline. TP documentation should be finalized by the time of submitting upon request.

c) Documentation submission deadline

▶ **Is there a statutory deadline for submission of transfer pricing documentation?**

There is no statutory deadline for submission of transfer pricing documentation; however, it is to be submitted as supporting documentation upon submission of the CIT return if specifically requested by the taxpayer's tax officer.

▶ **Time period/deadline for submission on tax authority request**

The prescribed deadline for provision of any documentation to the tax authorities is eight days. In practice, this deadline is generally extended.

6. Transfer pricing methods

a) Applicability

▶ **International transactions**

Yes.

▶ **Domestic transactions**

Not applicable.

b) Priority/preference of methods

The Croatian CIT Act regulations do not provide detailed rules on how to arrive at the arm's-length price that should be applied in related party transactions. However, the CIT Act prescribes the following methods that a taxpayer can use to determine the arm's-length price: CUP, resale-minus, cost-plus, profit split and TNMM. All five standard methods are allowed; however, traditional transactional methods (CUP, resale-minus and cost-plus) should have the priority when establishing whether the conditions imposed between related parties are at arm's length.

If possible, the CUP method should be applied. Other available methods – i.e., transactional profit methods (profit split and TNMM) – should be used when traditional methods cannot be reliably applied.

7. Benchmarking requirements

a) Local vs. regional comparables

Croatian CIT legislation does not prescribe any rules regarding the search approach for preparation of a benchmark analysis. However, the OECD approach is followed.

b) Single-year vs. multi-year analysis

Multi-year analysis (three years), as per common practice.

c) Use of interquartile range

Excel Quartile is used, as per common practice; however, there is no preference as such.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

There is no specific provision in the legislation in relation to performing a fresh benchmarking search every year or updating the financials of a prior study. Per common practice, a fresh benchmarking search is usually performed after a three-year period, while in between, updates of financials of a prior study are accepted.

e) Simple vs. weighted average

Both the weighted average and simple average are used in practice.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures

Fines of up to HRK200,000 (approximately EUR27,000) for a company and HRK20,000 (approximately EUR2,700) for the responsible individual within the company may be imposed for any underestimation of the CIT liability. Penalty interest would also be calculated from the date the tax was due until the date the tax is paid.

- ▶ If an adjustment is sustained, can penalties be assessed?

Not specifically prescribed.

- ▶ Is interest charged on penalties/payable on refund?

Not specifically prescribed.

b) Penalty relief

There are no specific provisions concerning penalty relief.

9. Statute of limitations on transfer pricing assessments

According to the Croatian General Tax Act (GTA), as of 1 January 2017, the statute of limitations for determining tax liabilities by the tax authorities and taxpayers' right for claiming a tax refund for a particular tax period expires at the end of the sixth year following the year in which the tax liability has arisen – i.e., a CIT return for FY 2016 should have been submitted by 30 April 2017, and thus the statute-of-limitations period commences on 1 January 2018.

The statute of limitations for collection of tax and interest commences in the year following the year in which the taxpayer determined the tax liability itself or by the end of the year in which the resolution by which the tax authorities determined the tax liability and interest became enforceable.

According to GTA provisions, the tax authorities can perform a tax audit in three years following the commencement of the statute of limitations.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

- ▶ Likelihood of transfer pricing-related audits (*high/medium/low*)

Once a tax audit is initiated, there is a high risk of transfer pricing being reviewed within the audit.

- ▶ Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

High, if the taxpayer is not able to support the prices applied in intercompany transactions with the appropriate documentation.

Croatia

► **Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)**

High, if the taxpayer is not able to support the prices applied in intercompany transactions with the appropriate documentation.

► **Specific transactions/industries/situations, if any, more likely to undergo audit**

None specified.

associated parties, before their commencement, an appropriate set of criteria is determined, such as methods, comparative criteria, appropriate harmonization or key suppositions related to future events, in order to determine transfer pricing for these transactions during a given time period. As of 29 April 2017, the Bylaw for concluding APA entered into force.

► **Tenure**

APAs are concluded for a period of up to five years.

► **Rollback provisions**

None specified.

11. APA opportunity

► **Availability (unilateral/bilateral/multilateral)**

Article 14a of the CIT Act defines an APA as an agreement between the taxpayer and Ministry of Finance, tax authorities and tax bodies from other countries in which associated parties are residents or perform business activities through a business unit, through which, for transactions between

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Cyprus

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Cyprus Tax Department, Ministry of Finance.

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

Currently, the arm's-length principle is codified in Cyprus Income Tax Law (L.118(I) of 2002, as amended, Section 33) with wording similar to that of Article 9 of the OECD Model Tax Convention (on associated enterprises).

As of December 2017, there were no specific transfer pricing (TP) rules or transfer pricing documentation requirements in Cyprus. Nevertheless, Cyprus is expected to introduce detailed TP legislation and TP documentation requirements in 2018, which will be based on the OECD TP Guidelines.

On 30 June 2017, the Cyprus Tax Department issued a Circular (the Circular) revising the transfer pricing framework for companies carrying out intragroup financing activities in Cyprus. More specifically, the scope of application of the Circular is limited to intragroup financing activities (granting of loans or cash advances) that are financed by debt instruments, regardless of whether the source of funding is with related or third parties.

As of 1 July 2017, Cypriot entities granting loans financed out of debt should support the margin (spread) to be applied on the above intragroup (back-to-back) financing arrangements with a transfer pricing study, which must be prepared by an independent advisor based on the OECD TP guidelines. The Circular includes additional guidance in terms of substance and transfer pricing requirements in line with the OECD TP guidelines, as well as guidance as to the required content of a transfer pricing study. Based on the Circular, the TP analysis of such financing arrangements should be conducted on the basis of documenting the remuneration of the Cypriot intermediary financing entity, irrespective of the intercompany interest rates applied in each loan under the financing scheme.

The provisions of the Circular are effective from 1 July 2017 onward and cover all existing and future transactions, regardless of the date of entering into the tested transactions and irrespective of any tax rulings issues prior to said date.

► Section reference from local regulation

Section 33 of the Cyprus Income Tax Law (L.118(I) of 2002, as amended, Section 33) refers to connected and related parties.

2. OECD guidelines treatment/reference

Cyprus is not a member of the OECD.

In principle, the local transfer pricing regulations are expected to be in line with the OECD Guidelines.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

None, apart from the documentation requirements limited to intercompany loans financed by debt.

► Does transfer pricing documentation have to be prepared annually?

No, except for intragroup financing transactions relating to loans funded by debt.

b) Materiality limit/thresholds

► Transfer pricing documentation

No materiality limit.

► Economic analysis

No materiality limit.

► BEPS master and local files

Not applicable.

► CbCR

Companies with consolidated group revenue of EUR750 million or more in the preceding fiscal year are required to comply with the CbCR legislation.

c) Specific requirement(s)

► Treatment of domestic transactions

There is a documentation obligation for domestic transactions only for intragroup financing transactions relating to loans financed out of debt.

► **Local language documentation requirement**

The TP documentation need not be submitted in the local language. The TP documentation can be submitted in English.

► **Safe harbor availability**

Safe harbor is available for companies performing purely intermediary financing activities, at the rate of 2% on assets after tax, and for companies with functions similar to a regulated financial institution, a return on equity of 10% after tax.

d) BEPS Action 13 implementation overview

► **Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?**

Cyprus has adopted BEPS Action 13 only in relation to CbCR. No master file and local files rules are being adopted.

► **Coverage in terms of master and/or local files**

Not applicable.

► **Effective/expected commencement date**

Legislation is expected in 2018.

► **Material differences from OECD report template/format**

Not applicable.

► **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

Not applicable.

► **CbCR notification and CbC report submission requirement**

There is a CbCR notification and CBC report requirement in Cyprus. For FY 2016, notification is to be submitted by 20 November 2017, and for FY 2017, by the last day of the reporting fiscal year (extended to 15 January 2018). The CbC report is to be submitted within 12 months from the end of the fiscal year (e.g., 31 December 2018 for the year that ended on 31 December 2017); however, an extension was granted for FY 2016 until 28 February 2018.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Related party balances and transactions are disclosed on an aggregated basis in the company's income tax return.

b) Transfer pricing-specific returns

Not applicable.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► **Corporate income tax return**

Within 15 months from the financial year-end (e.g., for the fiscal year ending 31 December 2017, the deadline is 31 March 2019).

► **Other transfer pricing disclosures/return**

Not applicable.

► **CbCR notification**

Last day of the reporting fiscal year (extended to 15 January 2018 for FY 2017).

► **CbC report preparation/submission**

Within 12 months from the end of the fiscal year (extended to 28 February 2018 for FY 2016).

b) Documentation preparation deadline

There is no specific deadline; however, it should be disclosed in the tax return whether the taxpayer has complied with the transfer pricing documentation requirements for its intercompany financing transactions that are financed by debt.

c) Documentation submission deadline

► **Is there a statutory deadline for submission of transfer pricing documentation?**

No.

- ▶ Time period/deadline for submission on tax authority request

Usually within 60 days from the day of request.

6. Transfer pricing methods

a) Applicability

- ▶ International transactions

Not applicable.

- ▶ Domestic transactions

Not applicable.

b) Priority/preference of methods

Currently, the arm's-length principle is codified in the Cyprus Income Tax Law (L.118(I) of 2002, as amended, Section 33) with wording similar to that of Article 9 of the OECD Model Tax Convention (on associated enterprises), and no specific guidelines have been issued in regard to the preferred transfer pricing methods.

7. Benchmarking requirements

a) Local vs. regional comparables

Not applicable.

b) Single-year vs. multi-year analysis

No relevant guidance has been set out; however, multiple-year (three years) analysis is accepted.

c) Use of interquartile range

No relevant guidance has been set out; however, Excel Quartile is accepted.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

None specified.

e) Simple vs. weighted average

The weighted average is accepted.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures

Any transfer pricing adjustments that may arise during a tax audit may trigger additional income tax liability (plus applicable interest and penalties). There are no specific transfer pricing penalties.

- ▶ If an adjustment is sustained, can penalties be assessed?

Refer to the previous section.

- ▶ Is interest charged on penalties/payable on refund?

3.50% per year.

b) Penalty relief

The taxpayer has the right to submit an objection; however, the burden of proof lies with the taxpayer.

9. Statute of limitations on transfer pricing assessments

The statute of limitations is the same as it is for income tax (i.e., 6 years from the end of the year of assessment, which may be increased to 12 years in the case of fraud).

10. Likelihood of transfer pricing scrutiny/related audit by local authority

- ▶ Likelihood of transfer pricing-related audits (*high/medium/low*)

No transfer pricing audits are performed by the tax authorities; however, the authorities usually challenge the pricing applied on intercompany transactions and frequently request documents supporting the pricing.

- ▶ Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

In case transfer pricing is reviewed as part of the audit, the probability that TP methodology will be challenged is low since there is no detailed transfer pricing legislation as long as the methodology is based on OECD TP guidelines.

► **Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)**

Not applicable, since there are no guidelines yet in regard to preferred transfer pricing methods.

► **Specific transactions/industries/situations, if any, more likely to undergo audit**

None specified.

11. APA opportunity

► **Availability (unilateral/bilateral/multilateral)**

APAs are not available, although the tax authorities may change their practice in the near future. As of 1 July 2017, the tax authorities have indicated that they will issue rulings for intragroup financing transactions financed by debt.

► **Tenure**

Not applicable.

► **Rollback provisions**

Not applicable.

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Czech Republic

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Ministry of Finance (MF).

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

The Czech Income Tax Act and Directives D-10, D-332, D-333 and D-334 of the Czech Ministry of Finance; transfer pricing obligation applicable since 1993.

► Section reference from local regulation

Section 23/7 of the Czech Income Tax Act.

2. OECD guidelines treatment/reference

The Czech Republic is a member of the OECD and follows the OECD Guidelines.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

Czech Republic tax legislation currently does not have a formalized legal requirement for the existence of transfer pricing (TP) documentation. However, Czech taxpayers generally bear the burden of proof in tax proceedings; thus, upon a tax audit, they are obligated to demonstrate that their transfer prices are in line with the arm's-length principle. In recent years, the transfer pricing documentation has always been required during tax audits.

Directive D-334 outlines requirements of the expected scope of documentation of a transfer pricing methodology agreed upon between related parties.

► Does transfer pricing documentation have to be prepared annually?

Transfer pricing documentation should be prepared annually under the local country regulations (although it is not legally obligatory; refer to the previous section).

b) Materiality limit/thresholds

► Transfer pricing documentation

No materiality limit.

► Economic analysis

No materiality limit.

► BEPS master and local files

Not applicable.

► CbCR

Consolidated revenues of the group in the previous fiscal year amounted to at least EUR750 million.

c) Specific requirement(s)

► Treatment of domestic transactions

The same rules apply with respect to cross-border and domestic transactions.

► Local language documentation requirement

Based on the Czech Tax Code, all the documents provided to the tax authorities have to be in the Czech language. However, TP documentation is sometimes accepted by the tax authorities in English.

► Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

► Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Yes. However, only the CbCR obligation has been effectively adopted.

► Coverage in terms of master and/or local files

The master and local files are not covered. However, Directive D-334, containing similar requirements on the scope of TP documentation and issued by the Czech Ministry of Finance, is followed in the Czech Republic.

► Effective/expected commencement date

None specified.

► Material differences from OECD report template/format

None specified.

Czech Republic

► **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

There is no concept of penalty protection in Czech tax law.

► **CbCR notification and CbC report submission requirement**

Yes, there is such a requirement.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Effective 1 January 2001, the executives of a controlled entity are required to complete a memorandum with respect to relationships and transactions with companies in the group. This does not apply if a controlling agreement is concluded. Note that this is based on commercial legislation rather than on tax legislation, and the memorandum has no direct tax impact or tax aspects.

From 2014, taxpayers are obliged to fill in a mandatory enclosure with the corporate income tax return that includes reporting of intragroup transactions. Qualifying companies have to submit information regarding related parties (name, registered office) and complete a list of selected transactions entered into with them in a special enclosure with their tax return. The transactions are to be classified by type (such as sale of goods, provision of services, financial transactions and payment of royalties).

In addition, all taxpayers have to disclose in the corporate income tax return whether they were engaged in transactions with related parties.

b) Transfer pricing-specific returns

Not applicable.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► **Corporate income tax return**

Three months after the year-end or six months after the year-end if the taxpayer is subject to the obligatory audit or the tax return is filed by a certified tax advisor.

► **Other transfer pricing disclosures/return**

Three months after the year-end or six months after the year-end if the taxpayer is subject to the obligatory audit or the tax return is filed by a certified tax advisor.

► **CbCR notification**

The notification Filing deadline for FY 2016 is 31 October 2017. The notification Filing deadline for FY 2017 is the end of the respective year. It needs to be filed only if there are changes in the filed information, compared with the notification for FY 2016.

► **CbC report preparation/submission**

12 months after the year-end.

b) Documentation preparation deadline

Upon request of the tax authorities.

c) Documentation submission deadline

► **Is there a statutory deadline for submission of transfer pricing documentation?**

No.

► **Time period/deadline for submission on tax authority request**

The taxpayer has to deliver the transfer pricing documentation within the prescribed deadline, which is usually 14 days, but it may be extended to at least 30 days.

6. Transfer pricing methods

a) Applicability

► **International transactions**

Yes.

► **Domestic transactions**

Yes.

b) Priority/preference of methods

The MF follows the OECD Guidelines. The CUP method is generally preferred. Use of profit-based methods is acceptable, where substantiated.

7. Benchmarking requirements

a) Local vs. regional comparables

There is no legal requirement for local country comparables. There is a preference for local comparables, even though EU comparables are usually accepted in practice.

b) Single-year vs. multi-year analysis

Multiple-year (three years) analysis, as per common practice.

c) Use of interquartile range

Excel Quartile, as per common practice.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

There is no need to conduct a fresh benchmarking search every year; however, an update of the financials is recommended annually.

e) Simple vs. weighted average

The weighted average, as per common practice.

f) Other specific benchmarking criteria, if any

There is a 25% independence threshold, based on Czech tax law.

8. Transfer pricing penalties/relief

a) Penalty exposure

► Consequences of failure to submit/late submission and/or incorrect disclosures

There are no specific penalties for not having transfer pricing documentation.

There is a penalty of up to CZK1.5 million (approximately EUR60,000) for not filing the CbC report.

There is a penalty of up to CZK0.5 million (approximately EUR20,000) for not filing the CbCR notification or the TP appendix to the corporate income tax return.

► If an adjustment is sustained, can penalties be assessed?

Generally, when the tax authority successfully challenges transfer pricing, a penalty of either 20% of the unpaid tax or 1%

of the decreased or reduced tax loss will be applied. Thereafter, interest is assessed at 14% above the "repo rate" (or repurchase agreement rate) of the Czech National Bank (for a maximum of five years).

► Is interest charged on penalties/payable on refund?

No.

b) Penalty relief

No penalty relief regime is in place. It is at the discretion of the MF to decrease penalties; however, this is limited to specific situations.

When the tax authorities issue a final report (decision) about the tax audit, including calculation of the tax assessment and a payment order, the taxpayer may appeal to the Appeal Financial Directorate. Although bringing an appeal does not suspend the effect of the contested decision, the additional tax, penalties and late-payment interest do not have to be paid until the appeal decision date.

Subsequently, the taxpayer may sue the Appeal Financial Directorate in the Regional Court. The additional tax, penalties and late-payment interest are already payable.

The Regional Court judgment may be appealed to the Supreme Administrative Court.

Regardless of the above described remedies provided by Czech domestic law, the taxpayer's respective counterparty may, upon the tax assessment, initiate the MAP based on the EU Arbitration Convention or the respective double tax treaty before its tax authorities (if enabled by law in the respective country).

9. Statute of limitations on transfer pricing assessments

3 years as of the corporate income tax return (CITR) deadline, but it may be extended in the case of tax scrutiny, supplementary CITR, tax losses (up to an additional 5 years to the standard statute of limitations for the year when the tax loss was realized and the subsequent 5 years) or investment incentives (up to an additional 10 years to the standard statute of limitations).

10. Likelihood of transfer pricing scrutiny/ related audit by local authority

► Likelihood of transfer pricing-related audits (*high/medium/low*)

Overall, the likelihood is medium. However, the transfer pricing audits are initiated based on the results of complex screening performed by the Czech tax authorities and risk profiles of taxpayers, not regularly.

► Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

The likelihood is high; as mentioned above, the tax audits are initiated when the tax authorities have a specific suspicion.

► Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

The likelihood is high, as the tax authorities generally take a pragmatic approach and focus on areas where it is relatively easy for them to make the adjustment.

► Specific transactions/industries/situations, if any, more likely to undergo audit

Intangibles, royalties, long-term losses and service fees are seen as the most likely transfer pricing audit issues. Although no specific country is targeted for transfer pricing audits, transactions with tax haven countries are closely scrutinized. The scrutiny of transfer pricing will only intensify and, in press statements, the MF has directed that the tax authorities should particularly focus on transfer pricing. In addition, they have created a specialized group within the tax authority of full-time specialists dedicated to transfer pricing issues.

11. APA opportunity

► Availability (unilateral/bilateral/multilateral)

An APA program is available, and Czech taxpayers may request unilateral, bilateral and multilateral APAs. Upon the taxpayer's request, the tax administrator decides whether the taxpayer has chosen a transfer pricing method that would result in a transfer price determination on an arm's-length basis. D-333 details the procedure for issuing binding assessments and the particulars for the application.

► Tenure

None specified.

► Rollback provisions

The binding assessment can be issued only for transactions that are effective in a particular tax period or that will be effective in the future. It is impossible to apply for a binding assessment of business relationships that have already affected tax liability. However, in practice, the decisions are respected for previous periods, as well.

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Denmark

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Danish Customs and Tax Administration (SKAT).

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

- ▶ Tax Assessment Act Section 2, effective 2016, which states that controlled transactions should be at arm's length.
- ▶ Tax Control Act 3B, which defines the documentation requirements that are further detailed in an executive order.
- ▶ Executive Order No. 401, of 28 April 2016, is effective as of 1 January 2016. For the income year 2016, taxpayers can, however, choose to apply either Executive Order No. 42 of 24 January 2006 or Executive Order No. 401 of 28 April 2016. Consequently, the income year 2016 is a transition year in which either the old documentation requirements or the new, BEPS-compliant documentation requirements can be applied.

▶ Section reference from local regulation

Tax Control Act 3 (2).

2. OECD guidelines treatment/reference

Denmark is a member of the OECD.

The OECD Guidelines are generally recognized as a source for interpretation (soft law) of the Danish transfer pricing (TP) rules.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Yes.

▶ Does transfer pricing documentation have to be prepared annually?

Yes, transfer pricing documentation needs to be prepared

annually under local country regulations. Taxpayers must be able to submit documentation fulfilling all requirements under the Danish regulations upon request. A memo with updated transaction values would only fulfill the requirements if its content was applicable for the requested year and contained all the required information.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

Companies belonging to a consolidated group with less than 250 employees and either less than DKK125 million in assets or DKK250 million in revenue are not required to prepare documentation as per the master file/local file format.

▶ Economic analysis

No materiality limit. A controlled transaction can be deemed insignificant if it is a single transaction with a limited value. An insignificant transaction is not subject to an economic analysis.

▶ BEPS master and local files

Same as for TP documentation above.

▶ CbCR

Applicable from 2016 tax returns.

c) Specific requirement(s)

▶ Treatment of domestic transactions

There is a documentation obligation for domestic transactions. In reality, the Danish Tax Administration is not interested in Danish-Danish transactions, unless the related parties are subject to an asymmetrical tax regime (e.g., tonnage, hydrocarbon tax or cooperative taxation). All Danish entities are, as a starting point, subject to joint taxation.

▶ Local language documentation requirement

The TP documentation does not need to be submitted in the local language. English, Swedish, Norwegian and Danish are acceptable.

▶ Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Denmark

Denmark has adopted BEPS Action 13 for transfer pricing documentation in terms of master file/local file and CbCR.

▶ **Coverage in terms of master and/or local files**

It does cover the master file and local file.

▶ **Effective/expected commencement date**

Effective for years beginning on or after 1 January 2016.

▶ **Material differences from OECD report template/format**

There are no material differences between the OECD report template/format and Danish regulations.

▶ **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

The taxpayer must also file a supplemental form to the tax return providing details on controlled transactions.

▶ **CbCR notification and CbC report submission requirement**

Yes, there is a CbCR notification and CbC report submission requirement in Denmark.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Not applicable.

b) Transfer pricing-specific returns

Form 05.021, Controlled Transactions – Annex to the Income Tax Return (Form 05.022 for the English version), discloses information on all intercompany transactions and whether the company qualifies for reduced documentation requirements. The form has to be prepared only if the total value of the controlled transactions exceeds DKK5 million in the income year.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ **Corporate income tax return**

30 June (calendar year).

▶ **Other transfer pricing disclosures/return**

30 June.

▶ **CbCR notification**

31 December (by the end of the fiscal year in question).

▶ **CbC report preparation/submission**

31 December (or 12 months after the fiscal year-end).

b) Documentation preparation deadline

TP documentation should be finalized at the time the tax return is submitted – i.e., the transfer pricing documentation should be prepared contemporaneously. Consequently, the documentation should, if possible, avoid inclusion of any material not available at the time of filing the tax return for a given year. The Danish Tax Administration has been known to take the position that non-contemporaneous documentation is invalid and can be disregarded, and a discretionary income assessment can be made.

c) Documentation submission deadline

▶ **Is there a statutory deadline for submission of transfer pricing documentation?**

No.

▶ **Time period/deadline for submission on tax authority request**

The taxpayer has to submit the transfer pricing documentation within 60 days once requested by the tax authorities.

6. Transfer pricing methods

a) Applicability

▶ **International transactions**

Yes.

▶ **Domestic transactions**

Yes.

b) Priority/preference of methods

The following transfer pricing methods are accepted: CUP, resale price, cost-plus, profit split, TNMM and others. When selecting the most appropriate method, the taxpayer should consider the aspects regarding the application of methods stated in the OECD Guidelines.

7. Benchmarking requirements

a) Local vs. regional comparables

Local benchmarks are not required as per local requirements. Consequently, Pan-European benchmarks are accepted.

b) Single-year vs. multi-year analysis

Multiple-year testing is generally accepted. However, in principle structures, there is a tendency to request the margins of limited-risk entities (contract manufacturer/limited risk distributor) to be inside the interquartile range every year.

c) Use of interquartile range

Yes, interquartile range calculation using Excel Quartile formulas is preferred.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

A fresh benchmarking search is required every third year, with an update of the financial data in between. Compare this with the recommendations in the OECD Guidelines.

e) Simple vs. weighted average

There is a preference for the weighted average for arm's-length analysis.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

► Consequences of failure to submit/late submission and/or incorrect disclosures

The penalty amounts to DKK250,000 per legal entity per year for which late or insufficient/no transfer pricing documentation is submitted.

In addition, if the taxpayer does not fulfill the disclosure requirements as stated in Form 05.021 (refer to the section above on transfer pricing-specific returns), or if the information provided in Form 05.021 is not correct, a penalty will be calculated.

► If an adjustment is sustained, can penalties be assessed?

If the tax authorities increase the income, an additional fine of 10% may be imposed on the income adjustment. The penalty amounts are nondeductible.

Where there is an income adjustment, a 3.6% nondeductible surcharge in 2015 (4.6% in 2014, 3.9% in 2013, 4.3% in 2012 and 4.8% in 2011) will be levied on all prior-year adjustments of corporate taxes payable.

► Is interest charged on penalties/payable on refund?

Nondeductible interest of 0.8% will be added from 1 January 2016 (0.8% for the income years 2014-15, 0.4% until 31 July and 0.7% from 1 August 2013, and 0.5% for the income years 2011-12) for each month after the corporate tax payable for the income year in question is due. The compound interest was introduced in 2013.

b) Penalty relief

If the taxpayer provides insufficient documentation or no documentation and subsequently provides documentation that meets the requirements, the fine will be reduced to half of the original amount (DKK125,000). However, the 10% penalty on any income adjustment still applies. As stated above, adequate transfer pricing documentation submitted in due time will provide penalty protection.

9. Statute of limitations on transfer pricing assessments

The statute of limitations for a transfer pricing assessment is 1 May in the sixth year after the income year concerned (e.g., the statute of limitations for the income year 2012 is 1 May 2018).

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► Likelihood of transfer pricing-related audits (high/medium/low)

High; generally, the Danish tax authorities are known for being very aggressive.

► Likelihood of transfer pricing methodology being challenged (high/medium/low)

High; however, in recent years, it has become more common for the Danish tax authorities to close cases without any income adjustments.

Denmark

► **Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)**

Refer to the section above.

► **Specific transactions/industries/situations, if any, more likely to undergo audit**

The tax authorities are particularly focused on:

- a. Valuation of intellectual property (IP), in particular in relation with the transfer of intangible assets abroad to low-tax countries
- b. Loss-making entities
- c. Business restructurings
- d. Group financing, including long intercompany loans, cash pools and guarantees
- e. Management services – both inbound and outbound
- f. Licensing (royalty)

11. APA opportunity

► **Availability (unilateral/bilateral/multilateral)**

Danish legislation provides for unilateral, bilateral and multilateral APAs. There is no bilateral APA regime in place; however, it is common practice by the Danish tax authorities to accept and process APAs.

► **Tenure**

Usually five years, but may be shorter or longer.

► **Rollback provisions**

No, but they are applied in practice.

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Dominican Republic

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Tax Administration of the Dominican Republic (Dirección General de Impuestos Internos, or DGII).

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

Article 281 of the Dominican Tax Code and Decree No. 78-14 of the Dominican Republic.

Transfer pricing regulations have been in effect since fiscal year 2011.

► Section reference from local regulation

Refer to the section above.

2. OECD guidelines treatment/reference

Currently, the Dominican Republic is not an OECD member.

Furthermore, under the current regulations, there is no reference in which the OECD Guidelines can be relied upon for interpretation. However, the transfer pricing regulations in the Dominican Tax Code are mainly based on the OECD Guidelines.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

The Dominican Republic has transfer pricing documentation guidelines provided in Article 281 of the Dominican Tax Code and Decree No. 78-14.

► Does transfer pricing documentation have to be prepared annually?

The transfer pricing (TP) report and return must be prepared annually, with updates to all the information that allows a correct TP analysis. The local tax authorities require the most recent available financial information for the comparables and the tested party.

b) Materiality limit/thresholds

► Transfer pricing documentation

Taxpayers are exempt from preparing a transfer pricing study in certain situations:

- a. Taxpayers whose total amount of intercompany transactions does not exceed DOP10 million (adjusted very year for inflation) and that have no transactions with entities located in tax havens or under preferential tax regimes
- b. For related party transactions with entities resident in the Dominican Republic, provided that such intercompany transactions do not result in a tax deferral or overall reduction of tax revenues

Nevertheless, taxpayers excluded from the documentation requirements are still subject to complying with the arm's-length principle and are required to file the TP information return.

► Economic analysis

Taxpayers are exempt from preparing a transfer pricing study in certain situations:

- a. Taxpayers whose total amount of intercompany transactions does not exceed DOP10 million (adjusted very year for inflation) and that have no transactions with entities located in tax havens or under preferential tax regimes
- b. For related party transactions with entities resident in the Dominican Republic, provided that such intercompany transactions do not result in a tax deferral or overall reduction of tax revenues

Nevertheless, taxpayers excluded from the documentation requirements must still comply with the arm's-length principle and are required to file the TP information return.

► BEPS master and local files

Not applicable.

► CbCR

Not applicable.

c) Specific requirement(s)

► Treatment of domestic transactions

Taxpayers with domestic transactions are not obligated to prepare a transfer pricing documentation report unless the amounts agreed upon between the parties reduce tax liability or produce a deferred taxation in the Dominican Republic. Notwithstanding the above, taxpayers with domestic transactions must file the TP return.

Dominican Republic

▶ Local language documentation requirement

The TP documentation needs to be submitted in the local language. Article 21 of General Norm No. 07-14 states that entities and individuals must file (when required by the Tax Administration) accounting and financial documents that support the information provided in the corresponding tax return. These documents must be filed in Spanish.

▶ Safe harbor availability

There is safe harbor availability for TP documentation.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No.

▶ Coverage in terms of master and/or local files

Not applicable.

▶ Effective/expected commencement date

Not applicable.

▶ Material differences from OECD report template/format

Not applicable.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

Not applicable.

▶ CbCR notification and CbC report submission requirement

There is no CbCR notification requirement in the Dominican Republic.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

There are no related party disclosures that are to be made on general income tax returns.

b) Transfer pricing-specific returns

Article 18 of Decree No. 78-14 states that taxpayers should file an annual information return.

Information to be disclosed includes related parties' tax address and tax identification number, transaction classifications, amounts, invoices for each transaction, and methods applied for analysis and profit or loss obtained. This return shall be filed within 180 days after the closing date of the fiscal year.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ Corporate income tax return

120 days after the closing date of the fiscal year.

▶ Other transfer pricing disclosures/return

180 days after the fiscal year-end.

▶ CbCR notification

There is no CbCR notification requirement in the Dominican Republic.

▶ CbC report preparation/submission

Not applicable.

b) Documentation preparation deadline

Documentation must be readily available by the time the TP information return is filed (180 days after the fiscal year-end) and must be kept as part of the company's accounting books and records. If requested by the tax authorities, documentation should be provided within the period the tax authorities stipulate in the notice.

c) Documentation submission deadline

▶ Is there a statutory deadline for submission of transfer pricing documentation?

There is no statutory deadline for submission of transfer pricing documentation. If requested by the tax authorities, documentation should be provided within the period the tax authorities stipulate in the notice.

▶ Time period/deadline for submission on tax authority request

The taxpayer has five days to submit the transfer pricing documentation once requested by the tax authorities in an audit inquiry.

6. Transfer pricing methods

a) Applicability

- ▶ International transactions

Yes.

- ▶ Domestic transactions

Not applicable.

b) Priority/preference of methods

Article 281 of the Dominican Tax Code establishes the following methods to assess the arm's-length standard: CUP, resale price, cost-plus, TNMM, profit split and transparent market concept (the sixth method).

7. Benchmarking requirements

a) Local vs. regional comparables

There are no benchmarking requirements for local and regional comparables, considering the lack of financial information available on local comparables. Thus, international comparables are accepted by the tax authorities.

b) Single-year vs. multi-year analysis

Multiple-year testing for the comparables only. In practice, the number of years is three.

c) Use of interquartile range

Article 12 of the decree requires the application of an interquartile range. Excel Quartile is common in practice.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

A fresh benchmarking search every year over updating financials of a prior study is required. A TP report must be prepared annually, updating all the information that allows a correct TP analysis. Additionally, in practice, local tax authorities expect to see the most recent comparable information and to use the most recent available financial information for the comparables and the tested party.

e) Simple vs. weighted average

Weighted average is common in practice.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures

Article 281 ter of the Dominican Tax Code, with reference to Article 257, dictates that failure to provide transfer pricing documentation on time or failure to provide true, complete or accurate information could result in penalties of up to three times 0.25% of the previous year's income and/or from 5 to 30 minimum wages.

- ▶ If an adjustment is sustained, can penalties be assessed?

Any additional tax generated by DGII price adjustments should be subject to surcharges (10% for the first month and 4% for the subsequent months) and interest (1.10% on a monthly basis).

- ▶ Is interest charged on penalties/payable on refund?

Refer to the section above.

b) Penalty relief

Taxpayers can benefit from reductions of the surcharges assessed as a result of any DGII adjustment:

- 40% reduction of the surcharges assessed if the company decides to voluntarily amend its tax return without any prior notice from the tax authorities
- 30% reduction of the surcharges if, after being audited, the difference between the estimated tax and the effectively paid tax represents less than 30% of the latter

9. Statute of limitations on transfer pricing assessments

The statute of limitations is three years; the term is affected by amended returns. However, if a taxpayer fails to file a return, the period is extended to five years.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

- ▶ Likelihood of transfer pricing-related audits (*high/medium/low*)

The likelihood of a general tax audit is currently categorized as medium. The likelihood of a transfer pricing assessment as

Dominican Republic

part of a general tax audit is considered high. In the past five years, the DGII has been active in tax audits regarding transfer pricing issues.

► **Likelihood of transfer pricing methodology being challenged (*high/medium/low*)**

In case transfer pricing is scrutinized, the risk that the transfer pricing methodology will be challenged is high. In practice, the DGII has continued to focus on transfer pricing with no exceptions to large and non-large taxpayers, and is currently paying special attention to and auditing MNEs with complex transactions. The methodologies applied by these type of enterprises are usually challenged by the DGII in transfer pricing audits. For instance, the DGII has been adjusting commodities transactions with the use of the sixth method.

In addition, the DGII has been challenging comparables when using the TNMM, agreements when using the CUP method, royalty transactions, among others.

► **Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)**

High, because in most audits, the DGII challenges either the methodology or the comparables.

► **Specific transactions/industries/situations, if any, more likely to undergo audit**

The hospitality industry.

11. APA opportunity

► **Availability (unilateral/bilateral/multilateral)**

APAs, bilateral or multilateral, are contemplated in Article 281 bis of the Dominican Tax Code and in Decree No. 78-14.

► **Tenure**

Taxpayers can request an APA for a certain time period and renew it for an additional three years.

APAs should be requested within the first three months of the corresponding taxpayer's fiscal year and can be requested, among others, for financing transactions with third parties to exceed the thin capitalization rules.

The DGII must issue a response within the first 24 months after the request was filed. If no response is issued, the request may be presumed to have been denied.

The decree establishes the information that must be included in the APA request.

Furthermore, Article 281 of the Dominican Tax Code contemplates a protection regime (*regimen de protección*) oriented to specific industries or economic activities, even though the law does not mention the specific industries or activities subject to this regime. The DGII could determine a minimum price or margin if the taxpayer agrees and reflects it in its income tax return. Such a price or margin could be calculated considering the total value of income, assets, costs and expenses, and other variables that may be justified. The DGII issues a corresponding resolution once the industry or economic activity is selected.

► **Rollback provisions**

None specified.

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Ecuador



1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Ecuadorian national taxes are administered by the Internal Revenue Service (Servicio de Rentas Internas, or SRI) and National Customs Service (Servicio Nacional de Aduanas del Ecuador, or SENA).¹

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

The transfer pricing regime is part of the corporate income tax (CIT) enacted in the Internal Tax Regime Law (Ley de Régimen Tributario Interno, or LORTI), and its application is prescribed in LORTI, Tax Administration resolutions and communications, and a technical guidelines document prepared by the SRI that is available on its website¹.

As the OECD's Transfer Pricing Guidelines shall be used as a technical reference, the OECD BEPS Actions 8, 9 and 10 shall also be used as guidelines for the pertinent transactions. However, LORTI, Tax Administration resolutions, Ecuadorian laws or international treaties signed by Ecuador hold supremacy over the OECD Guidelines. In this regard, Action 13 is Not applicable, as SRI resolutions define the documentation procedure.

► Section reference from local regulation

Related parties are defined in LORTI's first unnumbered article after the fourth, its regulations' Article 4 and SRI's resolution on tax havens, as transactions with those regimes are deemed as related party transactions per Ecuadorian tax Law.

2. OECD guidelines treatment/reference

Ecuador is not a member of the OECD; however, in May 2017, Ecuador became part of the OECD Forum on Transparency and Information Exchange.

The OECD Guidelines are applicable as technical guidelines for matters not being regulated by any internal law, regulation or resolution or by any international treaty. The regulation states that the guidelines for analyzing a transaction will be those that were the most current on 1 January of the fiscal year during which the transaction was held. In this regard, the OECD Guidelines amendments including the BEPS actions

will be applicable for transactions that Ecuadorian companies hold with related parties (domestic or cross-border) starting 1 January 2017.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

Ecuador has its own local transfer pricing (TP) documentation guidelines supported in the LORTI, Tax Administration resolutions and communications, and a technical guidelines document prepared by the SRI. The OECD's Transfer Pricing Guidelines have to be used as the transfer pricing technical reference for items not covered by laws, treaties or SRI resolutions.

Tax law regulation on transfer pricing includes a number of factors, such as:

- Compulsory delivery of documentation when a defined threshold is met.
- Thresholds are based on the addition of transactions following rules that cover profit and loss and balance sheet accounts.
- Domestic transactions are affected by the transfer pricing regime. They may not be part of the threshold calculations if certain conditions are met.
- There are restrictive deductibility limits for royalties, technical services, management fees and consulting services paid to related parties.
- Certain indirect allocated expenses paid to related parties are restricted.
- The CIT for banana exports became revenue-based where the taxable revenue derives from transfer prices calculated by the SRI.
- The use of the interquartile range, when more than one comparable is found, is compulsory for every applicable method. Also, the transfer pricing adjustment must be calculated to the median of the comparables set.
- The use of a single year (contemporaneous to the transaction) of financial statements of comparable companies is requested, as well as the exclusion of companies with more than one business activity.

¹ sri.gob.ec

Ecuador

- ▶ The Tax Administration may use secret comparables.
- ▶ Application of the transfer pricing regime may be waived if certain conditions are met.
- ▶ Specific regimes apply for crude oil, metallic minerals and banana exports.
- ▶ **Does transfer pricing documentation have to be prepared annually?**

Yes, transfer pricing documentation has to be prepared annually under local country regulations. It must cover every transaction, independently of the obligation of filing it when the aforementioned thresholds are met, which are explained in the section below.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

The Tax Administration has defined “relevant transactions” to exclude domestic (exceptions apply) and certain cross-border transactions in order to quantify the amount that triggers the transfer pricing formal obligations, as explained below:

- ▶ Taxpayers are required to file the Transfer Pricing Annex (TP Annex) if the relevant transactions exceed USD3 million.
- ▶ Taxpayers are required to submit the Transfer Pricing Report (TP Report) if the relevant transactions exceed USD15 million.

Notwithstanding the thresholds that trigger documentation submission, the SRI may require, at any time, the TP Annex or the TP Report, even though the company does not reach the threshold amounts, and on transactions that did not accumulate for the threshold.

▶ Economic analysis

Ecuadorian tax law does not establish any thresholds for the preparation of economic analysis. All transactions, regardless of their amount, must comply with the arm's-length principle and therefore should have an analysis.

▶ BEPS master and local files

The issuance of a BEPS master and local file is not required by Ecuadorian tax law. However, taxpayers have the obligation to issue a local TP report according to the specifications defined by local regulations.

▶ CbCR

Issuance of a CbC report is not required by Ecuadorian tax law.

c) Specific requirement(s)

▶ Treatment of domestic transactions

Domestic transactions will receive the same treatment as foreign transactions.

▶ Local language documentation requirement

The official national language, Spanish, shall be used for documentation.

▶ Safe harbor availability

Taxpayers may obtain exemption from the transfer pricing regime when they comply with all these conditions concomitantly:

- ▶ Have a payable CIT greater than 3% of their taxable revenues
- ▶ Not perform any transactions with tax havens or lower/preferred tax jurisdictions
- ▶ Not have Government contracts related to the exploration and exploitation of nonrenewable resources

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No.

▶ Coverage in terms of master and/or local files

Not applicable.

▶ Effective/expected commencement date

Not applicable.

▶ Material differences from OECD report template/format

Not applicable.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

The BEPS Action 13 format report is not sufficient to achieve penalty protection. To achieve this standard, all the specific regulations of SRI resolutions on documentation, including the SRI TP guidelines, must be closely followed.

► **CbCR notification and CbC report submission requirement**

There is no CbCR notification and CbC report submission requirement in Ecuador.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Identification information on the related parties involved in transactions held by Ecuadorian taxpayers must be disclosed in an appendix to the transfer pricing documentation and in the main documentation as well. This appendix must be filed concomitantly to the documentation and consist of a summary of the transactions and the analysis results.

b) Transfer pricing-specific returns

The transfer pricing regime requires a number of specific obligations to be fulfilled in terms of the information that is required by the Tax Administration, as well as by the external auditors because of Tax and Companies Laws compliance requests.

The following is typical information that should be prepared and shared or submitted:

- Report on the external audit of the financial statements, which shall include tax compliance assessments that make it compulsory to communicate the transfer pricing analysis outcome before the issuance of the audit report
- Income tax return, which includes transfer pricing-specific fields
- TP Exemption form, if applicable
- Related parties operations Annex (TP Annex)
- TP Report
- Tax Compliance Report, which must be filed by external auditors each year, including details of transfer pricing-related information

The TP Report and the TP Annex, typically due in June, have specific classifications for financial transactions; the Tax Compliance Report, typically due in July, includes specific sections for them. Companies having an absolution to advanced pricing ruling requests must file a compliance report in May.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► Corporate income tax return

The exact submission deadline for the specific obligations to be fulfilled by taxpayers with regard to the transfer pricing regime is defined according to the ninth digit of their tax identification number.

► Other transfer pricing disclosures/return

The TP Annex and TP Report must be filed no later than two months after filing the corporate income tax return (CITR).

► CbCR notification

Not applicable.

► CbC report preparation/submission

Not applicable.

b) Documentation preparation deadline

Transfer pricing documentation has to be prepared annually under local country regulations. Documentation requirements will be determined according to the thresholds of related party transactions (domestic, foreign and tax havens). Local TP documentation has to be submitted according to what is specified in the previous section.

c) Documentation submission deadline

► Is there a statutory deadline for submission of transfer pricing documentation?

The TP Annex and TP documentation must be submitted within two months after the CIT return of the company.

► Time period/deadline for submission on tax authority request

When the Tax Authority notifies the taxpayer of noncompliance or late submission of the TP Report and TP Annex, it will establish a deadline of five business days to submit information.

However, if the Tax Authority detects inconsistencies in declarations or annexes filed by the taxpayer, it will establish a deadline of 10 to 20 business days for the taxpayer to present the correction of the detected errors.

6. Transfer pricing methods

a) Applicability

- ▶ International transactions

The legislation accepts the following methods:

- ▶ CUP
- ▶ Resale price
- ▶ Cost-plus
- ▶ Transactional profit split
- ▶ TNMM

The five transfer pricing methods in the OECD Transfer Pricing Guidelines (profit split and residual profit split are recognized as one method) may be used.

- ▶ Domestic transactions

Refer to the section above.

b) Priority/preference of methods

In 2016, LORTI regulation reform eliminated the compulsory hierarchy application between direct and indirect methods and also allowed the Ecuadorian Tax Administration to issue technical guidelines that all taxpayers must follow unless they can document the reasons behind the use of a different methodology.

7. Benchmarking requirements

a) Local vs. regional comparables

The SRI prefers the use of local comparable companies instead of foreign comparable companies.

b) Single-year vs. multi-year analysis

The PLI for analyses must be calculated only with the financial information for the year when transactions were held.

c) Use of interquartile range

Interquartile ranges are compulsory whenever more than one comparable is available.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

A fresh benchmarking search needs to be conducted every

year. For the application of methods that use external comparables (resale price, cost-plus and especially TNMM), the same fiscal year must be used for the tested party and the comparable companies.

e) Simple vs. weighted average

Not applicable.

f) Other specific benchmarking criteria, if any

Not applicable.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures

Ecuador has a specific transfer pricing penalty regime. Penalties of up to USD15,000 could be applied if taxpayers do not submit the TP Report or the TP Annex, or if inaccuracies, mistakes, differences, lack of information or false data are detected.

In spite of the above, the Tax Administration issued a document (Instructivo para el Establecimiento de Sanciones Pecuniarias) that is used to establish the penalty amount according to the seriousness of the fault or misdemeanor (late delivery or incomplete or erroneous information sent by the local taxpayers). Based on this document, late filing could result in a penalty of up to USD333.

- ▶ If an adjustment is sustained, can penalties be assessed?

A 20% surcharge on the assessment will be applied.

- ▶ Is interest charged on penalties/payable on refund?

A specific interest rate will be charged on adjustments and is paid on refunds. This interest rate is variable and is defined as 1.5 times the Ecuadorian lending rate.

b) Penalty relief

No penalty relief regime is in place.

The 20% surcharge may be prevented when an assessment is accepted at the draft stage of the administrative action, before the final assessment has been issued. Once the adjustment has been assessed, a claim resource may be presented before the Tax Authority, to be resolved by a claims team.

9. Statute of limitations on transfer pricing assessments

The statute of limitations is three years from the date of the CITR filing and six years if material information is missing from the CITR.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► Likelihood of transfer pricing-related audits (*high/medium/low*)

If a taxpayer is selected for a general tax audit, the likelihood that transfer pricing is reviewed as part of that audit is high.

► Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

If transfer pricing is reviewed as part of the audit, the likelihood that the transfer pricing methodology will be challenged is high. In audits in which transfer pricing is a subject, the percentage of reviews where assessments are based on challenging the methodology (or at least the comparables set) is more than 75%.

► Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

The likelihood of a transfer pricing adjustment during a TP audit is high, as the local Tax Administration tends to propose very unorthodox positions from an OECD point of view.

► Specific transactions/industries/situations, if any, more likely to undergo audit

Recent activities have been focused on intangible property- and services-related transactions. Nevertheless, the likelihood of methodologies being challenged during an audit are similar for every taxpayer.

11. APA opportunity

► Availability (unilateral/bilateral/multilateral)

There is an APA-like procedure that takes the form of pricing or methodology consultations and information disclosure. In general terms, it tends to be limited to the information available to the taxpayer in Ecuador but may be requested as a bilateral procedure as well.

► Tenure

The ruling term includes the year previous to the response date (in cases where the response is issued before the CITR filing for the previous year), the year when the response is issued and the following three tax years.

► Rollback provisions

None specified.

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Egypt

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Egyptian Tax Authority (ETA).

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

- Egyptian Income Tax Law (ITL) No. 91 of 2005, Article 30 of the ITL
- Articles 38, 39 and 40 of executive regulations
- Transfer pricing (TP) guidelines issued in November 2010

► Section reference from local regulation

To raise taxpayer awareness of transfer pricing principles and how to apply Article 30 of the ITL and articles 38, 39 and 40 of its executive regulations, the ETA, with the assistance of the OECD, issued its TP guidelines in 2010. The ETA decided to issue its transfer pricing guidelines in a series of parts, with the first part focusing on the main concepts and issues. Accordingly, the first part provides taxpayers with guidance on the arm's-length principle, comparability analysis, transfer pricing methods and documentation requirements.

The upcoming parts of the transfer pricing guidelines will address other issues, such as the application of the arm's-length principle to transactions involving intangible property, intragroup services, CCAs and APAs. They will also offer further explanation of the TNMM application.

Taxpayers may submit their TP documentation in English. However, an Arabic version is generally requested during the inspection process.

According to Article 30 of the ITL, "If the associated persons set conditions in their commercial or financial dealings different from the conditions taking place between non-associated persons, which are liable to reduce the tax base or transfer its burden from a taxable person to another tax-exempted or non-taxable person, the Administration may determine the taxable profit on basis of the arm's-length pricing."

The head of the administration may conclude advance agreements with associated persons on one or more methods for determining the arm's-length price.

The General Anti-Avoidance Rule (GAAR):

- The rule was introduced under Article No. 92 (bis) of Law No. 53 of 2014, which was published by the Egyptian Government on 30 June 2014. Article No. 92 provides that tax implications of transactions would not be acknowledged (upon determining a tax assessment) where it is proved that the purpose or one of the main purposes of such transactions was to avoid or postpone taxes.

The law exemplified aggressive tax planning as cases in which:

- The expected profit from the transaction prior to tax deduction is minimal as compared to the tax benefits attained from the examined transaction
- The transaction resulted in obvious tax exemptions that do not reflect the risks experienced by the taxpayer or its financials based on the transaction
- The transaction includes some criteria that have contradictory impacts eliminating each other

In all cases, the burden of proving the transaction's abusive purpose falls upon the ETA. However, the taxpayer may provide evidence that could disprove accusations of aggressive tax planning.

To ensure that the ETA does not act abusively, the Minister of Finance will issue a decree forming a committee led by the head of the ETA or his or her deputy to examine cases of tax avoidance. The taxpayer would not be penalized for tax avoidance unless the committee decides otherwise.

2. OECD guidelines treatment/reference

Egypt is not a member of the OECD.

Pursuant to the executive regulations of the ITL, in the case that none of the three methods referred to in the law (CUP, resale price and cost-plus) are applicable, any one of the methods mentioned in the OECD Guidelines, or any other acceptable method suitable for the taxpayer, may be followed.

3. Transfer pricing documentation requirements

a) Applicability

- Does your country have transfer pricing documentation guidelines/rules?

The Egyptian transfer pricing rules place the burden of proof on the ETA, provided that the taxpayer can produce sufficient TP

Egypt

documentation (and other supporting documents, including intercompany agreements, schedules and invoices) to support its declared transactions on the tax return. According to the rules, however, the burden of proof shifts to the taxpayer in the event that the tax return is not filed or the taxpayer fails to produce proper TP documentation to support its tax return positions.

The transfer pricing documentation does not need to be submitted with the tax return but should be available at short notice if the ETA requests it during the corporate income tax inspection phase

► **Does transfer pricing documentation have to be prepared annually?**

Transfer pricing documentation is required for each financial year.

b) Materiality limit/thresholds

► **Transfer pricing documentation**

There is no materiality limit; however, the Egyptian TP guidelines refer to the material transactions needing to be documented.

► **Economic analysis**

No materiality limit.

► **BEPS master and local files**

Not applicable.

► **CbCR**

Not applicable.

c) Specific requirement(s)

► **Treatment of domestic transactions**

There is a documentation obligation for domestic transactions, as all related party transactions should be documented.

► **Local language documentation requirement**

The TP documentation needs to be submitted in the local language (i.e., Arabic). Any correspondence with the ETA should be in Arabic; however, the Tax Authority will accept English documentation but may ask for an official translated copy.

► **Safe harbor availability**

None specified.

d) BEPS Action 13 implementation overview

► **Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?**

During 2016, Egypt signed on to the BEPS Inclusive Framework.

By signing up to be a BEPS Associate, Egypt is committing to implementing the four BEPS minimum standards:

- Action 5 (harmful tax practices)
- Action 6 (treaty abuse)
- Action 13 (CbCR)
- Action 14 (dispute resolution)

Egypt needs to amend the domestic tax law to reflect the effect of the abovementioned four actions that present the minimum BEPS standards. In addition, Egypt also needs to sign the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports with other countries in order to work toward Action 13 (CbCR).

As of December 2017, Egypt has not adopted BEPS Action 13 in the local regulations. In addition, Egypt did not sign any multilateral exchange of information agreements with other countries during 2017

► **Coverage in terms of master and/or local files**

Not applicable.

► **Effective/expected commencement date**

None specified.

► **Material differences from OECD report template/format**

Not applicable.

► **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

Not applicable.

► **CbCR notification and CbC report submission requirement**

There is neither a CbCR notification nor CbC report submission requirement in Egypt.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

The corporate tax return, in its related party disclosure section, requires taxpayers to provide the following information:

- a. Name of the related party or parties, along with the group structure
- b. The nature of the relationship
- c. Type of the related party transactions, if any
- d. The value of the transactions
- e. The method used to determine the fair-market price and the reasons for selecting this method
- f. The country of origin for tangible and intangible goods
- g. The country of the supplier.

b) Transfer pricing-specific returns

There are no separate returns to be filed for transfer pricing. However, disclosure of related party transactions is required on the corporate tax return.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ Corporate income tax return

30 April.

▶ Other transfer pricing disclosures/return

30 April.

▶ CbCR notification

Not applicable.

▶ CbC report preparation/submission

Not applicable.

b) Documentation preparation deadline

TP documentation should be finalized by the time of submitting upon request.

c) Documentation submission deadline

▶ Is there a statutory deadline for submission of transfer pricing documentation?

There is no statutory deadline for submission of transfer pricing documentation; it only needs to be finalized by the time of submitting upon request.

▶ Time period/deadline for submission on tax authority request

No official defined time frame.

6. Transfer pricing methods

a) Applicability

▶ International transactions

Yes.

▶ Domestic transactions

Yes.

b) Priority/preference of methods

In articles 39 and 40 of the ITL, the executive regulations establish the methods of calculating the arm's-length price.

According to Article 39, the fair-market price shall be determined according to the CUP, cost-plus or resale price methods.

According to Article 40, the preferred method for determining the neutral price shall be the CUP method. In case the data necessary for applying this method is unavailable, any of the two other methods prescribed in Article 39 may be applied.

In case of inability to apply any of the three methods mentioned, any other method described by the OECD Guidelines or any other method appropriate for the taxpayer may be followed. Profit-based methods noted in the OECD Guidelines, such as the TNMM, are acceptable methods, provided the taxpayer can demonstrate that the method used is the most appropriate for the analysis and give reasons for why the other methods are not appropriate.

7. Benchmarking requirements

a) Local vs. regional comparables

In Egypt, there is a lack of comparable data; however, the ETA can accept the emerging markets search, then Middle East and Africa, then Eastern Europe, based on the data availability.

b) Single-year vs. multi-year analysis

Multiple-year testing (three years).

c) Use of interquartile range

There are no preferences officially stated in the guidelines; however, Interquartile is used as a practice.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

There is no need to conduct a fresh benchmarking search every year; however, updating the financials of a prior study is required. In general, a fresh benchmarking study should be conducted every three years.

e) Simple vs. weighted average

The weighted average is used for arm's-length analysis; however, there are no preferences officially stated in the guidelines.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

► Consequences of failure to submit/late submission and/or incorrect disclosures

According to the ITL, if the tax amount included in the tax return by the taxpayers is less than the amount of the finally estimated tax, the taxpayers shall be liable for a penalty.

► If an adjustment is sustained, can penalties be assessed?

Penalties are based on the following:

- a. 5% of the tax payable on the non-included amount, if such amount is equivalent to 10% and up to 20% of the legally payable tax

- b. 15% of the tax payable on the non-included amount, if such amount is equivalent to more than 20% and up to 50% of the legally payable tax

- c. 40% of the tax payable on the non-included amount, if such amount is equivalent to more than 50% of the legally payable tax.

► Is interest charged on penalties/payable on refund?

Central bank credit and discount rate plus 2% on the due amount.

b) Penalty relief

At the time of this publication, there was no specific penalty related to transfer pricing; however, any adjustments based on related party transactions that cannot be defended because of the absence of a transfer pricing study or sufficient supporting documents will be subject to the normal penalties and interest mentioned in the ITL.

9. Statute of limitations on transfer pricing assessments

Five years.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► Likelihood of transfer pricing-related audits (*high/medium/low*)

Medium; there is no formal TP scrutiny yet – it is during the CIT audit phase in which the tax inspector will request to file the TP study during the CIT inspection and will be directed to the TP department within the ETA to be reviewed. Recently, the TP department within the ETA has formally started to send notifications to taxpayers with related party transactions requesting a localized TP documentation, as the tax authorities are focused on having the taxpayer submit the TP study, among other requirements, during the CIT inspection.

► Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

Medium; if there is no available transfer pricing documentation, the risk will be high, while the risk will be on the moderate side if the local TP documentation is available and includes material covered transactions and/or the covered transactions are complex in nature.

► **Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)**

High; the failure to produce proper TP documentation may lead the ETA to take an aggressive action toward the company. In some cases, the ETA has adjusted transfer prices between related parties.

► **Specific transactions/industries/situations, if any, more likely to undergo audit**

Transfer pricing is now part of the general corporate tax return audit. In its annual general budget – Taxation Chapter, Egypt indicated that transfer pricing adjustments are a major and priority source of tax income to the country. Hence, the ETA has started paying extra attention to related party transactions during the corporate tax inspections for FY 2005 onward. During the assessment, the ETA demands documents to support intercompany pricing.

Taxpayers who provide sufficient documentation proving that they exerted efforts to establish transfer prices that comply with the arm's-length principle are likely to be assigned by the ETA a low tax-risk rating. However, taxpayers giving inadequate consideration to their transfer pricing practices will be assigned a high-risk rating.

Taxpayers with high perceived risk are more likely to be audited by the ETA than those perceived to have low risk.

The ETA intends to issue periodic clarifications in connection with the transfer pricing issues that might arise from its practical experience.

11. APA opportunity

► **Availability (unilateral/bilateral/multilateral)**

APAs are available in Egypt, but there is no official framework to govern the APA process. Such framework is being prepared by the Ministry of Finance and should be published soon.

► **Tenure**

Not applicable.

► **Rollback provisions**

Not applicable.

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El Salvador



1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Dirección General de los Impuestos Internos (DGII) and Ministerio de Hacienda (MH) (Directorate General of Internal Taxes (DGII) and Ministry of Finance (MH)).

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

Articles 62 A, 124, 147, 199-A, 199-B, 199-C, 199-D and 244 of the Salvadoran Tax Code.

Administrative Guideline, or Guía de Orientación (GO), No. 001/2012, intended to provide general guidance to taxpayers about the tax treatment of related party transactions or transactions with entities domiciled in tax haven jurisdictions.

Transfer pricing regulations have been effective as of 29 December 2009.

► Section reference from local regulation

Article 199-C of the Salvadoran Tax Code.

2. OECD guidelines treatment/reference

El Salvador is not a member of the OECD.

Section 62-A of the Tax Code (TC) specifically refers to the methods established by the OECD Guidelines to determine the pricing used in related party transactions. As a result, taxpayers can carry out their transfer pricing analyses in accordance with the OECD Guidelines, and it is binding upon the tax authorities.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

Yes – articles 62-A, 124, 147, 199-A, 199-B, 199-C, 199-D and 244 of the Salvadoran Tax Code, as well as Administrative

Guideline, or Guía de Orientación (GO), No. 001/2012, which is intended to provide general guidance to taxpayers about the tax treatment of related party transactions or transactions with entities domiciled in tax haven jurisdictions.

► Does transfer pricing documentation have to be prepared annually?

Yes. The minimum requirement to achieve this would be that the transfer pricing (TP) report and return must be prepared annually, updating all the information that allows a correct TP analysis. Use of the most recent available financial information for the comparables and the tested party is requested.

In addition, the documentation is necessary for the external tax auditor to verify and reflect in the tax audit report that said transactions comply with transfer pricing regulations.

Under the rules of the TC, when a taxpayer has assets with a value exceeding USD1,142,857 or sales higher than USD571,429 during the previous fiscal year, it must appoint an external tax auditor (certified public accountant) to perform a statutory tax audit and file the resulting tax audit report (Dictamen Fiscal) within the first five months following the tax year that was audited (deadline of 31 May or, when applicable, the next business day).

Subsection (f) of Section 135 of the TC includes an obligation for an external tax auditor to include a note in its report regarding transactions conducted by the taxpayer with its related parties or entities domiciled in tax haven jurisdictions, indicating whether the taxpayer complies with the transfer pricing legislation.

b) Materiality limit/thresholds

► Transfer pricing documentation

No materiality limit.

► Economic analysis

No materiality limit.

► BEPS master and local files

El Salvador has not implemented or included master and local file requirements.

► CbCR

El Salvador has not implemented or included CbCR requirements.

El Salvador

c) Specific requirement(s)

► Treatment of domestic transactions

There is a documentation requirement for domestic transactions.

► Local language documentation requirement

The TP documentation needs to be submitted in the local language, per Article 333 of the Civil and Commerce Procedural Code.

► Safe harbor availability

There are no specific requirements for preparing safe harbor availability.

d) BEPS Action 13 implementation overview

► Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No.

► Coverage in terms of master and/or local files

Not applicable.

► Effective/expected commencement date

Not applicable.

► Material differences from OECD report template/format

Not applicable.

► Sufficiency of BEPS Action 13 format report to achieve penalty protection

Not applicable.

► CbCR notification and CbC report submission requirement

There is no CbCR notification and CbC report submission requirement for El Salvador.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Under the TC, when a taxpayer has assets with a value in excess

of USD1,142,857 or sales higher than USD571,429 during the previous fiscal year, it is required to appoint an external tax auditor (certified public accountant) to perform a statutory tax audit and file the resulting tax audit report within the first five months following the tax year that was audited (deadline of 31 May or, when applicable, the next business day).

Subsection (f) of Section 135 of the TC includes an obligation for an external tax auditor to include a note in its report regarding transactions conducted by the taxpayer with its related parties or with entities domiciled in tax haven jurisdictions, indicating whether the taxpayer complied with the transfer pricing legislation.

b) Transfer pricing-specific returns

Section 124-A of the TC establishes an obligation for taxpayers to file an information return for transactions conducted with related parties (Form F-982) within the first three months that follow the fiscal year-end, when these transactions (individually or in the aggregate) are equal to or exceed USD571,429 annually. Form F-982 is to be filed separately from the income tax return.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► Corporate income tax return

30 April.

► Other transfer pricing disclosures/return

31 March.

► CbCR notification

Not applicable.

► CbC report preparation/submission

Not applicable.

b) Documentation preparation deadline

Taxpayers should prepare and maintain contemporaneous transfer pricing documentation within the first five months following the close of the financial year (i.e., by 31 May).

c) Documentation submission deadline

- ▶ Is there a statutory deadline for submission of transfer pricing documentation?

No. The submission is upon request of the tax authorities.

- ▶ Time period/deadline for submission on tax authority request

There is no specific time range, but the Tax Authority usually grants 15 working days to submit the documentation once requested.

6. Transfer pricing methods

a) Applicability

- ▶ International transactions

Yes.

- ▶ Domestic transactions

Yes.

b) Priority/preference of methods

The law does not regulate specific transfer pricing methods, but it establishes that tax authorities are empowered to apply the CUP method when adjusting prices.

The introduction of Decree No. 763 through Section 62-A clarifies that the OECD methods are acceptable for both taxpayers and the DGII when determining and assessing prices in related party transactions. In addition, the GO establishes that the following methods are acceptable: CUP, resale price, cost-plus, TNMM and profit split.

7. Benchmarking requirements

a) Local vs. regional comparables

Considering the lack of financial information available on local comparables, international comparables are accepted by the tax authorities.

b) Single-year vs. multi-year analysis

Multiple-year testing for the comparables only; in practice, the number of years is three.

c) Use of interquartile range

Not specified, but the Excel Quartile calculation is preferred and common in practice.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

A fresh benchmarking study needs to be conducted every year. In practice, local tax authorities require use of the most recent available financial information for the comparables and the tested party.

e) Simple vs. weighted average

The weighted average is preferred for arm's-length analysis; in practice, three-year weighted average arm's-length ranges are frequently calculated.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures

Failure to maintain transfer pricing documentation leads to a penalty of 2% of the taxpayer's equity, as reflected on the taxpayer's balance sheet, minus any surplus on the revaluation of assets. This is imposed when the taxpayer does not have supporting documentation or fails to comply with the obligation to maintain all documentation for 10 years for transactions conducted with related parties, and those with individuals or legal entities domiciled, incorporated or resident in tax haven jurisdictions. Said penalty cannot be less than nine monthly minimum wages.¹

Failure to comply with Section 135-(f)

In case the external tax auditor fails to comply with the new requirement under Section 135 (f) of the TC, a penalty of five monthly minimum wages is established for the tax auditor, regardless of any other penalty that may be imposed by the local certified public accounting council for not complying with the responsibilities of the profession.

¹ The minimum wage is established by El Salvador's Labor Ministry. As of 1 January 2015, and according to Executive Decree No. 104 published in the Official Gazette No. 119, the monthly commercial minimum wage to which the TC refers was established was USD251.70.

El Salvador

Additionally, when the tax auditor's noncompliance is due to the fact that the taxpayer failed to provide the information and documentation requested and required by the tax auditor, a penalty of 0.1% of the taxpayer's equity (as reflected on the taxpayer's balance sheet), minus surplus on the revaluation of assets, would be imposed on the taxpayer. Said penalty is at least four monthly minimum wages.

Failure to file related-parties information return

In case of noncompliance with the filing obligation of the information return, Section 244 literal (I) of the TC establishes a penalty of 0.5% of the taxpayer's equity (as reflected on the taxpayer's balance sheet), minus any surplus on the revaluation of assets, with a minimum of three monthly minimum wages.

When there is no balance sheet, or it is not possible to determine the taxpayer's equity, a penalty of nine monthly minimum wages applies.

► If an adjustment is sustained, can penalties be assessed?

In the case of adjustments for underpayments either on income tax or value – added tax, a general penalty of 25% of the unpaid tax applies, with a minimum of USD568.

► Is interest charged on penalties/payable on refund?

Late interest also applies. If the tax liability is paid within two months of the original payment term, the applicable annual interest rate is 6.16%. If the tax liability is paid more than two months after the original payment term, the applicable annual interest rate is 10.16%.

b) Penalty relief

According to Section 261 of the TC, if there is voluntary disclosure and payment before any notice of an examination is received from the tax authorities, a 75% penalty reduction applies; if an examination is already ongoing, a 30% penalty reduction may still apply.

After a tax audit, the Tax Authority (Reviewer Office) issues an audit report that contains the findings of the audit (e.g., potential tax adjustments, if any). The taxpayer has five days to file the initial "non-conformity" script and 10 additional days to file the corresponding proofs (15 working days in total). The Tax Authority will review the arguments and proofs filed, and issue a resolution (approximate time of two to six months). After the Tax Authority sends the letter of determination (its final resolution that contains the final tax adjustments and penalties in charge of the taxpayer), the taxpayer has 15

working days to file an appeal before the Administrative Board of Appeals (still at an administrative level).

The appeals process has three phases (up to one to three years): the initial appeal script, the proofs phase and the final allegations phase. Once the Administrative Board issues its resolution, in case it is unfavorable for the taxpayer, the taxpayer can file a complaint script at a judicial level (within 60 working days from the date of notification of the final resolution).

9. Statute of limitations on transfer pricing assessments

Under the current legislation, and in particular under the rules of the TC, the ordinary statute of limitations is three years; however, when no tax return has been filed, the statute of limitations is extended to five years.

10. Likelihood of transfer pricing scrutiny/ related audit by local authority

► Likelihood of transfer pricing-related audits (*high/medium/low*)

The likelihood of a general tax audit currently is categorized as medium. As part of every general tax audit, the tax authorities review compliance with transfer pricing regulations. Thus, the likelihood that transfer pricing will be scrutinized as part of a general tax audit is high.

► Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

In case transfer pricing is scrutinized, the likelihood that the transfer pricing methodology will be challenged is medium. In practice, the DGII consistently has been questioning the application of transfer pricing methods (i.e., the CUP method with internal comparables instead of the TNMM), the profit level indicator and the use of comparables with losses, mainly.

► Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

High, because in most audits the DGII challenges either the methodology or the comparables.

► Specific transactions/industries/situations, if any, more likely to undergo audit

None.

11. APA opportunity

▶ **Availability (unilateral/bilateral/multilateral)**

None specified.

▶ **Tenure**

Not applicable.

▶ **Rollback provisions**

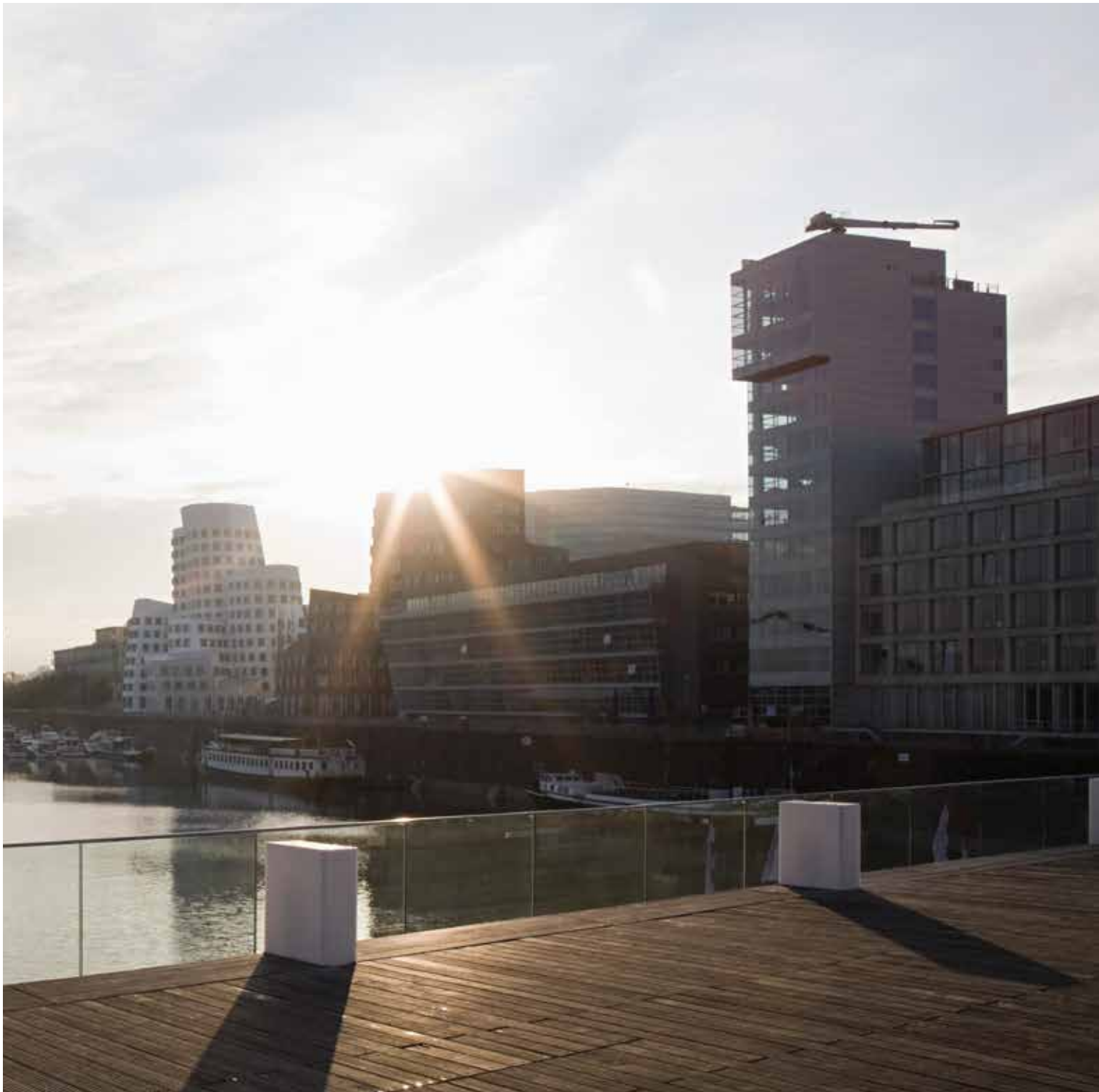
Not applicable.

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Estonia

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Estonian Tax and Customs Board.

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

The following articles of the Estonian Income Tax Act relate to transfer pricing:

- ▶ Article 8 – Associated persons
- ▶ Article 50, sections 4 to 8 – Taxation of profits transferred
- ▶ Article 53, sections 4 to 6 – Permanent establishments
- ▶ Article 14, section 7 – Sole proprietors
- ▶ Article 50, section 7 – Documentation requirements

Current Estonian transfer pricing (TP) legislation is effective as of 1 January 2007, amended as of 1 January 2011.

▶ Section reference from local regulation

Article 8 – Associated persons of Estonian Income Tax Act.

2. OECD guidelines treatment/reference

Estonia is an OECD member.

The tax authorities follow the OECD Guidelines. However, domestic legislation is the prevailing law

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Yes.

▶ Does transfer pricing documentation have to be prepared annually?

Yes. The transfer pricing documentation should be updated annually with the most recent data per company/group, industry

(if need be), as well as a functional analysis and economic analysis, if changes have occurred, and benchmark studies.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

There is no materiality limit based on transaction value; however, additional documentation is applicable to:

- ▶ A resident credit institution, finance institution, insurance agency or a listed company
- ▶ A resident of a low-tax-rate territory
- ▶ A resident legal person or a nonresident with a permanent establishment in Estonia meeting the following criteria:
 - a. Number of employees (including associated persons) is at least 250
 - b. Turnover of the financial year preceding the transaction with associated persons was at least EUR50 million
 - c. Consolidated balance sheet net assets were at least EUR43 million.

▶ Economic analysis

No materiality limit.

▶ BEPS master and local files

Not applicable.

▶ CbCR

Consolidated revenues of the group in the previous fiscal year amounted to at least EUR750 million.

c) Specific requirement(s)

▶ Treatment of domestic transactions

There is a documentation obligation for all related party transactions, domestic and cross-border.

▶ Local language documentation requirement

The TP documentation needs to be submitted in the local language (i.e., Estonian). The TP documentation may also be prepared in English, but the tax authorities may require translation of certain parts of the documentation.

Estonia

▶ Safe harbor availability

Not applicable.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No.

▶ Coverage in terms of master and/or local files

Not applicable.

▶ Effective/expected commencement date

Not applicable.

▶ Material differences from OECD report template/format

Not applicable.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

Not applicable.

▶ CbCR notification and CbC report submission requirement

There is no CbCR notification and CbC report submission requirement for Estonia.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

An annual report, including a description of transactions with related parties, must be filed within six months of the end of the relevant financial year. If the taxpayer has the obligation to prepare the transfer pricing documentation, such documentation must be completed every financial year.

The documentation does not have to be filed with the tax return or annual report.

b) Transfer pricing-specific returns

Currently, Estonian tax laws do not require a separate return for related party transactions.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ Corporate income tax return

Needs to be filed by the 10th date of each month.

▶ Other transfer pricing disclosures/return

Not applicable.

▶ CbCR notification

Within six months after the end of the financial year for which the reporting is to be made.

▶ CbC report preparation/submission

31 December (12 months after the end of the financial year for which reporting is to be made).

b) Documentation preparation deadline

TP documentation should be finalized by the time of submitting upon request.

c) Documentation submission deadline

▶ Is there a statutory deadline for submission of transfer pricing documentation?

There is no statutory deadline for submission of transfer pricing documentation, but it needs to be prepared annually.

▶ Time period/deadline for submission on tax authority request

Taxpayers are obligated to submit the documentation within 60 days of the tax authority's request.

6. Transfer pricing methods

a) Applicability

▶ International transactions

Yes.

▶ Domestic transactions

Yes.

b) Priority/preference of methods

The Tax and Customs Board accepts the CUP, resale price, cost-plus, profit split and TNMM or, if necessary, any other suitable method. There is no hierarchy of methods; all are treated as equal. However, if available, internal and Estonian domestic data is preferred for determining the arm's-length price.

7. Benchmarking requirements

a) Local vs. regional comparables

Local benchmarks are preferred, but Pan-European sets are acceptable.

b) Single-year vs. multi-year analysis

Multi-year analysis is acceptable.

c) Use of interquartile range

Excel Quartile is used in common practice.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

A benchmarking search must be up to date every year.

e) Simple vs. weighted average

A simple average is used in common practice.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures

If the required documentation or the relevant tax return is not submitted on time, the fine may be as high as EUR3,200. When a taxpayer intentionally submits wrong information on its tax return that reduces the tax paid, a criminal penalty may be imposed, and the fine may be as high as EUR16 million.

- ▶ If an adjustment is sustained, can penalties be assessed?

The income tax rate is 20% on the gross amount of the difference between the transfer price and arm's-length price (i.e., 20/80 of the net amount) and is payable even if a company has losses.

- ▶ Is interest charged on penalties/payable on refund?

If tax is assessed, interest on the tax amount at the rate of 0.06% per day, up to the principal tax amount, will be imposed retroactively as of the date when the tax was supposed to be paid until actual payment (here, interest is subject to income tax at the rate of 20/80 as a non-business-related expense).

b) Penalty relief

There is no penalty relief if a taxpayer has the necessary documentation but the transfer pricing is determined to be non-arm's-length and there is an income tax adjustment. However, imposing a fine is probably more the exception than the rule. Interest for the delay of the tax payment is always assessed.

9. Statute of limitations on transfer pricing assessments

The statute of limitations for making an assessment of tax is three years. In the event of intentional failure to pay or withhold an amount of tax, the limitation period for making an assessment of tax is five years. The statute of limitations begins as of the due date of submission of the tax return that was either not submitted or contained information leading to an incorrect determination of the tax due.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

- ▶ Likelihood of transfer pricing-related audits (*high/medium/low*)

High in the case of intragroup loans; medium in the case of large multinationals.

- ▶ Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

Medium; refer to the section above.

Estonia

► **Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)**

Medium to high; refer to the section above.

► **Specific transactions/industries/situations, if any, more likely to undergo audit**

Management and support services, as well as intragroup financing, are under critical scrutiny regardless of the industry and company. Additionally, primary business transactions of a company are always under critical scrutiny, as well as large-amount transactions and transactions involving intellectual property.

11. APA opportunity

► **Availability (unilateral/bilateral/multilateral)**

Currently, Estonian tax laws do not provide any opportunity to conclude APAs.

► **Tenure**

Not applicable.

► **Rollback provisions**

Not applicable.

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Fiji

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Fiji Revenue and Customs Authority (FRCA).

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

Legal Notice 11, Fiji Transfer Pricing Regulations 2012.

▶ Section reference from local regulation

Section 3 (Associates), subsection 2 of the Fiji Transfer Pricing Regulations.

2. OECD guidelines treatment/reference

Fiji is not a member of the OECD. The FRCA adopts the positions outlined in the OECD Guidelines for MNEs and tax administrations, and it proposes following the OECD Guidelines in administering Fiji's transfer pricing (TP) rules. Consequently, the FRCA Guidelines supplement, rather than supersede, the OECD Guidelines, and the OECD Guidelines should be referred to if more detail is required.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Yes.

▶ Does transfer pricing documentation have to be prepared annually?

Yes. The minimum requirement to achieve this is a TP analysis or TP documentation of the foreign country benchmarking documentation.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

No materiality limit.

▶ Economic analysis

No materiality limit.

▶ BEPS master and local files

Not applicable.

▶ CbCR

Not applicable.

c) Specific requirement(s)

▶ Treatment of domestic transactions

There is no specific requirement for domestic transactions.

▶ Local language documentation requirement

The TP documentation needs to be submitted in the local language, according to Fiji Transfer Pricing Regulations 2012 Part III.

▶ Safe harbor availability

Not applicable.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No.

▶ Coverage in terms of master and/or local files

Not applicable.

▶ Effective/expected commencement date

Not applicable.

▶ Material differences from OECD report template/format

Not applicable.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

Not applicable.

▶ CbCR notification and CbC report submission requirement

There is no CbCR notification and CbC report submission requirement for Fiji.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

There are no specific disclosure requirements. However, it is advisable to provide details of the following, together with the income tax return; otherwise, the FRCA may disallow a deduction for the same:

- ▶ Payments to nonresidents, such as dividends, interest, management fees, “know-how” payments, royalties or contract payments made

In some instances, the FRCA may require additional details before assessing an income tax return.

b) Transfer pricing-specific returns

There is no separate transfer pricing return required to be filed in Fiji.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

- ▶ Corporate income tax return

31 March or three months after the financial year-end.

- ▶ Other transfer pricing disclosures/return

The Filing deadline for other transfer pricing disclosures/return is usually the fiscal year-end or the date of the extension.

- ▶ CbCR notification

Not applicable.

- ▶ CbC report preparation/submission

Not applicable.

b) Documentation preparation deadline

The transfer pricing documentation needs to be finalized by the time of lodging the tax return to achieve penalty protection (e.g., where there is a contemporaneous requirement). Dates depend on the fiscal year-ends. For example, for fiscal years ending 31 December, the deadline is usually at the end of the third month – i.e., March – of the following year, or at the date the tax office provides for under the tax agent lodgment program.

c) Documentation submission deadline

- ▶ Is there a statutory deadline for submission of transfer pricing documentation?

The transfer pricing documentation should be submitted each year, along with the tax return.

- ▶ Time period/deadline for submission on tax authority request

The taxpayer has 14 days to submit the transfer pricing documentation once requested by the tax authorities, but an extension can be requested.

6. Transfer pricing methods

a) Applicability

- ▶ International transactions

Yes.

- ▶ Domestic transactions

None specified.

b) Priority/preference of methods

The FRCA accepts the most reliable method or methods chosen from the following:

- ▶ CUP
- ▶ Resale price
- ▶ Cost-plus
- ▶ Profit split
- ▶ TNMM

TNMM and the profit split method are the most commonly used in Fiji. Because Fiji is in a developing state, most transactions are cross-border and performed by multinationals.

7. Benchmarking requirements

a) Local vs. regional comparables

A local benchmarking can be used for benchmarking requirements in Fiji.

b) Single-year vs. multi-year analysis

Multi-year analysis (five years), as per common practice.

c) Use of interquartile range

In recent TP audits, the interquartile range was used by the tax authorities.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

There is no need to conduct a fresh benchmarking search every year, and financial updates are acceptable.

e) Simple vs. weighted average

The weighted average, as per common practice.

f) Other specific benchmarking criteria, if any

The FRCA at most times uses the Australian Taxation Office (ATO) industry benchmarking on profitability.

- ▶ The amount of penalty imposed under the abovementioned cases is increased by 10 percentage points if this is the second application of the penalties relating to making false or misleading statements, and 25 percentage points if this is the third or a subsequent application

▶ If an adjustment is sustained, can penalties be assessed?

Refer to the section above.

▶ Is interest charged on penalties/payable on refund?

No interest is charged on penalties. As for refunds, the market interest rate determined by the Reserve Bank of Fiji is applicable on refunds withheld by the tax office.

b) Penalty relief

Shortfall penalties may be reduced by 10 percentage points if the person voluntarily discloses the shortfall prior to the earlier of:

- ▶ The discovery by the FRCA of the tax shortfall
- Or
- ▶ The commencement of an audit of the tax affairs of the taxpayer

Shortfall penalties may also be reduced if a taxpayer has a historically good compliance record.

8. Transfer pricing penalties/relief

a) Penalty exposure**▶ Consequences of failure to submit/late submission and/or incorrect disclosures**

In accordance with the Income Tax (Transfer Pricing) Regulations 2012, the following penalties apply:

- ▶ Failure to keep required transfer pricing documentation is an offense, and upon conviction the person is liable for a fine of at least FJD100,000.

In accordance with the Tax Administration Decree, the following penalties apply:

- ▶ For failing to keep, retain or maintain accounts, documents or records as required under a tax law:
 - ▶ If the failure is knowingly or recklessly made, the taxpayer faces a penalty equal to 75% of the amount of tax payable for the tax period to which the failure relates.
 - ▶ In any other case, the taxpayer faces a penalty equal to 20% of the amount of tax payable for the tax period to which the failure relates.
- ▶ For making false or misleading statements:
 - ▶ If the statement or omission was made knowingly or recklessly, the taxpayer faces a penalty equal to 75% of the tax shortfall.
 - ▶ In any other case, the taxpayer faces a penalty equal to 20% of the tax shortfall.

9. Statute of limitations on transfer pricing assessments

There is no specific statute of limitations applying only to transfer pricing assessments. Accordingly, the statute of limitations applying to all assessments will also apply to TP assessments.

In accordance with the Tax Administration Decree, the amendment of a tax assessment may be made:

- ▶ In the case of fraud, willful neglect or serious omission by or on behalf of the taxpayer, at any time

Or

- ▶ In any other case, within six years of the date the FRCA served the notice of assessment on the taxpayer

10. Likelihood of transfer pricing scrutiny/ related audit by local authority

▶ Likelihood of transfer pricing-related audits (*high/medium/low*)

Usually low, as the FRCA lacks the qualified resources to conduct such related audits repeatedly. Tax audits are undertaken at the discretion of the FRCA. The FRCA selects audit targets based on certain criteria and risk profiling, including:

- ▶ Company incurring ongoing losses
 - ▶ Lower-than-expected profitability
 - ▶ Dealings with associates in tax haven jurisdictions
 - ▶ Dealings with associates in special-purpose tax haven jurisdictions – these jurisdictions have relatively high headline tax rates but offer significant tax savings for specified activities
 - ▶ Those who offer special reduced tax rates for a particular activity
 - ▶ Poor compliance processes and records
 - ▶ Intragroup charges – e.g., management and technical fees
 - ▶ Large royalty payments and excessive debt levels (i.e., interest payments)
 - ▶ Transfer of intangibles
 - ▶ Business restructurings
- ▶ **Likelihood of transfer pricing methodology being challenged**
(*high/medium/low*)

From experience, if a tax audit is conducted on a TP client, there is a medium likelihood that the Fiji Revenue and Customs

Service will look into the basis of the related party transaction. In other words, a referral is made to the TP team, which in most cases will conduct an analysis of the methodology – a challenge will be low.

▶ Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

High; if the methodology is challenged, then the tax office will divert resources to the case if the exposure is substantial.

▶ Specific transactions/industries/situations, if any, more likely to undergo audit

Manufacturing and services such as banking and insurance (refer to the section above for more details).

11. APA opportunity

▶ Availability (unilateral/bilateral/multilateral)

APAs were not available in Fiji at the time of this publication but may be considered later in the context of introducing a binding rulings process. Currently, there is one APA in existence in Fiji.

However, the FRCA encourages taxpayers to discuss related party transactions with the FRCA prior to entering into them, with a view toward eliminating any TP implications of the same, even though such discussions are not binding on either party.

▶ Tenure

Not applicable.

▶ Rollback provisions

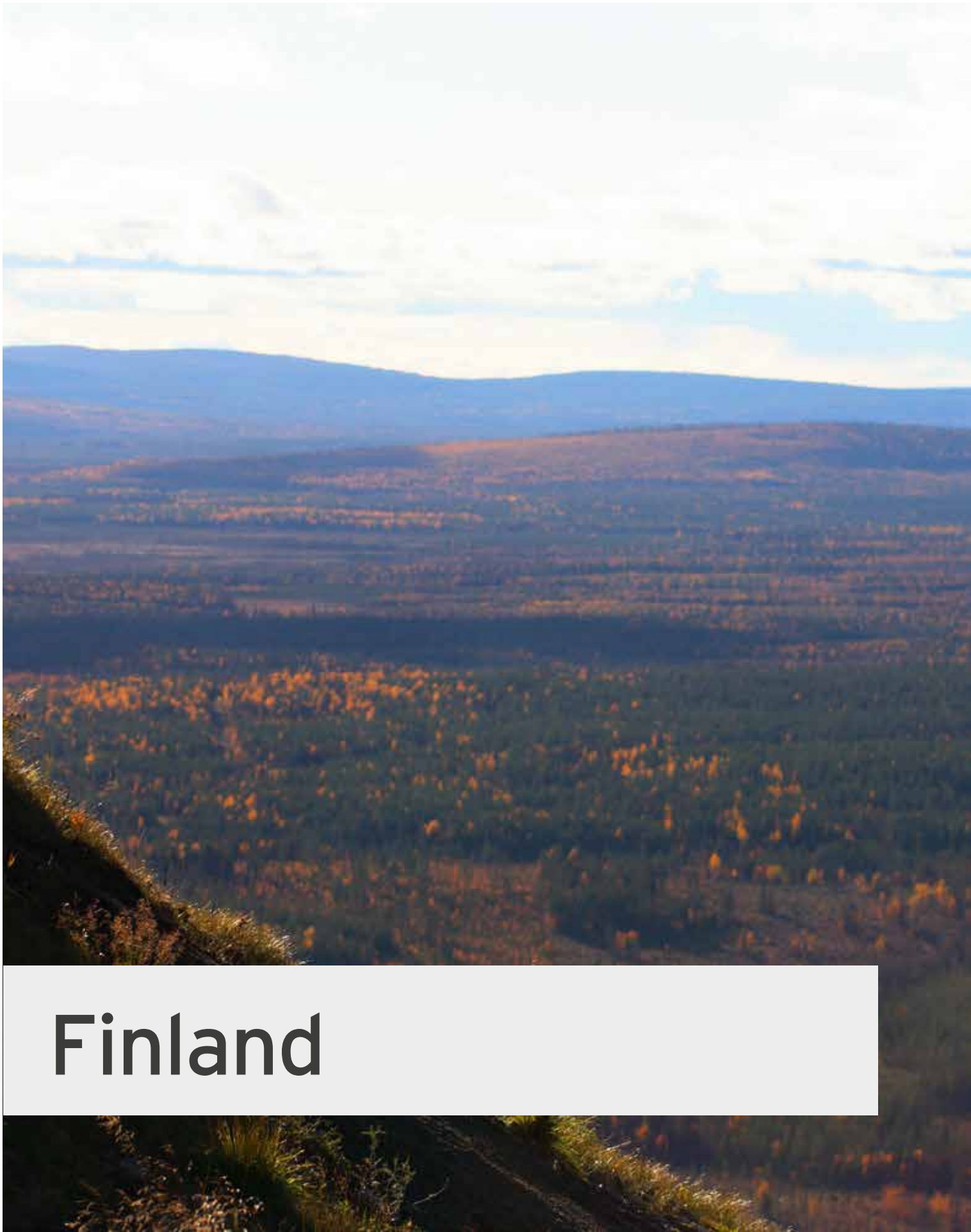
Not applicable.

Contact

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Finland

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Finnish Tax Administration.

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

Act on the Tax Assessment Procedure, sections 14a to 14e, 31, 32, 75 and 89. The original Finnish transfer pricing rules entered into force on 1 January 2007. The new provisions concerning BEPS Action 13's master file and local file, as well as the rules on CbCR, entered into force on 1 January 2017. The rules concerning CbCR apply, however, to financial years that have begun on or after 1 January 2016.

► Section reference from local regulation

Act on the Tax Assessment Procedure, Section 31.

2. OECD guidelines treatment/reference

Finland is a member of the OECD.

The Finnish transfer pricing regulations and tax practice in general follow the OECD Guidelines.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

Sections 14a to 14e of the Act on the Tax Assessment Procedure contain rules on the preparation of transfer pricing documentation. The Finnish tax authorities have also issued separate guidelines concerning transfer pricing.

Finland has implemented the master and local file requirements as well as CbCR as proposed in BEPS Action 13.

► Does transfer pricing documentation have to be prepared annually?

Yes. There is, however, no annual obligation to submit transfer pricing documentation, and the completed transfer pricing

documentation should be submitted only if requested by the tax authorities. There are no specific, separate minimum requirements for how the documentation should be updated from year to year.

b) Materiality limit/thresholds

► Transfer pricing documentation

The obligation to prepare transfer pricing documentation is stated in Section 14a of the Act on the Tax Assessment Procedure, and the transfer pricing documentation applies to the following entities:

- A company that together with its group companies employs 250 people or more
- A company that together with its group companies has a consolidated turnover of EUR50 million or more and consolidated net assets of EUR43 million or more
- A company that does not qualify as a small or medium-sized enterprise as defined in the EU Commission Recommendation (2003/361/EC) concerning the definition of micro, small and medium-sized enterprises

The documentation requirements apply if one of the abovementioned criteria is fulfilled. The figures used in calculating the abovementioned criteria are figures for the whole group.

► Economic analysis

Refer to the section below.

► BEPS master and local files

The obligation to prepare master file documentation applies if one of the abovementioned limits regarding the employees, turnover and assets of the group is fulfilled and if the total value of intercompany transactions between the two parties during the fiscal year in question exceeds EUR500,000.

The obligation to prepare local file documentation applies if one of the abovementioned limits regarding the employees, turnover and assets of the group is fulfilled. Local file documentation needs to be prepared, although the total value of intercompany transactions between two parties would be below EUR500,000, but in this case, less-extensive documentation is allowed (functional analysis, comparability analysis and description of the transfer pricing method can be omitted).

Finland

► CbCR

Finnish CbCR requirements apply if the group revenue exceeds EUR750 million in the financial year immediately preceding the reporting financial year.

c) Specific requirement(s)

► Treatment of domestic transactions

There is no transfer pricing documentation obligation for domestic transactions. The arm's-length principle should be, nevertheless, applied also in domestic transactions.

► Local language documentation requirement

Transfer pricing documentation can be prepared in Finnish, Swedish or English.

► Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

► Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Finland has adopted BEPS Action 13 for transfer pricing documentation in its local regulations.

► Coverage in terms of master and/or local files

The master and local files are covered in accordance with OECD recommendations.

► Effective/expected commencement date

1 January 2017.

► Material differences from OECD report template/format

There are no material differences between the OECD report template/format and Finland's regulations.

► Sufficiency of BEPS Action 13 format report to achieve penalty protection

Yes, transfer pricing documentation prepared in the BEPS Action 13 format should be sufficient to achieve penalty protection.

► CbCR notification and CbC report submission requirement

There is a CbCR notification and CbC report submission requirement in Finland. The obligation to prepare a CbC report and submit a CbCR notification applies to financial years that have begun on or after 1 January 2016.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

None specified.

b) Transfer pricing-specific returns

If a taxpayer (including a Finnish branch of a foreign company) is obligated to prepare transfer pricing documentation in Finland, the Finnish tax authorities also require Form 78 to be completed and disclosed with the annual corporate income tax return. Information regarding cross-border intragroup transactions, which normally cannot be directly found in the company's financial statements, is reported on Form 78.

However, information regarding the transfer pricing method applied is not reported in this form.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► Corporate income tax return

End of the fourth month after the end of the financial year (i.e., 30 April if the financial year ends on 31 December).

► Other transfer pricing disclosures/return

Same as the deadline for filing the corporate income tax return (i.e., 30 April if the financial year ends on 31 December).

► CbCR notification

CbCR notification should be submitted by the last day of the financial year of the ultimate parent entity. For example, if FY 2018 of the ultimate parent entity ends on 31 December 2018, the CbCR notification for that financial year should be submitted by 31 December 2018.

► CbC report preparation/submission

The CbC report should be submitted within one year from the end of the financial year (i.e., by 31 December 2019 for a financial year that ends on 31 December 2018).

b) Documentation preparation deadline

There is no specific deadline for preparation of transfer pricing documentation (master file, local file), but a taxpayer should

be prepared to provide the transfer pricing documentation within 60 days if requested by the tax authorities.

c) Documentation submission deadline

- ▶ Is there a statutory deadline for submission of transfer pricing documentation?

There is no statutory requirement to submit transfer pricing documentation to the tax administration every year.

- ▶ Time period/deadline for submission on tax authority request

A taxpayer must deliver the transfer pricing documents within 60 days upon request. The first time the tax authorities can request delivery of the transfer pricing documentation is four months after the closing of financial statements.

6. Transfer pricing methods

a) Applicability

- ▶ International transactions

Yes.

- ▶ Domestic transactions

There is no transfer pricing documentation obligation for domestic transactions; however, the arm's-length principle should be, nevertheless, applied also for domestic transactions.

b) Priority/preference of methods

Taxpayers may choose any of the OECD transfer pricing methods, as long as the chosen method results in an arm's-length pricing for the intragroup transaction. In its selection of the method, a taxpayer should consider the aspects regarding the application of methods stated in the OECD Guidelines.

7. Benchmarking requirements

a) Local vs. regional comparables

There are no specific regulations governing the preparation of benchmarking studies, but the preference is for local/Nordic comparables. Pan-European comparables are, however, widely accepted in tax practice.

b) Single-year vs. multi-year analysis

Three-year analysis, as per common practice.

c) Use of interquartile range

Excel Quartiles, as per common practice.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

There is no need to conduct a fresh benchmarking search every year.

e) Simple vs. weighted average

There is a preference for a simple average for arm's-length analysis.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures

A tax penalty of up to EUR25,000 can be imposed for failure to comply with the transfer pricing documentation requirements, even if the pricing of intragroup transactions has been at arm's length.

- ▶ If an adjustment is sustained, can penalties be assessed?

Adjustment of taxable income may result in a separate tax penalty of up to 30% of the adjusted amount of income, as well as penalty interest.

- ▶ Is interest charged on penalties/payable on refund?

If the income of the taxpayer is adjusted upward, the resulting additional tax liability will incur interest at two different rates. A lower rate of interest, adjusted annually and 2% in 2017, is calculated until approximately 10 months after the end of the financial year. An interest at a higher rate (7% in 2017) applies from approximately 10 months after the end of the financial year until the due date of the additional tax liability resulting from the adjustment. Somewhat different rules apply to the calculation of interest for the tax assessment for years preceding 2017.

The rate of interest payable on tax refunds varies annually and was 0.5% during 2017.

b) Penalty relief

It is possible that the penalties can be reduced or removed if the taxpayer presents supplementary transfer pricing documentation that supports the arm's-length nature of the intragroup transactions. Determination of penalties will be made on a case-by-case basis.

According to a decision issued by the Finnish Supreme Administrative Court in 2014, penalties should not be assessed in transfer pricing cases where the taxpayer has adequately tried to follow the arm's-length principle in its intragroup pricing.

The following dispute resolution options are available if an adjustment is proposed by the tax authority:

- a. The taxpayer can initiate a MAP procedure in order to remove the double taxation.
- b. The taxpayer can also appeal the tax assessment decision

9. Statute of limitations on transfer pricing assessments

The time limit for the adjustment of income due to the failure to apply arm's-length principles to the pricing of a transaction is six years after the end of the calendar year during which the financial statement was closed. This statute of limitations applies to financial years that ended on or after 1 January 2017. The previous rules were, in this regard, identical.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► Likelihood of transfer pricing-related audits (*high/medium/low*)

High, as transfer pricing is one of the key topics of the tax authorities.

► Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

The likelihood of a challenge to the transfer pricing methodology should be moderate, provided that the transactions are reflecting the commercial rationale and the pricing models follow the OECD recommendations.

► Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

Medium to high; it is very typical that a reassessment will be imposed by the tax office if a challenge is made during a tax audit.

► Specific transactions/industries/situations, if any, more likely to undergo audit

Transactions involving transfer of intellectual property rights and business restructurings.

11. APA opportunity

► Availability (unilateral/bilateral/multilateral)

It is possible to apply for an APA with the Finnish Tax Administration. There is, however, no formal APA program available in Finland.

► Tenure

APAs are concluded for a fixed term, but there are no formal rules concerning the term in Finland.

► Rollback provisions

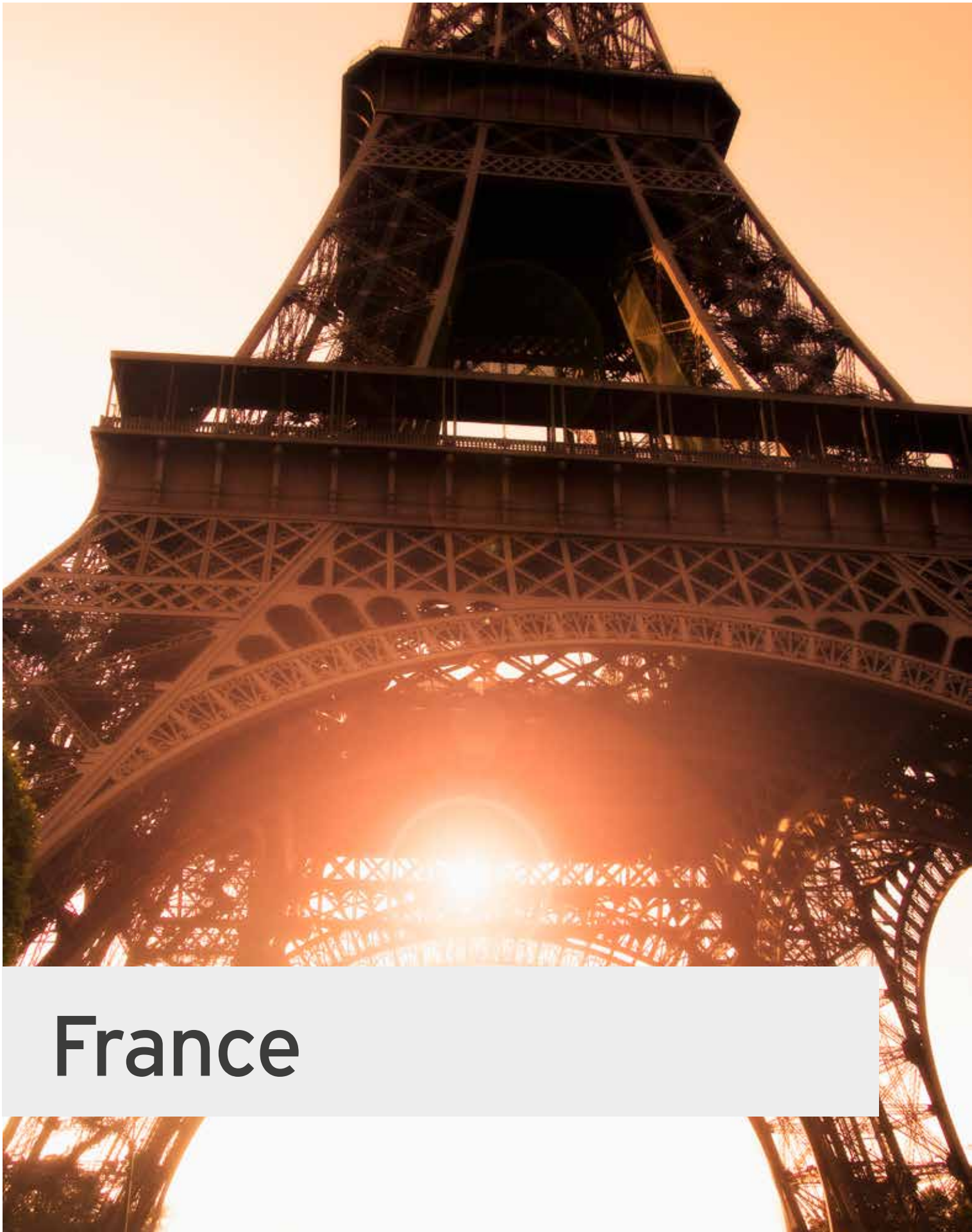
None.

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France

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

French tax authorities (FTA) (Direction Générale des Finances Publiques, or DGFIP; formerly, Direction Générale des Impôts, or DGI).

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

French Tax Code (FTC) articles 57 (arm's-length principle), 223 quinquies B (annual declaration of related-party transactions), 223 quinquies C (CbCR), 238A (reversal of burden of proof in case of tax haven), 209B (CFC regulation), 212-I and 39-1 3 (thin capitalization legislation, applied in the context of certain intragroup financing arrangements only, e.g., intragroup interest payments on intragroup debt), 1735 ter (transfer pricing documentation penalty regime) and 1729F (CbCR penalties).

French Procedural Tax Code (FPTC) articles L 13 AA (transfer pricing documentation requirements), L 10 (general information requests during a tax audit) and L 13 B (transfer pricing-related questions during a tax audit; this article reverses the burden of proof from the tax authority onto the taxpayer and can only be applied if certain conditions are met).

► Section reference from local regulation

FTC Article 39-12.

2. OECD Guidelines treatment/reference

France is a member of the OECD.

The French tax authorities consider the French transfer pricing regulations to be consistent with the OECD Guidelines and are following the BEPS developments very closely (certain BEPS initiatives have been introduced into law).

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

Yes.

► Does transfer pricing documentation have to be prepared annually?

Transfer pricing documentation needs to be prepared annually under local country regulations. Transaction values must be updated, and a memo that confirms changes to prior-year content must be prepared. However, comparable searches only need updating every three years, under the condition that no material changes occurred during that period.

b) Materiality limit/thresholds

► Transfer pricing documentation

Taxpayers that fulfill at least one of following conditions need to prepare transfer pricing documentation compliant with Article L 13 AA of the FPTC:

- Entities that generate more than EUR400 million of turnover and/or have at least EUR400 million of gross assets on the balance sheet at the end of the year
- Entities that are owned, directly or indirectly, by an entity that passes this EUR400 million threshold

Or

- Entities that own, directly or indirectly, an entity that passes this EUR400 million threshold

► Economic analysis

There is no materiality limit prior to 2018. For financial years starting on or after 1 January 2018, only the "most important intragroup transactions" need to be benchmarked. A separate decree, published in July 2018, specifies that the "most important intragroup transactions" are cross-border intragroup transactions that exceed EUR100,000 by type of transactions. A "type of transaction" is, for example, tangible goods purchase, tangible goods sale, service provision, trademark royalty, IT license, sale of a tangible asset or purchase of an intangible asset.

France

► BEPS master and local files

This is not applicable prior to 2018. For financial years starting on or after 1 January 2018, Article L 13 AA of the FPTC was amended to reflect the outcome of BEPS Action 13 – i.e., adoption of the master file/local file approach to transfer pricing documentation.

► CbCR

EUR750 million.

c) Specific requirement(s)

► Treatment of domestic transactions

There is no documentation obligation for domestic transactions.

► Local language documentation requirement

The transfer pricing documentation does not need to be submitted in the local language, and English-language reports are commonly provided to the French tax authorities. However, the FTA does have the power to demand a translation into French of all or parts of the documentation.

► Safe harbor availability

None Specified.

d) BEPS Action 13 implementation overview

► Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

France has adopted BEPS Action 13. CbCR requirements were adopted for financial years starting on or after 1 January 2016, whereas master file/local file requirements were adopted for financial years starting on or after 1 January 2018.

► Coverage in terms of master and/or local files

Both master and local files are covered, but only for financial years starting on or after 1 January 2018.

► Effective/expected commencement date

Not applicable.

► Material differences from OECD report template/format

The decree that complements Article L 13 AA (i.e., the French transfer pricing documentation requirements) added the following elements to the OECD's Action 13 recommendations:

- The master file and local file have to be made available in electronic format.
- All financial data contained in the master file and local file has to be made available in an electronic format that allows the French tax authorities to verify the calculations (e.g., in Excel).
- A specific format, in terms of section headings and the order of the sections, is specified, but the sections themselves are consistent with the OECD's Action 13 recommendations.
- The entity's financial information in the local file needs to be sourced from the French statutory accounts, and the corresponding account numbers need to be provided in the local file.

► Sufficiency of BEPS Action 13 format report to achieve penalty protection

A BEPS Action 13 format report should be sufficient to achieve penalty protection, but financial data contained in the report needs to be provided in electronic format. In addition, financial data of the French entity itself needs to be sourced from the French statutory accounts, listing the corresponding relevant account numbers.

► CbCR notification and CbC report submission requirement

There is a CbCR notification and CbC report submission requirement in France. However, if the ultimate parent entity (UPE) has submitted a CbCR for the group and if that UPE is located in a country that has signed an automatic exchange of information agreement with France, no CbCR notification needs to be performed by the French entity. The list of countries that have signed such an exchange of information agreement with France is regularly updated and published by the French tax authorities.

4. Transfer pricing return/related party disclosures

a) Related-party disclosures/transfer pricing-related appendices

The transfer pricing documentation (i.e., required by either Article L 13 AA or Article L13B) only needs to be provided upon request during a tax audit.

The Transfer Pricing Statement (i.e., required by Article 223 quinquies B) needs to be submitted as part of the taxpayer's annual tax return (CERFA form 2257-SD). This form needs to be submitted at the latest six months after the legal deadline for submitting the tax return itself. Filing has to be done electronically and in French. The threshold for entities having to lodge a Transfer Pricing Statement is lowered from EUR400 million to EUR50 million, but only cross-border intragroup transactions exceeding a threshold of EUR100,000 per type of transaction need to be disclosed on this tax return form.

CbCR disclosures or notifications are required by Article 223 quinquies V.

b) Transfer pricing-specific returns

See the above section about the Transfer Pricing Statement and CbCR to be submitted to the FTA, provided by Article 223 quinquies B and new Article 223 quinquies C of the FTC, respectively, for companies that satisfy specific criteria.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► Corporate income tax return

Generally three months after the financial year-end; a minor extension is granted for companies closing on 31 December.

► Other transfer pricing disclosures/return

The Transfer Pricing Statement (tax form 2257-SD) needs to be submitted within six months of the legal deadline for submitting the tax return itself.

► CbCR notification

At the same time as submitting the tax return – i.e., generally three months after the financial year-end.

► CbC report preparation/submission

Within 12 months after the end of the financial year.

b) Documentation preparation deadline

Transfer pricing documentation needs to be provided only upon request in the case of a tax audit. However, as the taxpayer only has 30 days to provide its transfer pricing documentation after having received such a request, proactive preparation is recommended.

c) Documentation submission deadline

► Is there a statutory deadline for submission of transfer pricing documentation?

There is no statutory deadline for submission of transfer pricing documentation; it only needs to be finalized by the time it is submitted upon request.

► Time period/deadline for submission on tax authority request

Taxpayers are obligated to submit the documentation within 30 days of the tax authority's request. This can potentially be extended to up to 60 days, but the decision to allow such an extension is at the discretion of the tax inspector.

6. Transfer pricing methods

a) Applicability

► International transactions

Yes.

► Domestic transactions

No, as no transfer pricing documentation obligation exists in France for domestic transactions.

b) Priority/preference of methods

The tax authorities accept the following methods: CUP, resale price, cost-plus, profit split and TNMM. Tax inspectors usually prefer the TNMM based on French comparables when the tested party is French.

7. Benchmarking requirements

a) Local vs. regional comparables

French comparables are preferred when the tested party is French. However, Pan-European comparables are sufficient for transfer pricing documentation penalty protection.

b) Single-year vs. multiyear analysis

Multiple-year testing (three years).

c) Use of interquartile range

Excel Quartile.

d) Fresh benchmarking search every year vs. rollforwards/update of the financials

There is no need to conduct a fresh benchmarking search every year or update the financials of a prior study. French administrative guidance allows for updating the benchmarking studies every three years instead of annually, on the condition that no material changes occurred during the period. However, inspectors tend to ask for a refresh of the financial information (i.e., addition of the most recent available financial information) when comparables searches have not been updated.

e) Simple vs. weighted average

The weighted average is used for arm's-length analysis.

f) Other specific benchmarking criteria, if any

Independence of comparables is required by law. Independence is either a question of law (exceeding 50% of detention) or fact (whether management's decision can be influenced by the other entity).

8. Transfer pricing penalties/relief

a) Penalty exposure

► Consequences of failure to submit/late submission and/or incorrect disclosures

Penalties specific to a failure to comply with the transfer pricing documentation requirements apply, in addition to the fiscal penalties generally applied as a consequence of a transfer pricing reassessment. Transfer pricing reassessments from the FTA trigger an adjustment of the taxable profit for corporate income tax purposes (and other taxes, depending on the case).

Specific transfer pricing penalties apply when the taxpayer fails to answer the tax authorities' request for documentation, either on the basis of Article L 13B of the FPTC (which relates to general transfer pricing documentation requirements, if the FTA can provide evidence of a transfer pricing issue before it applies this article) or on the basis of articles L 13AA and L 13AB of the FPTC (which relate to special transfer pricing documentation requirements). Failure to provide complete information in the framework of Article L 13B of the FPTC may result in:

- i. A reassessment of the company's taxable profit based on information the tax authorities possess
 - ii. The application of a EUR10,000 penalty for each year audited
- Failure to provide sufficient transfer pricing documentation under the framework of articles L 13AA and L 13AB of the FPTC will trigger penalties. Such transfer pricing documentation-related penalties are the highest of the following amounts:

- i. A minimum of EUR10,000 per entity and per period not documented
 - ii. 0.5% of the volume of transactions that were not documented
- Or
- iii. 5% of the reassessments based on Article 57 (arm's-length principle) of the FTC

Failure to submit a Transfer Pricing Statement as required by Article 223 quinquies B of the FTC or making erroneous statements on this tax return form (form 2257-SD) will trigger penalties as follows:

- i. EUR150 if the Transfer Pricing Statement is not submitted
- Or
- ii. EUR15 per error, with a minimum penalty of EUR60 and a maximum penalty of EUR10,000

Failure to submit a Transfer Pricing Statement will increase the risk of tax audit, as the French tax authorities use this tax return form as a risk assessment tool.

Failure to submit a CbCR as required by Article 223 quinquies C of the FTC will trigger a penalty of maximum EUR100,000.

► If an adjustment is sustained, can penalties be assessed?

Penalties generally applied as a result of a transfer pricing reassessment, regardless of compliance with transfer pricing documentation requirements, are as follows:

- i. After a transfer pricing reassessment is made, the additional profit is qualified as a deemed distribution of a benefit. The tax treatment of such “benefit” transfer may trigger the same consequences as a deemed transfer of a dividend, depending on the definition of “dividend” in the applicable tax treaty. Accordingly, a withholding tax on the reassessed amounts is imposed by the FTA when the applicable tax treaty allows for imposing withholding taxes. When the double tax treaty permits the FTA to treat the transfer pricing reassessment as a deemed dividend distribution, the actual withholding tax applied depends on the relevant tax treaty provisions. In the absence of a specific tax treaty, the withholding tax rate applied is 30% and increases to 75% when the foreign entity is based in a “noncooperative” jurisdiction. Note that the effective rate will be the grossed-up rate (i.e., 300% effective withholding tax rate in the case of a reassessed transaction with a “noncooperative” jurisdiction).
- ii. If the transfer is treated as a deemed dividend, the tax authorities also usually apply a 10% penalty for not declaring the withholding tax. Such penalty is applied regardless of the good faith of the taxpayer.
- iii. However, if certain cumulative conditions are met, at the request of the taxpayer, the withholding taxes may be waived. These cumulative conditions are enshrined in Article L62 A of the FPTC but basically require that (i) the taxpayer files, before the FTA issues the tax bill, a written request to apply Article L62 A, and (ii) the amounts classified as deemed dividends are repatriated to the benefit of the French taxpayer within 60 days from the request. However, the taxpayer cannot have recourse to Article L62 A if the non-French related party that entered into the reassessed transaction with the French entity is located in a noncooperative state or territory.
- iv. Supplementary penalties apply if the taxpayer committed a willful offense (formerly referred to as “bad faith” penalties) (40%) – this is much more frequently applied by the tax authorities – or acted fraudulently (80%). In these cases, taxpayers are denied recourse to the European Union Arbitration Convention and often also from MAPs through the applicable double tax treaty (possibly subject to discussion, however, depending on treaty provisions).

It should be noted that assessment of a transfer pricing documentation penalty under Article L 13AA (transfer pricing documentation penalty regime) does not prevent the taxpayer from seeking recourse under MAP provisions. In addition, the adjustment may result in a reassessment of other taxes and contributions, such as business or local taxes and employee profit-sharing regimes.

► Is interest charged on penalties/payable on refund?

Late interest payments are applied in the case of tax reassessments made on the grounds of Article 57 of the FTC. The ordinary late payment interest rate is 0.4% per month (i.e., 4.8% per year), reduced to 0.2% for periods starting on or after 1 January 2018. In other words, when a late payment interest calculation bridges a period that included months prior to and after 1 January 2018, 0.4% is applied to the months prior to 1 January 2018 and 0.2% for periods after 1 January 2018.

Tax reimbursements that may be made by the French Government as a consequence of a MAP do not attract interest.

b) Penalty relief

During a tax audit and before the tax authorities send the notice of reassessment, taxpayers, under the framework of Article L 62 of the FPTC, are allowed to correct their errors or omissions in consideration of a reduced late-payment interest rate (3.36% per year), which is equal to 70% of the ordinary late-payment interest rate. In this respect, taxpayers must file a complementary tax return and pay the corresponding additional taxes at the same time.

The taxpayer can contest penalties for willful offense (40%) or penalties for fraudulent activities (80%) in court if such penalties are maintained at the end of the usual tax audit procedures.

9. Statute of limitations on transfer pricing assessments

The statute of limitations for transfer pricing adjustments is the same as for all French corporate tax assessments, generally three years following the year for which the tax is due. For example, a financial year that closed on 31 December 2017 will be statute-barred by 31 December 2020. Similarly, a financial year that closed on 31 March 2017 will also be statute-barred by 31 December 2020 (i.e., calendar-year principle applies). If no reassessment notice has been received by the taxpayer by 31 December 2020 at the latest, the 2017 will be statute-barred. However, carryforward losses can be audited as long as they are carried forward. But if the losses occurred in periods being statute-barred, the French tax authorities could only reassess up to the amount of the losses in those statute-barred years – i.e., they could not reassess additional taxable income in those statute-barred years and, at maximum, cancel the losses.

If the French tax authorities request international tax assistance (Article L 188A of the FPTC), administrative assistance procedures between tax authorities of different countries, then the statute of limitations is extended from three to five years in order to give the non-French authorities the time to respond and the French tax authorities the time to take into account this response in their analyses.

The general three-year statute of limitations can also be extended in specific cases, such as when an asset (e.g., going-concern/clientele) was transferred but not declared at the time of transfer (extension from three to six years in this particular case). An effective extension to 10 years applies in cases where permanent establishments are deemed to exist by the FTA and where the non-French entity never declared any activities in France to the FTA.

10. Likelihood of transfer pricing scrutiny/ related audit by local authority

► Likelihood of transfer pricing-related audits (*high/medium/low*)

High, as taxpayers that have been audited once usually enter a recurring three-year audit cycle and transfer prices will always be analyzed, to a greater or lesser extent, during tax audit.

► Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

High, as it is rare that a French tax inspector would invest the time and effort to investigate transfer prices in detail without at least trying to reassess.

► Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

High, as no French tax inspector would ever challenge a transfer pricing methodology without coming to the conclusion that this challenge is based on the assertion that the French taxable base was too low.

► Specific transactions/industries/situations, if any, more likely to undergo audit

In recent years, US-headquartered technology companies have been subject to highly publicized (in newspapers, etc.) tax police raids and tax audits. Also, intragroup financial transactions, in particular with Luxembourg, have been heavily scrutinized in the past two years. But, as a general comment, all types of intragroup transactions (e.g., management fees and royalties/licenses) are subject to scrutiny.

11. APA opportunity

► Availability (unilateral/bilateral/multilateral)

Bilateral, multilateral and, subject to certain well-defined conditions, unilateral APAs are available (Article L 80 B 7° of the FPTC).

► Tenure

APAs have a fixed term of three or five years. An APA Submission, an official request to be allowed into the APA program, needs to be lodged at the latest six months before the start of the first year the APA would apply. For example, for a 1 January 2018 start of the APA, the APA Submission would need to be lodged by 30 June 2017 at the latest. No administrative fees are required to be paid to the French authorities for entering into an APA.

► Rollback provisions

There is no rollback possibility.

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FYR of Macedonia

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Revenue Office and Customs Office.

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

No specific transfer pricing (TP) documentation requirement exists under the current tax legislation. The administrative guidelines to the Corporate Income Tax (CIT) Law stipulate that a taxpayer involved in intercompany transactions is obligated to present, upon the tax authority's request, sufficient information and analysis for proving that the prices applied are in line with the arm's-length principle. In practice, a transfer pricing analysis prepared in line with the OECD Guidelines should be sufficient for the taxpayer to comply with the tax authority's request.

► Section reference from local regulation

Related parties and associated enterprises are defined in Article 16 of the local CIT Law. The relevant law is publicly available only in the Macedonian language.

2. OECD guidelines treatment/reference

Macedonia is not a member of the OECD.

No reference is made in the law or in the administrative guidelines to the OECD Guidelines. However, in the absence of any guidance outlining what the contents of adequate documentation should look like, the OECD Guidelines can effectively serve as a model.

There are no specific tax regulations on business restructurings in FYR of Macedonia.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

No. The administrative guidelines to the CIT Law stipulate that a taxpayer involved in intercompany transactions is obligated

to present, upon the tax authority's request, sufficient information and analysis for proving that the prices applied are in line with the arm's-length principle. In practice, a transfer pricing analysis prepared in line with the OECD Guidelines should be sufficient for the taxpayer to comply with the tax authority's request.

► Does transfer pricing documentation have to be prepared annually?

No.

b) Materiality limit/thresholds

► Transfer pricing documentation

No materiality limit.

► Economic analysis

No materiality limit.

► BEPS master and local files

FYR of Macedonia is not an OECD member, and the local legislation has not yet been amended to reflect BEPS standards and recommendations. Nevertheless, the local tax authorities usually follow and accept the OECD Transfer Pricing Guidelines.

► CbCR

No CbCR legislation is in force; refer to the section above.

c) Specific requirement(s)

► Treatment of domestic transactions

There is a documentation obligation for domestic transactions.

► Local language documentation requirement

The TP documentation needs to be submitted in the local language. Any transfer pricing documentation provided to the tax authorities should be translated to Macedonian upon the tax officer's request.

► Safe harbor availability

There is a specific requirement for safe harbor availability. Safe harbor rules exist only in case of intercompany financing arrangements. An interest rate that is higher or lower than the Euribor rate with the same maturity as the related party loan increased for 1 percentage point is deemed an arm's-length rate for the domestic loan provider/debtor. For loans denominated in MKD, the reference rate used for the safe harbor rule is the Macedonian interbank rate.

FYR of Macedonia

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No.

▶ Coverage in terms of master and/or local files

Not applicable.

▶ Effective/expected commencement date

Not applicable.

▶ Material differences from OECD report template/format

Not applicable.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

None specified.

▶ CbCR notification and CbC report submission requirement

There is no CbCR notification or CbC report submission requirement for FYR of Macedonia.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

There were no specific disclosure requirements at the time of this publication.

b) Transfer pricing-specific returns

There are no transfer pricing-specific return requirements.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ Corporate income tax return

15 March.

▶ Other transfer pricing disclosures/return

There were no specific provisions for transfer pricing documentation deadlines at the time of this publication.

The time frame is specified in the tax authority's request. However, in practice, the time frame is very short; hence, it is advisable that the documentation be compiled as soon as practicable after the close of the tax year.

▶ CbCR notification

Not applicable.

▶ CbC report preparation/submission

Not applicable.

b) Documentation preparation deadline

The transfer pricing documentation needs to be finalized by the time of submitting upon request.

c) Documentation submission deadline

▶ Is there a statutory deadline for submission of transfer pricing documentation?

No.

▶ Time period/deadline for submission on tax authority request

No exact deadline is determined by the law. In practice, the time frame within which the taxpayer has to deliver the TP documentation ranges from 7 to 14 working days from the day of the request.

6. Transfer pricing methods

a) Applicability

▶ International transactions

Yes.

▶ Domestic transactions

Yes.

b) Priority/preference of methods

The CIT Law makes explicit reference to the CUP and cost-plus methods, although preference is for the CUP method. No reference is made to the other transfer pricing methods of the OECD Guidelines. However, using one of the other OECD transfer pricing methods is used in practice, as long as no CUPs are available and the taxpayer's analysis demonstrates that the method chosen is the most appropriate one, in line with the OECD Guidelines.

7. Benchmarking requirements

a) Local vs. regional comparables

In determining the difference between the market price and the transfer price, the domestic tax law stipulates that the transfer price will have to be compared with comparable uncontrolled transactions concluded in domestic or in comparable foreign markets.

b) Single-year vs. multi-year analysis

Single-year testing is used in an arm's-length analysis.

c) Use of interquartile range

In the absence of detailed domestic TP regulations, an analysis made in accordance with the OECD TP Guidelines is acceptable. Along this line, the use of the interquartile range for testing the arm's-length character of a related party transaction should be acceptable.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

A fresh benchmarking search needs to be performed every year. Under the tax law, the taxpayer has to provide analysis to a tax auditor, upon the auditor's request, why it deems that all of its related party transactions undertaken in the respective year are at arm's length.

e) Simple vs. weighted average

There is a preference for the simple average for testing an arm's-length analysis.

f) Other specific benchmarking criteria, if any

The 25% threshold is accepted as independence criteria.

are sufficient indications that tax evasion has taken place. For taxpayers not providing the tax authority with transfer pricing documentation upon its request, a fine of EUR3,000 is imposed. For the same offense, tax authorities are entitled to suspend the taxpayer's business activity for 3 to 30 days.

► If an adjustment is sustained, can penalties be assessed?

Please refer to the above section. As explained, provided that the tax authorities assess that the intercompany transactions are not at arm's length, they are entitled to make appropriate adjustments and to obligate the taxpayer to pay the amount of underestimated tax, including late-payment interest in the amount of 0.03% of the less-paid tax for each day of delay. In a worst-case scenario, the taxpayer may be penalized with a fine of 10 times the amount of the underestimated tax obligation. In practice, the tax authorities make the reassessment of the tax obligation and the intercompany charges based on locally available market data.

► Is interest charged on penalties/payable on refund?

Default interest of 0.03% applies on the amount of the additional tax liability for each day of delay in settling such liability.

b) Penalty relief

No penalty relief was available at the time of this publication.

If it objects to the tax authorities' decision, the taxpayer is entitled to file a complaint with the tax authorities in the first instance. The decision reached by the tax authorities upon the complaint of the taxpayer is final. The taxpayer is entitled to initiate an administrative dispute with the Administrative Court against the tax authorities' final decision. Nevertheless, with the submission of the legal remedies, the enforcement of the decision is not postponed and the taxpayer is obligated to pay the tax liability assessed by the tax authorities.

8. Transfer pricing penalties/relief

a) Penalty exposure

► Consequences of failure to submit/late submission and/or incorrect disclosures

Failure to report the correct amount of tax liability results in a penalty of up to 10 times the amount of the understatement of tax. Penal prosecution may not be ruled out if there

9. Statute of limitations on transfer pricing assessments

There is a five-year statute of limitations beginning with the year following the year of expiration of the statutory term granted for filing the CIT returns, after which the tax authorities may not audit the taxpayer's reported position and reassess tax liabilities. Audited tax periods can be re-audited further based on the decision of the tax authority, as long as the five-year time period has not elapsed.

10. Likelihood of transfer pricing scrutiny/ related audit by local authority

► Likelihood of transfer pricing-related audits (*high/medium/low*)

There is no mandatory frequency for performing tax audits. The tax authority has the discretion to initiate a tax audit in accordance with the audit plans. In general, the likelihood of an annually recurring tax audit is medium.

► Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

The likelihood that controlled financial transactions may be reviewed as part of that audit is characterized as high, and the likelihood that the transfer pricing methodology may be challenged is characterized as medium. The chances for auditing the related party transactions are high, as under the local CIT Law, TP adjustments represent permanent tax adjustments, included in the taxable income. As for the likelihood for challenging the transfer pricing methodology, the same is medium because of a lack of detailed local transfer pricing regulation. Namely, under the law, the arm's-length character should be proved by applying the CUP or the cost-plus method, without further providing guidelines on the manner for preparation of TP documentation. However, in practice, other methods are acceptable, provided there is justification on the reasons for rejecting the CUP and the cost-plus method.

► Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

If the transfer pricing methodology is challenged, the likelihood of an adjustment can be characterized as medium, because of the reasons explained above.

► Specific transactions/industries/situations, if any, more likely to undergo audit

None specified.

11. APA opportunity

► Availability (unilateral/bilateral/multilateral)

No binding ruling or APA opportunities were available at the time of this publication. Taxpayers may file a request for a written opinion with the Revenue Office or the Ministry of Finance for the interpretation and application of the tax law with regard to a specific tax issue. However, the value of the position of the tax authorities on a particular tax aspect is very limited because the tax authorities refuse to provide any opinion about transactions that have not yet been implemented.

► Tenure

Not applicable.

► Rollback provisions

Not applicable.

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Gabon

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Gabonese Tax Authority.

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

Section 12 and sections P 831, P 831 bis, P 831 ter, P 832 and P 860 of the General Tax Code contain the main legislative provisions concerning transfer pricing, effective from 1 January 2017.

► Section reference from local regulation

Section 12 of the General Tax Code and Section 11-a of the Tax Regulations on Group of Companies define related party as companies that are directly or indirectly under common control whether from a legal perspective or that are in substance under common control.

2. OECD guidelines treatment/reference

Gabon is a member of the Exchange and Research Centre for Leaders of Tax Administrations (an OECD body for the fight against tax evasion). The OECD Guidelines are followed in the local transfer pricing regulations.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

Yes.

► Does transfer pricing documentation have to be prepared annually?

Transfer pricing documentation has to be prepared annually under local country regulations. Taxpayers must at least provide an update of the previous year's file.

b) Materiality limit/thresholds

► Transfer pricing documentation

Not applicable.

► Economic analysis

Not applicable.

► BEPS master and local files

Not applicable

► CbCR

In accordance with Article 831 of the tax code, parent or ultimate parent corporations are required to file a CbC report within 12 months of the end of the fiscal year if the consolidated annual turnover, excluding tax, is greater than or equal to XAF491,967,750,000 (USD930,470,656).

c) Specific requirement(s)

► Treatment of domestic transactions

There is no documentation obligation for domestic transactions.

► Local language documentation requirement

The transfer pricing documentation needs be submitted in the local language (i.e., French). There is no written law, but in Gabon, only documents in French or certified translated copies in French are acceptable.

► Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

► Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Yes.

► Coverage in terms of master and/or local files

Both the master file and local file are covered.

► Effective/expected commencement date

The effective commencement date for the adoption of BEPS Action 13 was 1 January 2017.

► Material differences from OECD report template/format

There are no material differences between the OECD report template/format and Gabon's regulations.

► Sufficiency of BEPS Action 13 format report to achieve penalty protection

Yes, a BEPS Action 13 format report would be sufficient to achieve penalty protection.

Gabon

► CbCR notification and CbC report submission requirement

There is a CbCR notification and CbC report submission requirement in Gabon.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Related party disclosures are required in the corporate income tax (CIT) return.

b) Transfer pricing-specific returns

Transfer pricing-specific returns are to be filed separately or with the CIT return.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► Corporate income tax return

30 April of each year.

► Other transfer pricing disclosures/return

Not applicable.

► CbCR notification

At the end of the following year.

► CbC report preparation/submission

31 December of the following year.

b) Documentation preparation deadline

The transfer pricing file must be prepared by the time of lodging the tax return to achieve penalty protection (e.g., where there is a contemporaneous requirement).

c) Documentation submission deadline

► Is there a statutory deadline for submission of transfer pricing documentation?

The transfer pricing file must be prepared and submitted to the tax administration by 30 April of every year.

► Time period/deadline for submission on tax authority request

Eligible taxpayers have to deliver the transfer pricing documents every year with the tax return.

6. Transfer pricing methods

a) Applicability

► International transactions

Yes.

► Domestic transactions

Not applicable.

b) Priority/preference of methods

The Tax Authority should accept the methods prescribed by the OECD (i.e., CUP, resale price, cost-plus, TNMM and profit split); there are no preferences.

7. Benchmarking requirements

a) Local vs. regional comparables

There is no legal requirement to include local country comparables, and foreign comparables are acceptable.

b) Single-year vs. multi-year analysis

Single-year testing is required, but multi-year also may be accepted.

c) Use of interquartile range

There are no formal requirements for use of the interquartile range.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

There is no need to conduct fresh benchmarking search every year; roll-forward/update of the financials are acceptable.

e) Simple vs. weighted average

Both are acceptable.

f) Other specific benchmarking criteria, if any

None.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ **Consequences of failure to submit/late submission and/or incorrect disclosures**

With the draft of the Finance Law for 2017, for failure to submit the transfer pricing documentation, the taxpayer is subject to a penalty of 5% of the global amount of the transaction (a minimum penalty of XAF65 million per year).

For failure to submit the CbC report, the taxpayer is subject to a penalty of 0,5 per thousand of the consolidated turnover excluding tax, capped at XAF100 million per year.

- ▶ **If an adjustment is sustained, can penalties be assessed?**

Tax adjustments for transfer pricing are subject to the normal penalty rules. In the case of an audit by the tax authorities, an incorrect corporate tax return is subject to a penalty of 1.5% on the basis of the amount recovered, capped at 50%. In the case of willful neglect, the penalty is increased by 100%. In the case of fraud, the penalty is 150% over and above the penalty for an incorrect tax return.

- ▶ **Is interest charged on penalties/payable on refund?**

None specified.

b) Penalty relief

Waiving of penalties is possible on special request to the Tax Authority. The MAP and the arbitration procedure are some of the dispute resolution options.

9. Statute of limitations on transfer pricing assessments

The statute of limitations is four years after the payment of corporate tax is due. Taxes are due by 30 April following the calendar year-end.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

- ▶ **Likelihood of transfer pricing-related audits (*high/medium/low*)**

Medium; transfer pricing legislation is relatively new in Gabon. However, tax audits are increasingly focusing on related party transactions.

- ▶ **Likelihood of transfer pricing methodology being challenged (*high/medium/low*)**

Refer to the above section.

- ▶ **Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)**

Refer to the above section.

- ▶ **Specific transactions/industries/situations, if any, more likely to undergo audit**

Recurrent loss position.

11. APA opportunity

- ▶ **Availability (unilateral/bilateral/multilateral)**

Unilateral, bilateral and multilateral APA programs are available. APAs are issued for a fixed term that is not provided by the law and will depend on the sector of activity of the taxpayer. There is no specific provision in the law for rollback of APAs, and its acceptability for past years will depend on discussions with the authorities.

- ▶ **Tenure**

Refer to the section above.

- ▶ **Rollback provisions**

Refer to the section above.

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Georgia

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Revenue Service of Georgia (RS).

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

The transfer pricing general principles are provided in articles 126 to 129 of the Georgian Tax Code (GTC)¹ and the Instruction on Pricing International Controlled Transactions² (TP Instruction).

▶ Section reference from local regulation

Article 126 of GTC and Article 127.5.²

2. OECD guidelines treatment/reference

Georgia is not a member of the OECD.

Georgian transfer pricing rules generally follow the OECD Guidelines. The TP Instruction contains a direct reference to the OECD Guidelines 2010 and sets forth that issues that are not regulated by the GTC or the Instruction shall be regulated by the OECD Guidelines.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Yes, the TP Instruction³ determines information to be included in the transfer pricing (TP) documentation.

▶ Does transfer pricing documentation have to be prepared annually?

¹ Law of Georgia #5202 of 8 November 2011, <https://matsne.gov.ge/ka/document/view/1043717>.

³ Georgian transfer pricing rules also apply to transactions between a Georgian resident company and an unrelated foreign company, where the latter is a resident of a country with preferential tax treatment. The list of jurisdictions with preferential tax regimes is determined by Ordinance #615 of 30 December 2016 of the Georgian Government, <https://matsne.gov.ge/ka/document/view/3523434>.

⁴ Article 17

Transfer pricing documentation needs to be prepared annually under local country regulations. Taxpayers with a turnover of less than GEL8 million (about USD3 million) will be considered to satisfy the documentation requirements even where the financial indicators of external comparables are only updated every third year, provided there have been no material changes to the Georgian enterprise's business, the business operations of the comparables or the relevant economic circumstances. In all other cases, there is no exception/special rule.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

No materiality limit.

▶ Economic analysis

No materiality limit.

▶ BEPS master and local files

Not applicable.

▶ CbCR

Not applicable.

c) Specific requirement(s)

▶ Treatment of domestic transactions

The Georgian TP rules are not applicable to domestic transactions. Thus, there are no documentation requirements in this regard.

▶ Local language documentation requirement

The TP documentation may be submitted in Georgian or English. However, whenever the documentation is submitted in English, the tax authorities may request a Georgian translation to be arranged by the taxpayer.

▶ Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Georgia has not adopted BEPS Action 13.

▶ Coverage in terms of master and/or local files

Not applicable.

Georgia

▶ **Effective/expected commencement date**

Not applicable.

▶ **Material differences from OECD report template/format**

Not applicable.

▶ **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

Not applicable.

▶ **CbCR notification and CbC report submission requirement**

There is no CbCR notification and CbC report submission requirement in Georgia.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Not applicable.

b) Transfer pricing-specific returns

Not applicable; however, any TP adjustment by the taxpayer shall be reflected in the monthly corporate income tax return.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ **Corporate income tax return**

Filed on a monthly basis.

▶ **Other transfer pricing disclosures/return**

Upon request.

▶ **CbCR notification**

Not applicable.

▶ **CbC report preparation/submission**

Not applicable.

b) Documentation preparation deadline

TP documentation should be finalized by the time of submission upon request.

c) Documentation submission deadline

▶ **Is there a statutory deadline for submission of transfer pricing documentation?**

There is no statutory deadline for submission of transfer pricing documentation; it only needs to be finalized by the time of submission upon request.

▶ **Time period/deadline for submission on tax authority request**

Taxpayers are obligated to submit the documentation within 30 calendar days of the tax authority's request.

6. Transfer pricing methods

a) Applicability

▶ **International transactions**

Yes.

▶ **Domestic transactions**

Not applicable.

b) Priority/preference of methods

The transfer pricing law includes five methods similar to those used in international TP practices: (1) CUP, (2) cost-plus, (3) resale price, (4) TNMM and (5) profit split. The CUP method has first priority, whereas the profit split is the method of last resort.

The three traditional methods prevail over the TNMM and profit split method. Some other method can be used if none of the approved methods can provide reliable results and such other method yields a result consistent with that which would be achieved by independent enterprises engaging in comparable uncontrolled transactions under comparable circumstances. In such cases, a taxpayer shall bear the burden of demonstrating that the abovementioned requirements have been satisfied.

A taxpayer should select the most appropriate method according to the nature of its business, comparability factors and the availability of relevant information. If there is a lack of internal comparables or information (or if these internal comparables or information are not accurate or reliable enough), the taxpayer may use external comparables from the foreign markets. Under the Instruction, use of secret comparables is prohibited.

7. Benchmarking requirements

a) Local vs. regional comparables

The application of foreign comparables is acceptable because of a lack of information sources within Georgia, but the impact of geographic differences and other factors need to be analyzed, and, where appropriate, comparability adjustments should be made in accordance with the TP Instruction.

b) Single-year vs. multi-year analysis

Generally, a taxpayer is expected to conduct an economic analysis using the benchmarks relevant to the financial year in which controlled transactions occurred. However, where required information is not available, the taxpayer is allowed to use the benchmarking data for the years preceding the year of its transaction, but not more than four years prior to the financial year in which the tested transaction took place.

c) Use of interquartile range

The Excel Quartile is used as per the Georgian TP rule specifying calculation approach.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

It is necessary to conduct a fresh benchmarking search every year or to update the financials of a prior study. Taxpayers with a turnover of less than GEL8 million (about USD3 million) could update an economic analysis based on external comparables every third year, provided there have been no material changes to the business operations of the comparables or relevant economic circumstances.

e) Simple vs. weighted average

There is no specific regulation in this regard; both simple and weighted averages may be used.

f) Other specific benchmarking criteria, if any

There are no specific regulations in place. The benchmarking criteria shall comply with the general comparability factors as determined by the TP Instruction.⁴ The applicable independence criterion is 50% or less.

8. Transfer pricing penalties/relief

a) Penalty exposure

► Consequences of failure to submit/late submission and/or incorrect disclosures

No specific penalties are defined for when a taxpayer does not submit transfer pricing documentation; if the documentation is not submitted by the deadline, the standard penalty for the failure to submit information to the tax authorities will apply. Any TP adjustment will be treated as distributed profit and taxed with profit tax according to the Georgian tax legislation. In addition, if the tax authorities reassess the transaction, penalties of 50% of the adjusted sum will apply.

► If an adjustment is sustained, can penalties be assessed?

If the tax authorities reassess the transaction, penalties of 50% of the adjusted sum will apply.

► Is interest charged on penalties/payable on refund?

Interest is not charged on penalties. However, late-payment interest of 0.5% per overdue day may apply.

b) Penalty relief

No specific penalty relief is available. However, in practice, having proper transfer pricing documentation reduces the risk of transfer pricing adjustments.

9. Statute of limitations on transfer pricing assessments

There is no specific Statute of limitations on transfer pricing assessments. The general statute of limitations in Georgia is three years. It shall be extended for one year if less than a year remains before the expiration of the period and the taxpayer has filed with a tax authority a taxpayer's claim or a tax return (including an adjusted tax return) for the relevant period. Tax cannot be reassessed after this period has elapsed.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► Likelihood of transfer pricing-related audits (high/medium/low)

High; from 1 January 2017, the existing regulation for levying a profit tax in Georgia changed and the so-called tax on

⁵ Articles 5 and 6.

distributed profits model was introduced. In particular, the object of taxation of a resident entity became only distributed profit, and, according to the new regulation, controlled transactions with related parties are deemed as distribution of profit if they do not comply with the arm's-length principle. Thus, the likelihood of the potential TP audit may further increase.

► **Likelihood of transfer pricing methodology being challenged (*high/medium/low*)**

High; refer to the section above.

► **Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)**

High; refer to the section above.

► **Specific transactions/industries/situations, if any, more likely to undergo audit**

Not applicable.

11. APA opportunity

► **Availability (unilateral/bilateral/multilateral)**

A unilateral APA (between a resident taxpayer and the RS) is available only for transactions that separately or in the aggregate exceed GEL50 million.

The TP Instruction and the GTC also refer to a possibility of conclusion of a bilateral or multilateral APA. Procedures related to such APAs may differ from those outlined for a unilateral APA. Further clarifications regarding the details and the way of application for a bilateral or multilateral APA may follow from the Georgian Ministry of Finance.

► **Tenure**

Three years (with a possibility of extension).

► **Rollback provisions**

None specified.

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Germany

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

German taxes are administered either by the German Federal Central Tax Office (Bundeszentralamt für Steuern) or by German state authorities.

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

German transfer pricing rules are not included in one integrated section of the German tax code but are included in several provisions in different legislative acts, i.e.

- Constructive dividend, § 8 (3) Corporate Income Tax Act;
- Hidden capital contribution, § 4 (1) Income Tax Act, § 8 (1) Corporate Income Tax Act;
- Contribution/withdrawal, § 4 Income Tax Act, e.g., for partnerships;
- Section 1 Foreign Tax Act.

Although only applicable on a subsidiary basis to the other adjustment provisions the most influential provision is Section 1 of the Foreign Tax Act which stipulates the arm's length principle (https://www.gesetze-im-internet.de/astg/_1.html). The German interpretation of the arm's length principle generally follows the definition in Article 9 of the OECD Model Tax Convention. However, § 1 (1) Sentence 3 of the Foreign Tax Act, stipulates that for the interpretation of the arm's length principle, it is assumed that both parties involved in an intercompany transaction have full knowledge about all facts and circumstances (information transparency).

Detailed transfer pricing regulations concerning the cross-border transfer of functions were incorporated into § 1 of the Foreign Tax Act on 1 January 2008. An Executive Order Law providing details on how the new transfer pricing provisions relate to business restructurings and transfer of functions is effective from 2008 onwards (<https://www.gesetze-im-internet.de/fverlv/>).

As of 1 January 2013, a law amending § 1 of the Foreign Tax Act incorporates the authorized OECD approach (AOA) on the allocation of profits to permanent establishments into German law. The AOA treats a permanent establishment as

a (nearly) fully separate entity for tax purposes. This includes the recognition of internal dealings between the head office and a foreign permanent establishment, such as the supply of goods, a service provision and even licensing arrangements. These dealings have to be priced in accordance with the arm's length principle (i.e., including a profit element). Given the lack of legally binding agreements between the different parts of one enterprise, contemporaneous transfer pricing documentation becomes crucial to defend the transfer prices applied for internal dealings. The new domestic rules stipulate that Germany will not tax the profits of the permanent establishment that are determined based on the AOA if the AOA is not yet implemented in the applicable double tax treaty. However, for the treaty relief, the taxpayer has to provide evidence that the other contracting state does not apply the AOA and that this will lead to double taxation.

In October 2014, an Executive Order Law with regard to the application of the arm's length principle to permanent establishments was released (<https://www.gesetze-im-internet.de/bsgav/>). The main issues covered by the Executive Order Law are the attribution of assets and risks to a permanent establishment and the allocation of the (free) capital/surplus to the different parts of the enterprise. In addition, the Executive Order Law contains specific provisions with respect to permanent establishments of banks and insurance companies and construction and exploration sites. Notably, the Executive Order Law stipulates that the taxpayer has to prepare an "Auxiliary Calculation" on an annual basis with respect to assets, capital, remaining liabilities and revenues and expenses attributable to the permanent establishment, including deemed revenues and expenses resulting from internal dealings. The Auxiliary Calculation has to be prepared, at the latest, when the tax return for the respective financial year is filed. The Executive Order Law is applicable for fiscal years beginning after 31 December 2014.

With regard to transfer pricing documentation and country-by-country reporting the following provisions are relevant:

German transfer pricing documentation requirements are stipulated in § 90 (3) German General Tax Act (transfer pricing documentation – https://www.gesetze-im-internet.de/ao_1977/_90.html. as well as in an Executive Order Law to § 90 (3) (https://www.gesetze-im-internet.de/gaufzv_2017/). Section 90 (3) General Tax Act has been amended in December 2016 with effect for tax periods starting after 31 December 2016 in order to include the requirement to prepare country-specific (local file) and global (master file)

documentation. In addition, the respective Executive Order Law to § 90 (3) German General Tax Act was also updated with effect as of 20 July 2017.

In addition, the German legislator introduced non-public country-by-country reporting (CbCR) standards as proposed by the OECD in its report on Action 13 of the BEPS project with mandatory CbCR for fiscal years beginning after 31 December 2015 in § 138a German General Tax Act (https://www.gesetze-im-internet.de/ao_1977/_138a.html). The bill also included the implementation of the European Automatic Information Exchange Directive, which was adopted in December 2015 and governs the exchange of information concerning advance cross-border rulings and APAs as well as some other additional information reporting obligations imposed on multinational enterprises.

§§ 162 (3) and 162 (4) German General Tax Act stipulate penalties in case of non-compliance with transfer pricing documentation rules (https://www.gesetze-im-internet.de/ao_1977/_162.html).

In addition to the above legislation, the German tax authorities have issued a number of circulars helping to interpret the German transfer pricing provisions and outlining their interpretation of the laws. These administrative regulations do not constitute binding law for taxpayers or the courts but are binding for the tax authorities and therefore indicate how the tax authorities will treat specific intercompany transactions between related parties. The purpose of these administrative regulations is to provide a directive concerning the tax treatment of transfer pricing cases and to ensure a uniform application of rules and methods. For transfer pricing purposes, the following circulars are of particular relevance:

- ▶ “Principles for the Examination of Income Allocation in the case of internationally related Enterprises”, dated 23 February 1983, known as “Administrative Principles”.
- ▶ On 12 April 2005, Administrative Principles including the tax authorities’ interpretation of the transfer pricing documentation requirements as stipulated in § 90 (3) of the General Tax Code and the Executive Order Law were published.
- ▶ On 13 October 2010, new Administrative Principles for the Examination of Income Allocation between related parties in cases of cross-border Transfer of Business Functions were released, which include 81 pages of clarifications applying § 1(3) of the Foreign Tax

Act and the Executive Order Law on Transfer of Business Functions. The Administrative Principles detail, for examples, circumstances under which a business restructuring and transfer of function would be exempt from the taxable valuation of the “transfer package”.

- ▶ In March 2017, new Administrative Principles on the Profit Attribution to Permanent Establishments were published, which include 152 pages of details and clarifications of the AOA that is implemented in § 1(5) of the Foreign Tax Act and the Executive Law.

Other relevant circulars include, inter alia administrative circulars concerning income allocation with regard to cross-border cost sharing arrangements (dated 30 December 1999), cross-border secondment of personnel (dated 9 November 2001), mutual agreement and arbitration procedures in the field of taxes on income and capital (dated 13 July 2006) as well as a circular relating to joint tax audit and simultaneous checks (dated 6 January 2017).

▶ Section reference from local regulation

In principle, there is no specific percentage of shareholding required to qualify as a “related party” under German transfer pricing rules. § 1 (2) Foreign Tax Act provides for a minimum direct or indirect shareholding of 25%. However, if this threshold is not met, transfer pricing adjustments can nevertheless be made based on § 8 (3) Corporate Income Tax Act (constructive dividend) or § 4 Income Tax Act (hidden capital contribution) which do not require a minimum shareholding percentage. Parties can also qualify as being “related” where one party can exert influence on the other party or has an interest in the income generated by the other party.

2. OECD guidelines treatment/reference

Germany is a member country of the OECD. The OECD Guidelines provide support for domestic use but do not constitute binding law in Germany. German transfer pricing regulations and practices do differ from those of the OECD Guidelines with regard to certain issues (e.g., the application of transactional profit methods, documentation requirements and the treatment of transfers of functions). The German tax authorities consider the German transfer pricing laws and regulations to be generally consistent with the OECD Guidelines. In tax audit practice as well as in tax court procedures the OECD Guidelines are often applied and used as a point of reference.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

Yes, there are transfer pricing documentation guidelines/rules. The obligation to prepare transfer pricing documentation is included in § 90 (3) General Tax Act.

Rules regarding CbCR are governed by § 138a General Tax Act.

The statutory rules on transfer pricing documentation are supplemented by an Executive Order Law as well as an administrative circular dated 12 April 2005 (so-called "Verwaltungsgrundsätze-Verfahren").

► Does transfer pricing documentation have to be prepared annually?

According to German transfer pricing documentation rules tax auditors have the right to request transfer pricing documentation for transactions between a German taxpayer and its foreign related parties and taxpayers have to submit the documentation within 60 days upon request. Thus, while there is no strict legal requirement to update transfer pricing documentation on an annual basis it is strongly recommended to at least update budgets, information on intercompany transaction volumes and segregated P&L financial data once a year. Regarding the update of benchmarking studies and other economic analysis there is no strict rule in the German transfer pricing law, Executive Order Law, or administrative circular that such studies have to be updated on an annual basis. In practice, benchmarking studies are often updated every three years.

For extraordinary business transactions (e.g., transfer of IP, business restructurings) transfer pricing documentation has to be prepared contemporaneously, i.e., at the latest within six months after the end of the fiscal year in which the transaction took place. Transfer pricing documentation for extraordinary business transactions has to be submitted within 30 days upon request by the tax authorities.

b) Materiality limit/thresholds

► Transfer pricing documentation

There is a materiality limit for preparing transfer pricing documentation. Exception for small and medium

sized companies apply. The company does not have to prepare transfer pricing documentation if annual consideration (paid or received) from intercompany transactions with foreign related parties does not exceed EUR 5 million. for transactions involving goods nor (cumulatively) EUR 500,000 for other intercompany transactions, e.g., services. As of fiscal year 2017 these thresholds have been increased to EUR 6 million (for goods) and EUR 600,000 (for other intercompany transactions). Once these de minimis thresholds are exceeded the transfer pricing documentation obligations apply on a transaction-by-transaction basis without a separate materiality threshold per transaction. Therefore, in principle, transfer pricing documentation has to be prepared for every single intercompany transaction upon request by the tax auditors independent of the transaction volume.

► Economic analysis

There is no materiality threshold for preparing an economic analysis, i.e., an economic analysis has to be prepared for each intercompany transaction with a related party if transfer pricing documentation for this transaction is requested by the tax authorities independent of the transaction volume. However, the law does not require a benchmarking study/database analysis to be prepared if the arm's length nature of the transfer prices can be evidenced otherwise.

► BEPS master and local files

There is a materiality limit for preparing the BEPS master file. The master file only has to be prepared by a German entity where its revenue was higher than EUR 100 million. in the preceding fiscal year. Other than the general de minimis thresholds described above there are no materiality limits for preparing the local file.

► CbCR

There is a materiality limit to prepare CbCR. For German domestic ultimate parent companies CbCR only has to be prepared where the consolidated revenues of the group in the previous fiscal year amounted to at least EUR 750 million.

c) Specific requirement(s)

► Treatment of domestic transactions

There are no transfer pricing documentation obligations for domestic intercompany transactions. However, with regard to domestic intercompany transactions taxpayers still have a duty to respond to tax authority enquires and to cooperate with them in order to clarify the facts and circumstances

of the case. This may include providing existing information relating to the specific transactions upon request of the tax authorities as well as answering questions of the tax authorities regarding these transactions. For domestic transactions only the general adjustment provisions are applicable but not § 1 Foreign Tax Act.

► **Local language documentation requirement**

In principle, the transfer pricing documentation has to be submitted in German (ref. Section 2 para 5 of the Executive Order Law on transfer pricing documentation). However, the taxpayer can apply for the transfer pricing documentation to be prepared in a foreign language. The application has to be filed at the latest without undue delay after receiving a request for submitting transfer pricing documentation. In practice, many German tax auditors accept English transfer pricing documentation reports or are satisfied with receiving a (partial) German translation of the reports.

► **Safe harbor availability**

Apart from the de minimis thresholds for preparing transfer pricing documentation mentioned above there are no safe harbor rules on which the taxpayer could rely upon.

d) BEPS Action 13 implementation overview

► **Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?**

Yes, Germany has adopted BEPS Action 13 for transfer pricing documentation effective as of 1 January 2016. For this purpose, § 90 (3) of the General Tax Act has been amended.

► **Coverage in terms of master and/or local files**

Yes, § 90 (3) of the General Tax Act has been amended and now includes the obligation to prepare a masterfile as well as a local file if the specific de minimis thresholds were exceeded.

► **Effective/expected commencement date**

German transfer pricing documentation obligations have already been implemented in 2003. As of fiscal years starting after December 31, 2016 German taxpayers are obliged to prepare a master file/local file type transfer pricing documentation.

With regard to CbCR, the regulation has been effective since 1 January 2016 (with exception for the surrogate companies – effective from 1 January 2017).

► **Material differences from OECD report template/format**

In principle, there should not be material differences between the OECD report template/format and Germany's regulatory requirements. However, taxpayers need to be aware that German transfer pricing documentation obligations apply on a transaction-by-transaction basis and that there are no materiality thresholds per transaction. In addition, the catalogue provided in the Executive Order Law slightly differs from the OECD local file template. For example, § 4 (1) No. 4 lit.a of the Executive Order Law stipulates that the taxpayer has to document the date/period when transfer prices have been determined ("price setting approach"). In addition, information available at the time the transfer prices were determined has to be documented as well (§ 4 (1) No. 4 lit. b). While these differences could be described as clarifications of the OECD local file template there is no official statement of the German tax authorities confirming that the German documentation requirements do not exceed the requirements as set forth under the OECD local file template. In particular, it is questionable whether the specific documentation obligations listed in § 4 (2) of the Executive Order Law are in compliance with the OECD local file template, e.g., the documentation requested for cost allocations/cost sharing arrangements, research and development activities, explanations for losses and the impact of business strategies and business restructurings. In practice, German tax authorities often request very detailed and specific information beyond OECD requirements.

► **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

It is generally considered reasonable to assume that transfer pricing documentation prepared in line with the BEPS Action 13 format report would not be considered as being "essentially unusable" under the German penalty rules and regulations. However, taxpayers should be aware that this understanding has not yet been confirmed by a tax court ruling or an official statement by the German tax authorities. Most importantly, taxpayers should be aware that penalties may be levied on a transaction-by-transaction basis without any materiality threshold in terms of intercompany volume.

► **CbCR notification and CbC report submission requirement**

There is a CbCR notification and CbC report requirement in Germany.

The CbC reports for fiscal years starting after 31 December 2015 have to be submitted at the latest one year after end of the fiscal year. The notification requirement is linked to the filing of the tax return. The earliest notification requirement will be when the tax return for FY starting from 1 January 2016 will be lodged.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Apart from the general, standard documentation and notification requirements under the German General Tax Act and the German Foreign Tax Act there are no specific disclosure requirements specifically relating to transfer pricing. However, the relevant tax return forms may include certain questions/information relevant for transfer pricing as well (e.g., inter alia, information on related parties in low tax jurisdictions for purposes of German CFC regulations, information on constructive dividends, information on foreign permanent establishments).

b) Transfer pricing-specific returns

There are no specific transfer pricing related returns. However, in October 2014, an Executive Order Law with regard to the application of the arm's length principle to permanent establishments was released (<https://www.gesetze-im-internet.de/bsgav/>). Notably, the Executive Order Law stipulates that the taxpayer has to prepare an "Auxiliary Calculation" on an annual basis with respect to assets, capital, remaining liabilities and revenues and expenses attributable to the permanent establishment, including deemed revenues and expenses resulting from internal dealings. The Auxiliary Calculation has to be prepared, at the latest, when the tax return for the respective financial year is filed. The Executive Order Law is applicable for fiscal years beginning after 31 December 2014. Other than that, there are no other specific transfer pricing related returns required.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► Corporate income tax return

The tax return generally must be filed by 31 May of the year following the tax year. German tax authorities usually accept

a tax return filed by 31 December of the year following the tax year if the taxpayer is represented by a tax advisor.

► Other transfer pricing disclosures/return

Transfer pricing documentation (master file/local file) has to be submitted within 60 days upon request. Such request typically comes within a tax audit which takes place a number of years after the year in question. Transfer pricing documentation for extraordinary business transactions has to be submitted within 30 days upon request by the tax authorities.

► CbCR notification

The CbCR notification has to be filed with the tax return for the relevant fiscal year.

► CbC report preparation/submission

The deadline for filing the CbC report is one year after the end of the relevant fiscal year.

b) Documentation preparation deadline

Ordinary intercompany transactions do not have to be documented contemporaneously and it is sufficient if the transfer pricing documentation is finalized within 60 days upon request of the transfer pricing documentation by the tax authorities.

Extraordinary business transactions need to be documented contemporaneously, i.e., at the latest within six months after the end of the fiscal year in which the transaction took place. Transfer pricing documentation for extraordinary transactions has to be submitted within 30 days upon request.

c) Documentation submission deadline

► Is there a statutory deadline for submission of transfer pricing documentation?

There is no statutory deadline for submission of transfer pricing documentation but transfer pricing documentation has to be submitted within 60 days upon request (30 days for extraordinary business transactions).

► Time period/deadline for submission on tax authority request

Transfer pricing documentation for ordinary intercompany transactions has to be submitted within 60 days upon request. Transfer pricing documentation for extraordinary business transactions has to be submitted within 30 days upon request.

6. Transfer pricing methods

a) Applicability

- ▶ International transactions

German tax authorities will analyse the intercompany transactions in line with the extensive rules and regulations as explained above.

- ▶ Domestic transactions

Although § 1 of the Foreign Tax Act is not applicable to domestic transactions, in practice, German tax authorities generally analyse domestic intercompany transactions applying the same methods. However, given that § 1 Foreign Tax Act is not applicable for domestic transactions there are some exceptions where the arm's length principle and the relevant methods are not necessarily applicable in domestic transactions (e.g., use of IP for free).

b) Priority/preference of methods

German tax auditors will analyse the arm's length nature of the transfer prices based on § 1 of the Foreign Tax Act. Therefore, the application of transfer pricing methods is dependent on the availability and quality of third-party comparable data. Three situations are distinguished: full comparability of the data, limited comparability of the data and non-availability of third-party comparable data.

When full comparability of third-party data exists (after making appropriate adjustments with regard to the functions exercised, the assets used, and the associated opportunities and risks), the law prioritizes the traditional transaction methods: CUP, resale price and cost-plus. Any price within the full range of fully comparable third-party data meets the arm's-length principle.

If limited comparability exists, all OECD methods (whose application is appropriate in the case under review) are allowed, i.e., the aforementioned traditional methods and the transactional profit methods (TNMM and profit split). In case of limited comparability, the range of available third-party comparable data must be limited by applying statistical measures (e.g., the interquartile range).

If no comparable data exists, the law stipulates that taxpayers have to conduct a hypothetical arm's-length analysis to derive arm's-length transfer prices. Accordingly, in compliance with the so-called prudent and diligent business manager principle, and based on the functional analysis and internal projections, the taxpayer has to establish a range of hypothetical

arm's-length prices. The range of negotiation is defined by the minimum price a hypothetical seller would accept and by the maximum price a hypothetical purchaser would pay. The taxpayer must use the value within the range of negotiation that has the highest probability of complying with the arm's-length principle. If the taxpayer provides no reasoning behind choosing that value, the arithmetic mean of the range of values is assumed to be the arm's-length transfer price for the transaction under review.

7. Benchmarking requirements

a) Local vs. regional comparables

Local benchmarks are preferred but European benchmarks are usually accepted if no local benchmarks are available. In tax audits, the validity of benchmark studies is often a major point of dispute between the taxpayer and the tax authorities.

b) Single-year vs. multi-year analysis

Single-year testing is preferred for tested arm's length analysis but multi-year analyses are usually accepted. Again, in tax audits, the validity of benchmark studies is often a major point of dispute between the taxpayer and the tax authorities.

c) Use of interquartile range

The interquartile shall be used to test the arm's length nature.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

There is no legal requirement to perform a new benchmarking search or a financial update of a benchmarking study on an annual basis.

e) Simple vs. weighted average

The weighted average is preferred for testing the arm's length analysis.

f) Other specific benchmarking criteria, if any

Usually, benchmarking studies should not include other companies with a common shareholder that owns 25% or more of the company's shares and should also exclude the company's own subsidiaries in which it has a share of 25% or more.

8. Transfer pricing penalties/relief

a) Penalty exposure

► Consequences of failure to submit/late submission and/or incorrect disclosures

If a taxpayer does not comply with the transfer pricing documentation requirements to the extent outlined in § 90(3) of the German General Tax Act, a refutable assumption applies and the tax authorities are allowed to assume that the taxpayer's income had been reduced by the amount of inappropriate transfer prices, thereby forming the basis of a transfer pricing adjustment.

The tax authorities may apply § 162(3) of the German General Tax Code if the taxpayer submits insufficient or no documentation, or if extraordinary transactions have not been recorded contemporaneously. In all three cases, the tax authority is authorized to estimate the income, provided that the taxpayer does not rebut the assumption. This also holds true when a taxpayer does not disclose relevant data available only from the foreign related parties. If the tax authorities have to estimate the arm's length transfer prices and it is only possible to determine the relevant income within a certain range, the range may be fully exploited to the taxpayer's detriment.

If the taxpayer fails to submit transfer pricing documentation or if the documentation submitted is insufficient/essentially unusable, a penalty of 5% to 10% on the income adjustment will be applied, with a minimum penalty of EUR 5,000.

In addition, for late filing, the taxpayer faces a penalty of up to EUR1 million (minimum penalty of EUR100 per day of delay, § 162 (4) General Tax Act).

Penalties are imposed after the closing of a tax audit. The aforementioned penalties constitute nondeductible expenses for tax purposes. Section 146(2b) of the German Federal Tax Code further allows the assessment of penalties of up to EUR250,000 in case documents are not provided to tax auditors in a timely manner upon request.

As of 2017 the penalty regime has been tightened and follows a transactional approach.

Noncompliance with the CbCR obligation may be subject to a penalty of up to EUR10,000.

► If an adjustment is sustained, can penalties be assessed?

Penalties can be assessed based on the taxpayer's noncompliance with the documentation requirements. An actual income adjustment is not subject to penalties. If the taxpayer fails to submit transfer pricing documentation or if the documentation provided is unusable or insufficient, a penalty of 5% to 10% on the income adjustment will be applied, with a minimum penalty of EUR5,000.

If no or insufficient transfer pricing documentation for a certain transaction is submitted, the burden of proof shifts to the taxpayer, and the German tax authorities can assess income adjustments up to the most unfavorable point (for the taxpayer) within the arm's-length range. Taxpayers, therefore, have to ensure that their transfer pricing documentation is complete and includes all intercompany transactions they are involved in, e.g., including intercompany financial transactions.

► Is interest charged on penalties/payable on refund?

Interest is only assessed on the additional tax payments (6% per annum, which is non-deductible for tax purposes). Interest starts accruing 15 months after the end of the calendar year in which the tax liability arose. The penalties constitute non-deductible expenses for tax purposes.

b) Penalty relief

The taxpayer is required to present compliant transfer pricing documentation to the German tax authority in order to avoid penalties. The taxpayer can avoid the consequence of a refutable assumption (Section 162 (3) General Tax Act) if the taxpayer submits sufficiently compliant transfer pricing documentation any time prior to a ruling of a lower tax court. In this case, the court will not apply § 162 (3) General Tax Act in his ruling. However, penalties for late submission will be levied.

In general, if an adjustment is assessed by the tax authorities in post-audit tax assessment notes which the taxpayer does not want to accept the taxpayer is able to appeal the assessment at the local tax authority. Separate appeals will have to be filed against any penalty assessments. If an appeal is rejected by the tax authorities the taxpayer can file a claim at the local tax court.

In case the adjustment is not in line with respective double tax treaties or with the EU Arbitration Convention the taxpayer may also file a request for mutual agreement procedure/arbitration at the Federal Central Tax Office.

9. Statute of limitations on transfer pricing assessments

In general, the assessment period for taxes (§ 169 of the General Tax Act) is four years. For customs duties, it is shorter, and in cases of grossly negligent evasion of taxes or tax fraud, it is much longer (10 years in the case of tax fraud). These periods commence at the end of the calendar year in which the tax liability arose. No special time limit provisions apply if intercompany transactions are involved. However, taxpayers should be aware that – under specific circumstances – tax authorities are allowed to retroactively adjust the transfer price within a period of up to ten years in cases where a significant intangible asset has been transferred between related parties (§ 1 (3) sentence 11 et seq., German commensurate-with-income rule).

The general regime of the statute of limitations applies in accordance with the General Tax Act. Accordingly, each case has to be carefully considered to determine the specific statute of limitations. Most taxes are levied by way of assessment. Assessments can be made only within the statutorily prescribed assessment period, which is subject to the statute of limitations for assessments.

The assessment period, however, does not start before the end of the calendar year in which the taxpayer has submitted the tax return (but also does not start later than three years after the year the tax liability arose). There are a number of statutory exceptions to the statute of limitations for assessments (e.g., it should be kept in mind that the limitation period is interrupted when a tax audit begins).

Section 175a of the General Tax Act stipulates that tax assessments can be amended due to the result of a MAP or European Union (EU) arbitration procedure up to one year after the effective date of such agreement, regardless of whether the aforementioned statutes of limitations have expired before.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► Likelihood of transfer pricing-related audits (*high/medium/low*)

The likelihood of a tax audit in Germany is high for domestic and foreign groups of companies. Usually, a tax audit covers a three- to four-year period on a continuous basis. The likelihood of transfer pricing issues being scrutinized during a tax audit is also high and continuously rising. It is expected that

transfer pricing issues will continue to attract significant attention in tax audits, in particular, with respect to transactions qualifying as extraordinary business transactions under the documentation provisions, such as the transfer of functions. Further, many tax audits increasingly focus on (brand) royalty charges and financing transactions.

► Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

The likelihood that the transfer pricing mechanism will be challenged if transfer pricing is reviewed as part of the audit, is also high in view of the generally aggressive tax audit environment regarding transfer prices in Germany.

► Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

In case the transfer pricing methodology is challenged there is a high likelihood that tax authorities will claim an adjustment based on their own methodology and estimates applied to the detriment of the taxpayer. The likelihood of whether the taxpayer's position can ultimately be defended strongly depends on the fact and circumstances of the case.

► Specific transactions/industries/situations, if any, more likely to undergo audit

The likelihood of a transfer pricing audit is particularly high in the following circumstances:

- a. Companies facing (long-term) losses,
- b. Companies being involved in a business restructuring,
- c. Companies that have intercompany business transactions with related parties located in low tax jurisdictions

11. APA opportunity

► Availability (unilateral/bilateral/multilateral)

In Germany, taxpayers may apply for a bilateral or multilateral APA in relation to transfer pricing questions. German tax authorities usually do not grant unilateral APAs on transfer pricing questions in case where there is a double tax treaty including an article on mutual agreement procedures. The German Ministry of Finance issued an APA circular on 5 October 2006 that defines the APA procedures and provides guidance with regard to the negotiation of APAs. Additionally, the Annual Tax Act 2007 introduced fees for APAs: EUR 20,000 for a new APA, EUR 15,000 for a renewal and EUR 10,000 for a modification during the term of the APA. For small taxpayers (i.e., those with intercompany tangible goods

transactions below EUR5 million and other intercompany transactions below EUR 500,000), the filing fee is half of the above amounts. The administrative competence for APAs is centralized in the Federal Central Tax Office.

► **Tenure**

From application to conclusion, the APA process can take 18 months to several years. According to the APA circular, the APA term should be not less than three years and not more than five years. In practice, However, APAs can and have already been negotiated for (much) longer time periods depending on the facts and circumstances of the case. An agreement reached between two competent authorities will be made conditional in two regards: the taxpayer must consent to the Intergovernmental agreement and must waive its right to appeal tax assessments, to the extent that they are in line with the content of the APA.

► **Rollback provisions**

There is no automatic roll-back procedure but German tax authorities usually accept a roll-back if the taxpayer can provide evidence that the assumptions, facts and circumstances stated within the APA are also fulfilled in previous years. Technically, the rollback years are processed under a separate MAP that is conducted together with the APA procedure.

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Ghana

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Ghana Revenue Authority (GRA).

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

Section 31 of the Income Tax Act 2015, Act 896 (as amended).

Transfer Pricing Regulations, 2012 (L.I. 2188), effective 14 September 2012.

▶ Section reference from local regulation

Section 128 of the Income Tax Act 2015.

Paragraph 2 of the Transfer Pricing Regulations, 2012.

2. OECD guidelines treatment/reference

Ghana is not a member of the OECD.

The OECD Guidelines are followed by Ghana in its local transfer pricing (TP) regulations.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Yes.

▶ Does transfer pricing documentation have to be prepared annually?

Transfer pricing documentation has to be prepared contemporaneously under local country regulations. The documentation must produce evidence that all related party transactions in a year satisfy the arm's-length principle.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

No materiality limit.

▶ Economic analysis

No materiality limit.

▶ BEPS master and local files

Not applicable.

▶ CbCR

Not applicable.

c) Specific requirement(s)

▶ Treatment of domestic transactions

Yes, there is a documentation obligation for domestic transactions. The Transfer Pricing Regulations do not discriminate between domestic and cross-border transactions.

▶ Local language documentation requirement

The TP documentation needs to be submitted in English.

▶ Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No.

▶ Coverage in terms of master and/or local files

Not applicable.

▶ Effective/expected commencement date

Not applicable.

▶ Material differences from OECD report template/format

Not applicable.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

Not applicable.

▶ CbCR notification and CbC report submission requirement

There is no CbCR notification and CbC report submission requirement in Ghana.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

None specified.

b) Transfer pricing-specific returns

Filing an annual return on transfer pricing transaction is required and forms part of the corporate income tax return. The return must be filed no later than four months after the end of the taxpayer's financial year.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► Corporate income tax return

Four months following the end of the taxpayer's year of assessment.

► Other transfer pricing disclosures/return

Four months following the end of the taxpayer's year of assessment.

► CbCR notification

Not applicable.

► CbC report preparation/submission

Not applicable.

b) Documentation preparation deadline

The transfer pricing file must be prepared by the time of lodging the tax return to comply with the contemporaneous documentation requirement.

c) Documentation submission deadline

► Is there a statutory deadline for submission of transfer pricing documentation?

No.

► Time period/deadline for submission on tax authority request

There is no specified time in legislation. In practice, the TP unit has been known to give clients three days, as it is the unit's

expectation that taxpayers have this documentation already as required by law.

6. Transfer pricing methods

a) Applicability

► International transactions

Yes.

► Domestic transactions

Yes.

b) Priority/preference of methods

The transfer pricing methods approved by the Commissioner-General include the CUP, resale price, CPM, transaction profit split and TNMM. Taxpayers are to use the "most appropriate" method.

Notwithstanding the transfer pricing methods stated, the Commissioner-General may use a different method or, in writing, permit a taxpayer to use another method. Although not binding on the taxpayer, the practice notes on the TP regulations state that when the CUP and another TP method are equally reliable, the CUP is preferred by the Commissioner-General. Similarly, in applying the CUP, the Commissioner-General prefers the use of internal comparables.

7. Benchmarking requirements

a) Local vs. regional comparables

There is no legal requirement for local comparables. In practice, comparables from economies similar to Ghana are acceptable to the GRA.

b) Single-year vs. multi-year analysis

None are specified, but in practice, multi-year analysis is used.

c) Use of interquartile range

Interquartile range calculation using Excel Quartile formulas is acceptable.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

There is no legal requirement to conduct a fresh benchmarking search every year. In practice, benchmarking is updated on a three-year basis.

e) Simple vs. weighted average

In practice, the weighted average is used.

f) Other specific benchmarking criteria, if any

Independence threshold of 50%.

8. Transfer pricing penalties/relief

a) Penalty exposure

► **Consequences of failure to submit/late submission and/or incorrect disclosures**

The provisions of an act of fraud, failure to file returns, failure to maintain records, penalty for underpayment of tax and offenses also apply to the transfer pricing regulations.

► **If an adjustment is sustained, can penalties be assessed?**

Yes; the interest penalty is computed at 125% of the statutory (central bank prime) rate compounded monthly.

► **Is interest charged on penalties/payable on refund?**

Refer to the section above.

b) Penalty relief

The burden of proof for arm's length is on the taxpayer. If the taxpayer can prove that, it is an acceptable defense.

Dialogue with the tax authorities and provision of documentation to support arm's length is the first line of dispute resolution. Taxpayers who are entitled to benefits under Ghana's nine double tax agreements may also avail themselves to the MAP. For other taxpayers, the next option would be to go to court.

9. Statute of limitations on transfer pricing assessments

The general statute of limitations prescribes 12 years after the end of the relevant year of assessment, after which

the Commissioner-General cannot recover tax. The tax law, however, mandates records to be maintained for a maximum of six years from the financial year-end. When fraud is involved, there is no limit.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► **Likelihood of transfer pricing-related audits (high/medium/low)**

Medium. There has been a significant increase in the number of TP audits launched by the TP unit in the last year.

► **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood of the pricing method being challenged in a transfer pricing audit is low to medium and depends on client-specific circumstances.

► **Likelihood of an adjustment if transfer pricing methodology is challenged (high/medium/low)**

Medium. One case has already proceeded to court, with a proposed adjustment of approximately USD40 million.

► **Specific transactions/industries/situations, if any, more likely to undergo audit**

None specified; primarily, the communications, pharmaceutical and cement manufacturing industries are profiled for audits.

11. APA opportunity

► **Availability (unilateral/bilateral/multilateral)**

An APA program is not available in Ghana.

► **Tenure**

Not applicable.

► **Rollback provisions**

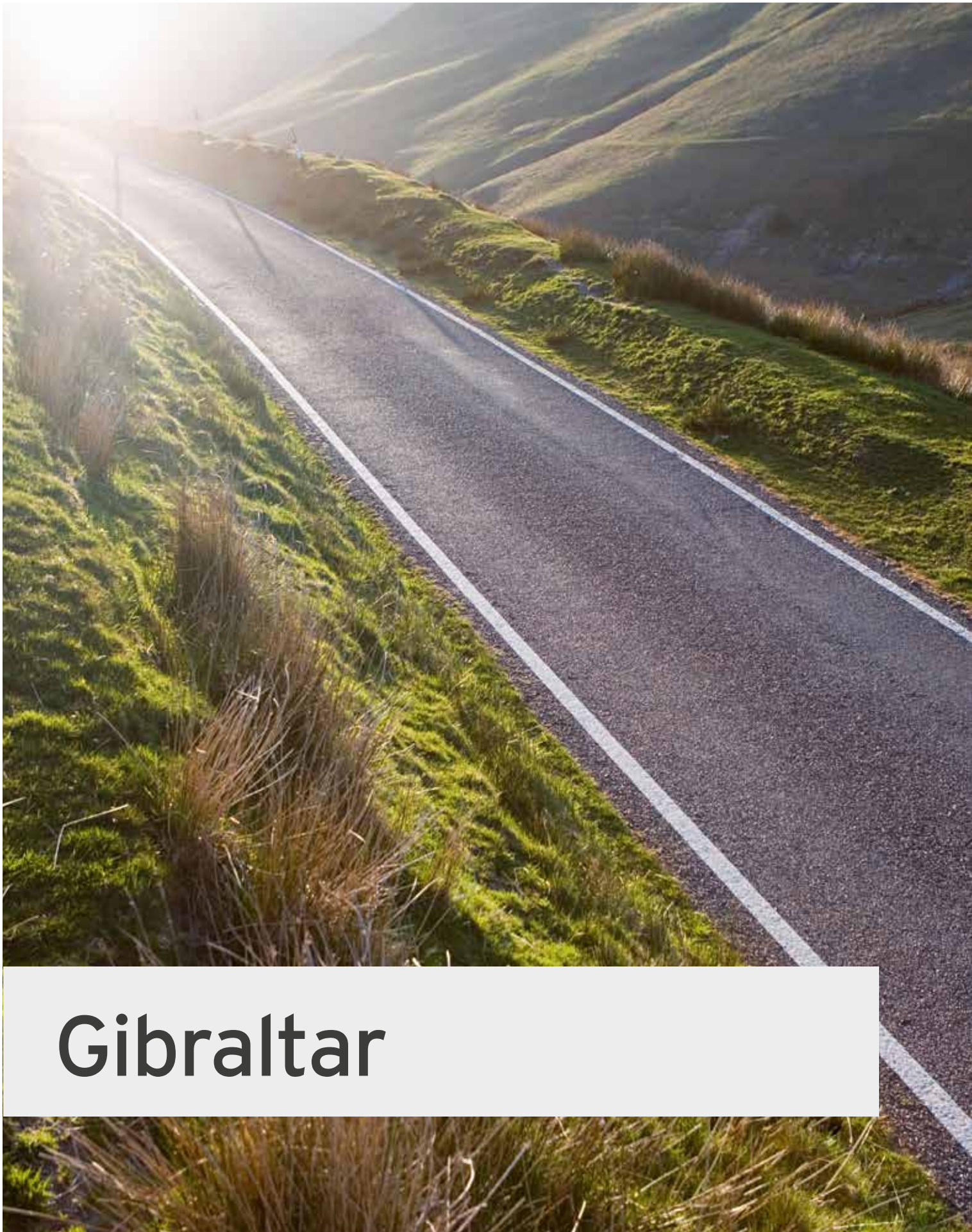
Not applicable.

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Gibraltar

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Commissioner of Income Tax, Income Tax Office.

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

Income Tax Act 2010 Section 40(3)(c) – under heading “Anti-avoidance.” This does not set out any specific transfer pricing (TP) rules but refers to documents published by the OECD as part of its Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations. This was effective from 1 January 2011 onward.

▶ Section reference from local regulation

Income Tax Act 2010 Schedule 4 Paragraph 9.

2. OECD guidelines treatment/reference

Gibraltar is not a member of the OECD.

The general anti-avoidance provisions in the tax law state that those provisions shall be construed in a manner that best secures consistency among those powers, internationally accepted principles for the determination of profit in respect of activities within a multinational group of companies –notably, the rules that, at 1 January 2011, were contained in Article 9 of the Model Tax Convention on Income and on Capital published by the OECD – and such documents issued by the OECD on or after 1 January 2011, which are designated by the relevant minister and published in the *Gibraltar Gazette*.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

No .

▶ Does transfer pricing documentation have to be prepared annually?

Not applicable.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

No materiality limit.

▶ Economic analysis

No materiality limit.

▶ BEPS master and local files

Not applicable.

▶ CbCR

MNE groups with total consolidated revenue of EUR750 million (in accordance with EU Directive 2016/881).

c) Specific requirement(s)

▶ Treatment of domestic transactions

There is no specific requirement for treatment of domestic transactions.

▶ Local language documentation requirement

There is no requirement to submit the TP documentation in the local language.

▶ Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Gibraltar has not adopted or implemented BEPS Action 13 for TP documentation.

▶ Coverage in terms of master and/or local files

Not applicable.

▶ Effective/expected commencement date

Not applicable.

▶ Material differences from OECD report template/format

Not applicable.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

Not applicable.

Gibraltar

► CbCR notification and CbC report submission requirement

There is a CbCR notification and CbC report submission requirement for Gibraltar – i.e., nine months after the fiscal year-end.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Not applicable.

b) Transfer pricing-specific returns

Not applicable.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► Corporate income tax return

The corporate income tax return filing date is nine months after the end of the month in which the fiscal year ends.

► Other transfer pricing disclosures/return

Not applicable.

► CbCR notification

The CbCR notification Filing deadline is nine months after the fiscal year-end.

► CbC report preparation/submission

The Filing deadline for CbC preparation/submission is 12 months after the relevant financial year.

b) Documentation preparation deadline

Not applicable.

c) Documentation submission deadline

► Is there a statutory deadline for submission of transfer pricing documentation?

No.

► Time period/deadline for submission on tax authority request

The authorities may impose a deadline of 30 days (or more) for providing information when an inquiry is made.

6. Transfer pricing methods

a) Applicability

► International transactions

No specific requirements.

► Domestic transactions

No specific requirements.

b) Priority/preference of methods

There is nothing specific in the legislation, other than the abovementioned reference to documents published by the OECD.

7. Benchmarking requirements

a) Local vs. regional comparables

Not specified.

b) Single-year vs. multi-year analysis

Not specified.

c) Use of interquartile range

Not specified.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

Not specified.

e) Simple vs. weighted average

Not specified.

f) Other specific benchmarking criteria, if any

Not specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

► Consequences of failure to submit/late submission and/or incorrect disclosures

There are no specific transfer pricing penalties. If tax is underpaid, or paid late, a surcharge of 10% of the underpaid amount is due immediately after the date at which the tax was due. A further surcharge of 20% of the underpaid amount is due if the amount remains underpaid after another 90 days. Additional penalties are payable for failing to comply with specific provisions in the Income Tax Act 2010, though none specifically relate to transfer pricing.

► **If an adjustment is sustained, can penalties be assessed?**

Refer to the section above.

► **Is interest charged on penalties/payable on refund?**

Refer to the section above.

b) Penalty relief

There is no specific provision in the legislation for relief from surcharges. Penalties may be removed at the discretion of the Commissioner of Income Tax.

9. Statute of limitations on transfer pricing assessments

The Commissioner of Income Tax has one year from the date that a return is received to give notice of his or her intention to make an inquiry about a return. After that date expires, for up to six years from the end of the relevant accounting period or tax year, the Commissioner of Income Tax may raise an assessment upon discovery that a person has not been assessed tax or was assessed at a lesser amount than ought to have been assessed. There is no time limit for additional assessments to be raised when any form of fraudulent or willful default or negligent conduct has been committed.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► **Likelihood of transfer pricing-related audits (high/medium/low)**

Formal tax audits are relatively rare. Ad hoc queries are frequently raised by the Income Tax Office on behalf

of the Commissioner of Income Tax, though queries relating to transfer pricing are relatively uncommon.

In practice, because of Gibraltar's relatively low rate of corporate tax (10% for most companies), the requirement to justify transfer pricing is more likely to arise from the jurisdiction in which the Gibraltar taxable entity's counterparty is taxable. This would not apply when the counterparty is based in a zero-tax jurisdiction.

► **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

High, as audits are very rare occurrences. If they occur, it is likely that a potential issue has been identified.

► **Likelihood of an adjustment if transfer pricing methodology is challenged (high/medium/low)**

Medium. Again, if an audit takes place, it is likely that a potential issue was identified.

► **Specific transactions/industries/situations, if any, more likely to undergo audit**

None specified.

11. APA opportunity

► **Availability (unilateral/bilateral/multilateral)**

Taxpayers may request advance tax rulings from the Commissioner of Income Tax. Such rulings generally do not have a fixed expiration date, but the rulings state that they are given on the basis of the facts and circumstances as described by the taxpayer in the request and on the basis of the tax law in force at the time of the ruling.

► **Tenure**

None specified.

► **Rollback provisions**

None specified.

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Greece



1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Ministry of Finance.

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

Transfer pricing (TP) in Greece is driven by the Income Tax Code (L. 4172/2013) and the Tax Procedures Code (L. 4174/2013), double taxation treaties and supranational norms. Other decisions and guidelines issued are provided below.

- Circular POL 1142/02.07.2015, aiming to clarify transfer pricing issues, affecting intercompany transactions pertaining to tax years starting from 1 January 2014 onward. The circular provides long-anticipated clarifications (e.g., clarifications on the concept of the “associated/affiliate persons,” the calculation of the interquartile range, the use of databases for the comparable company search and the benchmarking studies to be used for documentation purposes).
- Issued by the General Secretary of Public Revenues, Decision 1097/2014, as amended by Decision 1144/2014, provides the mandatory contents of the transfer pricing documentation file for intercompany transactions referring to fiscal years starting on or after 1 January 2014.
- Decision 1284/2013 of the General Secretary of Public Revenues determined the procedures for the conclusion, amendment, revocation and annulment of an APA. The decision refers to the procedures of both unilateral and bilateral APAs for cross-border intercompany transactions that take place in financial years starting 1 January 2014 onward.
- APA guidelines and templates from the Ministry of Finance were issued in October 2014.

The CbCR requirements that are applicable to Greek tax resident entities that are members of an MNE group with a consolidated group turnover exceeding EUR750 million were introduced by L. 4484/2017 in August 2017.

► Section reference from local regulation

The Income Tax Code (L. 4172/2013, Article 2) defines the term “associated person,” which applies to legal persons, individuals and any other body of persons.

Circular 1142/2015 provides examples of cases in which management dependence or control or the possibility for one person to exercise decisive influence exist.

2. OECD guidelines treatment/reference

Greece is a member of the OECD. The aforementioned legislative framework confirms the application of the OECD Guidelines. More specifically, according to the Income Tax Code, the provisions regarding intercompany transactions are, in principle, interpreted and implemented in accordance with the OECD Guidelines.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

Yes.

► Does transfer pricing documentation have to be prepared annually?

Yes, the TP documentation has to be prepared annually under local country regulations. Furthermore, all sections of the TP documentation files have to be updated. Especially if profit-based documentation methods are applied through the performance of a comparability search, the comparable data defined based on the benchmarking study can be used for the next two consecutive fiscal years; however, the comparable companies' financial data should be annually updated, and the compliance of the final set of comparable companies with the comparability and independence requirements should be examined for each fiscal year.

b) Materiality limit/thresholds

► Transfer pricing documentation

Persons subject to documentation requirements include taxpayers with a total value of intercompany transactions of more than EUR200,000 or EUR100,000, depending on whether their turnover is more or less than EUR5 million, respectively.

Entities exempt from income tax obligations are also exempt from transfer pricing documentation requirements.

► **Economic analysis**

Taxpayers qualifying as subject to documentation requirements need to document all transactions irrespective of value, whereas expense transactions fully tax-adjusted for corporate income tax purposes are exempt from documentation requirements.

► **BEPS master and local files**

Both the master file and local file are covered (with minimum content defined in local rules), whereas entities subject to documentation requirements need to prepare both the master file and local file. But there is no threshold limit for the same.

► **CbCR**

On 1 December 2017, Greece's Independent Public Revenue Authority (AADE) published Decision 1184/2017, providing guidelines on the implementation of CbCR in Greece.

► **CbC report filing**

Under local rules, the ultimate parent entity (UPE) of an MNE group or any other reporting entity, established in Greece, is required to submit the CbC report – for each fiscal year – electronically to the competent authority within 12 months from the end of the MNE group's reporting fiscal year.

► **CbC report notification procedure**

Greek tax resident entities forming part of an MNE group that are subject to the aforementioned requirements must notify the AADE of the identity and tax residence of the reporting entity no later than the last day of the reporting fiscal year. Transition provisions apply for the first fiscal year of application only.

c) Specific requirement(s)

► **Treatment of domestic transactions**

There is no specific requirement for treatment of domestic transactions.

► **Local language documentation requirement**

Based on Decision 1097/2014, the TP documentation (i.e., master file and local file) needs to be submitted to the Greek tax authorities upon request in the Greek language. The local file is required to be maintained in Greek even prior to submission.

► **Safe harbor availability**

None specified.

d) BEPS Action 13 implementation overview

► **Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?**

Greece has adopted the three-tier approach (i.e., master file, local file and CbCR) as described in OECD's BEPS Action 13.

► **Coverage in terms of master and/or local files**

Both the master file and local file are covered (with minimum content defined in local rules), whereas entities subject to documentation requirements need to prepare both the master file and local file (no threshold applies).

► **Effective/expected commencement date**

The master file and local file are required since FY 2008; however, the required minimum content of the master file and local file became closer to BEPS Action 13 suggested content effective from FY 2014 onward.

► **Material differences from OECD report template/format**

The main differences of the minimum required content of master file for Greek TP documentation purposes and the sample content suggested under BEPS Action 13 are:

- The Greek rules require the description and high-level functional analysis in the master file to be performed for all material transactions relevant to the Greek entities and not to be limited to the services, intangibles and financial transactions.
- The Greek rules require special reference to the group's business strategy.
- The Greek rules require reference to CCAs and/or court decisions relevant for transfer pricing purposes apart from reference to APAs.
- The Greek rules require a short description of the entities with which the Greek entities report intercompany transactions to be included also in the master file.

The main differences of the minimum required content of the local file for Greek TP documentation purposes and the sample content suggested under BEPS Action 13 are:

- The Greek rules require analysis of all transactions, not only of material transactions.

- ▶ The Greek rules require explicit reference to the group pricing policy applied and to any debit or credit TP adjustments that may have taken place.
- ▶ The Greek rules require analysis to be included regarding any business restructurings subject to “transfer of functions” rules (Article 51 of the Income Tax Code).
- ▶ The Greek rules require a flow chart of transactions.
- ▶ The Greek rules require additional information – e.g., financial statements of affiliates with which ICO transactions exist and that are located in noncooperative jurisdictions.
- ▶ The Greek rules require a statement to be included by the taxpayer committing that additional information may be provided upon request.

▶ **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

There is no penalty protection available.

▶ **CbCR notification and CbC report submission requirement**

There is a CbCR notification and CbC report submission requirement in Greece.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Taxpayers disclose their intragroup transactions by annually filing a Summary Information Table (SIT) of transfer pricing information. For intragroup transactions taking place from 1 January 2015, the SIT must be filed up to the deadline for the submission of companies’ corporate income tax (CIT) returns (previously, the respective deadline for submission was shorter).

b) Transfer pricing-specific returns

Companies must submit an SIT of their intercompany transactions to the tax administration up to the deadline for the submission of companies’ CIT returns.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ **Corporate income tax return**

The corporate income tax return Filing deadline is six months following the year-end (for entities with a 31 December year-end, this is, in principle, by 30 June next year.

▶ **Other transfer pricing disclosures/return**

Companies are obligated to electronically submit an SIT of their intercompany transactions to the tax authorities up to the deadline for the submission of companies’ CIT return.

▶ **CbCR notification**

In general, at the last day of the reference year; however, for reporting FY 2016, an extension of the notification deadline has been granted. This means that constituent entities should submit the notification by the deadline for the CbC report submission (i.e., for MNE groups with a reporting fiscal year ending on 31 December 2016, the first notification must be filed by 31 December 2017).

▶ **CbC report preparation/submission**

The UPE of an MNE group or any other reporting entity, established in Greece, must submit the CbC report for each fiscal year electronically to the competent authority within 12 months from the end of the MNE group’s reporting fiscal year. If the application for submitting the CbC report is not operational because of a technical failure, the deadline will be extended by seven working days.

b) Documentation preparation deadline

The transfer pricing documentation should be prepared annually up to the deadline for the submission of companies’ CIT return (in principle, within six months from the year-end); it is not filed with the tax authorities until it is officially requested.

c) Documentation submission deadline

▶ **Is there a statutory deadline for submission of transfer pricing documentation?**

No.

► **Time period/deadline for submission on tax authority request**

The taxpayer has up to 30 days to submit the TP documentation once requested by the tax authority in an audit (requests always require the files to be submitted in Greek).

6. Transfer pricing methods

a) Applicability

- International transactions

Yes.

- Domestic transactions

Yes.

b) Priority/preference of methods

Greek regulations follow the OECD Guidelines. More specifically, Decision 1097/2014, as amended by Decision 1144/2014, adopts the OECD methods. However, the traditional transaction methods (CUP, resale price and cost-plus) are preferred, while transactional profit methods are allowed when the traditional methods do not lead to reliable results. In particular, transactional profit transfer pricing methods, such as the TNMM and profit split, can be used only in cases in which the above traditional transfer pricing methods are considered ineffective because of the absence of available or sufficient comparables, provided that a detailed justification is included in the documentation files.

7. Benchmarking requirements

a) Local vs. regional comparables

For performing the comparable company search, any database may be used as long as relevant details on the database are included in the transfer pricing file. In practice, the Greek tax authorities accept Pan-European benchmarking studies.

b) Single-year vs. multi-year analysis

If profit-based documentation methods are selected to calculate the acceptable interquartile range, the weighted-average financial data of the comparable companies for the three fiscal years preceding the year under review should be utilized (this is a legal requirement).

The tested party's results should always refer to one year (this is a legal requirement).

c) Use of interquartile range

The arm's-length range, determined based either on prices or on profit margins, is the interquartile range as calculated based on an Excel formula (this is a legal requirement).

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

Based on Decision 1142/2015, the comparable data defined based on a benchmarking study can be used for the next two consecutive fiscal years; however, the financial data should be annually updated, and the compliance of the final set of comparable entities with the comparability and independence requirements should be examined for each fiscal year (this is a legal requirement).

e) Simple vs. weighted average

The weighted average is preferred in testing an arm's-length analysis.

f) Other specific benchmarking criteria, if any

The search strategy should incorporate the independence criteria as provided by the Greek legislation currently in force.

In light of the above, a 33% shareholding screening step should be included, as well as a 33% subsidiary screening step.

The final set of comparable observations should consist of at least five observations in order to calculate the interquartile range. Furthermore, the calculation of the quartiles should be based on a specific formula that is identical to Microsoft Excel's formula `"=quartile.exc(array;quart)"` (this is a legal requirement).

During the comparability search, information reasonably available to the taxpayer when preparing the documentation should be used, while the use of databases is restricted to releases available two months prior to a company's year-end and up to the deadline for the submission of companies' CIT return (this is a legal requirement).

8. Transfer pricing penalties/relief

a) Penalty exposure

- **Consequences of failure to submit/late submission and/or incorrect disclosures**

Transfer pricing penalties include:

- Penalties for late filing of the SIT are calculated at 0.1% on the value of the transactions subject to documentation

requirements (minimum penalty of EUR500; maximum penalty of EUR2,000). In the event of filing an amended SIT, a penalty applies only to the extent that the declared amounts are amended and such amendments exceed the amount of EUR200,000. In the event that the amended amounts exceed EUR200,000, then the penalty is calculated at 0.1% on the value of the transactions subject to documentation requirements (minimum penalty of EUR500; maximum penalty of EUR2,000).

- ▶ Penalties for an inaccurate filing of the SIT are calculated at 0.1% on the value of the amounts to which the inaccuracy relates (minimum penalty of EUR500; maximum penalty of EUR2,000). If the inaccuracy consists of differences in the amounts declared and does not exceed 10% of the value of the total transactions subject to documentation, no penalty applies.
- ▶ Penalties for non-filing of the SIT are calculated at 0.1% on the value of the transactions subject to documentation requirements, with a minimum penalty of EUR2,500 and a maximum penalty of EUR10,000.
- ▶ In the case of failure to provide the tax authorities with TP documentation within 30 days from the official request, a penalty of EUR5,000 applies, which is increased to EUR10,000 if TP documentation is provided after 60 days, and to EUR20,000 if it is provided after 90 days or not provided at all.
- ▶ The penalty for non-submission of the CbC report has been set at EUR20,000, whereas the penalty for late submission or submission of inaccurate information has been set at EUR10,000.

▶ **If an adjustment is sustained, can penalties be assessed?**

In the case of noncompliance with the arm's-length principle, the difference in taxable profits shall increase the tax base of the company. In addition, the general income tax inaccuracy penalties, ranging from 10% to 50% of the tax underpayment, will apply, as well as default interest.

▶ **Is interest charged on penalties/payable on refund?**

In the case of late payment of any amount of tax within the statutory period, including the late submission of tax returns, the taxpayer is obligated to pay interest on that amount starting from the statutory deadline. The interest rate currently is set at 8.76% annually (0.73% monthly).

b) Penalty relief

No penalty relief is available.

Upon the completion of a tax audit, the taxpayer is notified of a temporary Assessment Note. According to Article 28 of L. 4174/2013 (Tax Procedures Code), the taxpayer may file, within 20 days, a memo to the tax authorities stating his or her views of the tax audit's findings.

Within one month from the receipt of the taxpayer's memo or from the due date for such submission, the tax auditors shall issue the final Assessment Note. The final Assessment Note shall be handed over to the taxpayer together with the relevant audit report.

Within 30 days of the notification of the final Assessment Note, the taxpayer may file an administrative appeal before the Dispute Resolution Department of Article 63 of L. 4174/2013, seeking a revision of the case (tax audit results and final Assessment Note). The Dispute Resolution Department should issue its decision within 120 days from the filing/ submission of the administrative appeal.

If the Dispute Resolution Department fails to issue a decision within the 120 days, the appeal is deemed to have been implicitly rejected. Having said that, the Dispute Resolution Department will examine only the tax items challenged by the company through the administrative appeal. In the case of an adverse decision on the administrative appeal or implicit rejection thereof, the taxpayer may appeal before the Administrative Court within 30 days as of the notification of the decision (or the implicit rejection).

EU arbitration through a MAP procedure and arbitration through double tax treaties' MAP procedure may be available, depending on the tax residency of the counterparties and their eligibility.

9. Statute of limitations on transfer pricing assessments

Taxpayers must keep documentation files for a period equal to the statute of limitations for performance of a tax audit, as specified by the provisions of the general tax provisions applicable for the said financial year. Open tax years as of 1 January 2018 are, in principle, FY 2012 and onward, whereas the statute of limitations is, in principle, six years following year-end.

10. Likelihood of transfer pricing scrutiny/ related audit by local authority

► Likelihood of transfer pricing-related audits (*high/medium/low*)

In the course of the statutory audit, certified auditors may be required to issue a tax certificate to the companies they audit by performing a special audit of their tax affairs, which takes place at the same time as the statutory audit. Based on this, the transfer pricing documentation file should be available to the certified auditors before the tax certificate is issued. Further, based on our recent experience, local tax authorities tend to scrutinize taxpayers' transfer pricing arrangements in the course of tax audits, focusing especially on the review of the benchmarking studies included in the documentation files.

The likelihood of a tax audit by the local tax authorities in general can be considered as high, based on recent experience. Further, in the course of general audits, the likelihood that transfer pricing will be reviewed is characterized as certain, based on the audit program followed by the Greek tax authorities. Tax authorities tend to challenge related party transactions, and there is a clear trend toward increased awareness of transfer pricing issues among local tax auditors

► Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

Medium; the Greek tax auditors are focused more on the results of the transfer pricing policy rather than the policy itself, unless they find this as an opportunity to assess differences.

► Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

High; usually the authorities challenge the transfer pricing methodology only if it leads to an adjustment.

► Specific transactions/industries/situations, if any, more likely to undergo audit

None.

11. APA opportunity

► Availability (unilateral/bilateral/multilateral)

The Tax Procedures Code, along with the implementing decision, provides the possibility of an APA from 1 January 2014. An APA will cover any relevant criteria used for the intragroup pricing.

These criteria mainly include the transfer pricing method, the comparable data to be used and any relevant adjustments to be made, as well as the critical assumptions under which the approved transfer pricing methodology will remain valid.

A taxpayer in Greece may apply for a unilateral, bilateral or multilateral APA.

► Tenure

An APA term cannot exceed four years, and a retroactive effect is not possible.

► Rollback provisions

None specified.

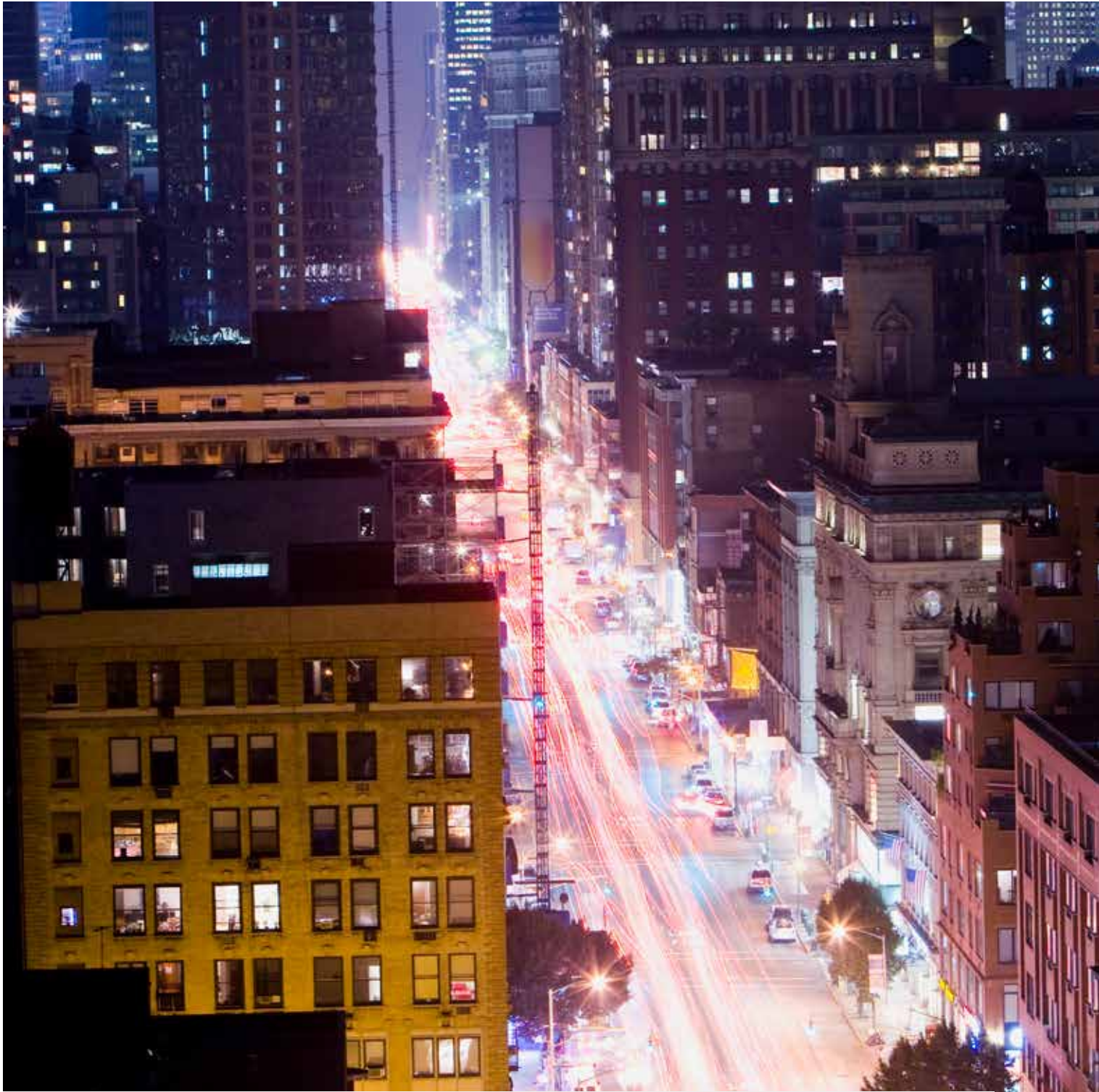
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Guatemala



1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Tax Administration Superintendence (Superintendencia de Administración Tributaria, or SAT).

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

Articles 54 to 67 of Ley de Actualización Tributaria (LAT or Tax Legislation Update or TLU), articles 37 to 66 of the TLU Regulations No. 213-2013.

In addition, in October 2016, the tax authorities published transfer pricing (TP) technical guidelines that establish parameters related to the presentation, content, calculation formulas and analysis to perform an adequate and standardized transfer pricing analysis. But most importantly, they refer to BEPS initiatives such as the master file requirement as part of transfer pricing documentation.

Regarding the validity of these guidelines, pursuant to Section 3(h) of the Organic Law of the Tax Administration Superintendence, Decree 1-98 of the Guatemalan Congress, the Guatemalan tax authorities are empowered to issue and implement any sorts of mechanisms or guidance that may enable the taxpayers to comply with their tax obligations more easily. However, the transfer pricing guidelines have not been ratified by the Guatemalan Congress and should not be understood as legally binding to the taxpayer.

► Section reference from local regulation

Refer to the section above.

2. OECD guidelines treatment/reference

Guatemala is not a member of the OECD, and there is no specific reference to the OECD Guidelines in the regulations.

The transfer pricing provisions in the regulations are mainly based on the OECD Guidelines and apply to all of the transactions conducted between Guatemalan taxpayers and their related parties abroad. The transfer pricing rules also present an additional non-OECD method (the import and export valuation method, or "sixth method"), which is intended to be used for transactions involving imports or exports of goods with well-known prices in international markets.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

Yes.

► Does transfer pricing documentation have to be prepared annually?

The TP report and return must be prepared annually, updating all the information that allows to a correct TP analysis. The local tax authorities require use of the most recent available financial information for the comparables and the tested party.

b) Materiality limit/thresholds

► Transfer pricing documentation

Not applicable.

► Economic analysis

Not applicable.

► BEPS master and local files

Not applicable.

► CbCR

Not applicable.

c) Specific requirement(s)

► Treatment of domestic transactions

There is a documentation requirement for domestic transactions.

► Local language documentation requirement

According to Article 369 to the Guatemalan Commerce Code, accounting must be kept in Spanish. In addition, even when the TP regulations do not expressly state this as mandatory, the Law of the Judicial Branch, in its Article 37, provides that all documents proceeding from abroad that have been prepared in a foreign language should be translated in order to be fully effective in Guatemala prior to being filed before any governmental entity.

Guatemala

► Safe harbor availability

There are no specific requirements for preparing safe harbor availability.

d) BEPS Action 13 implementation overview

► Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No.

► Coverage in terms of master and/or local files

Not applicable.

► Effective/expected commencement date

Not applicable.

► Material differences from OECD report template/format

Not applicable.

► Sufficiency of BEPS Action 13 format report to achieve penalty protection

Not applicable.

► CbCR notification and CbC report submission requirement

Not applicable.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Taxpayers are required to attach their audited financial statements that must be prepared according to “generally accepted accounting principles.”¹ No mandatory provisions

¹ In Guatemala, the term “generally accepted accounting principles” has no formal definition. Accounting regulations are derived from the Code of Commerce, which imposes the following rules:

- Annual accounts are stated in the Spanish language.
- Trial balances are recorded in Guatemalan quetzals.
- Annual accounts are based on the general ledger, journal entries, inventory and financial statements.
- Guatemala uses the double-entry principle.
- Trial balances and annual accounts are derived from the general ledger, journal entries, inventory and financial statements.
- The books must clearly show the origin, the substance and the accounting classification of each transaction. Each transaction must be supported by a written document, which must be available in a hard-copy format for statutory audit and other verification purposes.

regarding the inclusion of intercompany transactions are in force; however, it is common practice for external auditors to include a section on intercompany transactions.

b) Transfer pricing-specific returns

Regulations to Chapter VI of the TLU were enacted in 2013. The main provision of these regulations is the filing obligation in the form of a transfer pricing information return.

From FY 2015 onward, taxpayers are required to file a transfer pricing information return in the form of an appendix to the annual income tax return, which must be presented by 31 March each year.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► Corporate income tax return

31 April.

► Other transfer pricing disclosures/return

31 March.

► CbCR notification

None specified.

► CbC report preparation/submission

None specified.

b) Documentation preparation deadline

The TP documentation needs to be prepared by the time of lodging the tax return.

c) Documentation submission deadline

► Is there a statutory deadline for submission of transfer pricing documentation?

No.

Guatemala has no single source of accounting regulations. Accounting practice and procedures are essentially derived from the following legislation:

- Code of Commerce
- Accounting Manual, which applies only to banking and financial institutions subject to the control of the Bank Superintendent
- Accounting Manual for companies in the power generation and distribution sector

► **Time period/deadline for submission on tax authority request**

The taxpayer needs to submit the TP documentation within 20 days once requested by the tax authorities.

6. Transfer pricing methods

a) Applicability

- International transactions

Yes.

- Domestic transactions

Not applicable.

b) Priority/preference of methods

Acceptable transfer pricing methods are the CUP, resale price, cost-plus, profit split, TNMM, and the imports and exports valuation method (the "sixth method").

The CUP, resale price and cost-plus methods take priority over the transactional methods. In addition, the sixth method is preferred for transactions involving imports or exports of goods with well-known prices in international markets.

7. Benchmarking requirements

a) Local vs. regional comparables

There is no benchmarking requirement using local comparable companies because of the lack of financial information.

b) Single-year vs. multi-year analysis

Three years' analysis, as per common practice.

c) Use of interquartile range

Excel Quartile is preferred, as per common practice.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

A fresh benchmarking search vs. a financial update needs to be conducted every year. The TP report and return must be prepared annually, updating all the information that allows a correct TP analysis. Additionally, in practice, local tax authorities expect to see the most recent comparable information and to use the most recent available financial information for the comparables and the tested party.

e) Simple vs. weighted average

The weighted average, as per common practice.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

- **Consequences of failure to submit/late submission and/or incorrect disclosures**

According to Article 66 of the Regulations to the TLU, penalties for failure to comply with the transfer pricing obligations correspond to the general tax penalties. Penalties for failure to present the transfer pricing documentation upon request of the tax authority would be GTQ5,000 for the first time, GTQ10,000 for the second time and GTQ10,000 plus 1% of the taxpayer's gross income from then on.

In addition, any additional tax generated by price adjustments made by the SAT is subject to surcharges and penalty interest.

- **If an adjustment is sustained, can penalties be assessed?**

Yes, in case of incorrect compliance:

1. A fine equivalent to 100% of the tax due
2. 13.45% late payment interest
3. GTQ100 (approximately USD12.90) as a formal fine for the rectification.

- **Is interest charged on penalties/payable on refund?**

Refer to the section above.

b) Penalty relief

Penalties can be reduced up to 85% for the failure to submit documentation (only for the first time) if the omission is corrected by the taxpayer.

When the taxpayer accepts the errors in the determination of tax liability, before the tax authorities pre-grant a hearing, the taxpayer must pay the resulting tax, and interest payments with a discount of 40% and penalty for late payment reduced by 80%, provided it makes the payment within the next five days from the date of issue from the administrative record (Section 145 "A" Tax Code).

Guatemala

However, upon the letter of determination issued by the tax authorities, the fine equal to 100% of the omitted tax may be reduced as follows (Section 46 Tax Code):

- ▶ If the payment is made at the administrative hearing granted by the tax authorities, a 75% discount should be granted
- ▶ If the payment is made before filing for an administrative appeal, a 50% discount should be granted
- ▶ If the payment is made before filing a claim before the Tax Court, a 25% discount should be granted

According to the local tax code, the taxpayers may express their disagreement with the position taken by the tax authorities. In a first stage, the administrative procedure is available prior to the judicial process.

9. Statute of limitations on transfer pricing assessments

The statute of limitations on assessments is four years from the date of filing the tax return.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

- ▶ **Likelihood of transfer pricing-related audits** (*high/medium/low*)

The likelihood of a general tax audit and transfer pricing assessments as part of a general tax audit is high. Although transfer pricing regulations are relatively new in Guatemala, the SAT has been performing transfer pricing audits on taxpayers regarding FY 2013, and during 2016 and 2017, the tax authorities requested FY 2016 transfer pricing documentation from most taxpayers that informed intercompany transactions.

- ▶ **Likelihood of transfer pricing methodology being challenged** (*high/medium/low*)

When transfer pricing is scrutinized, the likelihood that the transfer pricing methodology will be challenged is high. In practice, the SAT consistently has been questioning the application of transfer pricing methods (i.e., sixth method instead of the CUP method), comparables with losses, the formulas and interest rate for capital adjustments to the comparables, among others.

- ▶ **Likelihood of an adjustment if transfer pricing methodology is challenged** (*high/medium/low*)

In most audits where the SAT challenges either the methodology or the comparables, the likelihood of an adjustment is high.

- ▶ **Specific transactions/industries/situations, if any, more likely to undergo audit**

Taxpayers that have not complied with previous TP obligations and transactions regarding the import and export of commodities.

11. APA opportunity

- ▶ **Availability (unilateral/bilateral/multilateral)**

APAs are contemplated in Article 63 of the TLU. Taxpayers can request an APA for a maximum of four years. The procedures for establishing an APA are established in articles 57 to 63 of the Regulations to the TLU.

- ▶ **Tenure**

Four years.

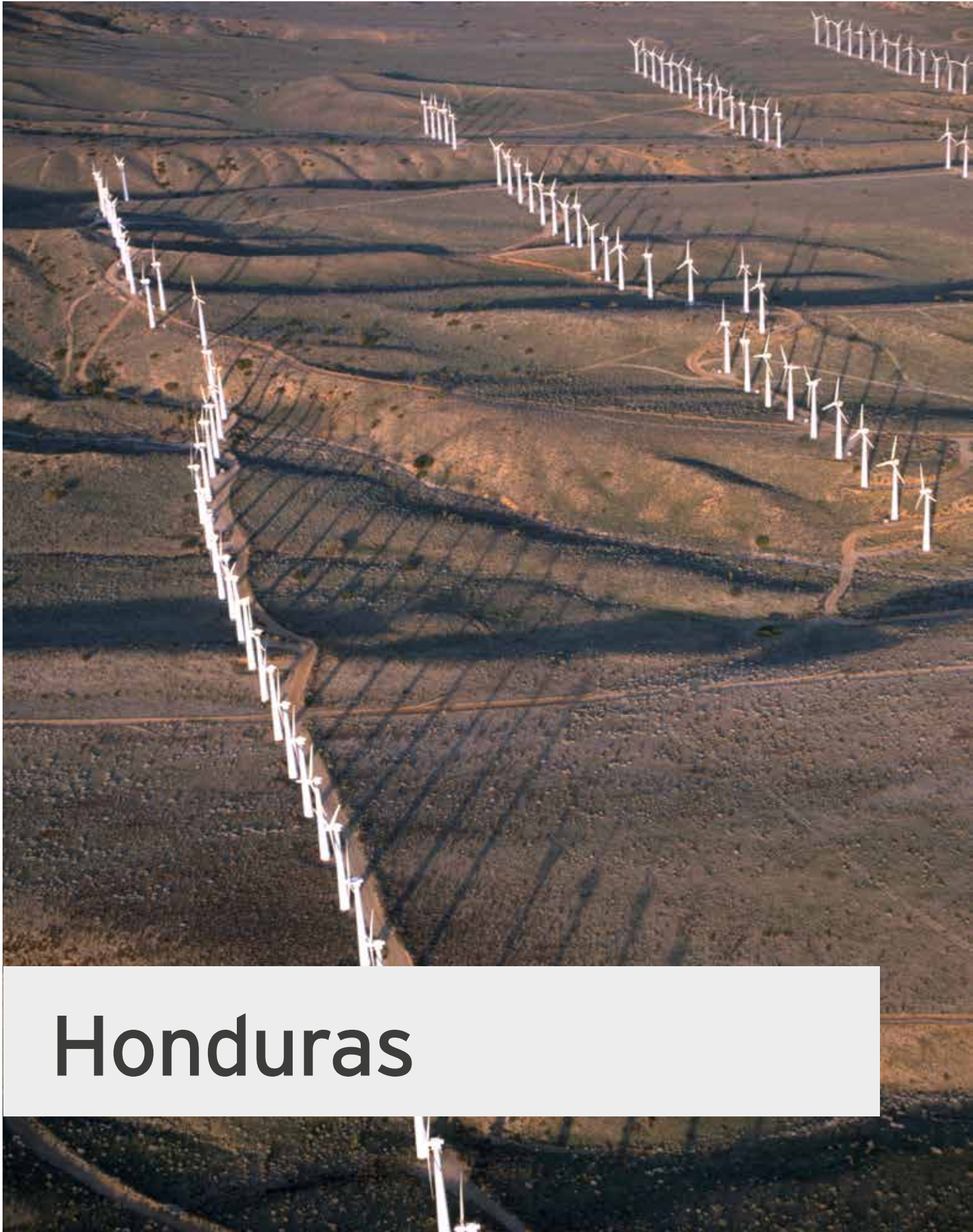
- ▶ **Rollback provisions**

Not applicable.

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Honduras

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Tax Administration of Honduras (Servicio de Administración de Rentas, or SAR).

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

- ▶ Decree No. 232-2011, effective 1 January 2014, establishes Transfer Pricing Law, Articles 1 to 22
- ▶ Executive Decree No. 027-2015, effective 18 September 2015, contains regulations on transfer pricing, Articles 1 to 40
- ▶ Communication-DEI-SG-004-2016
- ▶ Article 113 of Tax Code

▶ Section reference from local regulation

Refer to the section above.

2. OECD guidelines treatment/reference

Honduras is not a member of the OECD.

The OECD Guidelines can be relied upon for interpretation of the rules, as long as they do not contradict the Honduran tax system.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Yes.

▶ Does transfer pricing documentation have to be prepared annually?

Yes, the transfer pricing report and return must be prepared annually, updating all the information that allows a correct TP analysis. Use of the most recent available financial information for the comparables and the tested party is requested.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

Not applicable.

▶ Economic analysis

Not applicable.

▶ BEPS master and local files

Not applicable.

▶ CbCR

Not applicable.

c) Specific requirement(s)

▶ Treatment of domestic transactions

Through Article 113 of Decree No. 170-2016 and in effect since 2017, the obligation to document domestic related party transactions is repealed except those transactions carried out with domestic (related or not) entities established under a special tax regime.

▶ Local language documentation requirement

The documentation needs to be submitted in the local language, according to Civil Code, Article 45.

▶ Safe harbor availability

There is no materiality limit for safe harbor availability.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No.

▶ Coverage in terms of master and/or local files

Not applicable.

▶ Effective/expected commencement date

Not applicable.

▶ Material differences from OECD report template/format

Not applicable.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

Not applicable.

Honduras

► CbCR notification and CbC report submission requirement

Not applicable.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Taxpayers must report on the income tax return whether they conducted transactions with related parties and disclose the total amount of such related party transactions, indicating if they are income, purchases or other expense items.

b) Transfer pricing-specific returns

An information return on the transactions conducted with related parties should be filed annually, as follows:

- a. For fiscal years that end in December, taxpayers must file the transfer pricing return between 1 January and 30 April.
- b. For a special fiscal year that does not end in December, taxpayers must file the transfer pricing return within three months after the fiscal year-end.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► Corporate income tax return

The corporate income tax return should be filed annually, as follows:

- a. For fiscal years that end in December, taxpayers must file the return between 1 January and 30 April.
- b. For a special fiscal year that does not end in December, taxpayers must file the return within three months after the fiscal year-end.

► Other transfer pricing disclosures/return

None specified.

► CbCR notification

Not applicable.

► CbC report preparation/submission

Not applicable.

b) Documentation preparation deadline

Taxpayers are required to prepare transfer pricing documentation annually by the due date of the income tax return. The documentation should be filed only if requested by the SAR.

c) Documentation submission deadline

► Is there a statutory deadline for submission of transfer pricing documentation?

No.

► Time period/deadline for submission on tax authority request

10 working days.

6. Transfer pricing methods

a) Applicability

► International transactions

Yes.

► Domestic transactions

Not applicable after fiscal year 2017.

b) Priority/preference of methods

The provisions require the application of the most appropriate transfer pricing method. The specified methods are the CUP, resale price, cost-plus, profit split, TNMM and any other alternative method (as long as it is possible to demonstrate that no other method can be reasonably applied, and that it represents what third parties will agree upon under comparable arm's-length circumstances). A taxpayer can use an alternative method when it is in accordance with the international practice and standards, and previously approved by the SAR.

7. Benchmarking requirements

a) Local vs. regional comparables

There is no benchmarking requirements for local and regional comparables, considering the lack of financial information available on local comparables. Thus, international comparables are accepted by the tax authorities.

b) Single-year vs. multi-year analysis

Multiple-year testing (three years) is acceptable.

c) Use of interquartile range

Interquartile range calculation using Excel Quartile formulas is acceptable.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

A fresh benchmarking search vs. a financial update needs to be conducted every year. The transfer pricing report and return must be prepared annually, updating all the information that allows a correct TP analysis. Additionally, in practice, local tax authorities expect to see the most recent comparable information and to use the most recent available financial information for the comparables and the tested party.

e) Simple vs. weighted average

Weighted average, as per common practice.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

► **Consequences of failure to submit/late submission and/or incorrect disclosures**

If taxpayers fail to provide information, or provide false, incomplete or inaccurate information in response to a request by the SAR, a penalty of USD10,000 applies.

If taxpayers report taxable income less than it should have been under arm's-length conditions, a penalty of 15% on the corresponding income adjustment applies.

If taxpayers fail to provide the correct information or fail to declare a correct taxable income, then the penalties will be the greater of 30% or USD20,000.

If taxpayers fail to comply with any other provision of the Transfer Pricing Law, a penalty of USD5,000 applies.

► **If an adjustment is sustained, can penalties be assessed?**

Refer to the section above.

► **Is interest charged on penalties/payable on refund?**

In the case of a transfer pricing income adjustment, interest applies (3% on a monthly basis, up to 36%), per the general provisions of the Tax Code.

b) Penalty relief

Taxpayers can benefit from reductions of the surcharges assessed for noncompliance of a formal obligation:

- a. 50% reduction, if the taxpayer rectifies before any competent authority proceeding
- b. 30% reduction, if the taxpayer rectifies before the competent authority assesses and notifies the penalty or initiates the collection process; and without the taxpayer initiating any reconsideration request process
- c. 10% reduction, if it rectifies before the collection process of the penalty conducted by the judicial authority
- d. If the taxpayer is categorized as a small taxpayer, it has an additional reduction of 20%

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

- An appeal that has to be filed with the Honduran tax authorities – first administrative instance
- An appeal that has to be filed with the Secretary of Finance – second administrative instance
- An Extraordinary Review Appeal

9. Statute of limitations on transfer pricing assessments

Five to seven years. The term is extended with the filing of an amended return.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood of a general tax audit is high, as is the likelihood of transfer pricing assessments as part of a general tax audit. During the past year, the SAR has sent information requests to several taxpayers related to their documentation reports, therefore initiating transfer pricing audits.

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► **Likelihood of transfer pricing methodology being challenged**
(*high/medium/low*)

Medium. Since the first audits were initiated in the past year, it is hard to predict at this stage the position the SAR will take regarding the methodology.

► **Likelihood of an adjustment if transfer pricing methodology is challenged** (*high/medium/low*)

High, given the overall aggressive stance of tax authorities.

► **Specific transactions/industries/situations, if any, more likely to undergo audit**

None.

11. APA opportunity

► **Availability (unilateral/bilateral/multilateral)**

APAs are contemplated under the provisions of Decree 232-2011 and Executive Decree 027-2015. However, the corresponding regulations have not yet been enacted.

► **Tenure**

The duration of an APA is a maximum of five years.

► **Rollback provisions**

Not applicable.

Contact

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Hong Kong

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Inland Revenue Department (IRD).

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

On 29 December 2017, the Government of Hong Kong Special Administrative Region (the Government) published in its official gazette an amendment bill, Inland Revenue (Amendment) (No. 6) Bill 2017, for further reading at the Legislative Council (LegCo) (Amendment Bill No. 6). The main objectives are to codify certain transfer pricing principles into the Inland Revenue Ordinance (Cap. 112) (IRO) and implement the minimum standards of the base erosion and profit shifting project. The effective dates for the regulations are staggered across the accounting period beginning on or after 1 January 2018 (for country-by-country reports), 1 April 2018 (for master file/local file and advance pricing arrangements) and years of assessment beginning on or after 1 April 2018 (for profits taxes under the IRO). These rules are expected to be released as final regulations as part of the IRO in 2018.

Other relevant sections of the IRO include:

- Section 16, about deductibility of expenses in arriving at assessable profits
- Section 17, about prohibited deductions
- Section 20, about basis for taxation of closely connected, nonresident persons
- Section 61A, about transactions designed to avoid tax liability

In addition, the Departmental Interpretation and Practice Notes (DIPN) contain the IRD's interpretation and practices related to the law. These notes are issued as information and guidance, and have no legal binding force. The relevant DIPNs include:

- DIPN 45: *Relief from Double Taxation due to Transfer Pricing or Profit Reallocation Adjustments*, issued in April 2009

- DIPN 46: *Transfer Pricing Guidelines – Methodologies and Related Issues*, issued in December 2009
- DIPN 48: *Advance Pricing Arrangement*, issued in March 2012
- DIPN 51: *Profits Tax Exemption for Offshore Private Equity Funds*, issued in May 2016
- Local generally accepted accounting principles (GAAP): Hong Kong Financial Reporting Standards (HKFRS), which are largely based on International Financial Reporting Standards (IFRS)

► Section reference from local regulation

Paragraph 1 of Section 20 of the IRO defines related parties. According to the paragraph:

- a. A person is closely connected with another person where the Commissioner in his discretion considers that such persons are substantially identical or that the ultimate controlling interest of each is owned or deemed under this section to be owned by the same person or persons.
- b. The controlling interest of a company shall be deemed to be owned by the beneficial owners of its shares, whether held directly or through nominees, and shares in one company held by or on behalf of another company shall be deemed to be held by the shareholders of the last-mentioned company.

DIPN 46 references the "Associated Enterprises Article," or Article 9(1) of the OECD Model, where two enterprises are associated with respect to each other if:

- a. An enterprise of a contracting state participates directly or indirectly in the management, control or capital of an enterprise of the other contracting state.

Or

- b. The same persons participate directly or indirectly in the management, control or capital of an enterprise of a contracting state and an enterprise of the other contracting state.

Amendment Bill No. 6 also suggests that associated parties would be defined based on tests of participation in the management, control and capital of another or of common participation by a third party.

2. OECD guidelines treatment/reference

Hong Kong (a special administrative region of China) is not a member of the OECD; however, it is a BEPS Associate country (announced in June 2016). The Hong Kong transfer pricing framework is largely based on the OECD Guidelines, and the IRD generally will not differ from the transfer pricing methodologies recommended by the OECD Guidelines.

3. Transfer pricing documentation requirements

a) Applicability

► Does Hong Kong have transfer pricing documentation guidelines/rules?

The prevailing Hong Kong transfer pricing framework recommends maintaining transfer pricing documentation; however, this is not mandatory, and there is no contemporaneous transfer pricing documentation requirement. However, Section 51C of the IRO requires taxpayers to maintain sufficient records about the transacting parties and other details of goods and services transactions. In addition, upon an audit or investigation, the taxpayer is expected to have maintained records that have details about intercompany transactions with regard to the nature of transactions and payments made or received.

Further, Amendment Bill No. 6 has proposed the adoption of the OECD's recommended three-tiered documentation structure, comprising a master file, local file and the CbCR (subject to certain thresholds being met).

► Does transfer pricing documentation have to be prepared annually?

Transfer pricing documentation need not be prepared annually under the prevailing Hong Kong transfer pricing framework. However, Amendment Bill No. 6 has proposed annual and contemporaneous documentation requirements. There is no specific guidance currently on the minimum requirement on the update of such annual reports.

b) Materiality limit/thresholds

► Transfer pricing documentation

DIPN 46 suggests that the need for and adequacy of transfer pricing documentation should be determined based on

the nature, size and complexity of the business or transaction. Amendment Bill No. 6 has proposed specific thresholds to determine the need to prepare master file and local file documentation.

► Economic analysis

Not applicable.

► BEPS master and local files

Refer to the section on the transfer pricing documentation threshold.

► CbCR

The CbCR filing threshold is set in accordance with the OECD recommendation, i.e., EUR750 million, which is approximately HKD6.8 billion.

c) Specific requirement(s)

► Treatment of domestic transactions

There is no difference or separate treatment of domestic transactions for the application of the arm's-length principle.

► Local language documentation requirement

The transfer pricing documentation may be prepared in either English or Chinese.

► Safe harbor availability

The prevailing Hong Kong transfer pricing framework does not have specific safe harbors.

d) BEPS Action 13 implementation overview

► Has Hong Kong adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Amendment Bill No. 6 proposes the adoption of the OECD's recommended three-tiered documentation structure, comprising a master file, local file and the CbCR based on Action 13. However, these rules are yet to be implemented.

► Coverage in terms of master and/or local files

The proposed rules cover both the master file and the local file.

► **Effective/expected commencement date**

The effective date is proposed to be the accounting period beginning on or after 1 January 2018 (for CbCR) and 1 April 2018 (for master file/local file). (Note: The IRD has implemented a transitional arrangement for accepting a voluntary filing of CbCR for taxpayers with an ultimate parent entity resident in Hong Kong. These voluntary filings will cover accounting periods commencing between 1 January 2016 and 31 December 2017).

► **Material differences from OECD report template/format**

Not applicable.

► **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

The BEPS Action 13 format report alone will not qualify for penalty exemption; however, it will be considered in determining whether a reasonable excuse exists. The scale of the penalty to be imposed on a taxpayer in Hong Kong is determined based on the nature of the omission, the quantum of understatement of income or profits, the scale of the business, the degree of the taxpayer's cooperation or disclosure and the length of the offense period. Penalties can be scaled up or down based on such facts.

► **CbCR notification and CbC report submission requirement**

Amendment Bill No. 6 proposes CbCR notification and CbC report submission requirements.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

The IRD requires taxpayers to disclose in their annual profits tax return whether they have transactions with nonresident persons, fees paid for royalties, fees paid to nonresidents for services rendered in Hong Kong and the location of the nonresident person.

b) Transfer pricing-specific returns

There are no specific returns that have to be filed for transfer pricing purposes.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► Corporate income tax return

Tax returns are normally due for filing within one month from the date of issue of the profits tax return, but an extension of time may be granted if a reasonable request is filed with the IRD.

Tax representatives can apply for an extension under the Block Extension Scheme; the due date is normally extended as follows.

Accounting date	Extended due date
For N Code Return (accounting date between 1 April and 30 November)	2 May
For D Code Return (accounting date between 1 and 31 December)	15 August
For M Code Return (accounting date between 1 January and 31 March)	15 November
For M Code Return and current year loss cases	31 January

► Other transfer pricing disclosures/return

Included within the corporate income tax return, and therefore the same dates apply.

► CbCR notification

Amendment Bill No. 6 proposes CbCR notifications to be due within three months after the end of the accounting period, starting for accounting periods beginning on or after 1 January 2018.

► CbC report preparation/submission

Amendment Bill No. 6 proposes CbCR filings be prepared 12 months after the end of the accounting period or the date specified in a notice given by an assessor, whichever is earlier, starting for accounting periods beginning on or after 1 January 2018.

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b) Documentation preparation deadline

The prevailing Hong Kong transfer pricing framework does not have specific deadlines for documentation.

Amendment Bill No. 6 proposes documentation to be prepared within a certain time frame starting for the accounting period beginning on or after 1 April 2018.

c) Documentation submission deadline

► Is there a statutory deadline for submission of transfer pricing documentation?

There is no statutory deadline for submission of transfer pricing documentation.

► How much time does the taxpayer have to submit the transfer pricing documentation once requested by the tax authorities in an audit or enquiry?

There is no specific guidance on the time to submit transfer pricing documentation. However, typically, in an audit or inquiry, a taxpayer is given 30 days (extensions are available) to reply to the tax authorities.

6. Transfer pricing methods

a) Applicability

► International transactions

The IRD recognizes the methods outlined in the OECD Guidelines, which include the traditional transaction methods (CUP, resale price and cost-plus) and profit methods – profit split and TNMM. Other methods are also allowed, to the extent that the OECD-recognized methods are not applicable.

► Domestic transactions

Same as the international transactions.

b) Priority/preference of methods

The most appropriate method should be selected. Although the IRD may prefer the traditional transaction methods, as they are considered to be the most direct means of establishing the arm's-length price, the profit methods are accepted in circumstances where traditional methods are not comparable or reliable.

7. Benchmarking requirements

a) Local vs. regional comparables

There is no specific requirement for local country comparables; comparables from Greater China and Far East Asia are acceptable.

b) Single-year vs. multi-year analysis

DIPN 46 suggests that a multi-year analysis should be applied (in the context of discussing the application of the TNMM).

c) Use of interquartile range

DIPN 46 states that the use of ranges, such as an interquartile range, would be accepted.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

There is no specific requirement or guidance on the need for new searches every year.

e) Simple vs. weighted average

There is no specific requirement or guidance on the averaging method.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

► Consequences of failure to submit/late submission and/or incorrect disclosures

The IRD is empowered to take punitive action under IRO Sections 80(1), 80(1A), 80(2), 82 and 82A for noncompliance. Offenses can include any person who, without a reasonable cause or with willful intent to evade tax, fails to comply with record-keeping requirements of IRO Section 51(C); files an incorrect tax return; furnishes any incorrect information; fails to furnish a return in time; fails to inform chargeability for tax; makes any false statement in connection with a claim for any deduction of the allowance; gives any false answer to any question or request for information asked or made in accordance with the provisions of the IRO; or makes use of any fraud, art or contrivance to evade tax, among others.

Further, Amendment Bill No. 6 proposes penalties aimed at noncompliance with transfer pricing rules and documentation.

► **If an adjustment is sustained, can penalties be assessed?**

Offenses can be subject to a fine of HKD10,000, plus up to three times the amount of tax undercharged. In the case of willful intent, the taxpayer can be subject to a fine of HKD50,000, plus up to three times the amount of tax undercharged and three years of imprisonment.

Further, Amendment Bill No. 6 proposes penalties aimed at noncompliance with the fundamental transfer pricing rule (i.e., the arm's-length principle).

► **Is interest charged on penalties/payable on refund?**

Not applicable.

b) Penalty relief

Although transfer pricing documentation alone will not qualify for penalty exemption, it will be considered in determining whether a "reasonable excuse" exists.

The scale of the penalty to be imposed on a taxpayer in Hong Kong is determined based on the nature of the omission, the quantum of understatement of income or profits, the scale of the business, the degree of the taxpayer's cooperation or disclosure, and the length of the offense period. Penalties can be scaled up or down based on such facts.

The domestic objection and appeal process for income tax is available to the taxpayer. In addition, the taxpayer may request to resolve the issue through a MAP if the counterparty to the transaction is a resident of a jurisdiction that has a tax treaty with Hong Kong.

9. Statute of limitations on transfer pricing assessments

Six years after the end of the assessment year. In the case of fraud or willful evasion, the statute of limitations is extended to 10 years from the end of the assessment year.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► **Likelihood of transfer pricing-related audits**
(high/medium/low)

Medium to high, because the IRD has increased its attention on related party transactions. While there are no field auditors,

and there is no separate division within the IRD that deals specifically with transfer pricing cases, transfer pricing may be reviewed as part of an audit if the IRD suspects that transactions have not been carried out on an arm's-length basis (e.g., goods are sold or purchased at a deflated or inflated price, service or royalty fees are not commensurate with the benefits received, or transactions are with tax haven locations).

An audit related to transfer pricing will be aimed at reviewing the intercompany pricing policies and any analysis prepared to support the pricing, considering the facts of the business and the transactions. Transfer pricing inquiries typically arise as part of general field audits, with the deductibility of expenses or payments to related parties being a common line of inquiry.

Notably, among asset managers, the allocation of fee revenue into Hong Kong is an increasingly frequent area of inquiry. The recent DIPN 51 notes that an allocation to Hong Kong using a cost-plus formula is not likely to be at arm's length if significant functions are performed, or significant risks are borne, in Hong Kong. The risk of audit or transfer-pricing scrutiny depends on the facts and circumstances of the taxpayer.

► **Likelihood of transfer pricing methodology being challenged**
(high/medium/low)

The likelihood of the transfer pricing methodology being challenged is medium to high, depending on the complexity of the related party transactions. This is because transfer pricing-associated audits/inquiries typically arise as part of general field audits, with the deductibility of expenses or payments to related parties being a common line of inquiry. Therefore, when viewed from a corporate tax perspective, there is often a focus on transactional/product-level pricing without fully recognizing the transfer pricing structure and methodology.

► **Likelihood of an adjustment if transfer pricing methodology is challenged**
(high/medium/low)

The likelihood of an adjustment is medium to high if a transfer pricing methodology is challenged, if the case under review has been ongoing for a lengthy period of time and if it involves material tax assessments. The risk is also high if the taxpayer is unable to provide sufficient information, on a timely basis, to support its tax positions and if the responses do not adequately address the information being requested as part of the audit.

► **Specific transactions/industries/situations, if any, more likely to undergo audit**

The likelihood of a tax audit in Hong Kong may be triggered by a variety of situations, such as fluctuating profit margins, if the accounts of a business are heavily qualified, profits or turnover are deemed unreasonably low, filing of tax returns

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is persistently delayed or omitted, business records are not properly maintained, or requested information is not provided.

11. APA opportunity

▶ **Availability (unilateral/bilateral/multilateral)**

There is an APA program available in Hong Kong. The APA program will cover unilateral, bilateral and multilateral agreements.

▶ **Tenure**

In general, an APA will apply for three to five years.

▶ **Rollback provisions**

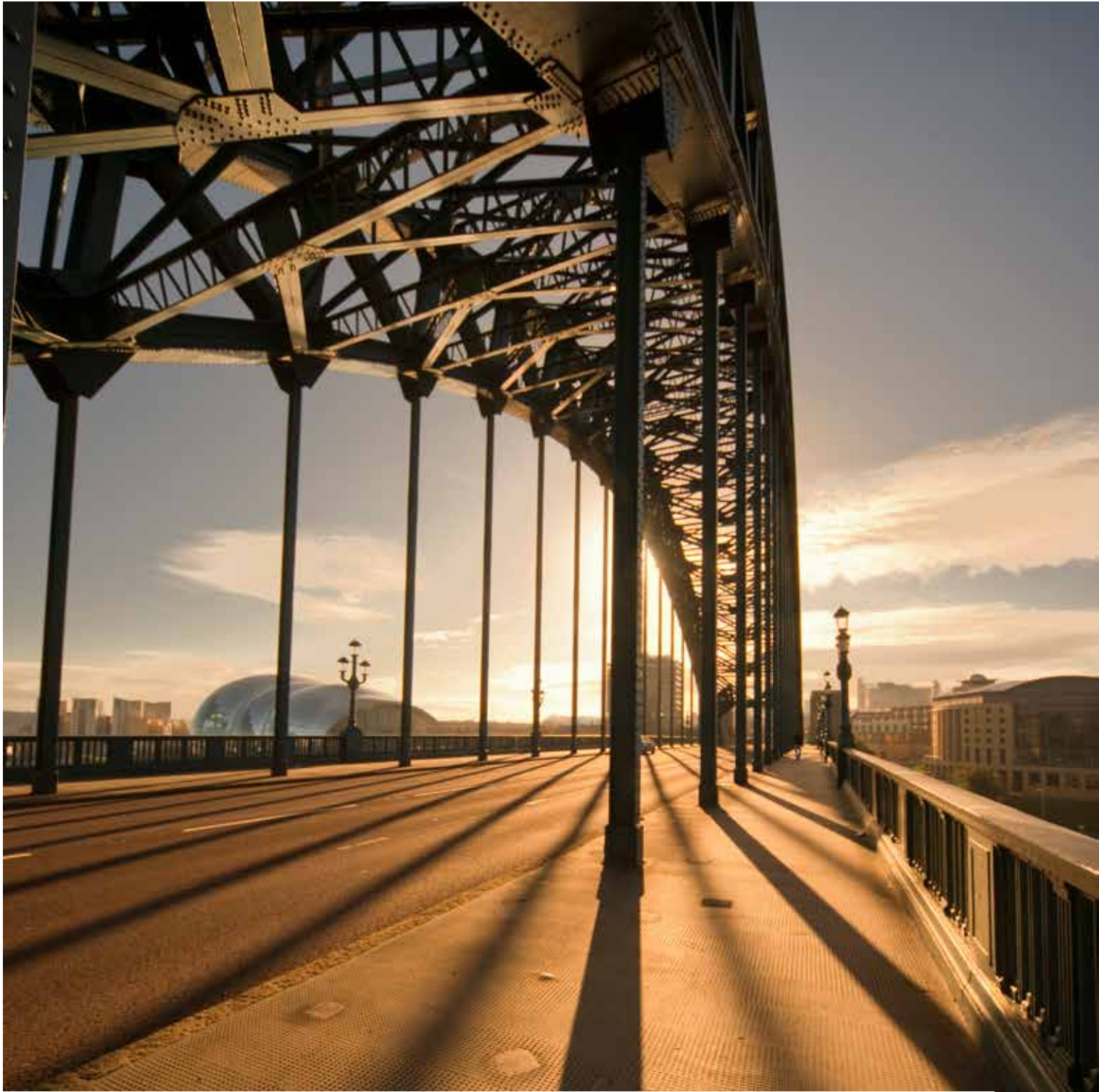
Yes, a rollback may be considered, subject to certain conditions.

Contact

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Hungary

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

National Tax and Customs Administration (NTCA).

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

Section 18 of the Act on Corporate Income Tax (CIT) (application of the arm's-length principle) which has been applicable from 1992.

► Section reference from local regulation

Section 4.23 of the Act on Corporate Income Tax (definition of related parties).

2. OECD guidelines treatment/reference

Hungary is a member of the OECD.

The Act on CIT contains specific reference to the OECD Guidelines. If the Hungarian tax laws do not include regulations on specific issues, the OECD Guidelines may be used as a primary reference.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

Yes.

► Does transfer pricing documentation have to be prepared annually?

Transactions have to be documented for each year that falls under the documentation obligation. If the main terms and conditions of the transaction did not change significantly, compared with the previous year, it is acceptable to prepare an update (of the transfer pricing (TP) report prepared for the previous year) summarizing the changes that took place in an appendix. Updating the benchmarking analysis is required.

b) Materiality limit/thresholds

► Transfer pricing documentation

There is a materiality limit for preparation of TP documentation. The materiality limit is HUF50 million (approximately EUR166,000). When determining whether a transaction falls under the documentation obligation, the rules of consolidation (i.e., the transactional value of transactions with similar terms and conditions have to be summed up when tested against the documentation threshold) also have to be considered.

► Economic analysis

There is a materiality limit for preparation of economic analysis. If a transaction is considered to be a low-value-adding service, no economic analysis has to be prepared. In every other case, economic analysis has to be prepared for the specific transaction.

► BEPS master and local files

The local and master files have to be prepared for transactions exceeding HUF50 million in a given tax year.

► CbCR

CbC reports have to be prepared and filed according to OECD standards for all Hungarian tax resident entities that are members of an MNE group with annual reports that show consolidated group revenue of at least EUR750 million.

c) Specific requirement(s)

► Treatment of domestic transactions

There is no specific requirement for treatment of domestic transactions. The obligation and requirements are the same as for international transactions.

► Local language documentation requirement

There is no requirement for the TP documentation to be prepared exclusively in the local language.

► Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

► Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

BEPS Action 13 has been implemented for TP documentation in Hungary.

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► Coverage in terms of master and/or local files

This covers both the master file and local file.

► Effective/expected commencement date

The documentation requirements under Action 13 are in place, effective as of 1 January 2018.

► Material differences from OECD report template/format

There are material differences between the formats of the OECD report template and the local country regulations. The (i) administrative data of the related parties, (ii) the date of the preparation of the local file, (iii) the justification and reasons for consolidation (if such report was prepared), and (iv) the details of court or other official procedures (in progress or finished) relating to the arm's-length price have to be included in the report. Since 2015, the application of the interquartile range is also mandatory. Based on the legislation implementing Action 13, a segmented profit/loss statement has to be prepared with respect to each documented transaction (the segmentation must reconcile foreign GAAP segment results with local GAAP segment results, if applicable).

► Sufficiency of BEPS Action 13 format report to achieve penalty protection

A BEPS Action 13 format report typically would not be sufficient to achieve penalty protection. See the section above.

► CbCR notification and CbC report submission requirement

There is a CbCR notification and CbC report submission requirement for Hungary. Hungarian resident member companies of MNE groups are required to report to the Hungarian tax authority on whether they qualify as a "reporting entity" under the new legislation. If they do not qualify, they should report the name and the state of residence of the reporting entity. The entities concerned have to report their status to the Hungarian tax authority by the last day of the reporting fiscal year.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Within 15 days of concluding its first contract with a related party, the taxpayer must report the name, registered seat and tax number of the contracting party to the NTCA. Cessation of the related party status must also be reported.

In the CIT return, the tax base should be adjusted if the price used in the related party transaction differs from the fair market price. In their year-end corporate tax returns, taxpayers must declare which type of transfer pricing documentation they have elected to prepare.

According to Hungarian transfer pricing regulations, the taxpayer is not required to file the transfer pricing documentation with the NTCA; however, the taxpayer needs to present the documentation during a tax audit.

Companies' financial statements include certain compulsory disclosures about related party transactions.

b) Transfer pricing-specific returns

None specified.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► Corporate income tax return

The corporate income tax return deadline is 31 May. The general rule is as follows: "Taxpayers shall satisfy their obligation to file tax returns concerning corporate tax and dividend tax by the last day of the fifth month following the last day of the tax year to which it pertains."

► Other transfer pricing disclosures/return

Not applicable.

► CbCR notification

By 31 December of each financial year.

► CbC report preparation/submission

By 31 December of the subsequent calendar year.

b) Documentation preparation deadline

The TP documentation needs to be prepared by the time of lodging the tax return to achieve penalty protection (e.g., where there is a contemporaneous requirement). New legislation is likely to enter into force in September 2018. The deadline for the preparation of the local file is the same as the deadline for the submission of the corporate income tax return. The deadline to prepare the master file is as defined by headquarters country regulations, or by 31 December of the subsequent year, whichever is earlier.

c) Documentation submission deadline

- ▶ Is there a statutory deadline for submission of transfer pricing documentation?

No.

- ▶ Time period/deadline for submission on tax authority request

The documentation has to be readily available by the documentation deadline. Upon request of the Hungarian tax authority, no extra time is provided for taxpayers after the CIT return's submission deadline. If the transfer pricing documentation is not available upon request, default penalties for noncompliance can be levied. The documentation will also have to be prepared regardless of the fact that penalties are levied. Repeated and higher penalties may be levied in the case of continued noncompliance.

6. Transfer pricing methods

a) Applicability

- ▶ International transactions

Yes.

- ▶ Domestic transactions

There are no specific rules for domestic transactions.

b) Priority/preference of methods

The traditional methods (i.e., CUP, resale price and cost-plus) and the profit-based methods recommended by the OECD (i.e., TNMM and profit split) are acceptable. Other methods can also be used only after the five major methods have been rejected.

As an important new requirement in a relatively wide array of cases, taxpayers are required by law to apply the interquartile range in their pricing and assess their Hungarian tax liabilities accordingly.

7. Benchmarking requirements

a) Local vs. regional comparables

Local comparables are preferred in the Hungarian unilateral APA practice but otherwise not mandated by law.

b) Single-year vs. multi-year analysis

Multi-year analysis is preferred in testing the arm's-length analysis.

c) Use of interquartile range

Mandatory by law, unless a full functional analysis is prepared and documented for each comparable used.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

In line with the OECD Transfer Pricing Guidelines, a new search has to be prepared every three years. For the two years not covered by a new comparable search, the financial update of the sample is required. With respect to financing transactions, a new search is expected to be prepared for each year.

e) Simple vs. weighted average

The simple average is preferred but is not mandated by law.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures

In relation to a tax base adjustment, a penalty of 50% of the unpaid tax may be imposed. A default penalty of up to HUF8 million may be levied for not fulfilling, or not properly fulfilling, the content and formal documentation requirements. As a general rule, the default penalty is levied for each set of documentation per fiscal year under a tax audit.

- ▶ If an adjustment is sustained, can penalties be assessed?

A late payment interest charge at double the prime rate of the National Bank of Hungary can be assessed.

- ▶ Is interest charged on penalties/payable on refund?

Yes, at the prime rate of the National Bank of Hungary.

b) Penalty relief

Currently, no penalty relief is available.

9. Statute of limitations on transfer pricing assessments

In the absence of a tax return or appropriate reporting, the statute of limitations lapses on the last day of the fifth calendar year calculated from the tax year in which taxes should have been declared, reported or paid. However, within the framework of the Arbitration Convention, it is possible to request a tax base adjustment even after the statute of limitations has expired.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► Likelihood of transfer pricing-related audits (*high/medium/low*)

The risk of transfer pricing issues being scrutinized during an NTCA audit is steadily growing. The NTCA now routinely checks the existence and completeness of the documentation (i.e., whether all transactions are covered).

For larger transactions, the NTCA usually inspects whether the content and formal requirements are fulfilled in the documentation. Since the beginning of 2007, the NTCA has started to train transfer pricing specialists. Consequently, the NTCA's knowledge of the application of transfer pricing methods has increased significantly. Since 2009, targeted transfer pricing audits have been commonplace; the number of audits and the amount of assessments are growing at a rate of roughly 50% each year. Since 2012, there have been two groups within the NTCA dedicated to transfer pricing issues. One group has specialized mainly in transfer pricing audits of large taxpayers, while the other deals solely with APA and transfer pricing-related MAP requests. Another specialist group was set up in late 2017 with the intention to double TP audit capacity nationwide.

The likelihood of comprehensive NTCA audits is characterized as medium overall.

For medium and large taxpayers, however, the risk of an audit with a transfer pricing focus can be characterized as high. Large taxpayers are likely to be reviewed every two to three years. In particular, the NTCA places significant focus on loss-making taxpayers and the enforcement of the interquartile range, especially at limited-risk entities.

► Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

The NTCA habitually challenges the transfer pricing methodology, especially for situations in which:

- The profitability of the Hungarian party is not tested in the documentation.
- The taxpayer came to an unusual conclusion regarding the transfer prices.
- The pricing method is unusual (i.e., not TNMM).
- The transactions themselves can be regarded as unusual or unique (especially hybrids, CCAs and certain royalty arrangements).

The NTCA continuously cooperates with other countries' tax authorities and follows the international transfer pricing auditing practices as well, through which it constantly develops its dedicated transfer pricing experts and their auditing practices. Based on experience, the NTCA is now rather knowledgeable about matters concerning method selection; therefore, the risk of the taxpayer's application of a particular transfer pricing methodology being challenged is characterized as medium to high.

► Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

Such likelihood is medium to high. Whenever the NTCA challenges the methodology, it will almost certainly also prepare an alternative financial analysis that implies an adjustment.

► Specific transactions/industries/situations, if any, more likely to undergo audit

See the "Likelihood of transfer pricing-related audits" section above.

11. APA opportunity

► Availability (unilateral/bilateral/multilateral)

On 1 January 2007, a formal APA regime was introduced in Hungary. Unilateral, bilateral and multilateral APAs are available according to the provision.

► **Tenure**

Anonymous pre-filing consultation with the NTCA's APA team is free. APAs may be requested for ongoing and future transactions, can be relied on for three to five years and can be extended for a further three years. Starting in the year of filing a valid APA request, the taxpayer does not have to prepare transfer pricing documentation for the transactions covered by the APA.

► **Rollback provisions**

There are no rollback provisions provided by the law.

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Iceland

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Directorate of Internal Revenue.

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

- Article 57(4) of the Icelandic Income Tax Act No. 90/2003 (documentation requirements), 1 January 2015
- Article 57(3) of the Icelandic Income Tax Act No. 90/2003 (definition of related parties), 1 January 2015
- Regulation No. 1180/2014 on the documentation and transfer pricing in transactions between related parties, 1 January 2015
- Regulation No. 1166/2016 on country-by-country reporting, 1 January 2017

► Section reference from local regulation

Article 57 of the Icelandic Income Tax Act No. 90/2003.

2. OECD guidelines treatment/reference

Iceland is a member of the OECD.

Tax authorities recognize the OECD Guidelines. According to the law, tax authorities may assess and adjust pricing between related parties based on the OECD principles.

Given the newness of both Chapter IX of the OECD Guidelines and the domestic transfer pricing (TP) rules, it is unclear how business restructurings will be affected.

3. Transfer pricing documentation requirements

a) Applicability

- Does your country have transfer pricing documentation guidelines/rules?

Yes.

- Does transfer pricing documentation have to be prepared annually?

The transfer pricing documentation has to be prepared annually under Iceland's local country regulations, which follow the OECD Guidelines. Additionally, if there have been any changes in the transfer prices from the previous year, the changes must be documented. As part of the tax return, the taxpayer must file a form (RSK 4.28) providing specific information on transactions with related parties and whether each type of transaction has been documented appropriately. The transfer pricing documentation is to be submitted upon request from the Directorate of Internal Revenue.

b) Materiality limit/thresholds

► Transfer pricing documentation

There is a materiality limit for transfer pricing documentation. In accordance with Article 57(4) of the Icelandic Income Tax Act, taxpayers reporting a revenue exceeding ISK1 billion in the previous financial year are required to prepare transfer pricing documentation for the subsequent financial year.

► Economic analysis

There is a de minimis threshold provided for in Article 12 of Regulation No. 1180/2014 whereby transactions that have a limited economic volume and significance on the operations of the taxpayer should only be mentioned in the transfer pricing documentation and are not covered further by the documentation. The de minimis threshold does not apply for transactions relating to intangible assets.

► BEPS master and local files

The BEPS master and local file approach is applicable for taxpayers required to prepare transfer pricing documentation under Article 57(4) of the Icelandic Income Tax Act.

► CbCR

There is a threshold of ISK100 billion for preparation of a CbC report.

c) Specific requirement(s)

► Treatment of domestic transactions

There is no documentation obligation for domestic transactions.

Iceland

► Local language documentation requirement

In accordance with Article 15 of Regulation 1180/2014, the transfer pricing documentation should be available in Icelandic and/or English.

► Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

► Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Yes.

► Coverage in terms of master and/or local files

Implementation of BEPS covers both the master and local files.

► Effective/expected commencement date

BEPS Action 13 has come into effect as of 1 January 2016.

► Material differences from OECD report template/format

In general, the Icelandic transfer pricing rules follow the OECD Guidelines. However, additional requirements are stipulated in the following articles of Regulation No. 1180/2014:

- Article 6 – any changes in transfer prices from previous years should be explained
- Article 7 – for service transactions, the taxpayer should be able to demonstrate the arm's-length nature of the allocation of costs and that the costs charged correspond to the benefit received
- Article 8 – transactions involving intangible assets require additional information related to the intangible asset itself (e.g., present value of future income from the intangible asset)

► Sufficiency of BEPS Action 13 format report to achieve penalty protection

No, the local file must additionally meet the requirements stated in articles 6, 7 and 8 of Regulation No. 1180/2014. However, as the Icelandic transfer pricing rules stand as of the time of this publication, there is no penalty for having insufficient transfer pricing documentation.

► CbCR notification and CbC report submission requirement

There is a CbCR notification requirement for Iceland by the end of FY 2017, and the CbC report submission should be filed by year-end 2018. Taxpayers falling within the scope of Regulation No. 1166/2016 should file form RSK 4.30.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

None specified.

b) Transfer pricing-specific returns

Legal entities subject to the documentation requirements must submit form RSK 4.28 with their tax return by 31 May. Form RSK 4.28 requires taxpayers to provide the name of related parties, tax identification numbers, country of incorporation, and type and volume of the transaction, as well as a "check-the-box" confirmation of whether the transaction has been documented.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► Corporate income tax return

The corporate income tax return Filing deadline is 31 May. An extension can be applied for under certain circumstances.

► Other transfer pricing disclosures/return

The Filing deadline for other TP disclosures/return is 31 May.

► CbCR notification

The CbCR notification deadline is by the end of the fiscal year. However, as the Directorate of Internal Revenue was still working on the notification format at the time of this publication, the deadline was to be extended to sometime in January 2018.

► CbC report preparation/submission

The CbCR submission deadline is no later than 12 months following the close of the financial year.

b) Documentation preparation deadline

The transfer pricing documentation should be finalized along with the tax returns. The documentation is to be submitted only upon request by the Directorate of Internal Revenue.

c) Documentation submission deadline

► **Is there a statutory deadline for submission of transfer pricing documentation?**

No. However, the documentation should be prepared by the time the tax return is filed – i.e., 31 May.

► **Time period/deadline for submission on tax authority request**

The taxpayer will have 45 days to submit the TP documentation once requested by the tax authorities in an audit or inquiry.

6. Transfer pricing methods

a) Applicability

► International transactions

Yes.

► Domestic transactions

None specified.

b) Priority/preference of methods

The pricing methods are based on the OECD Guidelines. The provision does not specify any one method or prioritize the methods.

7. Benchmarking requirements

a) Local vs. regional comparables

There are no local benchmarking requirements for Iceland. In accordance with Article 14 of Regulation No. 1180/2014, the Directorate of Internal Revenue may request that a benchmark study be provided.

b) Single-year vs. multi-year analysis

As the transfer pricing rules in Iceland have only recently been implemented, there has been no clear communication on whether the single-year or multi-year analysis is preferred.

c) Use of interquartile range

Similarly, it is unclear whether the interquartile range will be applied by the Directorate of Internal Revenue.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

Based on the OECD Guidelines, a fresh benchmarking search every third year is recommended, with an annual update of the financial data.

e) Simple vs. weighted average

There has been no clear communication on whether the simple average or the weighted average will be preferred by the Directorate of Internal Revenue.

f) Other specific benchmarking criteria, if any

There has been no clear communication on what the appropriate independence criteria should be. However, based on the definition of “related parties” in Article 57(4) of the Icelandic Income Tax Act, the independence threshold should be below 50%.

8. Transfer pricing penalties/relief

a) Penalty exposure

► **Consequences of failure to submit/late submission and/or incorrect disclosures**

There is no penalty for failure to provide documentation.

► **If an adjustment is sustained, can penalties be assessed?**

The provision states that tax authorities may assess and adjust pricing between related parties, as they are defined in the provision based on the OECD principles. These adjustments can be performed within the domestic statute of limitations period (i.e., for the six previous years from the date of the adjustment). A 25% penalty can be applied to the adjustment of pricing in case of underpayments.

► **Is interest charged on penalties/payable on refund?**

None specified.

b) Penalty relief

According to Article 108 of Act 90/2003 on income tax, the general rule is that a penalty can be avoided if the taxpayer is not responsible for the situation causing the adjustment of pricing, or if the situation is caused by a force majeure.

Iceland

Failure to comply with documentation rules does not provide penalty relief.

If the taxpayer does not agree with the adjustment proposed by the Directorate of Internal Revenue, the adjustment can be appealed to the Internal Revenue Board, which is the supreme administrative appeals authority for cases regarding taxation, value-added tax (VAT) and duties and is independent from the Directorate of Internal Revenue and the Ministry of Finance.

9. Statute of limitations on transfer pricing assessments

The statute of limitations period is six years prior to the year of assessment.

10. Likelihood of transfer pricing scrutiny/ related audit by local authority

► Likelihood of transfer pricing-related audits (*high/medium/low*)

The likelihood of an annual tax audit in general depends on several factors, such as the surveillance plan of the tax authorities, the type of business, revenue and compliance. The risk can therefore be defined as medium.

The Directorate of Internal Revenue has recently established a dedicated transfer pricing team. Therefore, the likelihood that a transfer pricing audit will be initiated is considered medium.

► Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

As a dedicated team has only recently been established by the Directorate of Internal Revenue, we are unable at this time to assess the likelihood of transfer pricing methodology being challenged.

► Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

See the previous section.

► Specific transactions/industries/situations, if any, more likely to undergo audit

See the previous section.

11. APA opportunity

► Availability (unilateral/bilateral/multilateral)

The Directorate of Internal Revenue has, to date, not issued any bilateral APAs. Furthermore, it is uncertain at this time whether it will be possible to obtain a binding ruling for transfer pricing purposes (equivalent to unilateral APAs).

► Tenure

Not applicable.

► Rollback provisions

Not applicable.

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India

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Central Board of Direct Taxes (CBDT).

Income Tax Department.

Tax Law: Income Tax Act, 1961 (the Act); Income Tax Rules, 1962 (the Rules).

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

The pricing of international transactions between associated enterprises will need to be determined with regard to the arm's-length principle using methods prescribed under Indian transfer pricing regulations. Associated enterprises are enterprises for which 26% of the voting power in one is held by the other or a common parent holds at least 26% of the voting power in both such enterprises in addition to certain other scenarios that would deem two enterprises as associated. Transfer pricing (TP) provisions apply to the following types of transactions between associated enterprises:

- ▶ Purchase, sale or lease of tangible or intangible property
- ▶ Provision of services
- ▶ Lending or borrowing of money or capital financing, including any type of long-term or short-term borrowing, lending or guarantee; purchase or sale of marketable securities or any type of advance, payments or deferred payment or receivable; or any other debt arising during the course of business
- ▶ A mutual agreement or arrangement for cost allocation or apportionment
- ▶ A transaction of business restructuring or reorganization
- ▶ Any other transaction having a bearing on the profits, income, losses or assets of such enterprises

Transactions with a third party will be deemed transactions between associated enterprises if the third party has a prior agreement with the associated enterprise, or if the terms of the relevant transaction are determined, in substance, between the third party and the associated enterprise, even if the taxpayer and third party are both domestic entities.

Sections 92 to 92F and sections 144C, 260A, 261, 270A, 271 (1)(c), 271AA, 271BA, 271G and 271GB of the Income Tax Act, 1961.

Rules 10A to 10THD and Rule 44GA of the Income Tax Rules, 1962.

▶ Section reference from local regulation

Refer to the section above.

2. OECD guidelines treatment/reference

India is not a member of the OECD. Indian legislation is broadly based on the OECD Guidelines. Five of the six methods prescribed in the legislation to compute arm's-length prices conform to the OECD Guidelines.

Further, the tax authorities generally recognize the OECD Guidelines and refer to them for guidance, to the extent that they are not inconsistent with domestic law.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Transfer pricing documentation requirements are provided under Section 92D of the Act and Rule 10D of the Rules. The categories of documentation required are:

- ▶ Ownership structure
- ▶ Profile of the multinational group
- ▶ Business description
- ▶ Nature and terms (including prices) of international transactions
- ▶ Description of functions performed, risks assumed and assets employed
- ▶ Record of any financial estimates
- ▶ Record of uncontrolled transaction with third parties and a comparability evaluation
- ▶ Description of methods considered
- ▶ Reasons for rejection of alternative methods

India

- ▶ Details of transfer pricing adjustments
- ▶ Any other information or data relating to the associated enterprise that may be relevant for determining the arm's-length price

A list of additional optional documents is provided in Rule 10D (3). The taxpayer is required to obtain and furnish an Accountant's Certificate (Form 3CEB) regarding maintenance of documentation.

▶ Does transfer pricing documentation have to be prepared annually?

Transfer pricing documentation has to be prepared annually, as per the Indian TP regulations. Full TP documentation, including an update of the functional analysis and fresh economic analysis using contemporaneous data, must be maintained.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

Mandatory annual documentation (local file) is to be maintained if the aggregate value of all intercompany transactions during the relevant financial year exceeds INR10 million (approximately USD156,250) and/or specified domestic transactions during the relevant financial year exceed INR200 million (USD3.125 million).

▶ Economic analysis

No materiality limit.

▶ BEPS master and local files

Master file requirements apply to a constituent entity if the consolidated turnover of the international group exceeds INR500 Crores (approximately USD77 million) and either of the following:

- ▶ The aggregate value of international transactions exceeds INR50 Crores during the reporting year
- Or
- ▶ The aggregate value of international transactions pertaining to the purchase, sale, transfer, lease or use of intangible property exceeds INR10 Crores during the reporting year, as per books of accounts

The local file is to be maintained if the aggregate value of all intercompany transactions during the relevant financial year exceeds INR10 million (approximately USD156,250) and/or specified domestic transactions during the relevant financial year exceed INR200 million (USD3.125 million).

▶ CbCR

If the total consolidated group revenue, as reflected in the consolidated financial statement for the preceding accounting year, exceeds INR55 billion (approximately USD846.1 million).

c) Specific requirement(s)

▶ Treatment of domestic transactions

There is a documentation obligation for domestic transactions undertaken from a tax holiday unit of an entity.

Effective FY 2012-13, the transfer pricing provisions are applicable to specified domestic transactions. The threshold from FY 2016-17 is INR200 million.

Specified domestic transactions include interunit transfers of goods or services of profit-linked, tax-eligible units; transactions of profit-linked, tax-holiday-eligible units with other parties; and any other transaction for which an entity may be notified by the CBDT.

By extending transfer pricing provisions to specified domestic transactions, the pricing of these transactions will need to be determined with regard to the arm's-length principle using methods prescribed under Indian transfer pricing regulations.

▶ Local language documentation requirement

The TP documentation need not be submitted in the local language but must be in English.

▶ Safe harbor availability

The Finance Act 2009 introduced provisions that authorized the CBDT to issue TP safe harbor rules. On 18 September 2013, the CBDT issued safe harbor rules, applicable for five years beginning from FY 2012-13 to FY 2016-17. The notification introduced new rules 10TA to 10TG that contain the procedure for adopting safe harbors, the transfer price to be adopted, the compliance procedures upon adoption of safe harbors and the circumstances in which a safe harbor adopted may be held to be invalid.

Subsequently, on 7 June 2017, the CBDT amended existing safe harbor rules with effect from 1 April 2017. These amended rules are applicable for three years from FY 2016-17 through FY 2018-19. For FY 2016-17, an overlap year, taxpayers can opt for the rule that is more beneficial.

The categories of international transactions covered under the safe harbor provisions include provision of software development services, IT services, knowledge

process outsourcing services, provision of intragroup loans and guarantees to wholly owned subsidiaries (WOS), manufacture and export of auto components, and receipt of low-value intragroup services.

When the tax authority accepts a taxpayer's transfer price under the safe harbor rules, the taxpayer shall not be entitled to invoke the MAP under an applicable tax treaty.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Action 13 has been implemented in India through Section 92D and Section 286, accompanied by relevant rules.

▶ Coverage in terms of master and/or local files

Both the master file and local file are covered.

▶ Effective/expected commencement date

1 April 2016.

▶ Material differences from OECD report template/format

The existing local documentation requirements and the new CbCR notification are generally aligned to OECD's BEPS Action 13. Indian master file regulations provide for additional reporting/documentation requirements, which are provided below.

Master file requirements

The master file requirements apply to every taxpayer that is a constituent entity of an international group if the following two conditions are satisfied:

- ▶ The consolidated turnover of the international group exceeds INR500 Crores (approximately USD77 million) and either of the following: the aggregate value of international transactions exceeds INR50 Crores during the reporting year, or the aggregate value of international transactions pertaining to the purchase, sale, transfer, lease or use of intangible property exceeds INR10 Crores during the reporting year, as per books of accounts.

Additional reporting requirements in the master file

The Indian regulations require constituent entities to provide the following additional information/documents as a part of the master file:

- ▶ Maintenance of a list of all the entities of the international group, along with their addresses.
- ▶ A description of the functions performed, assets employed and risks assumed by the constituent entities of the international group that contribute at least 10% of the revenues or assets or profits of the group.
- ▶ A list of all the entities of the international group engaged in the development and management of intangibles, along with their addresses.
- ▶ A detailed description of the financing arrangements of the international group, including the names and addresses of the top 10 unrelated lenders.
- ▶ In a number of instances, the Final Rules require a "detailed description," instead of a "general description" mentioned in the Action 13 report, particularly with respect to TP policies relating to R&D, intellectual property, intragroup services and financing arrangements.

Filing procedures and filing due dates

Scenario	Entity responsible	Filing obligation
When there is only one constituent entity (CE) of the international group in India	Constituent entity	Master file to be filed in Form 3CEAA
When there is more than one CE of the international group in India	Any one CE may be designated by the group to furnish Form 3CEAA	Notification report to be filed to designate a CE in Form 3CEAB and Master file to be filed in Form 3CEAA

CbCR requirements

According to the Final Rules, CbCR requirements would apply to an international group for an accounting year, if the total consolidated group revenue, as reflected in the consolidated financial statement for the preceding accounting year, exceeds INR55 billion (approximately USD846.1 million).

The CbC report filing requirements would arise in the case of the following entities:

- ▶ If the parent entity of an international group (which has been defined to include two or more enterprises including a permanent establishment that are resident of different countries or territories) is resident in India

India

- ▶ If there is a constituent entity in India belonging to an international group and the parent entity of the group is resident in a country that is either:
 - ▶ A country with which India does not have an arrangement for exchange of the CbC reporting
 Or
 - ▶ A country that is not exchanging information with India even though there is an agreement and this fact has been communicated to the constituent entity by the Indian tax administration

Filing procedures and filing due dates

Scenario	Entity responsible	Filing obligation	Accounting period	Due date
Ultimate parent company (UPC) or alternate reporting entity (ARE) is resident in India	UPC or ARE resident in India	CbCR in Form 3CEAD	April to March	CbCR needs to be filed within one year from the end of the relevant financial year end (31 March 2018 for FY 2016-17)
UPC or ARE not resident in India	Constituent entity	A notification in Form 3CEAC	Accounting period followed in the UPC or ARE jurisdiction	2 months prior to the filing of Form 3CEAD (latest by 31 January 2018 for FY 2016-17)

Local file requirements

India's existing local file requirements are generally consistent with the OECD's recommendations.

- ▶ **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

A BEPS Action 13 format report would typically be sufficient to achieve penalty protection.

- ▶ **CbCR notification and CbC report submission requirement**

There is a CbCR notification and CbC report submission requirement in India.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

The taxpayer needs to file an accountant's report (Form 3CEB), along with the return of income by the due date. The taxpayer is required to provide information such as the nature and value of the transaction, details about the associated enterprise with which the transaction was undertaken, and the method used to benchmark the transaction.

In accordance with Indian GAAP, a company is required to disclose related party transactions in its financial statements.

b) Transfer pricing-specific returns

Under Section 92E of the Income Tax Act, 1961, an accountant's report is required to be provided with the tax return. In the report, the accountant certifies that the taxpayer has maintained the prescribed documentation.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

- ▶ **Corporate income tax return**

30 November following the close of the financial year, if subject to transfer pricing guidelines.

- ▶ **Other transfer pricing disclosures/return**

30 November following the close of the financial year.

- ▶ **CbCR notification**

Two months prior to the filing of Form 3CEAD (latest by 31 January 2018 for FY 2016-17).

- ▶ **CbC report preparation/submission**

CbCR needs to be filed within one year from the end of the relevant financial year end (31 March 2018 for FY 2016-17).

b) Documentation preparation deadline

The information and documentation specified should, as much as possible, be contemporaneous, and should exist no later than the filing date of the income tax return, which is 30 November following the close of the financial year.

c) Documentation submission deadline

- ▶ Is there a statutory deadline for submission of transfer pricing documentation?

Although an accountant's report must be submitted along with the tax return, the taxpayer is not required to furnish the TP documentation with the accountant's report at the time of filing the tax return.

- ▶ Time period/deadline for submission on tax authority request

As per Section 92D of the Income Tax Act, 1961, the prescribed documentation/information maintained by the taxpayer for its transfer pricing arrangements would have to be produced for the tax authorities during the course of audit proceedings within 30 days after such request has been made. The period of 30 days can be extended to 60 days at most.

6. Transfer pricing methods

a) Applicability

- ▶ International transactions

Yes.

- ▶ Domestic transactions

Yes.

b) Priority/preference of methods

Indian legislation prescribes the following methods: CUP, resale price, cost-plus, profit split and TNMM. In addition, effective from FY 2011-12, the legislation provides a sixth method – namely, any other method that considers the price charged or paid, or that ought to be have been paid or charged for a similar uncontrolled transaction. No hierarchy of methods exists; rather, the most appropriate method should be applied.

7. Benchmarking requirements

a) Local vs. regional comparables

There is no legal requirement for local country comparables. Based on experience, tax authorities have a tendency to take an Indian entity as a tested party and accordingly use Indian comparable companies.

b) Single-year vs. multi-year analysis

Three-year margin analysis, as provided by Rule 10B.

c) Use of interquartile range

Rule 10CA prescribes use of the 35th percentile to 65th percentile as the arm's-length range if there are six or more entries in the data set. If there are fewer than six entries, the arm's-length price shall be the arithmetic mean of the entries in the data set. A deviation of 3% from the transfer price is allowed if the arm's-length price is the arithmetic mean.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

A fresh benchmarking search needs to be conducted every year. According to Rule 10D(4), "The information and documents specified under [sub-rules (1), (2) and (2A)], should, as far as possible, be contemporaneous and should exist latest by the specified date referred to in clause (iv) of section 92F." For transactions having impact across years, past data may be relied upon.

e) Simple vs. weighted average

The weighted average.

f) Other specific benchmarking criteria, if any

Specific benchmarking criteria are not provided under the Act or the Rules, but in general, companies that have related party transactions in excess of 25% of revenues are excluded. Other quantitative and qualitative filters are applied for a reliable comparison.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures

For not maintaining documentation, failure to report the transaction, or maintenance of or furnishing inaccurate particulars, a penalty of 2% of the transaction value may be levied.

For a failure to furnish information or documents requested by the tax officer, a penalty of 2% of the transaction value may be levied.

India

For not furnishing an Accountant's Certificate (Form 3CEB) by the due date, a penalty of INR100,000 may be levied.

For non-filing of a CbC report by an Indian resident parent company or alternate resident company, a penalty of INR5,000 (USD77) per day for up to one month, INR15,000 (USD230) per day beyond one month, and INR50,000 (USD780) per day for continuing to default after being served notice.

For not furnishing the information called for by the Indian tax authority within the given time limit, a penalty of INR5,000 per day up to service of penalty order and INR50,000 per day for default beyond the date of service of penalty order.

For furnishing inaccurate details or non-filing of a corrected report within 15 days, a penalty of INR500,000.

► **If an adjustment is sustained, can penalties be assessed?**

In the case of a transfer pricing adjustment, a penalty in the range of 100% to 300% of the additional tax liability arising from the adjustment may be levied, unless the taxpayer is able to demonstrate that the arm's-length price was determined in good faith and with due diligence.

For transactions undertaken from 1 April 2016 onward, a penalty of 50% on the taxpayer on underreported income may be levied in the case of a transfer pricing adjustment if it results in underreporting of income. The penalty can be increased to 200% if the underreporting is the consequence of misreporting.

► **Is interest charged on penalties/payable on refund?**

No interest is charged on penalties. Interest on refunds is payable by the Income Tax Department at the rate of one-half percent per month from the date of payment of tax or filing of return, whichever is later, until the refund is granted.

b) Penalty relief

All penalties are discretionary in the hands of the tax authorities.

Relief from penalties may be requested if the taxpayer is able to demonstrate reasonable cause for the noncompliance/default. Additionally, immunity from penalties may be sought for transactions undertaken from 1 April 2016 onward under certain conditions.

Domestic dispute resolution mechanisms

Appeal to the Dispute Resolution Panel or the Commissioner of Income Tax (Appeals) (the First Appellate Stage).

Appeal to the Income Tax Appellate Tribunal if not resolved at the First Appellate Stage.

Appeal before the Jurisdictional High Court and the Supreme Court (for matters that pertain to questions of law only).

Writ petitions before the Jurisdictional High Court and Supreme Court if certain conditions are met.

Alternate dispute resolution mechanisms

APAs and MAPs

The APA regime has been introduced in India, effective 1 July 2012. The APA rules provide an option for taxpayers to seek a unilateral, bilateral or multilateral APA. The APA can be valid for up to five years and requires payment of a specified fee. Rollback provisions have also been introduced by the Finance (No. 2) Act, 2014. A rollback would be available to taxpayers that have applied for an APA for a period of four consecutive previous years. The rules related to the rollback provisions have also been released by the CBDT, outlining the rules and procedures applicable to the rollback. The APA filing process includes an optional pre-filing submission, the filing of the APA request, negotiation of the APA, execution and monitoring. Taxpayers are required to prepare and file an annual compliance report for each year under the APA.

A MAP is an alternative available to taxpayers for resolving disputes giving rise to double taxation (juridical or economic). The MAP process may be preferred by a taxpayer facing double taxation, with the matter to be resolved between the Indian competent authority and the other country's competent authority. The MAP process is initiated based on the double taxation avoidance agreement (DTAA) India has entered into with several countries. Recently, the CBDT issued a press release stating that it would accept MAP/bilateral APA applications regardless of the absence of enabling provisions in the DTAAAs.

9. Statute of limitations on transfer pricing assessments

Transfer pricing assessments (in which a matter has been referred to the transfer pricing officer) are to be completed within 43 months of the close of the financial year (1 April to 31 March). From FY 2017-18 onward, the above time limit is 40 months from close of the financial year. For FY 2018-19, the time limit is reduced by another 6 months. However, if the tax authorities determine that income has escaped assessment, an assessment may be reopened within seven years of the close of the financial year.

10. Likelihood of transfer pricing scrutiny/ related audit by local authority

► Likelihood of transfer pricing-related audits (high/medium/low)

The frequency of TP-related audits is high.

Previously, the tax authorities issued internal guidelines pursuant to which companies with related party transactions in excess of INR150 million were being compulsorily scrutinized. Cases with lesser transactional values were also often picked up for audit.

However, the tax authorities recently removed this numerical benchmark for selecting cases for transfer pricing audits and moved to a risk-based selection of cases for audit.

This is seen as a move to shift the approach of selecting cases based on the facts and circumstances of the cases. However, regardless of the approach for selecting cases, the risk of TP audits continues to remain relatively high. In addition, audits are carried out annually, and once a case is selected for a transfer pricing audit, there is a high likelihood of recurring audits thereafter.

In most cases, the tax authorities do not seem to have adopted a centralized or coordinated approach to audits, with officers in different locations taking divergent positions in cases with similar facts. Substantial documentation is being requested in the course of the audit proceedings.

The likelihood of a general tax audit is characterized as high. Further, the likelihood that transfer pricing will be reviewed as part of a general tax audit is also characterized as high. Finally, if transfer pricing is reviewed as part of the audit, the likelihood that the transfer pricing methodology will be challenged is also high.

► Likelihood of transfer pricing methodology being challenged (high/medium/low)

High; given the aggressive nature of tax audits.

► Likelihood of an adjustment if transfer pricing methodology is challenged (high/medium/low)

High; tax officers challenge the choice of comparables of the taxpayer and deny economic adjustments that align the comparables' margins to its actual business performance.

► Specific transactions/industries/situations, if any, more likely to undergo audit

The IT, business process outsourcing, banking and pharmaceutical sectors have received particular attention. Additionally, the tax authorities continue to focus on intragroup services received and royalty payments made by Indian taxpayers. The taxpayer is required to demonstrate, along with evidence that the intragroup services were actually rendered or the intellectual property was actually provided and that such rendering or provision resulted in a tangible benefit to the taxpayer.

Losses of manufacturing companies are often attributed to pricing of intercompany transactions, and an adjustment is made even though losses could be on account of commercial and market factors.

Tax authorities have also focused on foreign companies that have income chargeable to tax in India, and on assessing the arm's-length nature of the foreign company's transactions with its Indian affiliates.

In recent audits, there has also been a significant focus on marketing intangibles. In many cases, brand promotion expenses incurred by Indian subsidiaries have been held as excessive when compared with industry standards and, thus, disallowed.

Tax authorities also focus on inclusion of notional cost (free of cost assets/services) as a part of the cost base to apply mark-up.

Accounts receivable and accounts payable are international transactions that need to be reported and tested, as per the provisions of the Indian TP regulations. Further, tax authorities propose interest on excessive outstanding receivables by treating them as a loan/advance provided to the foreign entity.

In addition, officers have insisted on disaggregating transactions in which the taxpayer has adopted an aggregate or combined approach to its transfer pricing documentation. During recent audits, tax authorities have paid considerable attention to the approach adopted by the taxpayer when selecting comparable data.

Transfer pricing additions in India go through the regular appellate proceedings. In many cases, the appeals were pending at the first appellate authority for three to five years. Hence, to fast-track transfer pricing issues, the Indian Government introduced an alternative dispute resolution process in 2009. Under this process, the taxpayer may choose to approach

a dispute resolution panel when a tax officer proposes a transfer pricing adjustment. The panel should dispose of the matter within nine months, and the panel's decision shall be binding on the tax officer.

11. APA opportunity

► Availability (unilateral/bilateral/multilateral)

There is an APA program available in India. The APA rules provide an option for taxpayers to seek a unilateral, bilateral or multilateral APA.

► Tenure

The APA can be valid for up to five years and requires payment of a specified fee.

► Rollback provisions

A rollback would be available to taxpayers that have applied for an APA for a period of four consecutive previous years. The rules related to the rollback provisions have also been released by the CBDT, outlining the rules and procedures applicable to the rollback.

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Indonesia

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Directorate General of Taxes (DGT).

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

- Law Number 7 Year 1983 regarding Income Tax (amended by Law Number 36 Year 2008) (PPH Law)
- Law Number 6 Year 1983 regarding General Taxation Provisions and Procedures (amended by Law Number 16 Year 2009) (KUP Law)
- Law Number 8 Year 1983 regarding Value Added Tax of Goods and Services and Sales Tax on Luxury Goods (amended by Law Number 42 Year 2009) (PPN Law)
- Minister of Finance Regulation Number PMK 213/PMK.03/2016 dated 30 December 2016 (PMK-213), regarding guidance on types of additional documents or information that is required to be kept by taxpayers who conduct transactions with related parties and its procedures

Indonesia's primary transfer pricing provisions are contained in Article 18 of the PPH Law and PMK-213.

Article 18(3) authorizes the DGT to redetermine the amount of taxable income and deductible expenditures for transactions between taxpayers where a "special relation" exists. Article 18(3) also allows a redetermination of debt as equity. The redetermination should be made in accordance with equity and the common practice of business for independent parties (i.e., in accordance with the arm's-length principle). Based on Article 18(4) of the PPH Law, a special relation is deemed to exist where:

- A taxpayer has direct or indirect ownership of 25% or more of another taxpayer or two or more other taxpayers
- A taxpayer controls another taxpayer or two or more other taxpayers
- There is a family relation, biologically or by marriage, in the first degree

PMK-213 is a new regulation issued by the Minister of Finance in response to the implementation of BEPS Action 13 in Indonesia. PMK-213 provides new guidance that stipulates the type of additional documents and/or information that is required to be kept by taxpayers who conduct transactions with related parties and its procedures.

Under PMK-213, taxpayers are required to prepare a three-tiered structure to transfer pricing documentation:

- Master file
- Local file
- CbC report

The issuance of PMK-213 marks the beginning of a new era for transparency in related party transaction disclosures and contemporaneous transfer pricing documentation requirements in Indonesia. However, PMK-213 neither revokes nor replaces the current transfer pricing regulation issued by the Directorate General of Taxation under PER 43/PJ/2010 (PER-43) as amended by PER-32/PJ/2011 (PER-32).

Regulation PER-43 is an implementation regulation of Article 18(3) as a basis for the DGT to assess the taxpayer's application of the arm's-length principle. In 2011, this regulation was amended by Regulation PER-32.

DGT Regulation PER-22/PJ/2013 (PER-22) and Circular Letter SE-50-PJ/2013 (SE-50) provide detailed guidance on transfer pricing audit processes and technical transfer pricing positions to be adopted by tax auditors.

DGT Regulation PER-29 provides further details on the implementation of the CbCR requirements.

► Section reference from local regulation

Refer to the section above.

2. OECD guidelines treatment/reference

Indonesia is not a member of the OECD, although it has been granted "enhanced participation" status.

The DGT broadly endorses the principles of the OECD Guidelines in its regulations. However, the DGT's practical application of the arm's-length principle in an audit context regularly diverges from the principles endorsed by the OECD Guidelines.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

The transfer pricing documentation guidelines and rules for Indonesia fall under PMK-213.

► Does transfer pricing documentation have to be prepared annually?

The documentation needs to be prepared annually under Indonesia's local country regulations. At a minimum, the contents of the transfer pricing documentation (TPD) must be contemporaneous for each year.

b) Materiality limit/thresholds

► Transfer pricing documentation

Based on PMK-213, there is a materiality limit for preparing TPD. If the taxpayer conducts a related party transaction and:

1. Has gross revenues of more than IDR50 billion (approximately USD3.7 million) in the prior fiscal year
2. Conducts related party transactions in the prior fiscal year with a value of:
 - a. More than IDR20 billion (approximately USD1.4 million) for tangible goods transactions
 - Or
 - b. More than IDR5 billion (approximately USD372,000) for each service, interest payment, utilization of intangible properties or other affiliated transactions
3. Conducts transactions with related parties that are located in countries or jurisdictions with income tax rates lower than the Indonesian corporate income tax rate, as specified in Article 17 of Income Tax Law No. 7 of year 1983 as last amended by Law No. 36 of year 2008.

► Economic analysis

There is no materiality limit for preparing economic analysis once the taxpayer has met the requirements to prepare TPD.

► BEPS master and local files

There is no threshold applied for preparation of BEPS master and local files once the taxpayer has met the requirements to prepare TPD.

► CbCR

Foreign-parented groups would follow the turnover threshold in their jurisdiction or, in the absence of CbCR rules in the parent jurisdiction, EUR750 million. The threshold for Indonesian-parented groups is IDR11 trillion.

c) Specific requirement(s)

► Treatment of domestic transactions

PMK-213 requirements are applicable for both domestic and overseas transactions.

► Local language documentation requirement

There is a requirement for the TPD to be in the local language. Article 11 paragraph 1 of PMK-213 states that the documentation as stipulated in Article 2 paragraph (1) should be prepared by the taxpayer in Bahasa Indonesia (Indonesian).

► Safe harbor availability

There are no specific requirements for safe harbor availability.

d) BEPS Action 13 implementation overview

► Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Indonesia has adopted BEPS Action 13 for TPD by the issuance of PMK-213.

► Coverage in terms of master and/or local files

This covers both the master file and local file.

► Effective/expected commencement date

The commencement date was 30 December 2016.

► Material differences from OECD report template/format

Yes, there are material differences between the OECD format and the Indonesian country format.

► **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

No penalty protection is applied for the BEPS Action 13 report.

► **CbCR notification and CbC report submission requirement**

Filing of a group CbCR in Indonesia is required for:

- An Indonesian taxpayer that is classified as the parent entity of a business group with consolidated gross revenues exceeding the threshold
- An Indonesian taxpayer in a multinational business group that exceeds the relevant turnover threshold, whose parent company is a foreign taxpayer resident in a country/ jurisdiction that:

- Does not require the parent company to submit a CbC report
- Does not have a qualifying competent authority agreement (QCAA) covering exchange of CbCR with the Indonesian Government

Or

- Has an agreement with the Indonesian Government on exchange of information for taxation purposes; however, the CbCR information could not be obtained by the Indonesian Government from that country/jurisdiction (i.e., systemic failure)

Given that a number of key information exchange arrangements are not yet in place, or do not take effect until later years, it is expected that some inbound groups will have local filing obligations related to fiscal year 2016. A single Indonesian entity can be nominated to perform local Indonesian filing.

As an alternative, surrogate parent filing in a QCAA jurisdiction can relieve the Indonesian local filing requirement, subject to conditions.

CbCR notifications need to be made by any Indonesian entities/ branches that are constituent entities of a business group or have related party transactions, using a prescribed form in Indonesian language.

The first year of operation of the CbCR rules is fiscal year 2016, which is generally the year to 31 December 2016. However, there is a risk of earlier application for some substituted year-ends.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

The disclosure of domestic and international related party transactions with the corporate income tax return is required in Form 3A/3B. The information required includes the counterparty, the type of transaction, the value of the transaction, the transfer pricing method applied and the reason for the application of the method. Additionally, taxpayers are required to disclose whether they have transfer pricing documentation prepared. Taxpayers are also required to submit a Summary Form in a given format with the corporate income tax return (CITR) for the relevant fiscal year, which requires the taxpayer to indicate that the content of the master file and local file has conformed to the regulations as well as the exact date the files have been made available.

b) Transfer pricing-specific returns

There are no transfer pricing-specific returns required in Indonesia.

5. Transfer pricing documentation/ disclosure timelines

a) Filing deadline

► Corporate income tax return

The corporate income tax return Filing deadline is four months after the fiscal year-end.

► Other transfer pricing disclosures/return

Disclosures related to transfer pricing must be attached with the CITR (Form 3A/3B and Summary Form).

► CbCR notification

For fiscal year 2016 – within 16 months of year-end.

For subsequent fiscal years – within 12 months of year-end.

The receipt from the notification filing must be attached to the CITR for the subsequent fiscal year.

► CbC report preparation/submission

For fiscal year 2016 – within 16 months of year-end.

For subsequent fiscal years – within 12 months of year-end.

The receipt from the CbCR filing must be attached to the CITR for the subsequent fiscal year.

b) Documentation preparation deadline

The master and local files must be available no later than four months after the taxpayer's fiscal year-end. The CbC report must be available 12 months after the end of the fiscal year.

c) Documentation submission deadline

▶ Is there a statutory deadline for submission of transfer pricing documentation?

There is no statutory deadline for submission of transfer pricing documentation.

▶ Time period/deadline for submission on tax authority request

The taxpayer has seven days upon request by the tax office or 30 days if it is in the tax audit process.

6. Transfer pricing methods

a) Applicability

▶ International transactions

Yes.

▶ Domestic transactions

Yes.

b) Priority/preference of methods

PER-32 states that the most appropriate transfer pricing method should be selected. The decision for the most appropriate method should regard:

- ▶ The advantages and disadvantages of each method
- ▶ The suitability of the method based on the functional analysis
- ▶ The availability of reliable information to apply the method
- ▶ The level of comparability between the tested transaction and potential comparable data, including the reliability of potential adjustments.

7. Benchmarking requirements

a) Local vs. regional comparables

Local and ASEAN region comparables are preferred; however, if not available, Asia-Pacific regional comparables may be accepted.

b) Single-year vs. multi-year analysis

Single-year or three-year analyses are most commonly applied.

c) Use of interquartile range

Interquartile range calculation using Excel Quartile formulas is acceptable and commonly used.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

There is a need to perform fresh benchmarking every year. According to Article 3 paragraph 1 of PMK-213, transfer pricing documentation as stipulated in Article 2 paragraph (1) letters "a" and "b" must be organized based on data and information available at the time the related party transaction is conducted.

e) Simple vs. weighted average

A weighted average is preferred while testing an arm's-length analysis.

f) Other specific benchmarking criteria, if any

<25% equity ownership independence criteria is required; other criteria based on common practice are also applied.

8. Transfer pricing penalties/relief

a) Penalty exposure

▶ Consequences of failure to submit/late submission and/or incorrect disclosures

Inappropriate disclosure of information regarding related party transactions by a taxpayer in a corporate income tax return may be construed as an act of fraud that could lead to an administrative penalty of up to 400% of the tax underpayment.

► **If an adjustment is sustained, can penalties be assessed?**

There will be penalties of 2% per month – up to 48% – on any tax underpayment arising from adjustments to income and costs corresponding to related party transactions as a result of the tax audit process as well as the abovementioned documentation-related penalties.

► **Is interest charged on penalties/payable on refund?**

The 2% per month penalty mentioned above reflects an interest charge.

b) Penalty relief

There are no provisions for penalty relief in Indonesia.

9. Statute of limitations on transfer pricing assessments

There is no separate statute of limitations for transfer pricing. The statute of limitations for transfer pricing assessments will follow the statute of limitations for tax. Under Indonesian tax law, the DGT is permitted to conduct a tax audit, which includes assessments of the arm's-length nature of related party transactions, within five years of the relevant fiscal year.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► **Likelihood of transfer pricing-related audits (high/medium/low)**

In general, the likelihood of an annual tax audit is high. In addition, a taxpayer's application for a tax refund will trigger an automatic tax audit, which must be finished within one year after the submission of the tax return.

The likelihood that transfer pricing will be reviewed as part of a regular and special tax audit is high.

Tax audit cases are typically commenced in the taxpayer's relevant tax office, with the exception of the special audit cases. A transfer pricing audit, unless it is a special audit, will occur as a part of an all-taxes audit. The DGT has a central transfer pricing team and/or valuations team that is assigned to cases as needed. The central transfer pricing team or valuations team

might also be involved in assisting a tax auditor team in their respective tax office in performing transfer pricing audits.

In practice, in addition to taxpayers that are subject to an automatic tax audit as a part of the tax overpayment process, taxpayers that exhibit the following characteristics are at a higher risk of a transfer pricing audit:

- A large number of related party transactions with offshore entities
- A multinational company that has continuous operating losses and/or significant related party transactions
- Lower net profit in comparison with other similar enterprises or with the industry average
- Increasing gross revenue and receipts but no change or decrease in net profit
- Related parties in tax havens

Each taxpayer is assigned an account representative (AR) to assist with its tax matters. The AR's role has increased this year with regards to confirming transfer pricing compliance. ARs have been actively risk-profiling taxpayers' transfer pricing audits by audit teams.

In undertaking transfer pricing audits, tax auditors will follow guidance contained in PER-22 and SE-50.

► **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood that the tax authority will challenge the transfer pricing methodology is also high, as Indonesia has an aggressive transfer pricing controversy environment. This aggressive audit environment is partially driven by the Indonesian Government's desire to increase Indonesia's tax collection as a percentage of the GDP.

► **Likelihood of an adjustment if transfer pricing methodology is challenged (high/medium/low)**

High (on account of the reasons mentioned in prior sections).

► **Specific transactions/industries/situations, if any, more likely to undergo audit**

There are no specific transactions/industries/situations.

11. APA opportunity

► Availability (unilateral/bilateral/multilateral)

Under PER-43, APAs are available. The specific DGT guidance covering APAs is PER-69/PJ/2010 (PER-69), which states that APAs may be unilateral or bilateral. Subsequently, the Government issued Ministry of Finance Regulation No. 7/PMK.03/2015 (PMK-7) on 12 January 2015, regarding the formation and implementation of an APA. This regulation became effective from 90 days after the enactment date (i.e., 12 April 2015) and is applicable for all outstanding and future APA applications.

Under PER-43, MAPs are also available, in accordance with the provisions of an applicable tax treaty. The specific DGT guidance covering MAPs is PER-48/PJ/2010. Subsequently, the Government issued Ministry of Finance Regulation No. 240/PMK.03/2014 (PMK-240), regarding the implementation of the MAP, which provides a refinement to the guidelines that had been stipulated in previous regulations. PMK-240 is effective from 22 December 2014 and applicable for all outstanding and future MAP implementations under tax treaties that are effective prior to, on or after this date.

► Tenure

Three years for a unilateral APA and four years for a bilateral APA.

► Rollback provisions

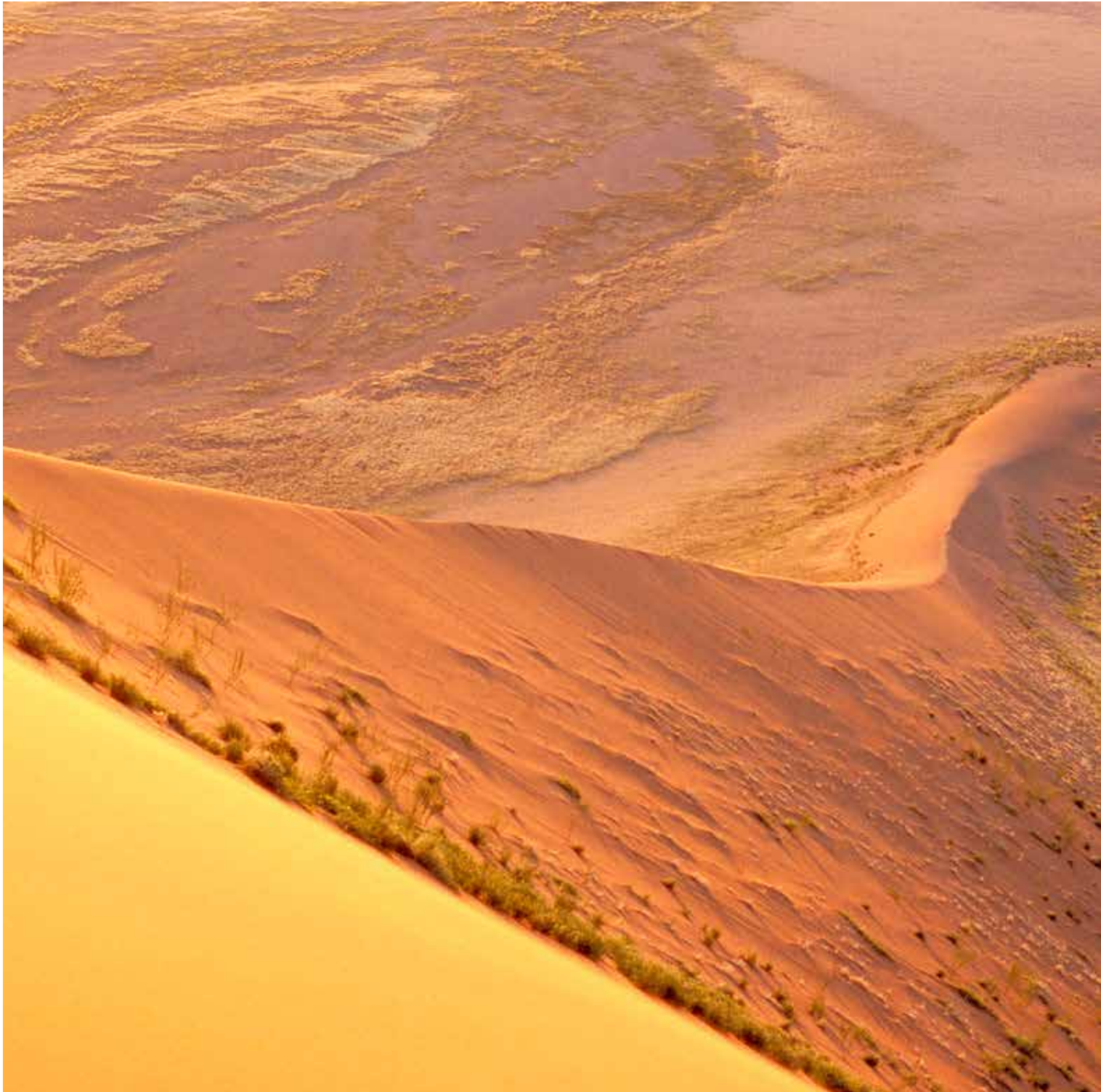
Regulation is unclear. The old regulation (PER 69) provided one year rollback, but the new regulation (PMK-7) does not specify that rollback is allowed. Both regulations are still applicable; however, new regulations are higher in the hierarchy than old ones.

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Iraq

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

General Commission for Taxes (GCT).

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

Iraq's income tax law does not currently follow the OECD Guidelines. However, the GCT expects that all transactions with related parties should be entered into under the usual commercial rates that apply to contracts with unrelated third parties.

▶ Section reference from local regulation

Refer section above.

2. OECD guidelines treatment/reference

Iraq is not a member of the OECD. Iraq's income tax law does not currently follow the OECD Guidelines.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

No.

▶ Does transfer pricing documentation have to be prepared annually?

Not applicable.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

Not applicable.

▶ Economic analysis

Not applicable.

▶ BEPS master and local files

Not applicable.

▶ CbCR

Not applicable.

c) Specific requirement(s)

▶ Treatment of domestic transactions

Not applicable.

▶ Local language documentation requirement

Not applicable.

▶ Safe harbor availability

Not applicable.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No.

▶ Coverage in terms of master and/or local files

Not applicable.

▶ Effective/expected commencement date

Not applicable.

▶ Material differences from OECD report template/format

Not applicable.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

Not applicable.

▶ CbCR notification and CbC report submission requirement

There is no CbCR notification requirement in Iraq.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Not applicable.

b) Transfer pricing-specific returns

Not applicable.

5. Transfer pricing documentation/ disclosure timelines

a) Filing deadline

- ▶ Corporate income tax return

31 May.

- ▶ Other transfer pricing disclosures/return

Not applicable.

- ▶ CbCR notification

Not applicable.

- ▶ CbC report preparation/submission

Not applicable.

b) Documentation preparation deadline

Not applicable.

c) Documentation submission deadline

- ▶ Is there a statutory deadline for submission of transfer pricing documentation?

Not applicable.

- ▶ Time period/deadline for submission on tax authority request

Not applicable.

6. Transfer pricing methods

a) Applicability

- ▶ International transactions

Not applicable.

- ▶ Domestic transactions

Not applicable.

b) Priority/preference of methods

Not applicable.

7. Benchmarking requirements

a) Local vs. regional comparables

Not applicable.

b) Single-year vs. multi-year analysis

Not applicable.

c) Use of interquartile range

Not applicable.

d) Fresh benchmarking search every year vs. roll-forward/ update of the financials

Not applicable.

e) Simple vs. weighted average

Not applicable.

f) Other specific benchmarking criteria, if any

Not applicable.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures

Not applicable.

- ▶ If an adjustment is sustained, can penalties be assessed?

Not applicable.

- ▶ Is interest charged on penalties/payable on refund?

Not applicable.

b) Penalty relief

Not applicable.

9. Statute of limitations on transfer pricing assessments

Not applicable.

- ▶ Specific transactions/industries/situations, if any, more likely to undergo audit

Not applicable.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

- ▶ Likelihood of transfer pricing-related audits (*high/medium/low*)

Not applicable.

- ▶ Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

Not applicable.

- ▶ Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

Not applicable.

11. APA opportunity

- ▶ Availability (unilateral/bilateral/multilateral)

Not applicable.

- ▶ Tenure

Not applicable.

- ▶ Rollback provisions

Not applicable.

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Ireland



1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Irish Revenue Commissioners (IRC).

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

- ▶ Section 835C of Taxes Consolidation Act (TCA) 1997 (Section 835C), Part 35A, sets out the primary transfer pricing (TP) regulations in Ireland. These regulations became effective for all accounting periods beginning on or after 1 January 2011.
- ▶ Section 835F of TCA 1997 (Section 835F) imposes an obligation on companies to have available such records as may reasonably be required for determining whether the company's trading income has been computed in accordance with the requirements of Section 835C.

▶ Section reference from local regulation

Section 835B of Taxes Consolidation Act (TCA) 1997.

2. OECD guidelines treatment/reference

Ireland is a member of the OECD. Irish regulations follow the arm's-length principle and adopt the OECD Transfer Pricing Guidelines wholesale into the domestic legislation.

The IRC will accept both the EU transfer pricing documentation guidance and Chapter V of the OECD Guidelines (the OECD rules apply only insofar as they relate to trading transactions).

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Yes. In addition to the statutory provisions relating to transfer pricing documentation contained in Section 835F (which are not clearly defined), the IRC has also released a manual titled "Transfer Pricing Documentation Obligations" (Tax and Duty

Manual Part 35a 01 02). The manual states that transfer pricing documentation must be sufficient to demonstrate a taxpayer's compliance with Irish regulations.

▶ Does transfer pricing documentation have to be prepared annually?

It is considered best practice (per the guidance note on documentation) that documentation be prepared at the time the terms of the transaction are agreed upon, and that documentation should exist no later than the time the tax return for the period is due to be made in order for the taxpayer to be in a position to make a correct and complete tax return. There is no formal deadline requirement in the actual transfer pricing legislation, however. Tax returns in Ireland are generally due to be filed within nine months after the end of the taxpayer's accounting period.

According to the IRC, transfer prices should be reviewed at regular intervals to determine that pricing remains at arm's length.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

There are exemptions for small and medium-size enterprises when a company has fewer than 250 employees and either turnover of less than EUR50 million or assets of less than EUR43 million. This is an annual test that is applied at a group level. In Ireland, there is no de minimis rule with respect to the intercompany transactions needing documentation.

▶ Economic analysis

No materiality limit.

▶ BEPS master and local files

Not applicable.

▶ CbCR

MNE annual consolidated revenues equal to or exceeding EUR750 million in the previous year.

c) Specific requirement(s)

▶ Treatment of domestic transactions

There is a documentation obligation for domestic transactions. The TP rules in Ireland apply to both domestic and international transactions.

▶ **Local language documentation requirement**

The TP documentation needs to be submitted in the local language.

Section 835F of TCA 1997 outlines the documentation obligations of Irish taxpayers to whom the TP rules apply. Subsection (2) of Section 835F of TCA 1997 establishes that Subsection (3) of Section 886 of TCA 1997 “shall apply to such records.” Subsection (3) of Section 886 of TCA 1997 confirms that “records required to be kept or retained by virtue of this section shall be kept in written form in an official language of the State.” Official languages of the state include Irish and English.

▶ **Safe harbor availability**

None specified.

d) BEPS Action 13 implementation overview

▶ **Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?**

▶ **Coverage in terms of master and/or local files**

Local legislation doesn't cover BEPS Action 13 master file or local file requirements; it covers only CbCR.

▶ **Effective/expected commencement date**

BEPS Action 13 master file or local file requirements are expected to come into force before the end of 2018.

▶ **Material differences from OECD report template/format**

The OECD report template is acceptable in Ireland.

▶ **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

There is no penalty protection regime in Ireland.

▶ **CbCR notification and CbC report submission requirement**

There is a CbCR notification and CbC report submission requirement in Ireland.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Currently, there are no tax return disclosures. However, certain multinationals may be obligated to submit a CbC report in accordance with BEPS Action 13.

b) Transfer pricing-specific returns

No transfer pricing-specific returns are required to be filed in Ireland, except those related to CbCR.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ **Corporate income tax return**

Within 9 months of the end of the accounting period, but no later than the 23rd day of the 9th month.

▶ **Other transfer pricing disclosures/return**

Not required in Ireland.

▶ **CbCR notification**

Notification must be provided by the end of the fiscal year via the online system of the IRC, Revenue Online Service (ROS).

▶ **CbC report preparation/submission**

In accordance with Regulation 8 of the regulations, CbC reports/equivalent CbC reports must be filed no later than 12 months after the last day of the fiscal year to which the CbC report/equivalent CbC report relates.

b) Documentation preparation deadline

According to the IRC, it is considered best practice that the documentation is prepared at the time the terms of the transaction are agreed upon. For a company to be in a position to make a correct and complete tax return for an accounting period in which there were trading transactions with associates, the documentation should exist by the time the tax return must be made.

c) Documentation submission deadline

- ▶ Is there a statutory deadline for submission of transfer pricing documentation?

No.

- ▶ Time period/deadline for submission on tax authority request

Typically, a taxpayer may have to submit the TP documentation within 21 days once requested by the tax authorities in an audit or inquiry.

6. Transfer pricing methods

a) Applicability

- ▶ International transactions

Yes.

- ▶ Domestic transactions

Yes.

b) Priority/preference of methods

The Irish transfer pricing rules apply to both cross-border and domestic transactions.

To establish an arm's-length price, the OECD Guidelines will be referenced. The arm's-length principle asserts that intragroup transfer prices should be equivalent to those that would be charged between independent persons dealing at arm's length in otherwise similar circumstances.

7. Benchmarking requirements

a) Local vs. regional comparables

There is no legal requirement for local country comparables, and Pan-European comparables are accepted.

b) Single-year vs. multi-year analysis

Three-year testing is a common practice in Ireland.

c) Use of interquartile range

The full range may be potentially acceptable under specific circumstances.

There is no expressed preference on the part of the IRC; however, the Excel Quartile is preferred.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

There is no need to conduct a fresh benchmarking search every year, even though an annual refresh is recommended.

e) Simple vs. weighted average

Based on experience, there is a preference for the weighted average for arm's-length analysis.

f) Other specific benchmarking criteria, if any

The usual Pan-European criteria are accepted; companies with unknown ownership are not accepted.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures

Part 35A does not contain any specific penalty provisions with respect to a transfer pricing adjustment. There is no separate statutory regime for transfer pricing penalties. However, standard tax-geared corporate tax penalties that apply to the Irish self-assessment regime may be applied to transfer pricing assessments by the IRC.

- ▶ If an adjustment is sustained, can penalties be assessed?

The following grid summarizes the corporate tax penalties regime and shows the penalties charged for each of the three categories of default on the part of the taxpayer:

No qualifying disclosure	Category of default	No cooperation	Cooperation only
All defaults where there is no qualifying disclosure	Careless behavior without significant consequences	20%	15%
	Careless behavior with significant consequences	40%	30%
	Deliberate behavior	100%	75%

Ireland

► **Is interest charged on penalties/payable on refund?**

Under the general corporate tax penalty provisions, interest arises on underpaid tax at a daily rate of 0.0273%, which is 9.965% per year.

b) Penalty relief

There are currently no penalty protection or relief rules in the regulations, but the IRC has guidance that the existence and quality of transfer pricing documentation will be a key factor in determining the level of penalties applicable to a transfer pricing adjustment, if any. The level of penalty

can be reduced based on the level of disclosure made by the taxpayer and whether another disclosure was made within the previous five years. The qualifying disclosure could be prompted or unprompted:

- A prompted qualifying disclosure: when the disclosure is made as a consequence of a notification letter received from the Irish tax authorities that the taxpayer has been selected for audit
- An unprompted qualifying disclosure: when no notification of audit is received from the IRC

The following table shows the potential penalty reduction:

Penalty table	Category of default	Qualifying disclosure	Unprompted qualifying disclosure
All defaults where there is a qualifying disclosure in this category.		Prompted qualifying disclosure and cooperation	Unprompted qualifying disclosure and cooperation
All qualifying disclosures in this category	Careless behavior without significant consequences	10%	3%
First qualifying disclosure in these categories	Careless behavior with significant consequences	20%	5%
	Deliberate behavior	50%	10%
Second qualifying disclosure in these categories	Careless behavior with significant consequences	30%	20%
	Deliberate behavior	75%	55%
Third or subsequent qualifying disclosure in these categories	Careless behavior with significant consequences	40%	40%
	Deliberate behavior	100%	100%

9. Statute of limitations on transfer pricing assessments

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.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

▶ Likelihood of transfer pricing-related audits (*high/medium/low*)

Medium. There has been a noted increase in IRC activity and staffing levels in recent times.

▶ Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

Medium. There are a number of transfer pricing audits ongoing in Ireland, and one of the IRC lines of inquiry is methodology selection, including whether a two-sided study was considered. However, none of these open audits were definitely concluded as of the time of this publication.

▶ Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

Low. This will ultimately depend on the merits and economic circumstances of the transaction.

▶ Specific transactions/industries/situations, if any, more likely to undergo audit

The IRC is interested in relatively low people substance and principal company structures. Modifying a tax return or requiring a tax refund may also trigger an IRC query.

11. APA opportunity

▶ Availability (unilateral/bilateral/multilateral)

There is an APA program available in Ireland. The Irish Revenue Commissioners have formally introduced a bilateral APA program with the publication of guidelines on 23 June 2016 – Revenue eBrief No. 60/2016. The guidelines are effective for new APAs requested from 1 July 2016 and formalize Irish Revenue's APA practice, which had previously operated informally.

▶ Tenure

An Irish bilateral APA agreed upon under the new program will likely have a fixed term of three to five years.

▶ Rollback provisions

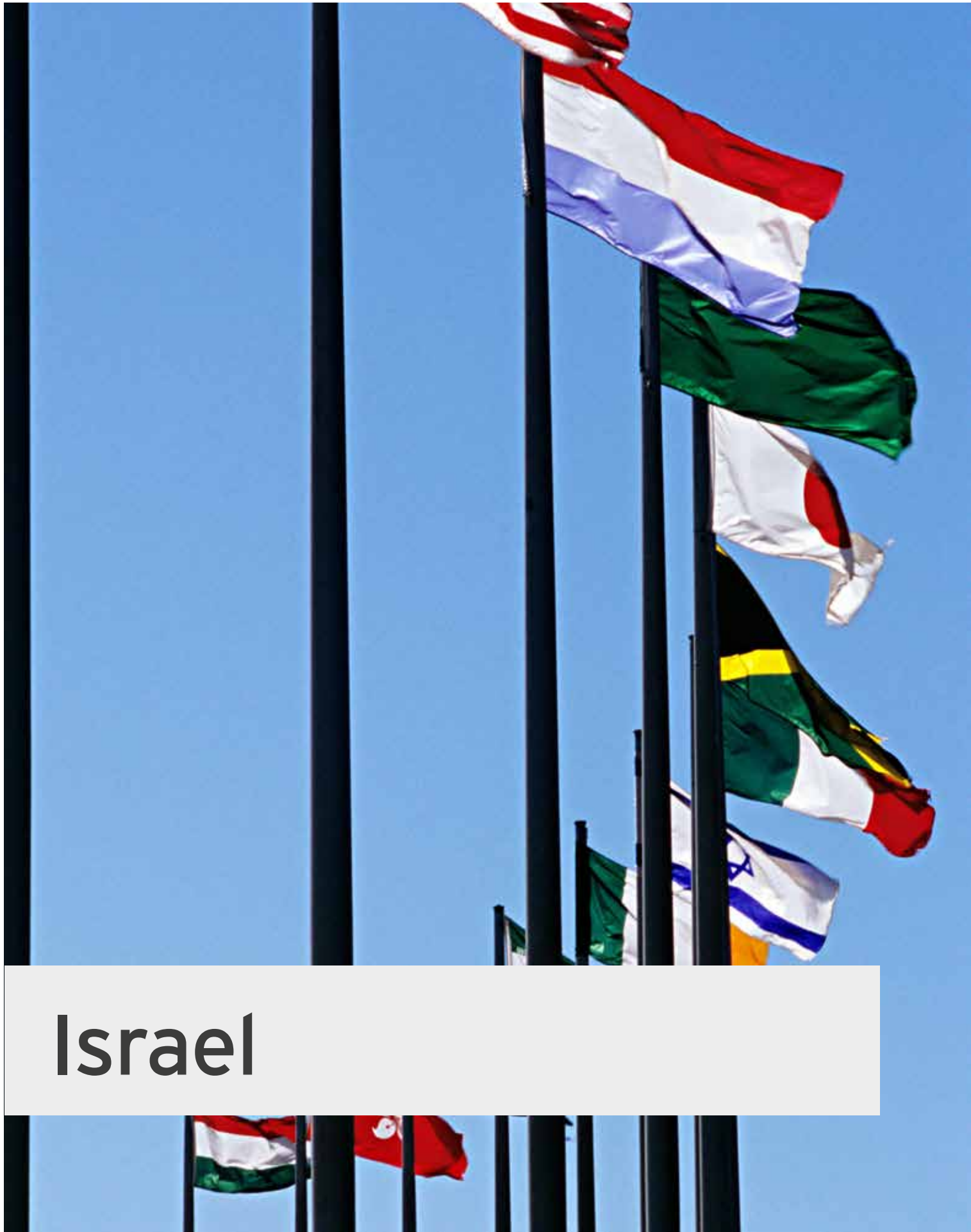
After the three to five years mentioned above, there is an opportunity to roll back the agreement to open tax periods in certain cases, as well as to renew the agreement upon expiration of the initial term. Therefore, a bilateral APA can provide in excess of five years of tax certainty and audit risk mitigation in the two relevant jurisdictions.

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Israel

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Israeli Tax Authority (ITA).

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

Section 85a of the Israeli Tax Ordinance (ITO) and the provisions thereunder include a description of the documentation required; it applies to fiscal years starting January 2007 and thereafter.

▶ Section reference from local regulation

Section 76d of the ITO and the provisions thereunder include a description of the documentation.

2. OECD guidelines treatment/reference

Israel is an OECD member country. The ITA considers its transfer pricing (TP) rules and regulations to be consistent with the OECD Guidelines.

However, usually a local adaptation is necessary, mainly with respect to the interquartile range when the CUP method is used and the decision of whether to use local, European or US comparables.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Yes Section 85a of the ITO and the provisions thereunder include a description of the documentation required.

▶ Does transfer pricing documentation have to be prepared annually?

The TP documentation does not have to be prepared annually under Israel's local country regulations. However, the likelihood of an annual tax audit in general is high. Traditionally, taxpayers operating in the international arena or subsidiaries of foreign companies have a higher likelihood of being audited.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

No materiality limit.

▶ Economic analysis

No materiality limit.

▶ BEPS master and local files

No threshold limit.

▶ CbCR

Sections 85b and 85c include reference to the threshold but were in draft form at the time this was published.

c) Specific requirement(s)

▶ Treatment of domestic transactions

There are no specific requirements for treatment of domestic transactions.

▶ Local language documentation requirement

There are no requirements for TP documentation to be submitted in the local language.

▶ Safe harbor availability

There is no materiality limit for safe harbor availability.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Sections 85b and 85c include local reference to the BEPS Action Plan and were in draft form at the time this was published.

▶ Coverage in terms of master and/or local files

Not applicable.

▶ Effective/expected commencement date

It has been expected that it would take effect starting FY 2017.

▶ Material differences from OECD report template/format

Not applicable.

- ▶ **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

Not applicable.

- ▶ **CbCR notification and CbC report submission requirement**

Not applicable.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Commencing with FY 2007, taxpayers must attach to the annual tax returns a specific TP form (#1385), in which the following should be disclosed:

- ▶ A short description of the intercompany transaction details of the other party and its residency
- ▶ Transaction volume and residency of other party
- ▶ Signatures on all declarations (forms) that the international transactions were conducted at arm's length

According to the taxing authority, such declaration must be supported by documentation that meets the requirements.

b) Transfer pricing-specific returns

Refer to the section above.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

- ▶ **Corporate income tax return**

31 May.

- ▶ **Other transfer pricing disclosures/return**

31 May, as Form(s) 1385 must be attached to the corporate income tax return. TP documentation is not required to be filed unless required under tax audit.

- ▶ **CbCR notification**

Not applicable.

- ▶ **CbC report preparation/submission**

Not applicable.

b) Documentation preparation deadline

The TP documentation only needs to be finalized by the time of submitting upon request. The TP documentation does not need to be finalized by a specific time and upon tax audit would be expected to be submitted within 60 days. However, Form 1385 is to be appended to the annual tax return, and the declaration of operating at arm's length included therein is required to be based on economically valid and timely analysis.

c) Documentation submission deadline

- ▶ **Is there a statutory deadline for submission of transfer pricing documentation?**

There is no statutory deadline for submission of TP documentation.

- ▶ **Time period/deadline for submission on tax authority request**

Taxpayers in Israel must provide documentation within 60 days of a tax assessing officer's request.

6. Transfer pricing methods

a) Applicability

- ▶ **International transactions**

The Israeli TP Regulations follow the OECD. Sections 85b and 85c include local reference to the BEPS Action Plan and are currently in draft form.

- ▶ **Domestic transactions**

Not applicable.

b) Priority/preference of methods

To determine whether an international transaction is at arm's length, the Israeli TP Regulations require the taxpayer to apply one of the following methods, in order of preference:

- ▶ CUP or comparable uncontrolled transaction (CUT)
- ▶ Comparable profitability
- ▶ Cost-plus or resale price

- ▶ CPM or TNMM
- ▶ Profit split
- ▶ Other methods

An international transaction is at arm's length if, through the application of the selected method, the result falls within a defined interquartile range.

As an exception, the entire range of values will apply when the TP method applicable is CUP or CUT and no adjustments are performed. If the international transaction's result is outside the range, the median should be applied as the arm's-length price for the transaction.

Additionally, the Israeli TP Regulations stipulate the use of several PLIs, depending on the particular industry and environment.

7. Benchmarking requirements

a) Local vs. regional comparables

There is no benchmarking requirement using local comparables, although tax authorities expect an effort to find local comparables (hardly found).

b) Single-year vs. multi-year analysis

Single-year is preferred.

c) Use of interquartile range

Yes, interquartile range calculation using Excel Quartile formulas is acceptable.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

A fresh benchmarking study vs. a financial update needs to be performed every year. This requirement is implicit given that an appendix to the annual tax return (Form 1385) needs to be completed for each international intercompany transaction stating it has been performed at arm's length.

e) Simple vs. weighted average

The weighted average is preferred.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

▶ Consequences of failure to submit/late submission and/or incorrect disclosures

No specific TP penalties; submission of TP documentation is upon request only, and within 60 days of request. Failure to submit in time may cause civil and/or criminal implications (as per sections 131, 271 and 224a of the ITO).

▶ If an adjustment is sustained, can penalties be assessed?

General tax-related penalties under Section 191 of the ITO include a penalty of 15% (may be increased to 30% in certain cases) of the deficit when the taxable income under audit is higher by 50% or more than the reported taxable income. We note that the tax inspector has the discretion to avoid penalty when reaching a settlement.

▶ Is interest charged on penalties/payable on refund?

Penalties are considered an addition to the taxpayer's tax debt. Therefore, they are linked to index and carry 4% interest.

b) Penalty relief

There is no penalty relief regime applicable in Israel.

Company may dispute and begin the stage A process. Based on stage A, the sides may reach an agreement. If not, stage B will begin the same as under stage A. If the sides do not reach an agreement, the assessment will be filed as a dispute and the matter will move to court.

9. Statute of limitations on transfer pricing assessments

The Israeli Income Tax Ordinance has general rules for auditing a tax return. As such, the statute of limitations usually is three years (or four if the commissioner extends the time period), beginning at the end of the fiscal year in which the tax return was filed.

10. Likelihood of transfer pricing scrutiny/ related audit by local authority

► Likelihood of transfer pricing-related audits (*high/medium/low*)

The likelihood of an annual tax audit in general is high. Traditionally, taxpayers operating in the international arena or subsidiaries of foreign companies have a higher likelihood of being audited.

The likelihood that TP will be reviewed as part of that audit is high.

► Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

In the past, the likelihood that the TP methodology would be challenged in a TP review had been moderate, if supported by robust TP documentation. Recently, a growing trend of challenged TP methodology has been seen as well. When no documentation exists, the methodology is even more likely to be challenged.

Following the recent circulars on restructuring, stock option expenses and the digital economy, these issues are more likely to be challenged, as well as financial transactions. In addition, considering Israel's startup ecosystem, another focus point of tax audits is intellectual property migrations and business restructurings. There are currently several such cases being debated in court.

► Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

High (refer to the section above).

► Specific transactions/industries/situations, if any, more likely to undergo audit

No specifications; the ITA challenges all TP transactions, industries and situations.

11. APA opportunity

► Availability (unilateral/bilateral/multilateral)

Section 85A of the Israeli Income Tax Ordinance, which governs the Israeli TP Regulations, stipulates in Article 85A(d) the conditions under which an APA may be concluded and delineates the scope of an APA.

The process starts with a detailed application that includes all of the relevant details. Under the APA process, the ITA must respond to the taxpayer's application within 120 days (though the time can be extended up to 180 days); otherwise, the application will be approved automatically and the intercompany policy will be deemed as providing reasonable arm's-length prices. In practice, a complete APA procedure may take 12 months.

► Tenure

None specified.

► Rollback provisions

Not applicable.

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Italy

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Italian Revenue Agency (Agenzia delle Entrate, or AdE).

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

Article 110 (7) of the Italian Income Tax Code (IIRC) is the historical Italian reference for the definition of the arm's-length principle for transfer pricing (TP) purposes. This article has been recently amended by Article 59 of Law Decree No. 50, dated 24 April 2017.

Additionally, in 2010, TP regulations for penalty protection purposes were issued. The preparation of TP documentation for such purposes remains optional.

▶ Section reference from local regulation

In Italy, there are several definitions of related parties. For transfer pricing, reference can be made to Circular Letter No. 32 (prot. 9/2267), dated 22 September 1980 (1980 Circular Letter).

2. OECD guidelines treatment/reference

Italy is an OECD member. Italian transfer pricing rules are largely consistent with the OECD Guidelines. Indirect reference to the applicability of the 2010 OECD Guidelines can be found in the abovementioned regulations on the optional transfer pricing regime for penalty protection. No explicit reference exists in the Italian domestic law to the latest approved version of the OECD Guidelines (under the BEPS project).

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Yes. In 2010, TP regulations for penalty protection purposes were issued. The preparation of TP documentation for such purposes remains optional.

▶ Does transfer pricing documentation have to be prepared annually?

If a taxpayer opts for the mentioned penalty protection regime, the complete TP documentation needs to be drafted annually under Italy's local country regulations.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

There is no materiality limit/threshold for transfer pricing documentation.

▶ Economic analysis

There is a materiality limit for performing an economic analysis. No quantitative materiality thresholds are provided; however, the Italian requirements affirm that "omissions or partial inaccuracies related also to residual transactions, which are unlikely to affect the analysis by the supervisory bodies and the accuracy of the results of such analysis" are possible and do not jeopardize the recognition of penalty protection.

▶ BEPS master and local files

The preparation of master file/local file according to BEPS Action 13 has not been implemented in Italy so far.

▶ CbCR

FY 2016 is the first fiscal year subject to CbCR requirements. According to qualification/situation, Italian taxpayers are required either to file the CbC report in Italy or to make the proper notification in the yearly tax return. Noncompliance with such requirements is subject to the payment of penalties from EUR10,000 to EUR50,000.

c) Specific requirement(s)

▶ Treatment of domestic transactions

There is no documentation obligation for domestic transactions.

▶ Local language documentation requirement

The TP documentation for penalty protection purposes needs to be submitted in the local language. The master file and the country-specific documentation must be drafted in Italian, as per Paragraph 8.1 of the Operational Instructions.

▶ Safe harbor availability

Not applicable.

d) BEPS Action 13 implementation overview**▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?**

Refer to the section below for details.

▶ Coverage in terms of master and/or local files

No, the preparation of the master file/local file according to BEPS Action 13 has not been implemented in Italy so far.

▶ Effective/expected commencement date

Not applicable.

▶ Material differences from OECD report template/format

Yes, Italy requires a specific format in terms of chapters, paragraphs and subparagraphs for both the master file and local file for penalty protection purposes. The structure, in terms of format and contents, is mandatory.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

No (see specific requirements mentioned above).

▶ CbCR notification and CbC report submission requirement

There is a CbCR notification requirement and CbC report submission requirement. A notification disclosing the company name and general details of the reporting entity has to be made in the tax return (generally due nine months after the fiscal year-end).

4. Transfer pricing return/related party disclosures**a) Related party disclosures/transfer pricing-related appendices**

Italian companies must officially communicate (in documents, correspondence and register of companies) whether they are managed and controlled by another company, as well as the name of the related company (Article 2497-bis of the Italian Civil Code). Financial statements should include essential data from the managing or controlling company's financial statements and relations with related parties (articles 2424, 2427, 2428 and 2497-bis of the Italian Civil Code). Disclosure is also applicable for taxpayers with reference to intercompany flows that are to be grouped in costs vs. revenues.

b) Transfer pricing-specific returns

In Italy, there are no specific transfer pricing returns. As already mentioned, for the purposes of the optional penalty protection regime, taxpayers that intend to adhere to such regime shall communicate the availability of proper documentation on the annual income tax return (i.e., in a dedicated box) to the Italian Revenue Agency.

5. Transfer pricing documentation/disclosure timelines**a) Filing deadline****▶ Corporate income tax return**

In the case of the calendar year, the corporate income tax return deadline is the end of October of the following fiscal year.

▶ Other transfer pricing disclosures/return

Not applicable.

▶ CbCR notification

A notification disclosing the company name and general details of the reporting entity has to be made in the tax return.

▶ CbC report preparation/submission

For FY 2016, the deadline for submitting the CbC report for companies with the calendar year was set as 9 February 2018. For the following fiscal years, the deadline is, in principle, at the end of the following fiscal year.

b) Documentation preparation deadline

In the yearly tax return, taxpayers that want to apply for the optional penalty protection regime are expected to flag a dedicated box stating that TP documentation is already available but does not have to be submitted until a specific request comes.

c) Documentation submission deadline**▶ Is there a statutory deadline for submission of transfer pricing documentation?**

No.

▶ Time period/deadline for submission on tax authority request

The taxpayer has 10 calendar days to submit the TP documentation once requested by the tax authorities in an audit or inquiry.

6. Transfer pricing methods

a) Applicability

- ▶ International transactions

Yes.

- ▶ Domestic transactions

Not applicable.

b) Priority/preference of methods

Reference is generally made to the TP methods as provided by the OECD Guidelines. Traditional methods, such as CUP, resale price and cost-plus, are preferred over profits-based methods.

The selection of the transfer pricing method entails an explanation of the reasons for using a particular method that produces results consistent with the arm's-length standard. Should a profit method be selected when a traditional transactional method could be applied in an equally reliable manner, the taxpayer should explain why the latter had been excluded. The same explanation applies when a method other than the CUP method is selected, in the event that the latter could have been applied to achieve equally reliable results.

An accurate description of the taxpayer's procedure for selecting comparable transactions will have to be provided (including a detailed comparability analysis), as well as a clear description of the underlying steps in arriving at an arm's-length range, if needed.

Small and medium-sized companies (i.e., companies with an annual turnover lower than EUR50 million) are not required to refresh the benchmarks every year.

The 2014 Stability Law provides important changes for groups involved in certain online businesses. From a transfer pricing perspective, the new rules provide that entities involved in the collection of online advertisements and in related auxiliary services on behalf of foreign group companies must use profit-level indicators other than those applicable to the costs incurred in the conduct of their business. However, the 2014 Stability Law does not provide any guidance about an alternative transfer pricing method to be used. Exceptions apply for companies that reach an APA with the tax authority by way of the International Standard Ruling procedure (outlined in the following sections).

7. Benchmarking requirements

a) Local vs. regional comparables

There are no benchmarking requirements for local and regional comparables.

b) Single-year vs. multi-year analysis

The use of multi-year data for testing a single year of the taxpayer is the common standard used when testing an arm's-length analysis.

c) Use of interquartile range

Interquartile range calculation using Excel Quartile formulas is acceptable.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

The Operational Instructions do not clarify whether the update of benchmark studies needs to be a new search or a simple financial update. Financial updates for a limited number of years (e.g., two) are generally accepted. For companies with an annual turnover lower than EUR50 million, the law provides for the possibility to update benchmarks on a three-year basis (rather than annually) if there are no changes in the relevant comparability factors.

e) Simple vs. weighted average

The weighted average is preferred for testing arm's-length analysis.

f) Other specific benchmarking criteria, if any

Independence criteria is generally set at 50%.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures

If and when the abovementioned optional TP documentation regime for penalty protection purposes is deemed inapplicable (with various degrees of judgment), general penalties for underpayment apply.

In particular, standard administrative penalties apply in an amount equal to 90% to 180% of the additional taxes or the minor tax credit assessed by Italian tax authorities, both for corporate income tax (IRES) and regional production

tax (IRAP) purposes. According to Circular Letter 58/E, higher penalties may be, in principle, applicable when the documentation is not deemed complete and appropriate.

► **If an adjustment is sustained, can penalties be assessed?**

Refer to the section above.

► **Is interest charged on penalties/payable on refund?**

Interest on penalties is not applicable. Interest for late payment (in case of additional taxes claimed) is due and amounts to 4%.

b) Penalty relief

As mentioned, in the case of a TP adjustment and non-applicability of the optional penalty protection regime, standard penalties apply. There are cases in which penalties can be reduced by the law (e.g., through a settlement procedure in case an agreement is reached).

After the issuing of a tax audit report (i.e., the summary of the findings of the tax inspection that represents a proposal for the relevant tax office for the assessment of higher taxes and application of penalties), an Italian taxpayer has the following remedies that can be attempted:

i. Defensive brief

Against the tax audit report, the company can file a defensive brief to the relevant tax office within 60 days from the notification of the tax audit report. Before such date, the tax office cannot issue any tax assessment. By means of the defensive brief, the company could ask the tax office to reconsider the challenges of the tax inspectors. This remedy does not grant any reduction of penalties.

ii. Self-disclosure procedure after a tax audit report

After the notification of the tax audit report and before the issuing of the related tax assessments, the taxpayer can apply for the so-called self-disclosure. It implies the payment of the additional taxes and interest related to the challenge of the tax audit report, granting a reduction of penalties to one-fifth of the minimum. The self-disclosure requires filing a new tax return, amended to take into consideration the additional income arising from the challenge to be "self-disclosed." The terms provided by the statute of limitations run again from the filing of the amended tax return only in relation to the challenge subject to the self-disclosure procedure. This remedy is not applicable in the case that the taxpayer opted for penalty protection for transfer pricing purposes.

iii. Settlement proposal on the basis of the tax audit report

The tax settlement (accertamento con adesione) is a procedure that allows a reduction of penalties and avoidance of a tax litigation procedure before the tax court. It consists of an agreement on the higher taxes due between the taxpayer and the tax office. If the company reaches such an agreement, an official report would be drawn up, showing the amount of taxes, interest and penalties due. The penalties due are reduced to one-third of the minimum applicable amount (i.e., 90% of the higher taxes due on the basis of the agreement). In this case the law does not provide a specific term for the length of the settlement procedure; in any case, the procedure must be concluded within the term in which the relevant tax office has to notify the tax assessment. If no settlement on the tax audit report is reached, the tax office is entitled to issue a tax assessment (avviso di accertamento) claiming for the higher taxes with the related interest and penalties.

Internal remedies after the issuing of a tax assessment

If no action is taken or no agreement is reached with the Italian tax authorities on the tax audit report, the tax office will notify of the tax assessment. These are the available remedies, according to Italian law:

i. Acquiescence to the tax assessment

The acquiescence is the renunciation of legal proceedings. The company could decide to fully pay higher taxes and interest issued by the tax assessment with relevant penalties reduced to one-third.

ii. Settlement proposal on the basis of the tax assessment

This procedure is analogous, also with regard to the reduction of penalties, to the one already mentioned above in relation to the tax audit report, except for the fact that the request for the tax settlement has to be filed by the company to the relevant tax office within 60 days from the notification of the tax assessment and the settlement procedure can only last 90 days. If the settlement procedure concerning the tax audit report, mentioned above, has been started, it is not possible to apply for the settlement procedure against the tax assessment.

If no agreement is reached, the company could still start legal proceedings before the tax court to defend its position.

iii. Litigation procedure

The tax assessment may be appealed before the tax courts within 60 days from the notification. The Italian law provides three judgment degrees:

- ▶ The first one before the Provincial Tax Court
- ▶ The second before the Regional Tax Court
- ▶ The third before the Supreme Court, in Rome, which decides only on issues relating to the interpretation of the law

Pending the litigation procedure, the tax office may ask the provisional payment of:

1. One-third of the higher taxes and interest required by the assessment, after filing of the appeal before the Provincial Tax Court
2. Two-thirds of the higher taxes and interest and two-thirds of the penalties, in the case of a negative decision of the Provincial Tax court (less the amount already collected under point "i" of internal remedies mentioned above).
3. The full amount of higher taxes, interest and penalties, in the case of a negative decision of the Regional Tax Court (less the amount already collected under point "ii" of internal remedies mentioned above).

9. Statute of limitations on transfer pricing assessments

There is no specific statute of limitations on an assessment for transfer pricing. The general statute-of-limitations period for tax purposes applies. Therefore, taxpayers must receive a notice of tax assessments by 31 December of the fourth year following the year for which the tax return has been filed. If the tax return has been omitted or is treated as null and void, the assessment period for the relevant year is extended by an additional year.

In the case of criminal ramifications, terms for assessments can be doubled, but only if the criminal offense has been communicated by the tax authorities to the criminal authorities within the standard statute of limitations.

For tax inspections relating to FY 2016 onward, the mentioned terms are increased by one year for unfaithful tax returns, and by two years for omitted tax returns.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

- ▶ Likelihood of transfer pricing-related audits (*high/medium/low*)

The risk of a general tax audit is high, as is the risk of being audited specifically for transfer pricing. Italy is also particularly active in challenging taxpayers on deemed permanent establishments: following the Italian Supreme Court's Philip Morris case, additional case law is available in this respect.

In addition, the Italian tax authorities generally pay particular attention and direct greater tax audit activity to large taxpayers, and they are devoting greater resources to intelligence and monitoring the activities of multinationals.

Likewise, Circular Letter No. 6/E, issued by the Central Revenue Agency on 25 January 2008, provides operating guidelines for tax authorities in relation to preventing and combating tax avoidance. Among the most crucial areas to be assessed, it mentions intercompany transactions and transfer prices according to the provisions of Article 110 (7) of Decree 917. Legislative Decree No. 185, issued on 29 November 2008, introduced the category of "large" taxpayers, stating that "in relation to the corporate income tax and VAT returns of relevant size companies, the Central Revenue activates substantial controls in the year following the one of the filing [where] relevant size companies are the ones which achieve a (yearly) turnover not lower than EUR300 million. Such threshold was reduced to EUR100 million by 31 December 2011."

Starting in 2012, in implementing the provisions of Paragraph 10 of Article 27 of Legislative Decree No. 185 of 2008, Circular Letter 18/E, dated 31 May 2012, provides that the "tutorship" activities shall cover all of the large taxpayers (then about 3,200 companies, compared with about 2,000 tutorials in 2011). As part of the tutorship activities, the need to maintain a high level of attention is reaffirmed for the purpose of identifying a number of phenomena related to important risk factors that the OECD has also carefully considered. Transfer pricing is expressly mentioned among such phenomena.

Guidance on TP assessments is included in circular letters that are generally issued yearly and relate to general instructions on tax inspections. Compliance with the optional regime on transfer pricing documentation is identified as a positive factor of transparency and cooperation with the tax administration within the risk-monitoring activities.

- ▶ Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

The likelihood of the transfer pricing methodology being challenged is also high, as tax officers often try to challenge all of the various aspects of transfer pricing – i.e., not only the methodology, but also the functional analysis and comparables.

▶ **Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)**

Medium/high; refer to the reasons mentioned above.

▶ **Specific transactions/industries/situations, if any, more likely to undergo audit**

Generally, all intercompany relationships are deeply scrutinized. Recently, specific areas of attention can be identified in management fees, intellectual property-related transactions and service provider structures (especially in the IT industry/web companies).

11. APA opportunity

▶ **Availability (unilateral/bilateral/multilateral)**

Although formally introduced in the Italian law in 2003, the Italian APA discipline has been recently updated by Legislative Decree No. 147 of 2015, dated 22 September 2015 (Internationalization Decree).

The Internationalization Decree revises and expands the scope of a specific type of tax agreement available for companies with international operations. The International Ruling was already available to reach agreements with the tax authorities on:

- ▶ Transfer pricing issues by concluding APAs
- ▶ Cross-border flow matters
- ▶ Attribution of profits to domestic and foreign permanent establishments (PEs)
- ▶ Existence of PEs

Under the revised version, the procedure is renamed Advance Agreements for enterprises with international activities (Advance Tax Agreement), and its scope is extended to the following:

- ▶ Agreements on asset bases in the case of inbound and outbound migrations
- ▶ For companies that participate in the Cooperative Compliance Program (CCP), agreements on the fair-market value of costs incurred with blacklist entities (blacklist costs) for deduction purposes

The Advance Tax Agreement is, in principle, valid for five years (i.e., for the year in which it is signed and the following four), to the extent that the underlying factual and legal circumstances remain unchanged. In addition, the new provision explicitly regulates rollback effects. More specifically:

- ▶ In the case of Advance Tax Agreements based on arrangements reached with other countries under the MAP clause set forth in bilateral treaties against double taxation (e.g., bilateral and multilateral APAs), it is explicitly provided that the agreement is also binding for any prior years elapsing from the year of the filing to the year of the actual signature of the agreement.
- ▶ In all other cases (i.e., unilateral APAs, etc.), taxpayers now have the option to roll back the terms of the Advance Tax Agreement up to the year of the filing, to the extent that no changes in the underlying factual and legal circumstances occurred (e.g., the taxpayer can align its transfer prices to reflect the terms of the unilateral APA). Where applicable, this rollback option will imply a self-disclosure procedure and/or the filing of amended tax returns with no penalties due.

Through the validity of the agreement, the tax authorities may exercise their power of scrutiny only in relation to matters other than those agreed upon in the Advance Tax Agreement.

▶ **Tenure**

Refer to the section above.

▶ **Rollback provisions**

Refer to the section above.

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Japan



1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

National Tax Agency (NTA).

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

Special Taxation Measures Law (STML) Article 66-4/66-4-2/66-4-3/66-4-4/66-4-5 – Special Provisions for Taxation of transactions with foreign related persons and profits attributable to a permanent establishment (PE).

STML Article 68-88/66-88-2 – Special Taxation Measures of Transactions between Consolidated Corporations and Foreign Related Persons.

Special Taxation Measures Law Enforcement Order Article 39-12, 39-12-2, 39-12-3, 39-12-4/39-112, 39-112-2 – Special Provisions for Transaction with foreign related persons and profit attributable to a PE.

Paragraph (1)-(18), Special Taxation Measures Law Enforcement Order Article 39-12.

Special Taxation Measures Law Ministerial Order Article 22-10, 22-10-2, 22-10-3, 22-10-4, 22-10-5/22-74, 22-75 – Special Provisions for Transaction with foreign related persons and profit attributable to a PE.

STML Circulars 66-4 (1)-1 to 66-4 (10)-1, 66-4-3 (1)-1 to 66-4-3 (8)-2, 68-88 (1)-1 to 68-88 (10)-1/66-4(1)-1.

Commissioner's Directive on the Establishment of Instructions for the Administration of Transfer Pricing Matters (Administrative Guidelines), Administration of Transfer Pricing Matters for Consolidated Corporations (Administrative Guidelines for Consolidated Corporations) and on Mutual Agreement Procedures.

2. OECD guidelines treatment/reference

Japan is an OECD member country, and OECD Guidelines are adopted in the local transfer pricing regulations by Japan.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

Japan has transfer pricing documentation rules.

► Does transfer pricing documentation have to be prepared annually?

For fiscal years beginning on or after 1 April 2017, companies are required to prepare a contemporaneous local file by the time of filing the corporate income tax return (i.e., annually). The regulations do not specify the extent of updates required. For fiscal years beginning prior to 1 April 2017, Japan has a de facto annual documentation requirement, as taxpayers are expected to maintain documents in support of any tax return (i.e., the results of the tested transactions need to be tested each year).

b) Materiality limit/thresholds

► Transfer pricing documentation

None specified.

► Economic analysis

None specified.

► BEPS master and local files

Master file: companies with global consolidated revenue of less than JPY100 billion in the most recent financial year are exempt from the master file.

Local file: companies with transactions with a single overseas entity of less than JPY5 billion (all transactions including intangible transactions) or intangible transactions less than JPY300 million (again with a single overseas counterparty) (for the previous business year) are exempt from the contemporaneous local file requirement. If there is no previous business year, the current business year shall apply.

Companies exempt from the contemporaneous rule are still required to submit documents considered necessary to calculate arm's-length prices for controlled transactions (which are contained in a local file).

► CbCR

MNE groups with a consolidated total revenue for the ultimate parent entity's preceding fiscal year of less than JPY100 billion.

c) Specific requirement(s)**► Treatment of domestic transactions**

There is no documentation obligation for domestic transactions.

► Local language documentation requirement

The transfer pricing documentation need not be submitted in the local language. CbCR must be prepared in English, and the master file can be prepared in English or Japanese. However, for the master file and local file, the tax examiner may request translation of all or part of the documentation when not in Japanese.

► Safe harbor availability

No specific safe harbor is available in Japan.

d) BEPS Action 13 implementation overview**► Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?**

Japan has adopted BEPS Action 13 for transfer pricing documentation in local regulation.

► Coverage in terms of master and/or local files

It does cover the master file and local file.

► Effective/expected commencement date

CbCR and master file requirements are effective for fiscal years commencing on or after 1 April 2016. Contemporaneous local file requirements are effective for fiscal years commencing on or after 1 April 2017. For fiscal years beginning prior to 1 April 2017, companies are still required to maintain documents considered necessary to calculate arm's-length prices for controlled transactions (i.e., transfer pricing documentation).

► Material differences from OECD report template/format

There are some differences between the OECD report template/format and Japan's local file regulations. Article 22-10 of Special Provisions for Taxation of Transaction with Foreign Related Persons contains the documentation requirements. Key additional points are the requirement for segmented profit and loss information for the counterparty to the transaction.

CbCR and master file requirements are materially the same.

► Sufficiency of BEPS Action 13 format report to achieve penalty protection

In Japan, there is no penalty protection by preparing a contemporaneous local file.

► CbCR notification and CbC report submission requirement

There is a CbCR notification and CbC report submission requirement in Japan.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Schedule 17-4 must be attached to the regular annual tax return when the taxpayer has foreign related party transactions during the fiscal year.

This contains the following:

- The name of the foreign related party
- The address of the foreign related party
- The description of the main business of the foreign related party
- The number of employees of the foreign related party
- The amount of capital of the foreign related party
- The legal ownership relationship
- The fiscal year of the foreign related party
- The revenue; cost of sales; selling, general and administrative expenses; operating profit; earnings before tax; and retained earnings of the foreign related party for the preceding year
- The amount of intercompany transactions by a type (the inventory transaction, the provision of services, tangible fixed asset transaction, intangible transaction and interest, etc.) and the transfer pricing methodology applied to each type of intercompany transaction
- Any APA between the taxpayer and the foreign competent authority.

b) Transfer pricing-specific returns

Refer to the section above.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ Corporate income tax return

This should be filed within three months after a year-end including an extension.

▶ Other transfer pricing disclosures/return

This is the same as above.

▶ CbCR notification

Notification must be submitted by the end of the ultimate parent's fiscal year-end

▶ CbC report preparation/submission

The CbC report must be submitted within one year of the day following the one when the ultimate parent entity's fiscal year ends. A master file is required to be submitted within one year of the year-end of the ultimate parent to the District Director by e-Tax filing.

b) Documentation preparation deadline

The transfer pricing file must be prepared by the time of lodging the tax return (e.g., where there is a contemporaneous requirement).

c) Documentation submission deadline

▶ Is there a statutory deadline for submission of transfer pricing documentation?

There is no statutory deadline for submission of transfer pricing documentation. The deadline for submission of a local file depends on whether transactions covered require contemporaneous documentation. If transactions require a contemporaneous local file, it should be submitted by the date designated by the tax examiner, which comes within 45 days in the course of a corporate or transfer pricing examination. If transactions are exempt from the contemporaneous local file requirement, documents considered as important to calculate arm's length (documents equivalent to the local file) should be submitted to an examiner by the day designated by the tax examiner, which comes within 60 days in the course of a corporate or transfer pricing examination.

▶ Time period/deadline for submission on tax authority request

Same as above.

6. Transfer pricing methods

a) Applicability

▶ International transactions

Yes.

▶ Domestic transactions

Not applicable.

b) Priority/preference of methods

Historically, the Japanese tax authorities have required that the CUP, resale price and cost-plus methods be used whenever possible, allowing the use of other methods (e.g., profit split and TNMM) only after the first three have been discounted.

STML Articles 66-4 and 66-4-2 were amended to eliminate the hierarchy of methods in favor of the most-appropriate-method approach for tax years beginning on or after 1 October 2011.

7. Benchmarking requirements

a) Local vs. regional comparables

There is a requirement for local country comparables in practice for Japan benchmarks (unless the tested party is outside Japan). In practice, non-Japanese comparables are rejected by the Japanese tax authorities because of market differences.

b) Single-year vs. multi-year analysis

For a transfer pricing assessment, a single-year analysis is applied. For a local file or APAs, multi-year analyses are common.

c) Use of interquartile range

Tax authorities will use the Excel calculation for formal matters including issuing an adjustment if relevant.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

Transfer pricing examiners would match the year of the taxpayer to the same financial year of the comparable companies selected for the purpose of a transfer pricing assessment. Pragmatically, many taxpayers use the most up-to-date information, as it may not be possible to match years when preparing the transfer pricing documentation.

e) Simple vs. weighted average

For transfer pricing documentation or APAs, there is a preference for the weighted average for arm's-length analysis.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief**a) Penalty exposure****► Consequences of failure to submit/late submission and/or incorrect disclosures**

A fine of up to JPY300,000 will be imposed if corporations fail to submit a CbC report or a master file to the District Director by the deadline without good reason.

There is no separate penalty for failure to prepare and maintain a local file. However, unlike in many other countries, preparation of sufficient documentation does not lead to penalty relief in the case of an assessment. The Japanese tax authority has the right to impose presumptive taxation if the taxpayer does not provide documents considered as necessary to calculate arm's-length prices or a local file in a timely manner. For the taxable year starting on 1 April 2017 or thereafter, a 45-days or 60-days due applies as described previously.

► If an adjustment is sustained, can penalties be assessed?

The underpayment penalty tax is computed as either 10% of the additional assessed tax (up to JPY500,000) or 15% of the additional tax, depending on the amount of underpayment.

The first part of delinquency tax accrues for one year following the due date of the original tax return at a rate of 4% per year plus the official discount rate as of 30 November of the prior fiscal year. However, for the time period

commencing 1 January 2014, the rate is determined by adding 1% to the average contractual interest rate on short-term bank loans for the period from October (two years prior) to September of the prior year, as announced by the Minister of Finance on 15 December of the prior year. As a specific example, this translates to a delinquency tax rate of 2.7% for the period from 1 January 2017 to 31 December 2017.

The second part of delinquency tax accrues from the date following the date of the assessment notice until the date the additional tax is paid. For the first three months following the date of the assessment notice (including the one-month period from the date of the notice until the payment deadline, and two months following the deadline), the rate of delinquency tax is 4% per year plus the official discount rate as of 30 November of the prior fiscal year. For any delinquency tax accruing after this period, the rate increases to the lower of 14.6% or the rate computed by adding 7.3% to the average contractual interest rate on short-term bank loans for the period from October (two years prior) to September of the prior year, as announced by the Minister of Finance on 15 December of the prior year.

► Is interest charged on penalties/payable on refund?

In general, no interest is accrued on a refund as a result of a correlative adjustment.

b) Penalty relief

There are no specific provisions for reductions of underpayment penalties.

However, the 2007 tax reforms allowed for the provision of a grace period for the payment of assessed taxes – including penalty taxes – for taxpayers submitting an application for MAPs. The taxpayer must submit a separate application to be entitled to the grace period. The grace period is the period starting on the initial payment due date of assessed taxes (if the application submission date is later than the initial payment due date, the submission date is applicable) and ending one month after the day on which the "correction," based on the mutual agreement, has been made (or the day on which a notification was issued that an agreement could not be reached). Any delinquency taxes accrued during the grace period will be exempted. However, under STML Article 66-4-2(2) (which grants a postponement of tax payment), the tax authority requires the taxpayer to provide security equivalent to the amount of the tax payment (i.e., collateral). This new transfer pricing rule applies to applications for a grace period made on or after 1 April 2007.

- ▶ After receiving an assessment notice, the taxpayer can take domestic measures to be relieved from economic double taxation.
- ▶ After receiving assessment notices, the taxpayer can file a request for reinvestigation with the Regional Commissioner or District Director within two months.
- ▶ After the decision by the Regional Commissioner, the taxpayer can file a request for a reconsideration with the President of the National Tax Tribunal within one month, or no decision is made within three months.
- ▶ After receiving assessment notices, blue tax return taxpayers can directly file a request for reconsideration with the President of the National Tax Tribunal within two months.
- ▶ After the decision or when no decision is made by the National Tax Tribunal, the taxpayer can file a litigation. There are three court instances for litigation against tax assessments in Japan:
 - ▶ District court
 - ▶ Courts of appeal
 - ▶ Supreme Court

There were only 12 to 13 litigation cases as a result of transfer pricing assessments, and the court ruled in favor of the taxpayer in only 2 of those. There were several other transfer pricing cases in which the taxpayers filed the requests for reconsideration. However, the National Tax Tribunal has granted “nullified all” and “partially nullified” decisions for only a few cases.

- ▶ Accordingly, most of the taxpayers seek the relief from economic double taxation through the competent authority procedures.

9. Statute of limitations on transfer pricing assessments

The statute of limitations in Japan on transfer pricing assessments is six years from the deadline for filing tax returns for a fiscal year (STML Article 66-4(16)).

10. Likelihood of transfer pricing scrutiny/ related audit by local authority

▶ Likelihood of transfer pricing-related audits (*high/medium/low*)

Medium to high, as tax examinations usually include a review of transfer pricing issues, even if the examination team lacks specialized transfer pricing expertise. A tax examiner may challenge transfer pricing directly or may refer the file to a specialized transfer pricing team for follow-up.

▶ Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

High, if the taxpayer appears unprepared to defend its transfer pricing policies and methods

▶ Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

High (same reason as above).

▶ Specific transactions/industries/situations, if any, more likely to undergo audit

The risk is increased for taxpayers that meet any of the following criteria:

- ▶ The domestic entity has incurred losses or posts low profit levels
- ▶ The profits of foreign related parties are high
- ▶ Changing the structure of transactions by transferring or otherwise shifting functions to foreign related parties resulted in inappropriate compensation, or the posting of high retained earnings by foreign related parties in low-tax jurisdictions leads to the presumption that income is being shifted to those parties
- ▶ Tax planning is conducted with the objective of shifting income to foreign related parties
- ▶ There may be compliance issues such as the lack of any change in profit levels despite the fact that transfer pricing adjustments were imposed in the past
- ▶ Multilevel transactions are being conducted between the domestic entity and multiple foreign related parties, and the profit allocation and foreign related party functions, etc., are not able to be clarified in the tax return or verification is required.

11. APA opportunity

▶ **Availability (unilateral/bilateral/multilateral)**

There is an APA program available in Japan. Unilateral and bilateral APAs are available and very common; however, the NTA prefers bilateral APAs.

▶ **Tenure**

In general, five years.

▶ **Rollback provisions**

A rollback of up to six years is possible in the case of a bilateral APA; however, a rollback is not permitted in unilateral cases.

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Jordan

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Income and Sales Tax Department (ISTD).

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

The only guidance regarding transfer pricing rules in Jordan is provided under Article 20 (d). This article does not set rates or specifications to calculate the profit margin in regard to related parties' transactions; it specifies only that related party transactions should be entered into under similar commercial terms and rates as in contracts with unrelated third parties based on the standard market practice.

▶ Section reference from local regulation

Refer section above.

2. OECD guidelines treatment/reference

Jordan is not a member of the OECD. Jordan's Income Tax Law does not currently follow the OECD Guidelines.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

No.

▶ Does transfer pricing documentation have to be prepared annually?

Not applicable.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

Not applicable.

▶ Economic analysis

Not applicable.

▶ BEPS master and local files

Not applicable.

▶ CbCR

Not applicable.

c) Specific requirement(s)

▶ Treatment of domestic transactions

Not applicable.

▶ Local language documentation requirement

Not applicable.

▶ Safe harbor availability

Not applicable.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No.

▶ Coverage in terms of master and/or local files

Not applicable.

▶ Effective/expected commencement date

Not applicable.

▶ Material differences from OECD report template/format

Not applicable.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

Not applicable.

▶ CbCR notification and CbC report submission requirement

There is no CbCR notification requirement in Jordan.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Not applicable.

b) Transfer pricing-specific returns

Not applicable.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

- ▶ Corporate income tax return

30 April.

- ▶ Other transfer pricing disclosures/return

Not applicable.

- ▶ CbCR notification

Not applicable.

- ▶ CbC report preparation/submission

Not applicable.

b) Documentation preparation deadline

Not applicable.

c) Documentation submission deadline

- ▶ Is there a statutory deadline for submission of transfer pricing documentation?

Not applicable.

- ▶ Time period/deadline for submission on tax authority request

Not applicable.

6. Transfer pricing methods

a) Applicability

- ▶ International transactions

Not applicable.

- ▶ Domestic transactions

Not applicable.

b) Priority/preference of methods

Not applicable.

7. Benchmarking requirements

a) Local vs. regional comparables

Not applicable.

b) Single-year vs. multi-year analysis

Not applicable.

c) Use of interquartile range

Not applicable.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

Not applicable.

e) Simple vs. weighted average

Not applicable.

f) Other specific benchmarking criteria, if any

Not applicable.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures

Not applicable.

- ▶ If an adjustment is sustained, can penalties be assessed?

Not applicable.

- ▶ Is interest charged on penalties/payable on refund?

Not applicable.

b) Penalty relief

Not applicable.

9. Statute of limitations on transfer pricing assessments

Not applicable.

10. Likelihood of transfer pricing scrutiny/ related audit by local authority

- ▶ Likelihood of transfer pricing-related audits (*high/medium/low*)

Not applicable.

- ▶ Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

Not applicable.

- ▶ Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

Not applicable.

- ▶ Specific transactions/industries/situations, if any, more likely to undergo audit

Not applicable.

11. APA opportunity

- ▶ Availability (unilateral/bilateral/multilateral)

Not applicable.

- ▶ Tenure

Not applicable.

- ▶ Rollback provisions

Not applicable.

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Kazakhstan

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

State Revenue Committee of the Ministry of Finance.

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

The Law of the Republic of Kazakhstan No. 67-IV on Transfer Pricing, dated 5 July 2008. Additionally, transfer pricing (TP) matters are regulated by the following subordinate legal acts:

- ▶ Rules for monitoring transactions (No. 176 of 16 March 2015)
- ▶ Rules for concluding agreements on the application of transfer pricing (No. 1197 of 24 October 2011)
- ▶ List of officially recognized sources of information on market prices (No. 292 of 12 March 2009)
- ▶ List of exchange-quoted goods (No. 638 of 6 May 2009)

▶ Section reference from local regulation

Per the Law on Transfer Pricing, individuals and/or legal entities having specific interrelations potentially affecting the economic results of deals (transactions) between them shall be recognized as interrelated parties. Detailed criteria for related parties are provided in Article 11 of the Law on Transfer Pricing.

2. OECD guidelines treatment/reference

Kazakhstan is not a member of the OECD. However, the Law on Transfer Pricing has some features in common with the OECD Guidelines. At the same time, there are also many differences; one of them is that Kazakhstan's transfer pricing legislation targets all international business transactions, regardless of whether the parties are related.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

There are two types of transfer pricing documentation:

- ▶ TP monitoring reporting (applies to specific taxpayers/ transactions only)
- ▶ TP documentation (applies to all taxpayers/transactions)

General requirements on the content of the TP documentation are established in the TP law.

For TP monitoring reporting, refer to the rules for monitoring transactions (No. 176 of 16 March 2015), as provided above.

▶ Does transfer pricing documentation have to be prepared annually?

TP documentation should be filed upon the request of the tax authorities within 90 calendar days.

TP monitoring reporting is an annual reporting that should be filed by transaction participants by 15 May of the year following the reporting period in the established form (refer to the rules for monitoring transactions (No. 176 of 16 March 2015)).

b) Materiality limit/thresholds

▶ Transfer pricing documentation

No materiality limit.

▶ Economic analysis

No materiality limit.

▶ BEPS master and local files

Not applicable; master and local files will be introduced from 1 January 2019.

▶ CbCR

Refer to the section below.

c) Specific requirement(s)

▶ Treatment of domestic transactions

Subject to the applicability of transfer pricing control to domestic transactions, general TP documentation requirements should apply.

▶ Local language documentation requirement

General requirements apply – documentation should be submitted/filed in either the Kazakh or Russian language.

▶ Safe harbor availability

No safe harbors, except for transactions with agricultural goods, where 10% safe harbors may apply.

Kazakhstan

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

The latest package of adopted changes to the TP legislation (published on 25 December 2017) introduced a requirement on CbCR with retroactive effect from 1 January 2016.

▶ Coverage in terms of master and/or local files

The master and local files will be introduced starting from 1 January 2019.

▶ Effective/expected commencement date

1 January 2016 for CbCR.

▶ Material differences from OECD report template/format

The template/format of the local CbC report has not been established yet.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

No guidelines were available at the time of this publication.

▶ CbCR notification and CbC report submission requirement

Starting 1 January 2018, transaction participants should file notification on their participation in an international group. This notification should be filed no later than 1 September of the year following the reporting period.

CbC reports are required to be filed with the Kazakhstan tax authorities for tax years beginning on or after 1 January 2016 by the following entities:

1. Kazakhstan resident entities that are ultimate parent entities (UPEs) of an MNE group
2. Surrogate parent entities of UPEs of the MNE group that are Kazakhstan tax residents
3. A Kazakhstan tax resident, a member of a multinational group provided that its UPE is not resident in Kazakhstan, and not required to file a CbC report in its country of residence, or failed to comply with CbCR requirements in its country of residence, or although obligated to file a CbC report there is no international tax treaty on the automatic exchange of information in place with Kazakhstan or there is a systemic failure of the jurisdiction of tax residence of the UPE on automatic exchange of information with Kazakhstan
4. Any other entity of the multinational group that is a non-Kazakhstan tax resident conducting activities in Kazakhstan through a structural subdivision or Permanent

Establishment (PE), provided that its UPE is not resident in Kazakhstan, and not required to file a CbC report in its country of residence, or failed to comply with CbCR requirements in its country of residence, or although obligated to file a CbC report there is no international tax treaty on the automatic exchange of information in place with Kazakhstan or there is a systemic failure of the jurisdiction of tax residence of the UPE on automatic exchange of information with Kazakhstan

For entities under points 1 or 2 above, the filing date is no later than 12 months following the reporting period. For entities under points 3 or 4, a CbC report may need to be filed upon the request of the Kazakhstan tax authorities, and the filing date is no later than 12 months from such request.

Applicable to international groups with consolidated revenue of:

- ▶ For parent company that is a Kazakhstan tax resident, EUR750 million for the year preceding the reporting year
- ▶ For nonresident parent companies, depends on the threshold established for the jurisdiction of such nonresident parent company or authorized participant of international group

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

No related party disclosure or other appendices/forms were required in tax declarations at the time of this publication.

b) Transfer pricing-specific returns

Apart from the general transfer pricing documentation requirements, including TP monitoring reporting, no other transfer pricing return is required to be filed.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ Corporate income tax return

By 31 March of the year following the reporting period (may be extended to 30 April).

► **Other transfer pricing disclosures/return**

TP monitoring reporting by 15 May of the year following the reporting period.

► **CbCR notification**

Starting 1 January 2018, transaction participants should file notification on their participation in the international group by 1 September of the year following the reporting period.

► **CbC report preparation/submission**

Refer to the "Transfer pricing documentation requirements" section above.

b) Documentation preparation deadline

Refer to the "Transfer pricing documentation requirements" section above.

c) Documentation submission deadline

► **Is there a statutory deadline for submission of transfer pricing documentation?**

Refer to the "Transfer pricing documentation requirements" section above.

► **Time period/deadline for submission on tax authority request**

Outside of a tax audit procedure, 90 calendar days.
Within a tax audit procedure, this period may be reduced to 30 calendar days.

6. Transfer pricing methods

a) Applicability

► International transactions

Yes.

► Domestic transactions

Yes, on certain transactions.

b) Priority/preference of methods

The domestic transfer pricing rules envisage five transfer pricing methods that should be applied in the following order: CUP, cost-plus, resale price, profit split and TNMM.

7. Benchmarking requirements

a) Local vs. regional comparables

Local comparables are preferable.

b) Single-year vs. multi-year analysis

Single-year analysis is preferable.

c) Use of interquartile range

The full range from maximum and minimum values is allowed.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

Not specified.

e) Simple vs. weighted average

Not specified.

f) Other specific benchmarking criteria, if any

A 10% independence threshold.

8. Transfer pricing penalties/relief

a) Penalty exposure

► **Consequences of failure to submit/late submission and/or incorrect disclosures**

Special penalties are in place for failure to comply with the documentation requirements established by the transfer pricing legislation (i.e., monitoring reporting and documentation supporting the transaction price). The maximum penalty is set at KZT740,000 (approximately USD2,550).

► **If an adjustment is sustained, can penalties be assessed?**

The penalty for an understatement of tax resulting from a transfer pricing adjustment is up to 50% of the additional accrued tax amount. Transfer pricing penalties are also imposed on individuals for personal liability of an administrative violation, including criminal liability if the tax amount misreported exceeds KZT48.1 million (approximately USD145,000).

► **Is interest charged on penalties/payable on refund?**

Interest for the delayed payment of the additionally assessed tax resulting from the transfer pricing adjustment is calculated at 1.25 times the Kazakhstan National Bank refinancing rate (approximately 12.2%).

Kazakhstan

b) Penalty relief

The legislation in Kazakhstan considers cases for penalty relief when an entity may be exempt from administrative liability. These cases, among others, include expiration of the statute of limitations, exemption on the basis of an act of amnesty and reconciliation of the parties. Despite legal provisions allowing for exemption, implementation is quite rare in practice.

The results of the tax audit may be appealed to the higher state body or court.

9. Statute of limitations on transfer pricing assessments

There is no specific Statute of limitations on transfer pricing assessments. The general statute of limitations period for tax assessment is five years. Within the same statute-of-limitations period, the taxpayer has the right to introduce amendments and additions to its tax reporting.

10. Likelihood of transfer pricing scrutiny/ related audit by local authority

► Likelihood of transfer pricing-related audits (*high/medium/low*)

Depends on the industry (high for export of commodities).

► Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

High, based on practice.

► Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

High, based on practice.

► Specific transactions/industries/situations, if any, more likely to undergo audit

Export of commodities is under higher scrutiny.

11. APA opportunity

► Availability (unilateral/bilateral/multilateral)

Transaction participants have the right to conclude an APA. The procedure for requesting such an agreement is included in the rules for concluding agreements on the application of transfer pricing, and it discusses the following:

- a. List of documents required for concluding the agreement
- b. Procedure for consideration of a request by the authorized bodies (tax and customs authorities)
- c. Duration of the agreement (e.g., no more than three years from the date of signing)
- d. Other

► Tenure

An APA may be agreed upon for a three-year period.

► Rollback provisions

None.

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Kenya

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Kenya Revenue Authority (KRA).

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

Section 18 (3) of the Income Tax Act.

Section 18A of the Income Tax Act, effective 3 April 2017.

Income Tax (transfer pricing) Rules, 2006.

Income Tax Act CAP 470, Laws of Kenya.

▶ Section reference from local regulation

Section 18 (3) of the Income Tax Act and the Income Tax (transfer pricing) Rules, 2006 (amended rules 2012) articulate the arm's-length principle, and Section 18 (6) provides guidance about the definition of related persons.

2. OECD guidelines treatment/reference

Kenya is not a member of the OECD. In practice, the OECD Guidelines are referred to.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Yes.

▶ Does transfer pricing documentation have to be prepared annually?

No.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

No materiality limit.

▶ Economic analysis

No materiality limit.

▶ BEPS master and local files

Not applicable.

▶ CbCR

Not applicable.

c) Specific requirement(s)

▶ Treatment of domestic transactions

There is a documentation obligation for domestic transactions. This is required when one entity operating in a preferential tax regime (such as special economic zones) enters into transactions with a related party in the normal tax regime.

▶ Local language documentation requirement

The transfer pricing documentation need not be submitted in the local language. English is the official business language in Kenya.

▶ Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Kenya has not adopted BEPS Action 13 for transfer pricing documentation in local regulations, but there are some elements thereof.

▶ Coverage in terms of master and/or local files

Not applicable.

▶ Effective/expected commencement date

Not applicable.

▶ Material differences from OECD report template/format

Not applicable.

Kenya

- ▶ **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

Not applicable.

- ▶ **CbCR notification and CbC report submission requirement**

There is no CbCR notification or CbC report submission requirement in Kenya.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

According to the corporate tax return format, the taxpayer is required to declare the names and addresses of related parties outside of Kenya.

Additionally, a taxpayer is required to declare all related party transactions in the audited financial statements, which then feed into the corporate income tax return.

b) Transfer pricing-specific returns

There are no transfer pricing-specific returns for taxpayers in Kenya.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

- ▶ **Corporate income tax return**

End of the sixth month following the company's financial year-end date.

- ▶ **Other transfer pricing disclosures/return**

Not applicable.

- ▶ **CbCR notification**

Not applicable.

- ▶ **CbC report preparation/submission**

Not applicable.

b) Documentation preparation deadline

There are no deadlines, but a transfer pricing policy document must be prepared and submitted upon request.

c) Documentation submission deadline

- ▶ **Is there a statutory deadline for submission of transfer pricing documentation?**

No.

- ▶ **Time period/deadline for submission on tax authority request**

There is no prescribed duration by law. However, the tax authorities normally give up to two weeks. An entity may be granted an extension upon application to the tax authority.

6. Transfer pricing methods

a) Applicability

- ▶ **International transactions**

Yes.

- ▶ **Domestic transactions**

Yes.

b) Priority/preference of methods

Rule 4 of the aforementioned rules provides that a taxpayer may choose the most appropriate from among six methods when determining the arm's-length price: CUP, resale price, cost-plus, profit split, TNMM and any other method that the Commissioner for Domestic Taxes may prescribe.

In 2012, the transfer pricing rules were amended to give the Commissioner for Domestic Taxes power to prescribe the application of the abovementioned methods. The practice notes that the application of the methods is yet to be released by the KRA. In practice, the most appropriate method, based on the facts and circumstances of the transaction, is applied.

7. Benchmarking requirements

a) Local vs. regional comparables

There is no legal requirement for local country comparables. In practice, there is a preference for the Asia-Pacific and Pan-European regions.

b) Single-year vs. multi-year analysis

Three-year testing is acceptable.

c) Use of interquartile range

Excel Quartile is acceptable.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

There is no need to conduct a fresh benchmarking search every year.

e) Simple vs. weighted average

There is a preference for the weighted average for arm's-length analysis.

f) Other specific benchmarking criteria, if any

In practice, 75% independence is applied when searching for comparables.

► Is interest charged on penalties/payable on refund?

Not applicable.

b) Penalty relief

There was no penalty relief available at the time of this publication. However, one can apply for a waiver.

If an adjustment is proposed by the tax authority, the following are the available dispute resolution options:

a. Alternative dispute resolution (ADR)

b. Tax tribunal hearing

Or

c. The high court – if the ruling from the tribunal is dissatisfactory

8. Transfer pricing penalties/relief**a) Penalty exposure****► Consequences of failure to submit/late submission and/or incorrect disclosures**

The Commissioner may make adjustments on the taxable profits and issue an assessment on the corporation's tax payable as a result of these adjustments, which may lead to penalties and interest on unpaid taxes.

► If an adjustment is sustained, can penalties be assessed?

There are no specific transfer pricing penalties. However, the Commissioner for Domestic Taxes can conduct an audit and make adjustments in the taxable profit and demand taxes, where applicable. Any tax due and unpaid in a transfer pricing arrangement is deemed to be an additional tax for the purposes of sections 38 and 84 of the Tax Procedures Act.

- i. Section 84 (2)(b) of the Tax Procedures Act provides that a penalty of 20% shall immediately become due and payable on the tax shortfall after the due date
- ii. Section 38 (1) of the Tax Procedures Act provides that a late-payment interest of 1% per month – or part thereof – shall be charged on the tax amount remaining unpaid for more than one month after the due date, until the full amount is recovered
- iii. Section 85 of the Tax Procedures Act prescribes a tax avoidance penalty equal to double the amount of tax that would have been avoided

9. Statute of limitations on transfer pricing assessments

Five years.

10. Likelihood of transfer pricing scrutiny/related audit by local authority**► Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood of tax audits is high because the KRA has become more aggressive in its audits and is now targeting multiple taxpayers across all sectors. Consequently, the likelihood of a transfer pricing review as part of a general tax audit is also high.

► Likelihood of transfer pricing methodology being challenged (high/medium/low)

High, given the recent trend mentioned above.

► Likelihood of an adjustment if transfer pricing methodology is challenged (high/medium/low)

If a transfer pricing methodology is challenged, then the likelihood of an adjustment is high. This is based on our experience in handling transfer pricing controversy issues. In most cases, when the tax authorities are not in agreement with the methodology adopted by a taxpayer, this results in an additional assessment. The taxpayer has the option to challenge this.

Kenya

- ▶ **Specific transactions/industries/situations, if any, more likely to undergo audit**

Generally, all related party transactions are viable for auditing; however, intragroup services and intangibles have a higher likelihood.

11. APA opportunity

- ▶ **Availability (unilateral/bilateral/multilateral)**

No specific APA rules are applicable.

- ▶ **Tenure**

Not applicable.

- ▶ **Rollback provisions**

Not applicable.

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Kosovo

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Tax Administration of Kosovo.

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

Law No. 05/L-029, on corporate income tax, dated 18 August 2015:

- a. Section VI, Article 27 – transfer pricing
- b. Section VI, Article 28 – avoidance of double taxation

The Ministry of Finance issued Administrative Instruction No. 02/2017, dated 27 July 2017, for the implementation of transfer pricing (TP), providing further guidance on the application of the arm's-length principle and the preparation of the TP documentation.

► Section reference from local regulation

- a. Law No. 03/222, dated 12 July 2010, on tax procedures – Article 1, Paragraph 1.27 – definition of related persons
- b. Law No. 05/L-029, dated 22 July 2015, on corporate income tax (CIT) – Article 2, Paragraph 1.18 – definition of related persons for CIT purposes
- c. Administrative Instruction No. 02/2017, dated 20 July 2017, on transfer pricing – Article 3, Paragraph 1.5 – definition of related persons for transfer pricing purposes

2. OECD guidelines treatment/reference

Kosovo is not a member of the OECD; however, the Kosovar legislation on transfer pricing makes reference to the OECD Guidelines.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

Yes.

► Does transfer pricing documentation have to be prepared annually?

Transfer pricing documentation has to be prepared annually under Kosovar regulations, provided that the taxpayer has controlled transactions, regardless of the total amount of such transactions.

The database searches for comparable external transactions that are part of the transfer pricing documentation can be updated every three years, provided that:

- There are no material changes in the controlled transactions.
- There are no material changes in the comparable uncontrolled transactions.
- There are no material changes in the relevant foreign economic circumstances.
- The business has the same operating conditions.

Financial information on the comparable external transactions needs to be updated annually.

b) Materiality limit/thresholds

► Transfer pricing documentation

Not applicable.

► Economic analysis

Not applicable.

► BEPS master and local files

Not applicable.

► CbCR

Not applicable.

c) Specific requirement(s)

► Treatment of domestic transactions

There is no documentation obligation for domestic transactions.

► Local language documentation requirement

The transfer pricing documentation needs to be submitted in one of the official languages of Kosovo (Albanian or Serbian). Paragraph 29.11 of Administrative Instruction No. 02/2017 on transfer pricing mandates the use of local language in transfer

pricing documentation. In special cases, the documentation may be submitted in English, as well; however, such cases are not specifically defined in the legislation.

▶ **Safe harbor availability**

Not applicable.

d) BEPS Action 13 implementation overview

▶ **Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?**

No.

▶ **Coverage in terms of master and/or local files**

Not applicable.

▶ **Effective/expected commencement date**

Not applicable.

▶ **Material differences from OECD report template/format**

Not applicable.

▶ **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

The BEPS Action 13 format report is not sufficient to achieve penalty protection.

▶ **CbCR notification and CbC report submission requirement**

There is no CbCR notification and CbC report submission requirement in Kosovo.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Companies' financial statements include certain compulsory disclosures of related party transactions.

b) Transfer pricing-specific returns

Pursuant to the newly issued Administrative Instruction for FY 2016, the Annual Controlled Transaction Notice was to be submitted with the tax authorities by 30 November 2017. As of FY 2017, the deadline for the submission of the Annual Controlled Transaction Notice will be on 31 March of the following tax year.

The Annual Controlled Transaction Notice must be submitted only by taxpayers involved in the controlled transactions, including loan surpluses, that in the reporting period exceed EUR300,000.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ **Corporate income tax return**

31 March.

▶ **Other transfer pricing disclosures/return**

31 March.

▶ **CbCR notification**

Not applicable.

▶ **CbC report preparation/submission**

Not applicable.

b) Documentation preparation deadline

There is no statutory deadline for the preparation of the transfer pricing documentation. However, the Annual Controlled Transaction Notice must be submitted by 31 March of the following year; therefore, it would be advisable to prepare it by such deadline.

c) Documentation submission deadline

▶ **Is there a statutory deadline for submission of transfer pricing documentation?**

No.

▶ **Time period/deadline for submission on tax authority request**

Transfer pricing documentation must be submitted within 30 days once requested by the tax authorities in an audit or inquiry.

6. Transfer pricing methods

a) Applicability

▶ **International transactions**

Yes.

- Domestic transactions

No.

b) Priority/preference of methods

The tax authorities generally follow the OECD Guidelines in examining related party transactions and transfer prices.

However, contrary to the OECD best-method approach, the CUP method must be first attempted pursuant to Kosovo's legislation. If CUP is not possible, the other traditional methods of resale price and cost-plus are favored. When profit split is more appropriate, because the activities of the transacting entity are highly integrated and the use of intangibles is incurred, the tax authorities may allow it to be used. A method of last resort is the TNMM.

7. Benchmarking requirements

a) Local vs. regional comparables

Article 15, Paragraph 5 of the Administrative Instruction on TP states that in the absence of domestic comparable uncontrolled transactions, Kosovo's tax authorities recognize the use of foreign comparable uncontrolled transactions, provided that the influence of geographical differences is analyzed.

In Kosovo, EY professionals prefer the use of local comparables; however, when not available, the benchmarks can be extended in the following order: to the Balkans, Eastern Europe and the EU.

b) Single-year vs. multi-year analysis

EY professionals prefer multi-year testing in Kosovo; however, the law does not specify how many years to use in testing.

c) Use of interquartile range

There is no legal reference requiring the use of the interquartile range. However, in Kosovo, EY professionals use the range between the first quartile (25%) and the third quartile (75%).

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

There is no requirement to conduct a fresh benchmarking search every year. Provided that the business operating conditions remain the same, database searches for comparable external transactions should be updated every three years.

e) Simple vs. weighted average

EY professionals' preference in Kosovo is for the weighted average; however, it is not required by local legislation.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

▸ Consequences of failure to submit/late submission and/or incorrect disclosures

Failures to file the Annual Controlled Transaction Notice and the transfer pricing documentation are each subject to a penalty of EUR125, up to a maximum of EUR2,500.

▸ If an adjustment is sustained, can penalties be assessed?

The current legislation does not provide for specific penalties in the case of transfer pricing adjustments. Therefore, in the case of an adjustment, the general tax penalties would apply. Hence, a penalty of 50% would apply on the amount of unpaid tax liability due to the lower declared taxable profit. If the taxpayer amends the transfer pricing position taken previously by filing an amended tax return, before a tax audit is initiated, then the penalty for the late filing imposed will be 5% of the unpaid liability for each month of delay, capped at 25%. Moreover, a penalty for late payment of the tax liability will apply at 1% thereof for each month of delay, capped at 12%. Both penalties do not apply cumulatively; rather, the late-payment penalty starts applying to the extent that the unpaid liability has not been paid by the time the late-filing penalty reaches its ceiling.

▸ Is interest charged on penalties/payable on refund?

In both the above cases, default interest would apply, which should be, at a minimum, 0.5% higher than the bank lending interest rate in Kosovo.

b) Penalty relief

Currently, no penalty relief is available.

9. Statute of limitations on transfer pricing assessments

The Statute of limitations on transfer pricing assessments is six years from the Annual Controlled Transaction Notice filing due date (i.e., 31 March of the following year; for instance, the statute of limitations for FY 2017 will terminate on 31 March 2024, six years after the filing date of 31 March 2018).

10. Likelihood of transfer pricing scrutiny/ related audit by local authority

► Likelihood of transfer pricing-related audits (*high/medium/low*)

Transfer pricing is audited in the general course of a corporate income tax audit. The likelihood of a tax audit in Kosovo is high for domestic and foreign groups of companies. Usually, a tax audit covers the last three to four years. Laws and relevant guidelines do not provide details on the contents of the documentation required to be kept by the taxpayer to substantiate the grounds on which the transfer prices applied are in line with the arm's-length principle. The Tax Administration is unlikely to challenge the methodology applied. In principle, in examining the arm's-length character of a transaction, the Tax Administration should use the same transfer pricing method applied by the taxpayer, to the extent that it is the most appropriate one for that transaction.

► Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

Currently low, because the new Administrative Instruction on transfer pricing has only become effective as of 27 July 2017, there have not been any strictly TP audits to our knowledge, and, as per comments received from the Kosovo tax authorities, they will not request TP documentation files for 2016. However, we expect TP audits to increase in the future, considering that the TP Instruction has been implemented.

► Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

Currently low, because the transfer pricing legislation is newly implemented, and, as such, the tax authorities for the time being rely on the taxpayers to defend their methodology. However, this is likely to change.

► Specific transactions/industries/situations, if any, more likely to undergo audit

None.

11. APA opportunity

► Availability (unilateral/bilateral/multilateral)

Kosovo's current TP legislation does not express or have provisions for APA. However, this might be subject to change.

► Tenure

Not applicable.

► Rollback provisions

Not applicable.

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Kuwait



1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Department of Inspections and Tax Claims (DIT).

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

Executive Bylaws of Law No. 2/2008, and Executive Rules and Instructions of Kuwait Income Tax Decree No. 3 of 1955, as amended by Law No. 2/2008.

▶ Section reference from local regulation

Executive Rule No. 49 of Law No. 2/2008 specifically refers to treatment of related companies.

2. OECD guidelines treatment/reference

Kuwait is not a member of the OECD.

The domestic regulations do not explicitly refer to the OECD Guidelines. On 7 June 2017, Kuwait signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS, along with 67 other countries. As part of the BEPS project, states are required to adopt certain regulations to maintain minimum standards, which includes CbCR. While the Action 13 requirements have not been implemented in Kuwait's local tax regulations, the country is committed to meeting the BEPS minimum standard requirements.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Kuwait does not have specific transfer pricing documentation rules.

▶ Does transfer pricing documentation have to be prepared annually?

Transfer pricing documentation should be drawn up and updated to limit the exposure to controversy.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

No materiality limit.

▶ Economic analysis

No materiality limit.

▶ BEPS master and local files

Not applicable.

▶ CbCR

Not applicable.

c) Specific requirement(s)

▶ Treatment of domestic transactions

There is no documentation obligation for domestic transactions.

▶ Local language documentation requirement

The transfer pricing documentation need not to be submitted in the local language.

▶ Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No.

▶ Coverage in terms of master and/or local files

Not applicable.

▶ Effective/expected commencement date

Implementation of BEPS Action 13 is expected before the end of the 2018 calendar year.

▶ Material differences from OECD report template/format

Not applicable.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

Not applicable for now; the BEPS Action 13 format report might be sufficient to achieve penalty protection.

► **CbCR notification and CbC report submission requirement**

Currently, there is no CbCR notification or CbC report submission requirement in Kuwait.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

There is a general obligation to disclose the transactions (including the related party transactions) in connection with tax retention duties. The taxpayers are obligated to disclose some of the related party transactions as part of the annual corporate income tax return with respect to material cost, design and consultancy fees incurred; related party leases; intragroup financing; intellectual property; and other items.

b) Transfer pricing-specific returns

There are no specific transfer pricing returns in Kuwait.

A specific template covering selected related and non-related party transactions must be disclosed, together with the annual tax return.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► **Corporate income tax return**

A specific template covering selected related and non-related party transactions must be disclosed, together with the annual tax return. A tax declaration must be filed on or before the 15th day of the 4th month following the end of the tax period.

► **Other transfer pricing disclosures/return**

Not applicable.

► **CbCR notification**

Not applicable.

► **CbC report preparation/submission**

Not applicable.

b) Documentation preparation deadline

There is no statutory deadline/recommendation for preparation of transfer pricing documentation.

c) Documentation submission deadline

► **Is there a statutory deadline for submission of transfer pricing documentation?**

No, but in practice, it is advisable to prepare and update the documentation before the annual inspection so that it can be admitted as evidence in the proceedings in a timely manner.

► **Time period/deadline for submission on tax authority request**

Once transfer pricing documentation is requested by the tax authorities, taxpayers have approximately one to two weeks to submit it.

6. Transfer pricing methods

a) Applicability

► **International transactions**

Domestic laws do not regulate the pricing methods.

► **Domestic transactions**

Not applicable.

b) Priority/preference of methods

In practice, it may be useful in discussions with the DIT if the transfer pricing method used is based on internationally accepted principles and standards and the transfer pricing documentation shows that the taxpayer adhered to the method.

7. Benchmarking requirements

a) Local vs. regional comparables

Even though they are not specifically mentioned in the regulations, local comparables are preferred over regional comparables. A regional search covering countries in the Gulf Cooperation Council or the Middle East and North Africa region could be accepted.

b) Single-year vs. multi-year analysis

None specified.

c) Use of interquartile range

None specified.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

There is no specific requirement to conduct a fresh

benchmarking search every year. However, it is recommended to conduct a fresh search once every three years and update financial data for the rest of the years.

e) Simple vs. weighted average

None specified.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

▶ Consequences of failure to submit/late submission and/or incorrect disclosures

None specified.

▶ If an adjustment is sustained, can penalties be assessed?

None specified.

▶ Is interest charged on penalties/payable on refund?

Penalty interest (1% per month) is imposed in the case of transfer pricing adjustments resulting in an assessment of additional income.

b) Penalty relief

Kuwaiti tax regulations do not offer any penalty relief mechanisms.

9. Statute of limitations on transfer pricing assessments

General regulations apply. Law No. 2 of 2008 provides a statute-of-limitations period of five years (generally calculated from the date the annual tax return is filed, unless a tolling or discovery rule can be applied).

10. Likelihood of transfer pricing scrutiny/related audit by local authority

▶ Likelihood of transfer pricing-related audits (high/medium/low)

High, because the taxing authority adds special scrutiny for intercompany transactions relating to material supply cost, design and consultancy fees incurred abroad; related party leases; intragroup financing; and intellectual property.

▶ Likelihood of transfer pricing methodology being challenged (high/medium/low)

High, as the tax authorities request substantial documentation to justify related party transactions.

▶ Likelihood of an adjustment if transfer pricing methodology is challenged (high/medium/low)

See the above section.

▶ Specific transactions/industries/situations, if any, more likely to undergo audit

None specified.

11. APA opportunity

▶ Availability (unilateral/bilateral/multilateral)

There are no specific provisions allowing APAs in Kuwaiti domestic regulations.

▶ Tenure

Not applicable.

▶ Rollback provisions

Not applicable.

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Latvia

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

State Revenue Service.

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

The arm's-length principle is established in the Law on Corporate Income Tax. Article 12 of the Law on Corporate Income Tax determines that the taxable income of the taxpayer may be adjusted upward if related party transactions are not at arm's length. Transfer pricing documentation requirements are laid down in Article 152 of the Law on Taxes and Duties.

Cabinet Regulation No. 556, promulgated on 4 July 2006, set the transfer pricing methods applicable for determining arm's-length prices in related party transactions. Additionally, Cabinet Regulation No. 16, promulgated on 3 January 2013, set requirements regarding the conclusion of APAs.

► Section reference from local regulation

The related party is defined in Section 1, Paragraph 18 of the Law on Taxes and Duties and in Section 1, Paragraph 3 of the Law on Corporate Income Tax.

2. OECD guidelines treatment/reference

Latvia has been a member country of the OECD since 1 July 2016.

Latvian transfer pricing legislative acts contain a reference to the OECD Guidelines in applying the transfer pricing methods. In most cases, the State Revenue Service accepts the principles stipulated in the OECD Guidelines regarding the structure of transfer pricing documentation.

The principle of supremacy of law does not provide application of the OECD Guidelines directly; however, the State Revenue Service is following the recommendations of the Council of the OECD (C(95)126/Final), which was a base in the drafting of current and planned legislation.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

Yes.

► Does transfer pricing documentation have to be prepared annually?

Yes. The documentation requirement is set in law for all related party transactions exceeding a threshold in a financial year; therefore, the documentation should be prepared annually.

The minimum requirement for annual update of transfer pricing documentation is not set out in local transfer pricing regulations. However, according to our experience, the minimum requirement would entail updating the relevant financial data of the local company, functional analysis of the transactions in question, as well as the transaction volumes and comparable data used for verifying the arm's-length nature of transfer prices applied.

b) Materiality limit/thresholds

► Transfer pricing documentation

According to Latvian statutory transfer pricing requirements applicable to transactions carried out in 2017, a taxpayer is obligated to prepare transfer pricing documentation for all types of transactions over EUR14,300 with a related party if the taxpayer's net turnover exceeds EUR1.43 million.

For related party transactions carried out in 2018 and beyond, the thresholds for master and local file requirements are applicable. The master and local file requirements effective from 1 January 2018 onward are indicated below.

► Economic analysis

There is no materiality for economic analysis. If the threshold for preparing transfer pricing documentation is reached, economic analysis should be prepared for each related party transaction.

For related party transactions carried out in 2018 and beyond, the arm's-length nature of transfer prices applied in all related party transactions has to be verified by functional and economic analysis.

Latvia

► BEPS master and local files

For related party transactions carried out in 2018 and beyond, the BEPS master file has to be prepared if the amount of related party transactions exceeds EUR1 million and the taxpayer's net turnover exceeds EUR50 million or if the amount of related party transactions exceeds EUR15 million.

For related party transactions carried out in 2018 and beyond, the BEPS local file has to be prepared if the amount of related party transactions exceeds EUR250,000.

► CbCR

Notification applies to all resident entities that are part of a qualifying group (the threshold is EUR750 million).

c) Specific requirement(s)

► Treatment of domestic transactions

There is a documentation obligation for domestic transactions.

► Local language documentation requirement

The transfer pricing documentation needs to be submitted in the local language. Section 8, Paragraph 4 of the Official Language Law states that statistical summaries, annual accounts, accounting documents and other documents that are to be submitted to state or local government institutions on the basis of laws or other regulatory enactments shall be drawn up in the official language.

For related party transactions carried out in 2018 and beyond, the master file can be submitted in English. However, the State Revenue Service has the right to require translation of the entire master file or relevant sections of the master file into Latvian. The translation has to be provided within 30 days following the request.

► Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

► Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Yes.

► Coverage in terms of master and/or local files

Both the master and local files are covered.

► Effective/expected commencement date

Expected to come into force on 1 January 2018.

► Material differences from OECD report template/format

There are no significant material differences.

► Sufficiency of BEPS Action 13 format report to achieve penalty protection

The BEPS Action 13 format report will typically be sufficient to achieve penalty protection with regard to penalty for noncompliance of the transfer pricing documentation (effective for related party transactions carried out in 2018 and beyond). Penalty protection with regard to noncompliance of transfer prices applied with the arm's-length principle is not available.

► CbCR notification and CbC report submission requirement

There is a CbCR notification requirement in Latvia. The date for the first notification period was 31 August 2017; for future years, it is the last date of the financial year. The notification requirement applies to any resident entity that is part of a qualifying group (the threshold is EUR750 million): it should inform the tax authority that it is an ultimate parent entity (UPE) or surrogate parent entity (SPE) or that the CbC report will be filed by the UPE or SPE in another jurisdiction that will exchange CbCR with Latvia; in the notification, that entity and its residence should be identified.

There is a CbC report submission requirement in Latvia.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Related party transactions must be disclosed in Appendix 2 of the corporate income tax return. The taxpayer should disclose the related parties involved, the types of transactions (e.g., purchase or sale of goods, services or fixed assets), the volume of transactions and the transfer pricing methods applied.

b) Transfer pricing-specific returns

There are no transfer pricing-specific returns in Latvia; however, related party transactions must be disclosed in Appendix 2 of the corporate income tax return.

5. Transfer pricing documentation/ disclosure timelines

a) Filing deadline

► Corporate income tax return

Four to seven months after closure of the financial year.

► Other transfer pricing disclosures/return

Together with the corporate income tax return.

► CbCR notification

There is a CbCR notification requirement in Latvia. The date for the first notification period was 31 August 2017; for future years, it is the last date of the financial year. The notification requirement applies to any resident entity that is part of a qualifying group (the threshold is EUR750 million): it should inform the tax authority that it is an ultimate parent entity (UPE) or surrogate parent entity (SPE) or that the CbC report will be filed by the UPE or SPE in another jurisdiction that will exchange CbCR with Latvia; in the notification, that entity and its residence should be identified.

► CbC report preparation/submission

The CbC report should be prepared and submitted within 12 months after the last date of the respective financial year.

b) Documentation preparation deadline

For transactions carried out until 31 December 2017, the transfer pricing documentation needs to be finalized by the time of submitting upon request.

For transactions carried out starting from 1 January 2018, the following transfer pricing documentation preparation deadlines apply (i.e., the documentation shall be prepared and filed upon request):

- For taxpayers whose related party cross-border transactions are from EUR1 million to EUR15 million, the master file shall be prepared by the submission of the taxpayer's annual report or by the day when the MNE submits its consolidated annual report, whichever is later.
- For taxpayers whose related party cross-border transactions are from EUR250,000 to EUR1 million, the local file shall be prepared by the submission of the taxpayer's annual report or within four months after the closure of the respective financial year, whichever is later.

- For taxpayers whose domestic related party transactions exceed EUR250,000 in a financial year and such transactions are related to another foreign related entity with any commercial or economic means, the transfer pricing documentation shall be prepared upon the request of the tax authority.

c) Documentation submission deadline

► Is there a statutory deadline for submission of transfer pricing documentation?

There is no statutory deadline for submission of transfer pricing documentation for transactions carried out until 31 December 2017.

For transactions carried out from 1 January 2018 onward, the following deadlines apply:

- The master file shall be submitted within seven months after the closure of the respective financial year if related party transactions exceed EUR15 million or the amount of related party transactions exceeds EUR1 million and the taxpayer's net turnover exceeds EUR50 million.
- The local file shall be submitted within seven months after the closure of the respective financial year if the related party transactions in the financial year exceed EUR5 million.
- For other cross-border related party transactions that do not exceed the thresholds, transfer pricing documentation should be submitted within one month after a request.

► Time period/deadline for submission on tax authority request

For transactions carried out until 31 December 2017, the taxpayer has to submit the transfer pricing documentation within one month once requested by the tax authorities in an audit or inquiry.

For transactions carried out from 1 January 2018 onward, if the threshold is reached, the taxpayer shall submit the master file and local file within seven months after the closure of the respective financial year. For transactions that do not exceed the threshold but have statutory transfer pricing documentation preparation deadlines, the documentation shall be submitted within one month upon request. For transactions that do not have statutory transfer pricing documentation preparation deadlines, the documentation shall be submitted within 60 days upon request.

6. Transfer pricing methods

a) Applicability

- ▶ International transactions

Yes.

- ▶ Domestic transactions

No.

b) Priority/preference of methods

Five methods are accepted: CUP, resale price, cost-plus, profit split and TNMM. If the CUP method may be appropriately applied, then it is deemed as the preferred transfer pricing method.

Current domestic legislation depicts a combination of both a hierarchy of methods and most-appropriate method; in practice, the most-appropriate-method criterion is used. However, currently, amendments to domestic law that emphasize the most-appropriate method are being prepared.

7. Benchmarking requirements

a) Local vs. regional comparables

Domestic comparables, if appropriate to controlled transactions, more closely reflect the comparability factors and are more reliable. However, in practice, foreign comparables are used in combination with domestic comparables.

b) Single-year vs. multi-year analysis

Though both acceptable, the choice of either single- or multiple-year analysis should be justified.

c) Use of interquartile range

There is no specific legal requirement on the use of the interquartile range. The Latvian tax authority accepts application of the interquartile range; thus, the EY member firm in Latvia uses the interquartile range as a threshold for acceptable results.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

A fresh benchmarking search is to be conducted every year. There is no national legislation regulating the necessary update of benchmarking; however, the Latvian tax authority accepts

the OECD approach for updating benchmarking every three years and financials every year.

e) Simple vs. weighted average

The simple average is preferred.

f) Other specific benchmarking criteria, if any

Regarding independence criteria, Latvian statutory rules stipulate that companies are considered to be related parties if ownership share is above 20% and should be excluded from comparables search. In addition, according to Latvian legislation, companies where individuals own over 50% of share capital should have been excluded from the search.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures

For transactions carried out until 31 December 2017, there is no specific penalty for not having transfer pricing documentation. When the prices applied in transactions between related parties are not at arm's length, the taxable income of the taxpayer may be adjusted upward, and a penalty of 20% to 30% and a late-payment penalty (annual rate of 18%) on the additionally payable corporate income tax may be applied. For recurring transfer pricing adjustments, the penalty rates are doubled (i.e., 40% to 60%).

For transactions carried out from 1 January 2018 onward, the following penalties will be applied:

- ▶ For non-submission of transfer pricing documentation – up to 1.5% of the total amount of controlled related party transactions
- ▶ For substantial breaches on preparation of transfer pricing documentation – up to 1% of the total amount of controlled related party transactions.

- ▶ If an adjustment is sustained, can penalties be assessed?

Refer to the section above.

- ▶ Is interest charged on penalties/payable on refund?

Refer to the section above.

b) Penalty relief

There is no specific penalty relief with respect to transfer pricing adjustments. Per ordinary procedure, a penalty imposed as the result of a tax audit may be reduced by 50%. In practice, having proper transfer pricing documentation reduces the risk of transfer pricing adjustments.

9. Statute of limitations on transfer pricing assessments

The State Revenue Service has the right to assess the tax of local transactions within three years and cross-border transactions within five years after the tax becomes due.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► Likelihood of transfer pricing-related audits (*high/medium/low*)

Small and medium-size taxpayers in Latvia have a medium risk that they will be subject to a general tax audit, while large taxpayers have a high risk of audit.

► Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

Based on tax audit practice, there is a medium risk for all taxpayers that if transfer pricing is reviewed as a part of the audit, the transfer pricing methodology will be challenged.

► Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

Based on tax audit practice, there is a medium to high risk for all taxpayers of an adjustment if the transfer pricing methodology is challenged.

► Specific transactions/industries/situations, if any, more likely to undergo audit

None.

11. APA opportunity

► Availability (unilateral/bilateral/multilateral)

A taxpayer has an opportunity to conclude an APA with the State Revenue Service for cross-border transactions with a related foreign company when the transactions exceed EUR1.43 million during a period of 12 months.

There are specific Cabinet Regulations regarding an APA that specify the information to be included in an APA application, describe the procedure and time frame for concluding an APA, and set the fee for filing an APA.

► Tenure

The APA is concluded for a term that does not exceed three years from the date of conclusion.

► Rollback provisions

None specified.

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Lebanon



1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Ministry of Finance.

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

a. The Lebanese tax regulation regarding transfer pricing is still neither elaborated upon nor clear.

b. Article 15 of the Income Tax Law states that if it appears that establishments belonging to establishments located outside Lebanon transfer part of their profits abroad either by increasing or decreasing purchase or sale prices, or otherwise, the profits so transferred shall, for taxation purposes, be added to the profits shown in the accounts. Without sufficient evidence to enable the real profits to be determined, the profits of a similar establishment shall be taken as a basis for comparing and determining the profit, in addition to the apparent indications and particulars gathered by the competent financial authorities

▶ Section reference from local regulation

Article 10 of Tax Procedure Law No.44/2008.

Arm's-length value is defined by the tax authorities under Decision No. 453/1, dated 22 April 2009, as the value of a similar transaction that occurs between independent persons and under complete competitive conditions that took place on the day of the transaction.

2. OECD guidelines treatment/reference

Lebanon is not a member of the OECD. Lebanon follows the OECD Guidelines when it comes to double tax treaties and interpretations of certain concepts, but there is nothing formal in this regard.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

No.

▶ Does transfer pricing documentation have to be prepared annually?

No.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

No materiality limit.

▶ Economic analysis

No materiality limit.

▶ BEPS master and local files

Not applicable.

▶ CbCR

Not applicable.

c) Specific requirement(s)

▶ Treatment of domestic transactions

There is no documentation obligation for domestic transactions.

▶ Local language documentation requirement

None specified.

▶ Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No.

▶ Coverage in terms of master and/or local files

Not applicable.

▶ Effective/expected commencement date

Not applicable.

▶ Material differences from OECD report template/format

Not applicable.

Lebanon

- ▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

Not applicable.

- ▶ CbCR notification and CbC report submission requirement

Not applicable.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Not applicable.

b) Transfer pricing-specific returns

Not applicable.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

- ▶ Corporate income tax return

31 May following the end of the fiscal year.

- ▶ Other transfer pricing disclosures/return

Not applicable.

- ▶ CbCR notification

Not applicable.

- ▶ CbC report preparation/submission

Not applicable.

b) Documentation preparation deadline

Transfer pricing documentation must be submitted upon request.

c) Documentation submission deadline

- ▶ Is there a statutory deadline for submission of transfer pricing documentation?

No.

- ▶ Time period/deadline for submission on tax authority request

None specified.

6. Transfer pricing methods

a) Applicability

- ▶ International transactions

None specified.

- ▶ Domestic transactions

None specified.

b) Priority/preference of methods

Not applicable.

7. Benchmarking requirements

a) Local vs. regional comparables

Even though it is not specifically mentioned in the regulations, local comparables are preferred over regional comparables.

A regional search covering countries in the Middle East and North Africa could be accepted.

b) Single-year vs. multi-year analysis

None specified.

c) Use of interquartile range

None specified.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

There is no specific requirement to conduct a fresh benchmarking search every year. However, it is recommended to conduct a fresh search once every three years and update financial data for the rest of the years.

e) Simple vs. weighted average

None specified.

f) Other specific benchmarking criteria

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures

There were no transfer pricing-specific penalties applicable at the time of this publication. However, normal tax penalty provisions could be applicable.

- ▶ If an adjustment is sustained, can penalties be assessed?

None specified.

- ▶ Is interest charged on penalties/payable on refund?

None specified.

b) Penalty relief

Not applicable.

9. Statute of limitations on transfer pricing assessments

None specified.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

- ▶ Likelihood of transfer pricing-related audits (*high/medium/low*)

Medium; there is no clear definition or standards for the likelihood of audits. However, this is done on a random basis when the tax authorities choose certain clients for audit. The method for choosing clients for audit is not disclosed.

- ▶ Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

Refer to the section above.

- ▶ Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

Refer to the section above.

- ▶ Specific transactions/industries/situations, if any, more likely to undergo audit

None.

11. APA opportunity

- ▶ Availability (unilateral/bilateral/multilateral)

None specified.

- ▶ Tenure

Not applicable.

- ▶ Rollback provisions

Not applicable.

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Libya

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Tax Department of the Ministry of Finance

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

Currently, there are no local transfer pricing regulations in Libya, but Libya has concluded about 17 tax treaties that contain an article resembling Article 9 of the OECD Model Treaty (on associated enterprises).

▶ Section reference from local regulation

Income Tax Law (Law 7/2010).

2. OECD guidelines treatment/reference

Libya is not a member of the OECD, and there are no transfer pricing regulations.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

No.

▶ Does transfer pricing documentation have to be prepared annually?

Not applicable.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

Not applicable.

▶ Economic analysis

Not applicable.

▶ BEPS master and local files

Not applicable.

▶ CbCR

Not applicable.

c) Specific requirement(s)

▶ Treatment of domestic transactions

Not applicable.

▶ Local language documentation requirement

Not applicable.

▶ Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No.

▶ Coverage in terms of master and/or local files

Not applicable.

▶ Effective/expected commencement date

Not applicable.

▶ Material differences from OECD report template/format

Not applicable.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

Not applicable.

▶ CbCR notification and CbC report submission requirement

Not applicable.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Not applicable.

b) Transfer pricing-specific returns

Not applicable.

5. Transfer pricing documentation/ disclosure timelines

a) Filing deadline

▶ Corporate income tax return

Within four months from the end of the tax fiscal year.

▶ Other transfer pricing disclosures/return

Not applicable.

▶ CbCR notification

Not applicable.

▶ CbC report preparation/submission

Not applicable.

b) Documentation preparation deadline

Transfer pricing documentation must be submitted upon request.

c) Documentation submission deadline

▶ Is there a statutory deadline for submission of transfer pricing documentation?

Not applicable.

▶ Time period/deadline for submission on tax authority request

Not applicable.

6. Transfer pricing methods

a) Applicability

▶ International transactions

Not applicable.

▶ Domestic transactions

Not applicable.

b) Priority/preference of methods

Not applicable.

7. Benchmarking requirements

a) Local vs. regional comparables

Even though they are not specifically mentioned in the regulations, local comparables are preferred over regional comparables. A regional search covering countries in the Gulf Cooperation Council or the Middle East and North Africa region could be accepted.

b) Single-year vs. multi-year analysis

None specified.

c) Use of interquartile range

None specified.

d) Fresh benchmarking search every year vs. roll-forward/ update of the financials

There is no specific requirement to conduct a fresh benchmarking search every year. However, conducting a fresh search once every three years and updating the financial data for the rest of the years are recommended.

e) Simple vs. weighted average

None specified.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

▶ Consequences of failure to submit/late submission and/ or incorrect disclosures

Currently, there are no transfer pricing-specific penalties applicable. However, normal tax penalty provisions could be applicable.

▶ If an adjustment is sustained, can penalties be assessed?

Not applicable.

▶ Is interest charged on penalties/payable on refund?

Not applicable.

b) Penalty relief

Not applicable.

9. Statute of limitations on transfer pricing assessments

Not applicable.

10. Likelihood of transfer pricing scrutiny/ related audit by local authority

▶ **Likelihood of transfer pricing-related audits**
(*high/medium/low*)

There is no specific transfer pricing audit in Libya.

▶ **Likelihood of transfer pricing methodology being challenged**
(*high/medium/low*)

Low, as there has been no specific transfer pricing audit in Libya.

▶ **Likelihood of an adjustment if transfer pricing methodology is challenged** (*high/medium/low*)

See the section above.

▶ **Specific transactions/industries/situations, if any, more likely to undergo audit**

None.

11. APA opportunity

▶ **Availability (unilateral/bilateral/multilateral)**

None specified.

▶ **Tenure**

Not applicable.

▶ **Rollback provisions**

Not applicable.

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Lithuania



1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Ministry of Finance of the Republic of Lithuania and the State Tax Inspectorate.

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

The arm's-length principle is established in the Law on Corporate Income Tax of Lithuania and its implementation rules, introduced in 2004.

- Article 40 of the Law on Corporate Income Tax of Lithuania
- Order of the Minister of Finance No. 1K-123 as of 9 April 2004 on transfer pricing evaluation and documentation rules
- Order of the Head of the State Tax Inspectorate No. VA-27 as of 22 March 2005 on the associated-party transaction disclosure in the annual corporate income tax return

► Section reference from local regulation

Article 2, parts 8 and 33 of the Law on Corporate Income Tax of Lithuania defines "related party" and "associated enterprise."

2. OECD guidelines treatment/reference

Lithuania is not a member of the OECD.

The use of the OECD Guidelines is explicitly advocated in the regulations and rulings applicable in Lithuania.

Other OECD papers, such as those regarding business restructurings and profit allocation to permanent establishments, are not explicitly implemented in the Lithuanian legislation.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

Yes.

► Does transfer pricing documentation have to be prepared annually?

No, provided that no material changes occur in the nature of transactions under review and the business environment of the transaction parties.

However, based on local draft legislation, the information related to the transaction under review (transaction values and the transfer price actually applied) will have to be updated in the transfer pricing documentation for each tax period. In addition, the benchmarking study will have to be updated at least every three years.

b) Materiality limit/thresholds

► Transfer pricing documentation

There is a materiality limit for transfer pricing documentation. If the sales revenues of certain companies exceeded EUR2.9 million in a year, they have to prepare transfer pricing documentation for the following year.

However, regardless of sales revenues, the documentation requirements apply to the following companies:

- Financial companies and credit institutions, the activities of which are regulated by the Law on Financial Institutions of the Republic of Lithuania
- Insurance companies, the activities of which are regulated by the Law on Insurance of the Republic of Lithuania

► Economic analysis

There is no materiality limit.

► BEPS master and local files

As of 8 January 2018, Lithuania had not yet formally adopted the BEPS master and local file recommendations. Therefore, the BEPS master and local files are not required by Lithuanian legislation for the financial years ending up to 31 December 2017.

Based on draft local regulations, the BEPS master and local files will be required to document the transactions in fiscal years starting on or after 1 January 2018. The following materiality thresholds will apply:

- A company will have to prepare a master file for the following year if its turnover exceeded EUR15 million.
- It will have to prepare a local file for the following year if its turnover exceeded EUR3 million

Lithuania

► CbCR

Not applicable; the CbCR notification for the first reporting year (starting on or after 1 January 2016) had to have been submitted to the State Tax Inspectorate of the Republic of Lithuania by 31 December 2017. For subsequent years, the CbCR notification has to be submitted by the last day of the reporting fiscal year of the MNE group.

c) Specific requirement(s)

► Treatment of domestic transactions

All domestic transactions (as well as international transactions) need to be documented in the transfer pricing documentation.

Based on local draft legislation, domestic transactions – the value of which does not exceed EUR30,000 – may be excluded from the transfer pricing documentation requirement unless one of the following applies:

- The amount of such transactions with the same associated party during the tax period exceeds EUR90,000.
- Such transaction is closely linked to another transaction, the amount of which exceeds EUR30,000, and, therefore, should be analyzed jointly.

► Local language documentation requirement

Based on Order of the Minister of Finance No. 1K-123 as of 9 April 2004 (Section 75 76), the transfer pricing documentation need not be submitted in the local language. However, the tax authorities could request the translation of these documents into the local language.

► Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

► Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Lithuania has adopted BEPS Action 13 for transfer pricing documentation in the local regulations only in terms of CbCR.

► Coverage in terms of master and/or local files

Not applicable.

► Effective/expected commencement date

Based on draft local regulations, the BEPS master and local files will be required to document the transactions in fiscal years starting on or after 1 January 2018.

► Material differences from OECD report template/format

Not applicable.

► Sufficiency of BEPS Action 13 format report to achieve penalty protection

Based on the draft legislation, there are no provisions related to penalty protection with respect to compliance with the BEPS Action 13 format report.

► CbCR notification and CbC report submission requirement

On 6 June 2017, Lithuania adopted the CbCR notification and CbC report submission requirements for the reporting years starting on or after 1 January 2016.

The following deadlines are set for submitting the CbC report to the State Tax Inspectorate:

- The CbC report for the first reporting year (beginning on or after 1 January 2016) should be submitted by 31 March 2018.
- The CbC report for subsequent years should be filed within 12 months after the end of the reporting fiscal year of the MNE group.

The following terms are set for submitting the CbC notification to the State Tax Inspectorate:

- The deadline for submitting the first notification (for FY 2016) is 31 December 2017.
- For subsequent years, the notification should be made by the last day of the reporting fiscal year of the MNE group.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

An associated-party disclosure annex (Form FR0528) to the annual corporate income tax return has to be submitted when the taxpayer's associated-party transactions exceed an annual value of approximately EUR90,000. On Form FR0528, taxpayers are required to provide information about the transactions between associated parties related to fixed tangible and intangible assets, stocks and goods, financial and other services, securities and derivatives, rent of property and loans. The taxpayers are also required to inform the tax authorities whether any transfer pricing method prescribed in the transfer pricing rules has been used in the transactions disclosed.

b) Transfer pricing-specific returns

The rules for completing Form FR0528 are set forth in Order of the Head of the State Tax Inspectorate No. VA-27 as of 22 March 2005. Form FR0528 must be submitted within six months of the end of each tax period. No other transfer pricing-specific returns shall be provided to the Lithuanian tax authorities .

5. Transfer pricing documentation/ disclosure timelines

a) Filing deadline

▶ Corporate income tax return

15 June.

▶ Other transfer pricing disclosures/return

15 June.

▶ CbCR notification

CbCR notification for FY 2016 should be submitted by the end of 2017; for subsequent years, it should be submitted by the end of the reporting financial year of the MNE group.

▶ CbC report preparation/submission

The CbC report for FY 2016 must be submitted by 31 March 2018; for subsequent years, it must be submitted within 12 months from the end of the reporting fiscal year of the MNE group.

b) Documentation preparation deadline

The transfer pricing documentation needs to be finalized by the time of submitting upon request.

c) Documentation submission deadline

▶ Is there a statutory deadline for submission of transfer pricing documentation?

There is no statutory deadline for submission of transfer pricing documentation.

▶ Time period/deadline for submission on tax authority request

The taxpayer has to submit the transfer pricing documentation within 30 days from the corresponding notice by the tax authorities in an audit or inquiry.

6. Transfer pricing methods

a) Applicability

▶ International transactions

Yes.

▶ Domestic transactions

Yes.

b) Priority/preference of methods

The CUP method is preferred over other pricing methods. In cases in which the CUP method cannot be reliably applied, other transaction-based methods, such as resale price or cost-plus, shall be used.

Taxpayers are encouraged to use profit-based methods only if transaction-based methods are not sufficient. Taxpayers are not required to use more than one method; however, a combination of methods may be used in all cases, provided the decision to apply any particular method is adequately supported.

7. Benchmarking requirements

a) Local vs. regional comparables

Local requirements follow the OECD Guidelines.

b) Single-year vs. multi-year analysis

There is a preference for single-year testing.

c) Use of interquartile range

The use of the interquartile range is preferred (based on country practice).

d) Fresh benchmarking search every year vs. roll-forward/ update of the financials

There is no requirement to conduct a fresh benchmarking search every year. However, based on draft legislation, the benchmarking results will have to be updated once every three years.

e) Simple vs. weighted average

There is a preference for a simple average (based on country practice).

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures

Noncompliance with transfer pricing documentation regulations exposes a taxpayer to a penalty of up to EUR5,800.

- ▶ If an adjustment is sustained, can penalties be assessed?

General tax penalties of 10% to 50% of the additional tax apply in the case of taxable income adjustments.

- ▶ Is interest charged on penalties/payable on refund?

None.

b) Penalty relief

Transfer pricing penalties are subject to general penalty relief rules.

9. Statute of limitations on transfer pricing assessments

Transfer pricing assessments may apply to the five years prior to the year in which the assessment takes place.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

- ▶ Likelihood of transfer pricing-related audits (*high/medium/low*)

Medium; the transfer pricing audit is part of the general tax audit. The latter is subject to internal risk identification procedures set by the tax authorities. Cross-border transactions with related parties should be treated as having increasing potential risk.

- ▶ Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

High; the tax authorities make an independent analysis of a taxpayer's tax position and analyze both documentation and factual results.

- ▶ Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

High; the tax authorities are qualified enough to assess and apply the correct transfer pricing methodology in case an incorrect one was applied by the taxpayer.

- ▶ Specific transactions/industries/situations, if any, more likely to undergo audit

None.

11. APA opportunity

- ▶ Availability (unilateral/bilateral/multilateral)

As of 1 January 2012, taxpayers may conclude unilateral APAs with the Lithuanian tax authorities on prospective transactions. Bilateral or multilateral APAs may be concluded based on existing tax treaties for avoiding double taxation.

- ▶ Tenure

None specified.

- ▶ Rollback provisions

None specified.

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Luxembourg



1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Luxembourg Tax Authority (Administration des Contributions Directes).

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

The Luxembourg Income Tax Law (ITL) contains three articles relating to transfer pricing (TP): articles 56 and 56bis, dedicated to the arm's-length principle, and Article 164(3), on hidden profit distribution. These articles provide for the application of the arm's-length standard for transactions between related parties.

Applicable from 1 January 2015, Article 56 of the ITL provides that profits of associated enterprises entering into transactions that do not meet the arm's-length principle will be determined according to normal market conditions and taxed accordingly. Based on this wording, both upward and downward adjustments are possible. Furthermore, this provision applies to domestic and cross-border transactions.

Article 56 of the ITL covers any "enterprise," which means any person carrying out a commercial activity. As such, under this article, company types such as S.A.s, S.à r.l.s and SICARs, and individuals that have a commercial business, are considered to be included in the definition of "enterprise." However, non-Luxembourg residents (unless they have a permanent establishment in Luxembourg) or transparent entities (such as FCP, SCS and SCSp, unless they exercise a commercial activity) would likely not be included under the scope of Article 56 of the ITL. Investment companies with variable capital (SICAVs) have a commercial business and are considered to be enterprises; however, they benefit from a subjective tax exemption.

The commentaries of the law specify that the arm's-length principle is applicable to any taxpayer, regardless of the legal form under which it exercises its activities in Luxembourg. Therefore, not only will this provision cover tax-opaque collective undertakings and tax-transparent partnerships, but also individual and collective undertakings without legal form.

Since Article 56 of the ITL grants the possibility to adjust the profits declared by a taxpayer, it is necessary to determine whether the conditions of a controlled transaction (i.e., a transaction between associated enterprises) are consistent with the arm's-length principle and what quantum of adjustment

has to be made to achieve the arm's-length principle. To assess this, a comprehensive economic comparability analysis/benchmark, which consists of comparing controlled transactions with uncontrolled transactions (i.e., transactions between independent parties) should in principle be realized in order to sustain the arm's-length character of the intragroup transaction.

Article 56bis of the ITL, applicable from 1 January 2017, contains the basic principles that must be respected in the context of a transfer pricing analysis, including the tool to be used and the methodology to be selected for implementing the arm's-length principle.

Article 56bis of the ITL first provides for definitions aiming to clarify some fundamental terms in the area of transfer pricing. The article then states that companies have to apply the arm's-length principle to all controlled transactions and specifies that the mere fact that a transaction may not be found between independent parties does not itself mean that it is not at arm's length.

As per the mechanism to be applied, this article particularly focuses on the comparability analysis, which is at the heart of the application of the arm's-length principle. This comparability analysis is based on the following two aspects: (a) the identification of the commercial or financial relations between related entities and the determination of the conditions and economically relevant circumstances linked to those relations in order to accurately delineate the controlled transaction, and (b) the comparison of the conditions and economically relevant circumstances of the accurately delineated controlled transaction with those of comparable transactions on the free market.

Article 56bis of the ITL further states that the economically relevant conditions and circumstances or comparability factors that have to be identified broadly include the following:

- The contractual terms of the transaction
- The functions performed by each of the parties to the transaction, taking into account the assets used and the risks assumed and managed
- The characteristics of the asset transferred, the service rendered or the engagement concluded
- The economic circumstances of the parties and the market on which the parties exercise their activities
- The business strategies pursued by the parties

Article 56bis of the ITL also specifies that the methods to be used for determining the appropriate arm's-length price

must take into account the factors of comparability identified and be coherent with the nature of the accurately delineated transaction. The most suitable method for the transaction has to be used. The Luxembourg Tax Authority issued an administrative circular on 27 December 2016 (Circular LIR No. 56/1-56bis/1) regarding the tax treatment applicable to companies carrying out intragroup financing activities. This new circular replaces the administrative circulars No. 164/2 of 28 January 2011 and No. 164/2bis of 8 April 2011 and is effective as of 1 January 2017.

The circular provides substantial guidance on the comparability analysis, the functional analysis and the substance requirements. In line with Article 56bis of the ITL, the circular mentions that the comparability analysis should contain: (a) an identification of the commercial or financial relations existing between related parties and determination of the conditions and significant economic circumstances attached to the controlled transaction in order to precisely delineate the controlled transaction, and (b) a comparison of the conditions and significant economic circumstances of the controlled transaction, accurately delineated, with comparable transactions between independent parties.

The circular provides substantial details on the approach to be taken in order to conduct a functional analysis, stressing the importance of identifying functions performed and assets used to determine the risk related to a financing transaction.

Furthermore, the circular requires the performance of a comprehensive risk analysis in order to determine the adequate level of equity. In that respect, it refers to the need to estimate – based on the facts and circumstances of each situation – the economically significant specific risks in relation to a financing transaction. The circular also explains the substance requirements to be met by a group financing entity.

The Law of 23 December 2016 in relation to CbCR rules was adopted by Luxembourg's Parliament on 27 December 2016. This law aims at transposing Directive 2016/881/EU of 25 May 2016, which amends Directive 2011/16/EU as it regards the mandatory automatic exchange of information in the field of taxation to include the CbCR rules for global MNEs.

► **Section reference from local regulation**

Related parties are defined by Article 56 of the ITL as follows: "When an enterprise participates, directly or indirectly in the management, control or capital of another enterprise, or where the same persons participate, directly or indirectly, in the management, control or capital of two enterprises."

2. OECD guidelines treatment/reference

Luxembourg has been a member of the OECD since 7 December 1961.

The OECD Guidelines are not officially incorporated into Luxembourgian tax law. Nevertheless, the commentaries to the 2015 Budget Law modifying Article 56 of the ITL refer to the OECD Guidelines as being designed to be observed by multinationals. More importantly, Article 56bis, introduced into Luxembourgian law by the 2016 Budget Law, clearly aims to incorporate the concept of the arm's-length principle, based on the OECD principles as revised by Actions 8 to 10 of the OECD BEPS Action Plan, which is now also reflected in the last version of the OECD TP Guidelines released in July 2017. The commentaries to Article 56bis refer directly to chapters 1 to 3 of the OECD Guidelines.

Furthermore, the new Circular No. 56/1-56bis/1, issued by the tax authorities on 27 December 2016 and effective from 1 January 2017, provides substantial guidance on the comparability analysis and, more specifically, on how to conduct it consistently with OECD principles. It also states that economic reality should prevail over the contractual terms of an agreement, thus reinforcing the application of the substance-over-form concept in the application of OECD TP principles. Considering that the OECD TP Guidelines are not incorporated into Luxembourg's Income Tax Law, the arm's-length nature of intercompany transactions may also be established with reference to other generally accepted transfer pricing guidelines or regulations.

3. Transfer pricing documentation requirements

a) Applicability

► **Does your country have transfer pricing documentation guidelines/rules?**

Luxembourgian tax law includes general documentation requirements but does not provide specific TP documentation regulations. The General Tax Law has been amended to extend the existing general obligation of taxpayers so they can justify the data contained in their tax returns with appropriate information and documentation (codified in Section 171 of the General Tax Law) for transfer pricing matters. This provision is reinforced by a third paragraph clarifying that the general documentation requirements set forth by this provision also apply to transactions between associated enterprises.

In the absence of further guidance, one could rely on the 2017 edition of the OECD TP Guidelines and the *Practical Manual on Transfer Pricing for Developing Countries* issued by the United Nations to get additional information on what types of documentation a taxpayer may be required to provide. Reference is also made to the European Council's Code of Conduct on transfer pricing documentation for associated enterprises in the EU, dated 2006, aimed at harmonizing the transfer pricing documentation that multinationals have to provide to tax authorities.

► **Does transfer pricing documentation have to be prepared annually?**

Yes, transfer pricing documentation has to be prepared annually under local country regulations. No further specific guidance is available. However, intragroup transactions should be documented for transfer pricing purposes for every fiscal year.

b) Materiality limit/thresholds

► **Transfer pricing documentation**

No materiality limit.

► **Economic analysis**

No materiality limit.

► **BEPS master and local files**

Not applicable.

► **CbCR**

The threshold is set at EUR750 million (consolidated annual group turnover).

c) Specific requirement(s)

► **Treatment of domestic transactions**

There is a documentation obligation for domestic transactions.

► **Local language documentation requirement**

The transfer pricing documentation need not be submitted in the local language.

► **Safe harbor availability**

None specified.

d) BEPS Action 13 implementation overview

► **Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?**

Luxembourg has adopted BEPS Action 13 for TP documentation in the local regulations only in terms of CbCR.

► **Coverage in terms of master and/or local files**

Not applicable.

► **Effective/expected commencement date**

Not applicable.

► **Material differences from OECD report template/format**

Not applicable.

► **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

Not applicable.

► **CbCR notification and CbC report submission requirement**

Yes, the Law of 23 December 2016 states that if the ultimate parent entity (UPE) of an MNE group that is required to prepare consolidated financial statements, or that would be required to do so if equity interests in any of its enterprises were listed, with a consolidated annual group turnover of at least EUR750 million is a Luxembourg tax resident, the entity must submit a CbC report to the Luxembourg tax authorities. Alternatively, a Luxembourg group entity that is not the UPE of the MNE group (the surrogate parent entity) should file a CbC report with the Luxembourg tax authorities in one of the following cases:

1. The UPE is not obligated to file a CbC report in its country of residence.
2. The UPE is obligated to submit a CbC report, but there is no automatic exchange of CbC reports between Luxembourg and the country of residence of the UPE.
3. The UPE is obligated to submit a CbC report, and there is an automatic exchange of CbC reports, but because of systematic failure, no effective exchange of information takes place.

A Luxembourg group entity will need to notify the Luxembourg tax authorities by the end of the financial year as to whether it is the UPE or surrogate parent entity. If it is not, it will have to inform the Luxembourg tax authorities of the identity of the UPE or surrogate parent entity (including the identification of its tax residency). The CbC report should be filed annually, within 12 months of the last day of the financial year.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

There are no specific disclosures required when filing tax returns. It is, however, a common practice that transactions with related parties are detailed by nature and by related party in a schedule attached to the tax returns.

b) Transfer pricing-specific returns

Currently, there are no transfer pricing-specific returns to be filed separately or with the corporate income tax return.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ Corporate income tax return

31 May.

▶ Other transfer pricing disclosures/return

Not applicable.

▶ CbCR notification

By the end of the reporting fiscal year.

▶ CbC report preparation/submission

12 months after the last day of the reporting fiscal year of the MNE group.

b) Documentation preparation deadline

There is no statutory deadline/recommendation for the preparation of TP documentation. As a general rule, contemporaneous documentation should exist when transactions are carried out.

c) Documentation submission deadline

▶ Is there a statutory deadline for submission of transfer pricing documentation?

Since the tax law does not contain specific TP documentation regulations, Luxembourg's tax law does not include a deadline to produce transfer pricing documentation. However, taxpayers must be able to justify the data contained in their tax returns with appropriate information and transfer pricing documentation.

▶ Time period/deadline for submission on tax authority request

Luxembourg's tax law neither contains specific TP documentation regulations nor includes a deadline to produce transfer pricing documentation. Taxpayers must be able to justify the data contained in their tax returns with appropriate information and documentation. The tax authority may request, in the context of assessing the tax return or in the context of a tax audit, that transfer pricing documentation be provided within a certain time frame. This time frame may be as short as 14 days but may be extended upon request.

6. Transfer pricing methods

a) Applicability

▶ International transactions

Yes.

▶ Domestic transactions

Yes.

b) Priority/preference of methods

Although there are no specific pricing methods mentioned in the ITL, the draft law introduced on 12 October 2016 reinforces that the methods to be used for the determination of the appropriate arm's-length compensation must take into account the OECD comparability factors and be coherent with the nature of the accurately delineated transactions. All methods advocated by the OECD are acceptable under the current administrative practice, such as the CUP, resale price, cost-plus, TNMM and profit split methods. There are no priorities established among the different methods.

7. Benchmarking requirements

a) Local vs. regional comparables

OECD guidance should be followed.

b) Single-year vs. multi-year analysis

OECD guidance should be followed.

c) Use of interquartile range

OECD guidance should be followed.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

OECD guidance should be followed.

e) Simple vs. weighted average

OECD guidance should be followed.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief**a) Penalty exposure****► Consequences of failure to submit/late submission and/or incorrect disclosures**

As a general rule (not specific but also applicable to TP matters), any tax return that is intentionally incomplete or has inexact information, or any non-declaration, can result in a fine. Furthermore, administrative penalties may be applied to enforce a taxpayer's delivery of general documentation within the assessment.

Finally, to the extent that the arm's-length standard is not respected, the tax authority may reassess or adjust the taxable result.

► If an adjustment is sustained, can penalties be assessed?

A tax return that is intentionally incomplete or has inexact information, or any non-declaration, can result in a fine not exceeding 25% of the taxes avoided or unduly reimbursed but not less than 5% of the taxes avoided or unduly reimbursed.

With regard to the CbCR rules, in the cases of failure on filing, late filing, inclusion of incomplete or inexact information, or in the case of not respecting any of the obligations included in the mentioned draft law, a penalty of up to EUR250,000 can be imposed on the declaring entity. This penalty is imposed at the discretion of the competent tax authority. The declaring entity can appeal the decision to the administrative court.

► Is interest charged on penalties/payable on refund?

None specified.

b) Penalty relief

An appeal before the Director of Direct Tax Administration can be lodged against penalties within three months.

The adjustment will be materialized within the tax assessment. Again, an appeal can be filed against this tax assessment (see below).

9. Statute of limitations on transfer pricing assessments

There are no specific limitations on transfer pricing adjustments; rather, the general rules apply. The statute of limitations is, in principle, five years starting from 1 January of the calendar year following the relevant tax year. In cases where no tax return or an incomplete tax return is filed, as well as in cases of fraud, the statute of limitations is extended to 10 years. Moreover, once a Luxembourgian company has been assessed for income and net wealth tax purposes for a particular year, the tax authorities may not reassess the relevant tax year unless they have obtained new information and the statute of limitations has not yet expired. As long as the tax authorities have issued a provisional tax assessment, the taxable base may still be adjusted after the provisional assessment is issued, until the statute of limitations has expired.

10. Likelihood of transfer pricing scrutiny/related audit by local authority**► Likelihood of transfer pricing-related audits (high/medium/low)**

There are no specific rules regarding transfer pricing audits in Luxembourg. Transfer pricing normally should be reviewed as part of a regular tax audit, respectively, when assessing the tax return for a specific year. The risk of transfer pricing being reviewed under a tax audit is characterized as medium.

The tax authority has the right to carry out an audit during the statute-of-limitations period until final income tax assessments are issued.

► Likelihood of transfer pricing methodology being challenged (high/medium/low)

Low to medium, for the same reason stated above.

► Likelihood of an adjustment if transfer pricing methodology is challenged (high/medium/low)

Low to medium, for the same reason stated above.

► Specific transactions/industries/situations, if any, more likely to undergo audit

None.

11. APA opportunity

► Availability (unilateral/bilateral/multilateral)

The General Tax Law (Abgabenordnung) includes a provision (Paragraph 29a) dedicated to the tax ruling practice (procédure des décisions anticipées). This provision, which has been further completed by a grand-ducal regulation, reflects and formalizes the administrative practice applied in the past, enabling taxpayers to obtain up-front legal certainty. The aim is also to provide a harmonized and uniform application of the tax laws across the various taxation offices and increased transparency toward foreign tax authorities. This provision also applies to APAs. Circular Letter LIR No. 164/2, dated 28 January 2011, further formalizes the issuance of APAs for intragroup financing transactions (i.e., activities consisting of granting loans or advances to associated enterprises funded through the issuance of public or private loans, advances or bank loans).

To further enhance tax transparency, the law on automatic exchange of information on tax rulings and APAs (transposing EU Council Directive 2015/2376 of 8 December 2015) was introduced into Luxembourgian legislation on 23 July 2016. The law foresees the mandatory and automatic exchange of information on cross-border tax rulings and APAs with all other EU members. The law is applicable from 1 January 2017. However, retroactive effect of up to 1 January 2012 is provided for certain rulings issued before 1 January 2017.

Furthermore, based on the final recommendations of the OECD in relation to Action 5 of the BEPS project, Luxembourg may also exchange information on certain types of tax rulings and APAs that were issued on or after 1 January 2010 and that were still in effect from 1 January 2014.

► Tenure

Five years.

► Rollback provisions

None specified.

Contact

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Madagascar

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Malagasy tax authorities (Ministry of Finance and Budget; Direction Générale des Impôts).

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

The General Tax Code (since the Financial Act for 2014), articles 01.01.13-I-§2 (arm's-length principle), 01.01.10-1° (no deduction on abnormal or unreasonable expenses), 20.06.08 (documentation requirements and deadlines), 20.01.56.8 (penalties) and 20.06.23 (on-site tax audit regime and deadlines).

Executive decision No. 4 – MFB/SG/DGI, dated 24 January 2014, on transfer pricing rules (transfer pricing tax audit, pricing methods, tax haven details).

▶ Section reference from local regulation

Article 3 of executive decision No. 4 – MFB/SG/DGI, dated 24 January 2014, on transfer pricing rules (transfer pricing tax audit, pricing methods, tax haven details).

2. OECD guidelines treatment/reference

Madagascar is not a member of the OECD.

The OECD Guidelines and the French tax law inspired Malagasy laws on transfer pricing, although there are no direct references.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

No.

▶ Does transfer pricing documentation have to be prepared annually?

There is no requirement to prepare transfer pricing documentation annually in Madagascar, but documentation has to be available in case of a tax audit.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

There are no limits or thresholds for intragroup transactions to be supported by transfer pricing documentation.

▶ Economic analysis

Not applicable.

▶ BEPS master and local files

Not applicable.

▶ CbCR

Not applicable.

c) Specific requirement(s)

▶ Treatment of domestic transactions

There are no specific transfer pricing requirements or provisions on domestic transactions.

▶ Local language documentation requirement

There is no local language documentation requirement. However, the tax authorities require a French version of English-written documents.

▶ Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No.

▶ Coverage in terms of master and/or local files

Not applicable.

▶ Effective/expected commencement date

Not applicable.

▶ Material differences from OECD report template/format

Not applicable.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

Not applicable.

Madagascar

► CbCR notification and CbC report submission requirement

There is no CbCR notification and CbC report submission requirement in Madagascar.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

There are no related party disclosures, transfer pricing-related appendices, additional forms or documents on transfer pricing required by the General Tax Code to be provided in the corporate income tax return.

b) Transfer pricing-specific returns

Not applicable.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► Corporate income tax return

Companies using the standard tax year must file financial statements and the corporate income tax return by 15 May of the year following the tax year. For companies choosing a tax year-end other than the standard tax year-end, the filing must be made by the 15th day of the 4th month following the year-end.

► Other transfer pricing disclosures/return

Not applicable.

► CbCR notification

Not applicable.

► CbC report preparation/submission

Not applicable.

b) Documentation preparation deadline

There is no mandatory preparation deadline for transfer pricing documentation in the General Tax Code. However, documentation must be available upon request from the tax authorities within two months (extendable to three months).

c) Documentation submission deadline

► Is there a statutory deadline for submission of transfer pricing documentation?

Not applicable.

► Time period/deadline for submission on tax authority request

Documents and information required by the tax authorities have to be provided upon request from the tax authorities within two months (extendable to three months).

6. Transfer pricing methods

a) Applicability

► International transactions

Yes.

► Domestic transactions

Not applicable.

b) Priority/preference of methods

The aforementioned executive decision No. 4 – MFB/SG/DGI accepts the following methods:

- CUP
- Resale price
- Cost-plus
- TNMM
- Transactional profit split method

It is up to the taxpayer to select and justify the most suitable approach.

7. Benchmarking requirements

a) Local vs. regional comparables

Not applicable. Malagasy transfer pricing law and practice are still recent, and the tax authorities have not yet required or recommended specific benchmarking methods.

b) Single-year vs. multi-year analysis

Refer to the section above.

c) Use of interquartile range

Refer to the section above.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

Refer to the section above.

e) Simple vs. weighted average

Refer to the section above.

f) Other specific benchmarking criteria, if any

Refer to the section above.

8. Transfer pricing penalties/relief

a) Penalty exposure

▶ **Consequences of failure to submit/late submission and/or incorrect disclosures**

If a company provides insufficient or no documentation by the aforementioned deadlines (the three-month first-request period or the 30-day additional-information period), it is subject to a penalty of MGA5 million.

▶ **If an adjustment is sustained, can penalties be assessed?**

In the case of an adjustment, the tax authorities would reclaim the benefits that should have been achieved if the transaction was made at arm's length and apply penalties of:

- ▶ 40% as standard penalties
- ▶ 80% in the case of fraudulent tactics
- ▶ 150% in the case of resistance during the tax audit

▶ **Is interest charged on penalties/payable on refund?**

Not applicable.

b) Penalty relief

There is no specific penalty relief applicable to transfer pricing.

The General Tax Code provides for the following dispute resolution options:

- ▶ Transaction with the tax authorities

- ▶ Referral to the Tax Appeal Committee, which offers its expertise, although its opinions do not bind the tax authorities
- ▶ The administrative litigation procedure with the tax authorities
- ▶ Referral to courts

9. Statute of limitations on transfer pricing assessments

There is no specific Statute of limitations on transfer pricing assessments.

It is the same as for all corporate tax assessments – i.e., three years following the year for which the tax is due

10. Likelihood of transfer pricing scrutiny/related audit by local authority

▶ **Likelihood of transfer pricing-related audits**
(*high/medium/low*)

Low. Tax audits and tax reassessments related to transfer pricing are not frequent yet. Malagasy transfer pricing law and practice are still recent; therefore, field tax auditors are not quite familiar with its principles or pricing methods.

▶ **Likelihood of transfer pricing methodology being challenged**
(*high/medium/low*)

Medium. Although it is up to the taxpayer to select and justify the most suitable method, a field tax auditor can demand that the taxpayer use a method that the tax auditor is more comfortable with, and assess accordingly.

▶ **Likelihood of an adjustment if transfer pricing methodology is challenged**
(*high/medium/low*)

High. The tax authorities tend to reassess as soon as they disagree with the taxpayer.

▶ **Specific transactions/industries/situations, if any, more likely to undergo audit**

None.

11. APA opportunity

▶ **Availability (unilateral/bilateral/multilateral)**

Malagasy tax law does not provide a specific APA procedure. Rescripts, individual binding tax rulings or any kind of prior agreement with the tax authority are not common practices in Madagascar.

▶ **Tenure**

Not applicable.

▶ **Rollback provisions**

Not applicable.

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Malawi

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Malawi Revenue Authority (MRA).

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

Effective from 1 July 2018, Malawi has introduced two transfer pricing-related regulations under Section 127A of the Taxation Act. The Taxation (Transfer Pricing Documentation) Regulation, 2017, deals with transfer pricing (TP) documentation requirements. The Taxation (Transfer Pricing) Regulation, 2017, deals with general aspects of transfer pricing, including TP methods and how to test related party transactions.

▶ Section reference from local regulation

Section 127A, Subsection 5 of the Taxation Act defines related and associated enterprises.

2. OECD guidelines treatment/reference

Malawi is not a member of the OECD.

The Malawi transfer pricing regulations follow the OECD Model, and the MRA relies heavily on the OECD Transfer Pricing Guidelines.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Yes.

▶ Does transfer pricing documentation have to be prepared annually?

Under the new regulations, documentation to support TP transactions in the financial statements has to be maintained contemporaneously. While there is no explicit obligation to submit the TP document with the annual income tax return, it is advisable for the taxpayer to do so. The Commissioner General of the MRA may demand TP-related information to be submitted within 45 days.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

Transactions with a value of more than USD135,000.

▶ Economic analysis

Not applicable.

▶ BEPS master and local files

Not applicable.

▶ CbCR

Not applicable.

c) Specific requirement(s)

▶ Treatment of domestic transactions

Transfer pricing analysis and documentation for transactions between resident related parties is not required when the annual value of the concerned transactions is less than USD135,000.

▶ Local language documentation requirement

All TP documents should be maintained in English.

▶ Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No, Malawi has not explicitly adopted BEPS Action 13 for transfer pricing documentation in local regulations, but there are some elements thereof.

▶ Coverage in terms of master and/or local files

Not applicable.

▶ Effective/expected commencement date

Not applicable.

▶ Material differences from OECD report template/format

Not applicable.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

Not applicable.

Malawi

► CbCR notification and CbC report submission requirement

There is no CbCR notification and CbC report submission requirement.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Effective from 1 July 2017, all related party transactions need to be tested to show that they are at arm's length. Maintaining a TP document is a requirement.

b) Transfer pricing-specific returns

Not applicable.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► Corporate income tax return

Within 180 days after the end of the financial year.

► Other transfer pricing disclosures/return

None specified.

► CbCR notification

Not applicable.

► CbC report preparation/submission

Not applicable.

b) Documentation preparation deadline

Documentation deadlines are not stipulated, but the Commissioner General may require a taxpayer to provide the necessary documentation within a period of 45 days.

c) Documentation submission deadline

► Is there a statutory deadline for submission of transfer pricing documentation?

There is no statutory deadline for submission of transfer pricing documentation.

► Time period/deadline for submission on tax authority request

Taxpayers are obliged to submit the documentation within 45 days of the request by the tax authority – i.e., the Commissioner General.

6. Transfer pricing methods

a) Applicability

► International transactions

Yes.

► Domestic transactions

Yes.

b) Priority/preference of methods

The following methods are applicable: CUP, resale price, cost-plus, profit split, TNMM and any other such method as may be prescribed by the Commissioner General from time to time.

7. Benchmarking requirements

a) Local vs. regional comparables

Local comparables are preferred, but comparables from different geographic markets could be accepted if information on uncontrolled transactions is not available locally (TP Regulation 9).

b) Single-year vs. multi-year analysis

Multi-year analysis is preferred but not required under the rules.

c) Use of interquartile range

Interquartile range calculation using Excel Quartile formulas is acceptable.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

The regulations indicate that the taxpayer should have in place documentation that verifies that conditions in related party transactions for the year of assessment are consistent with the arm's-length principle. The regulation does not explicitly suggest a fresh benchmarking search every year; hence, an update of a prior study might suffice.

e) Simple vs. weighted average

Not specifically stipulated.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief**a) Penalty exposure****► Consequences of failure to submit/late submission and/or incorrect disclosures**

Penalty for failure to submit TP documentation demanded by the Commissioner General of the MRA is USD1,400, plus a further penalty of USD2,100 for each additional month the documents remain un-submitted.

► If an adjustment is sustained, can penalties be assessed?

As for adjustments to income tax payable, including tax adjustments relating to transfer pricing, normally, 100% of the taxes involved, or 200% of the taxes involved if the case is considered fraudulent in nature.

► Is interest charged on penalties/payable on refund?

Interest is due on overdue taxes, including additional taxes assessed in terms of transfer pricing, at the prevailing bank lending rate plus 5%.

b) Penalty relief

Penalty relief is available at the Commissioner General's discretion. The taxpayer may appeal to the Commissioner General of the MRA, then to the special arbitrator. The final appeal is to the High Court.

9. Statute of limitations on transfer pricing assessments

The assessments can be raised going back six years, but in cases of fraud, the MRA can raise assessments going back indefinitely.

10. Likelihood of transfer pricing scrutiny/related audit by local authority**► Likelihood of transfer pricing-related audits (high/medium/low)**

High; currently, there are frequent TP audits by the MRA.

► Likelihood of transfer pricing methodology being challenged (high/medium/low)

Medium; if the methodology adopted by the taxpayer is well-substantiated, there is a better likelihood that the MRA might agree with it.

► Likelihood of an adjustment if transfer pricing methodology is challenged (high/medium/low)

High; from experience, when a methodology is challenged, then a tax adjustment is likely.

► Specific transactions/industries/situations, if any, more likely to undergo audit

None specified.

11. APA opportunity**► Availability (unilateral/bilateral/multilateral)**

Malawian law does not provide for APAs.

► Tenure

Not applicable.

► Rollback provisions

Not applicable.

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Malaysia



1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Inland Revenue Board (IRB) of Malaysia (IRBM).

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

Transfer pricing was legislated in Section 140A of the Income Tax Act (ITA); however, transfer pricing rules and guidelines were introduced in Malaysia in 2012, effective from 2009.

- ▶ Section 140A of the ITA: "Power to substitute the price and disallowance of interest on certain transactions"
- ▶ Section 138C of the ITA: Advance Pricing Arrangement
- ▶ Income Tax (Transfer Pricing) Rules 2012 (P.U. [A] 132)
- ▶ Income Tax (Advance Pricing Arrangement) Rules 2012 (P.U. [A] 133)
- ▶ Income Tax CbCR Rules 2016 [P.U.(A) 357] (CbCR Rules)
- ▶ Income Tax (Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports Order 2016 [P.U.(A) 358] (Malaysian MCAA)

▶ Section reference from local regulation

Income Tax Act 1967, subsection 2(4).

2. OECD guidelines treatment/reference

Malaysia is not an OECD member country.

The 2012 Malaysian transfer pricing guidelines are largely based on the governing standard for transfer pricing, which is the arm's-length principle as established in the OECD Guidelines. The IRB respects the general principles of the OECD Guidelines.

3. Transfer pricing documentation requirements

Contemporaneous documentation pertaining to transfer pricing need not be submitted with the tax return, but it should be made available to the IRB upon request.

- ▶ Transfer pricing documentation is deemed contemporaneous if it is prepared:
 - ▶ At the point when the taxpayer is developing or implementing any arrangement or transfer pricing policy with its associated person
 - ▶ If there are material changes, when reviewing these arrangements prior to, or at the time of, preparing the relevant tax return of the taxpayer's income for the basis year for a year of assessment
- ▶ In preparing the documentation, the arm's-length transfer price must be determined before pricing is established based upon the most current reliable data that is reasonably available at the time of determination. However, taxpayers should review the price based on data available at the end of the relevant year of assessment and update the documentation accordingly.

In FY17, the IRB has given further guidance on defining material changes as below:

- ▶ Material changes are significant changes that would give impact to the functional analysis or transfer pricing analysis of the tested party.
- ▶ Material changes include changes to the operational and economic conditions that will significantly affect the controlled transactions under consideration.

A contemporaneous transfer pricing documentation should include records and documents providing a description of:

- ▶ Organizational structure, including an organization chart covering persons involved in a controlled transaction
- ▶ Nature of the business or industry and market conditions
- ▶ The controlled transaction
- ▶ Strategies, assumptions and information regarding factors that influenced the setting of any pricing policies
- ▶ Comparability, functional and risk analysis
- ▶ Selection of the transfer pricing method
- ▶ Application of the transfer pricing method
- ▶ Documents that provide the foundation for, or otherwise support or were referred to in, developing the transfer pricing analysis
- ▶ Index to documents
- ▶ Any other information, data or document considered relevant by the person to determine an arm's-length price

Malaysia

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Malaysia has transfer pricing documentation guidelines/rules.

▶ Does transfer pricing documentation have to be prepared annually?

Malaysia requires preparation of transfer pricing documentation annually under its local country regulations. Preparation of contemporaneous transfer pricing documentation should be based on the most current reliable data that is reasonably available at the time of determination. However, taxpayers should review the price based on data available at the end of the relevant year of assessment and update the document accordingly.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

The IRB in the Malaysian transfer pricing guidelines has introduced de minimis rules and exceptions whereby taxpayers with the following threshold may opt for minimal transfer pricing documentation if:

- ▶ Gross income is less than RM25 million
- ▶ Total amount of related party transactions does not exceed RM15 million

The IRB guidelines also state that any person who falls within the above threshold criteria may opt to fully apply all relevant guidance as well as fulfill all transfer pricing documentation requirements in the IRB guidelines, or alternatively may opt to comply with the maintaining the minimum transfer pricing documentation, which consists of the following three components:

- ▶ Organizational structure
- ▶ Controlled transactions
- ▶ Pricing policies

In addition, the taxpayer is allowed to apply any method other than the five methods described in the OECD Guidelines provided it results in, or best approximates, arm's-length outcomes.

▶ Economic analysis

There is no materiality for economic analysis.

▶ BEPS master and local files

Malaysia has adopted BEPS Action 13 in its local regulations.

- ▶ Master file – Taxpayers that are obliged under the Income Tax (CbCR) Rules 2016 to prepare the CbC report shall prepare the master file and submit it together with the transfer pricing documentation upon request by the IRB. The master file is focused on providing a broader overview of the business group's operations and is very similar to the contents as prescribed by the OECD in Action 13.
- ▶ Local file – Local file refers to the transfer pricing documentation prepared in accordance with the Malaysian transfer pricing rules and guidelines issued by the IRBM.

▶ CbCR

Malaysia introduced the CbCR Rules effective 1 January 2017. The CbCR applies to multinational corporations (MNC) for which:

- ▶ Any of the constituent entities of the MNC group have cross-border operations with its other constituent entities.
- ▶ The consolidated revenue of the MNC group is at least RM3 billion in the financial year (FY) preceding the reporting FY.
- ▶ The ultimate holding company of the MNC group is incorporated under the Malaysian Companies Act 1965 or under any written law, and it is resident in Malaysia.
- ▶ Its constituent entities are incorporated or registered under the Companies Act 1965 or under any written law or under the laws of a territory outside Malaysia, and resident in Malaysia, including Labuan.

c) Specific requirement(s)

▶ Treatment of domestic transactions

There is a documentation obligation for domestic transactions.

▶ Local language documentation requirement

The transfer pricing documentation need not be submitted in the local language.

▶ Safe harbor availability

There are no safe harbor provisions in Malaysia.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Malaysia has adopted and implemented BEPS Action 13 effective 1 January 2017 for transfer pricing documentation in its local regulations.

▶ Coverage in terms of master and/or local files

It covers the master file.

▶ Effective/expected commencement date

The effective commencement date is 1 January 2017.

▶ Material differences from OECD report template/format

There are no material differences between the OECD report template/format and Malaysia's regulations on Action 13 CbCR and master file requirements.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

If a taxpayer fails to comply with the Malaysian CbCR Rules, penalties under Income Tax Act Sections 112A, 113A and 119B would be applied.

▶ CbCR notification and CbC report submission requirement

There is a CbCR notification and CbCR submission requirement in Malaysia. CbCR notification should be submitted in writing on or before the last day of the reporting financial year.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Taxpayers are required to disclose in a tax return if transfer pricing documentation has been prepared for the relevant year of assessment. This compliance requirement is effective from the year of assessment in 2014.

b) Transfer pricing-specific returns

In July 2011, the IRB started requiring a form related to information on cross-border transactions, from selected corporate taxpayers, requesting the following information for a given year:

- ▶ Names of ultimate holding company; holding companies; subsidiaries, both local and foreign; and affiliates in Malaysia
- ▶ A chart of the global corporate structure to which the taxpayer belongs, including ultimate holding companies, direct and indirect subsidiaries, associated companies, and other related parties, indicating the companies with which the taxpayer conducts related party transactions
- ▶ Information about cross-border intercompany transactions, such as:
 - ▶ Sales and purchases of stock in trade, raw materials and other tangible assets
 - ▶ Royalties and license fees and other payments for the use of intangible assets
 - ▶ Management fees, including fees and charges for financial, administrative, marketing and training services
 - ▶ R&D
 - ▶ Rent and lease of assets
 - ▶ Interest
 - ▶ Guarantee fees
 - ▶ Other services not falling under any of the above categories
- ▶ Particulars of financial assistance (showing balances during the year and the ending balance) with related companies outside Malaysia, such as:
 - ▶ Interest-bearing loans
 - ▶ Interest-bearing trade credit
 - ▶ Interest-free loans
- ▶ Description of the taxpayer's business activity:
 - ▶ Manufacturing (toll, contract, full-fledged)
 - ▶ Distributor (commissionaire, limited risk, full-fledged)
 - ▶ Service provider
 - ▶ Others (taxpayer to specify)
- ▶ Specification of the industry in which they operate and associated industry code
- ▶ Confirmation of whether they have prepared transfer pricing documentation for the relevant year

The issuance of Form MNE 2012 is an indication of the IRB's increasing attention to transfer pricing. The purpose of the form is to assess taxpayers' risk profiles as well as their level of compliance with the transfer pricing provisions. The taxpayers will be given 30 days to complete and return the form to the IRB.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► Corporate income tax return

To be filed within seven months from the end of the relevant financial year – e.g., 31 December 2017 year-ending companies to file the corporate tax return by 31 July 2018.

► Other transfer pricing disclosures/return

In 2014, the IRBM introduced a section in Form C (Corporate Tax Return Form) asking the taxpayers to declare if they have maintained a transfer pricing report for the year of assessment they are filing the tax returns; therefore, for the year of assessment for which they are filing the tax returns, if the taxpayer has maintained a transfer pricing report, they can select "Yes," or if the taxpayer does not have a transfer pricing report, they must select "No" and make a disclosure in the Form C.

► CbCR notification

Before the last day of the FY for which the CbC report has to be filed (e.g., a Malaysian constituent entity with an FY ending on 31 December 2017 will be required to notify the Director General prior to 31 December 2017).

► CbC report preparation/submission

The CbC report must be filed no later than 12 months after the last day of the reporting FY of the MNC group (e.g., MNC groups with financial years ending on 31 December 2017 will be required to file the CbC report by 31 December 2018 at the latest).

b) Documentation preparation deadline

Transfer pricing documentation must be finalized by the time of lodging the tax return to ensure that it satisfies the contemporaneous documentation requirement.

c) Documentation submission deadline

► Is there a statutory deadline for submission of transfer pricing documentation?

There is no statutory deadline for submission of transfer pricing documentation. The transfer pricing documentation must be filed with the IRB only upon request of the IRB of Malaysia.

► Time period/deadline for submission on tax authority request

The taxpayer is given 30 days from the date of the letter to file the transfer pricing report with the tax authorities.

6. Transfer pricing methods

a) Applicability

► International transactions

Yes.

► Domestic transactions

Yes.

b) Priority/preference of methods

The IRB accepts CUP, resale price, cost-plus, profit split and TNMM. However, the Malaysian transfer pricing rules state that the traditional methods are preferred over the profit methods and advise that the profit methods should be used only when the traditional methods cannot be reliably applied or cannot be applied at all.

7. Benchmarking requirements

a) Local vs. regional comparables

The IRB gives priority to the available sufficient and verifiable information on both tested party and comparables (Para 7.4 of the Malaysian TP Guidelines). The IRB has a preference for using a local benchmarking study (i.e., local Malaysian comparable companies).

b) Single-year vs. multi-year analysis

The arm's-length price should be determined by comparing the results of a controlled transaction with the results of uncontrolled transactions that were undertaken or carried out during the same year as the year of the taxpayer's controlled transaction. Therefore, the IRB reviews the transfer price on a year-by-year basis and relies on the information of the comparable companies reasonably available at the time of preparation of the transfer pricing study.

c) Use of interquartile range

The Malaysian transfer pricing guidelines advocate to use the interquartile range to establish the arm's-length price; however, in practice, the IRB uses the median as a reference point to ascertain the arm's-length price.

d) Fresh benchmarking search every year vs. roll forwards/update of the financials

The benchmarking study may be updated once every three years, as long as the taxpayer's operational profile remains unchanged. The financial data and suitability of the existing comparable companies should be reviewed and updated every year.

e) Simple vs. weighted average

The Malaysian transfer pricing guidelines do not use simple or weighted average to ascertain the arm's-length price of the intercompany transactions.

f) Other specific benchmarking criteria, if any

The IRB has a preference for using a local benchmarking study (i.e., local Malaysian comparable companies) and has not provided any specific criteria for selection of the comparable companies.

8. Transfer pricing penalties/relief**a) Penalty exposure**

The existing legislation and penalty structure under Section 113(2) (b) of the ITA (on penalty for incorrect return, incorrect information) is applied with penalties that are 100% of the undercharged tax.

There are no penalties for not preparing a transfer pricing report. The penalty will only be levied if the tax authorities make a transfer pricing adjustment. In such a case, the following penalties will be applicable:

- ▶ No contemporaneous documentation prepared – 35% of the tax adjustment
- ▶ Transfer pricing documentation prepared but not according to the requirement of the IRB transfer pricing guidelines – 25% of the tax adjustment

b) Penalty relief

If the tax authorities make an adjustment, the taxpayer would need to appeal against the tax assessment by lodging a Form Q (Notice of Appeal to the Special Commissioners of Income Tax (SCIT)) to seek any relief.

9. Statute of limitations on transfer pricing assessments

There is a seven-year statute of limitations for additional assessment issued pursuant to transfer pricing adjustments, and documentation must be kept for seven years. There is no statute of limitations in instances of fraud, willful default or negligence.

10. Likelihood of transfer pricing scrutiny/related audit by local authority**▶ Likelihood of transfer pricing-related audits (high/medium/low)**

Tax audits, including transfer pricing audits, are normally conducted to cover a period of three to five years (transfer pricing audits increased to seven years under Section 91(5) of the ITA). As such, the risk of a taxpayer being subjected to an annual audit could be characterized as medium. For companies with related party transactions, the likelihood that transfer pricing will be reviewed is characterized as high; every multinational corporation that was audited during the last 12 months had its transfer pricing policy scrutinized.

▶ Likelihood of transfer pricing methodology being challenged (high/medium/low)

As mentioned above, the IRB has indicated via the transfer pricing rules and guidelines that the traditional methods are preferred over the profit methods, and it advised that the profit methods should be used only when the traditional methods cannot be reliably applied or cannot be applied at all. Accordingly, if a profits-based method is applied without substantiation, the risk of the methodology being challenged is high.

▶ Likelihood of an adjustment if transfer pricing methodology is challenged (high/medium/low)

High (refer to "Likelihood of transfer pricing methodology being challenged" section above for details).

▶ Specific transactions/industries/situations, if any, more likely to undergo audit

The IRB during a transfer pricing audit would focus on the following:

- ▶ Companies with high value of related party transactions
- ▶ Companies that are having significant intragroup transactions – e.g.,, royalties paid, management fee paid, technical services fee paid, commission paid

Malaysia

- ▶ Companies having related party transactions and reporting losses
- ▶ Related party transactions between two Malaysian entities where one of the Malaysian entities is availing a tax incentive or is reporting losses

to roll back the outcome of the APA if it is demonstrated that the transfer pricing methodology applied is appropriate, provided that the facts and circumstances surrounding those years are substantially the same as that of the covered period under the APA.

▶ **Rollback provisions**

Refer to “Tenure” section above.

11. APA opportunity

▶ **Availability (unilateral/bilateral/multilateral)**

The introduction of Section 138C of the ITA effectively formalizes the availability of unilateral and bilateral APAs in Malaysia. Additionally, formal APA rules and guidelines in relation to APAs have been issued, and a specific unit in the IRB to oversee the APA applications and negotiations has been established.

▶ **Tenure**

The Malaysian APA rules allow the APA for a minimum of three years and a maximum of five years, with an option

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Maldives

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Maldives Inland Revenue Authority (MIRA)

b) Relevant transfer pricing section reference

- ▶ Name of transfer pricing regulations/rulings and effective date of applicability

Maldives Law No. 5 of 2011 (Business Profit Tax Act) contains transfer pricing provisions under the Tax Avoidance section.

- ▶ Section reference from local regulation

Refer to the above section.

2. OECD guidelines treatment/reference

The Maldives is not a member of the OECD; however, the OECD Guidelines are adopted in the local transfer pricing regulations by the Maldives.

3. Transfer pricing documentation requirements

a) Applicability

- ▶ Does your country have transfer pricing documentation guidelines/rules?

None specified.

- ▶ Does transfer pricing documentation have to be prepared annually?

None specified.

b) Materiality limit/thresholds

- ▶ Transfer pricing documentation

Not applicable:

- ▶ Economic analysis

Not applicable.

- ▶ BEPS master and local files

Not applicable.

- ▶ CbCR

Not applicable.

c) Specific requirement(s)

- ▶ Treatment of domestic transactions

Not applicable.

- ▶ Local language documentation requirement

Not applicable.

- ▶ Safe harbor availability

Not applicable.

d) BEPS Action 13 implementation overview

- ▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No .

- ▶ Coverage in terms of master and/or local files

Not applicable.

- ▶ Effective/expected commencement date

Not applicable.

- ▶ Material differences from OECD report template/format

Not applicable.

- ▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

Not applicable.

- ▶ CbCR notification and CbC report submission requirement

Not applicable.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

The following information should be disclosed in the final business profession tax (BPT) return:

- ▶ Related party expenses other than directors' remuneration
- ▶ Loan interest payable to related parties for the period

Maldives

In addition to the above, related party disclosures must be made in the notes to the audited financial statements, which are filed with the MIRA in support of the tax declaration

b) Transfer pricing-specific returns

Currently, there is no requirement to prepare a separate tax return for related party transactions.

5. Transfer pricing documentation/ disclosure timelines

a) Filing deadline

- ▶ Corporate income tax return

Not applicable.

- ▶ Other transfer pricing disclosures/return

Not applicable.

- ▶ CbCR notification

Not applicable.

- ▶ CbC report preparation/submission

Not applicable.

b) Documentation preparation deadline

Not applicable.

c) Documentation submission deadline

- ▶ Is there a statutory deadline for submission of transfer pricing documentation?

None specified.

- ▶ Time period/deadline for submission on tax authority request

Not applicable.

6. Transfer pricing methods

a) Applicability

- ▶ International transactions

Yes.

- ▶ Domestic transactions

Not applicable.

b) Priority/preference of methods

The arm's-length price is determined on the basis of a comparison with similar goods or services provided between unrelated parties.

7. Benchmarking requirements

a) Local vs. regional comparables

Not applicable.

b) Single-year vs. multi-year analysis

Not applicable.

c) Use of interquartile range

Not applicable.

d) Fresh benchmarking search every year vs. roll-forward/ update of the financials

Not applicable.

e) Simple vs. weighted average

Not applicable.

f) Other specific benchmarking criteria, if any

Not applicable.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures

Not applicable.

- ▶ If an adjustment is sustained, can penalties be assessed?

Not applicable.

- ▶ Is interest charged on penalties/payable on refund?

Not applicable.

b) Penalty relief

Not applicable.

9. Statute of limitations on transfer pricing assessments

The MIRA may serve a notice of inquiry to the taxpayer within 12 months from the date of submission of the return for business profits taxes and could conduct tax assessments up to three years from the date of the service of the notice of inquiry.

A transfer pricing assessment is part of the regular business profits tax assessments conducted by the MIRA. The MIRA may conduct a tax audit for all taxes or certain types of taxes only (i.e., withholding tax (WHT), goods and services tax (GST), BPT). The tax audit covers a "tax period," which may be annual (usually the case for BPT) or monthly (usually the case for WHT and GST). After an audit, a tax assessment is issued. However, if new relevant data subsequently is discovered after an assessment has been issued, the MIRA may revisit a tax period that previously has been audited. Data that was not previously disclosed during the tax audit process would be considered new data.

In cases where a taxpayer has deliberately or fraudulently evaded tax, a notice of inquiry may be served within three years of the date on which sufficient information becomes available to the MIRA.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

- ▶ **Likelihood of transfer pricing-related audits** (*high/medium/low*)

High; the MIRA conducts a tax audit of tax returns as part of a regular audit.

- ▶ **Likelihood of transfer pricing methodology being challenged** (*high/medium/low*)

Low to medium, provided that sufficient documentation is available.

- ▶ **Likelihood of an adjustment if transfer pricing methodology is challenged** (*high/medium/low*)

Medium; the MIRA shall tax the relevant transaction based on the OECD Guidelines.

- ▶ **Specific transactions/industries/situations, if any, more likely to undergo audit**

None specified:

11. APA opportunity

- ▶ **Availability (unilateral/bilateral/multilateral)**

None specified.

- ▶ **Tenure**

Not applicable.

- ▶ **Rollback provisions**

Not applicable.

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Malta

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Commissioner for Revenue (CfR).

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

There are no detailed transfer pricing (TP) rules/guidelines in Malta, but adherence to the arm's-length principle is prescribed by a number of articles in the Income Tax Act (ITA) and Income Tax Management Act (ITMA), namely Article 51(1) of the ITA and articles 5(6) and 5(7) of the ITMA (introduced in 1994).

▶ Section reference from local regulation

Not defined separately.

2. OECD guidelines treatment/reference

Malta is not a member of the OECD.

Agreements between associated enterprises must be entered into at arm's length, but Malta does not have any detailed transfer pricing rules. In any case, the Maltese tax authorities tend to refer to the OECD Guidelines as the need arises. Moreover, the double tax treaties entered into by Malta – except for the double tax treaty with the US – are based on the OECD Model Tax Convention and hence provide for the arm's-length principle addressed in transactions involving related parties. That said, for the sake of completeness, even the double tax treaty with the US contemplates a similar provision.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Maltese tax law does not contemplate detailed transfer pricing documentation rules; it only applies high-level transfer pricing principles.

▶ Does transfer pricing documentation have to be prepared annually?

Although the annual preparation of transfer pricing documentation is not statutory, the maintenance of such documentation is recommended.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

Not applicable.

▶ Economic analysis

Not applicable.

▶ BEPS master and local files

Not applicable.

▶ CbCR

Constituent entities making part of an MNE deriving revenue of at least EUR750 million.

c) Specific requirement(s)

▶ Treatment of domestic transactions

Not applicable.

▶ Local language documentation requirement

Not applicable.

▶ Safe harbor availability

Not applicable.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No.

▶ Coverage in terms of master and/or local files

Not applicable.

▶ Effective/expected commencement date

Not applicable.

Malta

▶ **Material differences from OECD report template/format**

Not applicable.

▶ **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

Not applicable.

▶ **CbCR notification and CbC report submission requirement**

Malta has introduced the CbCR provisions in full, meaning that there are CbCR notification and CbC report submission requirements.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

There are no specific statutory requirements, but any amounts due by/to a taxpayer to/by its shareholders as of the end of the relevant financial year are to be disclosed by the taxpayer separately in net for each shareholder in its annual income tax return.

b) Transfer pricing-specific returns

Malta does not require a separate return for related party transactions.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ **Corporate income tax return**

Within nine months from the end of the constituent entity's financial year or the following 31 March, whichever is later.

▶ **Other transfer pricing disclosures/return**

Not applicable.

▶ **CbCR notification**

A CbCR notification form is due to be submitted by the tax return date, which is nine months from the end of the constituent entity's financial year or the following 31 March, whichever is later.

▶ **CbC report preparation/submission**

The CbCR report is due to be submitted by 12 months following the end of the relevant financial year of the MNE group.

b) Documentation preparation deadline

There is no statutory deadline/recommendation for preparation of TP documentation.

c) Documentation submission deadline

▶ **Is there a statutory deadline for submission of transfer pricing documentation?**

No.

▶ **Time period/deadline for submission on tax authority request**

There are no specific provisions that relate to such instances, and therefore the general provisions will apply. Each case must be examined separately, and hence the time provided to reply is generally at the discretion of the Maltese tax authorities.

6. Transfer pricing methods

a) Applicability

▶ **International transactions**

Not applicable; Maltese tax law does not prescribe any detailed transfer pricing rules and, as such, no transfer pricing method requirements apply.

▶ **Domestic transactions**

Not applicable.

b) Priority/preference of methods

Not applicable.

7. Benchmarking requirements

a) Local vs. regional comparables

Not applicable.

b) Single-year vs. multi-year analysis

Not applicable.

c) Use of interquartile range

Not applicable.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

Not applicable.

e) Simple vs. weighted average

Not applicable.

f) Other specific benchmarking criteria, if any

Not applicable.

8. Transfer pricing penalties/relief

a) Penalty exposure**► Consequences of failure to submit/late submission and/or incorrect disclosures**

The lack of detailed TP rules means that there are no penalties that specifically relate to transfer pricing infringements. Generic penalties may, however, apply to incorrect disclosures made in income tax returns.

However, when a Maltese constituent entity fails to comply with any of the obligations in relation to CbCR, it shall be liable to the penalties for CbCR:

- a. When a Maltese constituent entity fails to retain the documentation and information it collected in the course of meeting its reporting obligations as provided in these regulations for a minimum period of five years starting from the end of the year in which the information relates, it is subject to a penalty of EUR2,500.
- b. When a Maltese constituent entity fails to report the information required to be reported within the time stipulated, it is subject to a penalty of EUR200 and EUR100 for every day during which the default existed. This penalty shall not exceed EUR20,000.

When a Maltese constituent entity fails to report the information required to be reported in terms of subregulation 13(4) in a complete and accurate manner, it is subject to a penalty of:

1. In the case of minor error, EUR200 and EUR50 for every day during which the default existed, provided that this penalty not exceed EUR5,000.
2. In the case of significant noncompliance, a penalty of EUR50,000.

When a Maltese constituent entity fails to comply with a request for information by the Commissioner made consequent to Regulation 42, it shall be subject to a penalty of EUR1,000 and EUR100 for every day during which the default existed, provided that this penalty not exceed EUR30,000.

The penalties listed above do not seem to specify the relevant penalties for noncompliance with respect to the CbCR notification requirement. Therefore, the general provisions contemplated by Article 49 of the ITMA should apply.

► If an adjustment is sustained, can penalties be assessed?

Not applicable.

► Is interest charged on penalties/payable on refund?

Not applicable.

b) Penalty relief

Not applicable.

9. Statute of limitations on transfer pricing assessments

Not applicable. In general cases, however, the time limit on when the tax authority can assess tax and any applicable penalties for transfer pricing is six years. But in the cases of evasion or fraud, the time limit for raising an assessment is open-ended.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► Likelihood of transfer pricing-related audits (high/medium/low)

The likelihood of transfer pricing-related audits under the generic provisions is low. There are no detailed transfer pricing guidelines in Malta; moreover, the chances that the Maltese tax authorities will initiate a TP audit on their own prerogative (i.e., not consequent to a request by a foreign tax authority) are, at least for the time being, low.

► Likelihood of transfer pricing methodology being challenged (high/medium/low)

Low, for the same reason stated above.

► Likelihood of an adjustment if transfer pricing methodology is challenged (high/medium/low)

Low, for the same reason stated above.

Malta

- ▶ **Specific transactions/industries/situations, if any, more likely to undergo audit**

None specified; each case is examined on its own merit.

11. APA opportunity

- ▶ **Availability (unilateral/bilateral/multilateral)**

Maltese tax rules do not provide for a formal APA program. That said, an APA may be applied for under the auspices of Article 52 of the ITA, which provides companies that are party to a transaction with the opportunity to apply for an advance revenue ruling (ARR).

- ▶ **Tenure**

An ARR would remain binding on the Commissioner for a period of a few years unless there is a change in the understanding statutory provisions, in which case it will continue to apply for two years.

- ▶ **Rollback provisions**

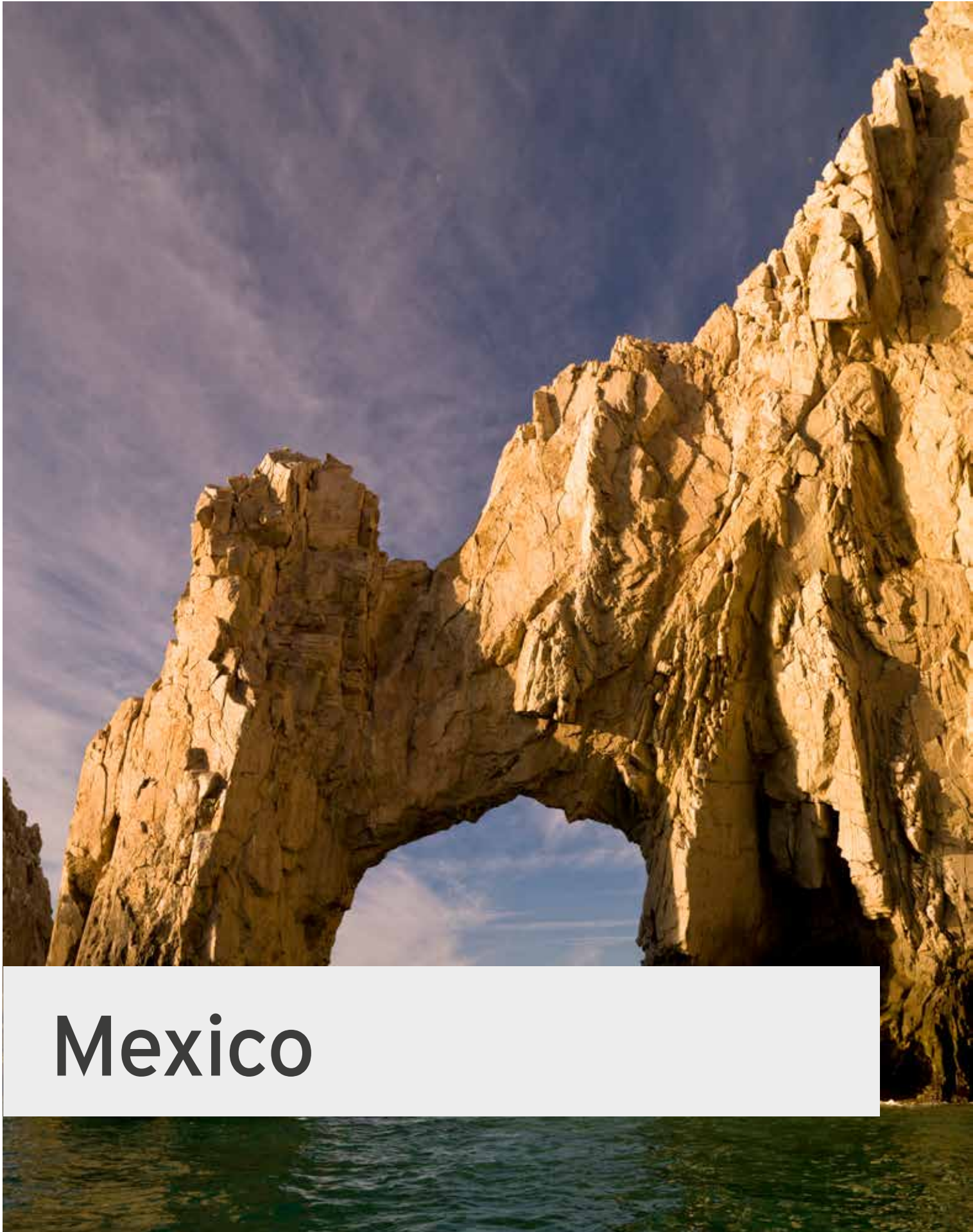
None specified.

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Mexico

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Servicio de Administración Tributaria (SAT).

Tax Administration Service (SAT).

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

A single Central Transfer Pricing (Audits) Administration, within the SAT, is responsible for enforcing the transfer pricing (TP) rules in Mexico established since 1997 for both audits and transfer pricing rulings (APAs) and MAP relief.

Tax law: Income Tax Law (ITL)

Federal Fiscal Code (FFC)

- ITL, Article 76 (IX, X and XII): taxpayer obligations for arm's-length pricing (all), contemporaneous transfer pricing documentation (cross-border), transfer pricing disclosure (cross-border)
- Miscellaneous Tax Resolution (MTR): domestic transactions documentation (threshold) obligation
- ITL, Article 180: method application (all), accounting records (all)
- ITL, Article 76-A: obligation for certain taxpayers to file annual transfer pricing CbC, master file and local file informative returns
- ITL, Article 179: "related party" definition, comparability, business cycles, permanent establishments and transfer pricing, tax havens and OECD Guidelines
- ITL, Article 180: transfer pricing methods, ranges and selection of the most appropriate method
- ITL, Article 181: permanent establishment and maquiladoras
- ITL, Article 182: transfer pricing options for maquiladoras
- ITL, Article 184: statement of the arm's-length principle, right of the tax authority to adjust to arm's-length result under International Tax Treaties on Income and Capital (ITTIC), definition of "related party" (OECD)
- FFC, Article 34A: transfer pricing ruling (unilateral), bilateral APA under treaty
- FFC, Articles 81 (XVII and XL) and 82 (XVII and XXXVII): fines for failure to report foreign intercompany transactions (ITL, Article 76X) and to file transfer pricing informative returns (76-A)
- FFC, Articles 83 (XV) and 84 (XIII): fines for failure to maintain intercompany transactions (transfer pricing documentation) as part of accounting records
- FFC, Articles 81 (XL) and 82 (XXXVII) and 32D: fines and negative compliance opinion that disqualifies taxpayers from entering into contracts with the Mexican public sector upon failure to file transfer pricing informative returns (76-A)
- FFC, Articles 17-H (X) and 81 (XL): cancellation of the relevant certificates issued by the SAT for purposes of invoicing upon failure to file transfer pricing informative returns (76-A)
- Foreign Trade Regulations (Rule 1.3.3): suspension of the official importers/exporters registry upon failure to file transfer pricing informative returns (76-A)

In addition, as a result of Mexico's energy reform, the Hydrocarbons Revenue Law (HRL) was created in 2014 to regulate the revenues to be generated as a result of hydrocarbons exploration and extraction activities. The regulation included in the HRL considers relevant transfer pricing aspects that should be considered by every contractor in addition to specific TP regulations included in the contracts awarded by the National Hydrocarbons Commission (CNH).

- HRL, Article 30: applicability of the OECD Guidelines to analyze transactions performed with related parties
- HRL, Article 51: obligations for arm's-length pricing and method application

► Section reference from local regulation

The ITL, Article 179, states the "related party" definition as follows: two or more entities are considered to be related parties when one of them participates, directly or indirectly, in the administration, control or equity of the other, or when an entity or group of entities participates, directly or indirectly, in the administration, control or equity of said entities. Members of partnerships are considered to be related, as are the persons who are considered related parties of said members.

2. OECD guidelines treatment/reference

Mexico is a member of the OECD. The ITL, Article 180, states that the OECD Guidelines can be relied upon for interpretation of the rules as long as they do not contradict the ITL or international tax treaties.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

Yes, Mexico has transfer pricing documentation rules.

► Does transfer pricing documentation have to be prepared annually?

Transfer pricing documentation has to be prepared annually under Mexico's local regulations. Documentation must include the name, address and tax residency of the nonresident related parties with whom transactions are carried out, as well as evidence of direct and indirect participation between related parties and correct application of a method as stated in Article 180 of the ITL, following the hierarchy established therein. It is necessary to include information regarding the functions performed, assets used and risks borne by the taxpayer and its related parties involved in each transaction. Information and documentation of comparable transactions or companies by type of transaction must also be included. Therefore, this information must be updated, usually through a comprehensive annual update on the transfer pricing documentation.

b) Materiality limit/thresholds

► Transfer pricing documentation

Mexican taxpayers with prior-year income in excess of MXN13 million in regular business activities or in excess of MXN3 million for the provision of professional services are required to prepare and maintain annual transfer pricing documentation. Taxpayers conducting transactions with residents in low-tax jurisdictions are not included in this exception, nor are the contractors or assignees according to the Hydrocarbons Revenue Law.

► Economic analysis

The obligation to conduct transactions with related parties (foreign and domestic) at arm's-length values applies

to all the intercompany transactions with no minimum thresholds applicable.

► BEPS master and local files

Starting fiscal year 2016, Mexican taxpayers are obligated to submit the master and local files if their taxable income for the preceding fiscal year is equal to or surpasses a certain threshold to be updated annually (January of each year, based on inflation) or placed shares among the investing public in stock exchange. The threshold for FY 2016's obligation is MXN686,252,580 (approximately USD38 million) in FY 2015, while FY 2017's obligation is triggered with MXN708,898,920 (approximately USD39 million) in FY 2016. In addition, public companies in the previous fiscal year are obligated to file the master and local files as well, even though they do not meet the applicable threshold. Other entities obliged to file the master and local file informative returns are the following: legal entities within the optional tax regime (integration system); Government-controlled corporations; and residents abroad with permanent establishment in Mexico.

► CbCR

The CbC report has to be filed by Mexican MNE-controlling entities with consolidated income equal to or greater than MXN12,000 million.

c) Specific requirement(s)

► Treatment of domestic transactions

There is a transfer pricing documentation obligation for domestic transactions. Intercompany transactions with local related parties must be documented (Article 76, Section XII, of the ITL). As of 23 December 2015, Temporary Rule I.3.9.5 allows entities that conduct intercompany transactions with domestic related parties to opt out of preparing contemporaneous transfer pricing documentation based on the same threshold amounts considered in Article 76 (IX), which corresponds to prior-year income of MXN13 million in regular business activities or MXN3 million for the provision of professional services.

► Local language documentation requirement

The transfer pricing documentation needs be submitted in local language when required. In the case of a review, all information that is intended to be presented to the tax authorities in order to clarify the tax position of the company, including the transfer pricing documentation, must be presented in Spanish. Taxpayers obligated to submit the master file informative return can file such information prepared by a foreign entity of the MNE as long as it is aligned with BEPS Action 13. This information

can be filed by the taxpayer either in Spanish or English through the specific software tools provided by the SAT. Local files need to be filed in Spanish based on the Mexican regulations.

► **Safe harbor availability**

Starting in 2014, the self-assessment option for maquiladoras is no longer available. As such, Mexican contract manufacturers with an IMMEX program have to choose between pursuing an APA with the SAT and applying safe harbor rules (with taxable profit being the greater of applying a 6.5% return over total costs or a 6.9% return over total assets, including assets and inventories of consignment property of foreign parties but used in the manufacturing activity). More unilateral and bilateral APAs are expected to be derived from this obligation for maquiladora companies.

d) BEPS Action 13 implementation overview

► **Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?**

Legislation was adopted on 29 October 2015, to take effect 1 January 2016.

► **Coverage in terms of master and/or local files**

Mexican regulations require the filing of both the master file and local file for certain taxpayers.

► **Effective/expected commencement date**

BEPS Action 13 implementation is effective from FY 2016, and the due date for compliance is 31 December of the following fiscal year from the fiscal year under analysis. On 31 October 2017, the SAT announced that as of 1 November 2017, taxpayers required to submit the new informative returns may access the new technological platform, as well as the digital formats for filing such informative returns, which as of that date are available on the SAT website for consultation and filing.

► **Material differences from OECD report template/format**

On 15 May 2017, the SAT published the final transfer pricing regulations listing the specific requirements to comply with Article 76-A of the ITL, and there are differences between the OECD report template/format and Mexico's regulations:

- Master file – specific differences in the description of the requirements for the general description of the MNE's business activities, as well as on the information related to financial activities of the MNE

- Local file – material differences with additional requirements, compared with the OECD report template, such as the requirement of a comprehensive description and taxpayer's participation on the MNE's value chain; detailed description of transfer pricing policies, DEMPE (development, enhancement, maintenance, protection and exploitation of intangibles) analysis, functional analysis per evaluated transaction and segmented financial information requirements; and importantly, financial statements for the taxpayer and the tested parties as well as financial information of all the foreign related parties that are counterparties in the evaluated transactions

These TP informative returns are an additional obligation to the contemporaneous transfer pricing documentation that must be maintained by the taxpayers in Mexico.

► **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

Contemporaneous documentation might reduce tax penalties by 50%, as long as the taxpayer complies with the formal requirements established in Article 76 (IX) of the ITL. In the case of overdetermined net operating losses (NOLs), penalties could be reduced to 15% to 20% of the overstated NOL. A local file report that complies with all the contemporaneous TP documentation and Article 76-A requirements could be sufficient for the abovementioned purposes.

► **CbCR notification and CbC report submission requirement**

Although no specific CbCR notification requirements have been established in Mexico regarding the CbCR filing process of the MNE's ultimate parent entity, it is relevant to consider that the Mexican regulations establish that the SAT may require the legal entities residing in Mexico to provide the CbCR filed by the ultimate parent entity when the SAT could not obtain the information corresponding to such return through the information exchange methods set forth in the international treaties currently in force by Mexico. To such end, the taxpayers shall have a maximum of 120 business days from the date when the request is made to provide such CbC report.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Specific transfer pricing informative returns or related party disclosures of information include the following:

Mexico

- ▶ Exhibit 9 of the Multiple Informative Return (DIM) for transactions carried out with foreign related parties
- ▶ Manufacturing, Maquiladoras and Export Services' Informative Return (DIEMSE) for transactions carried out under the maquiladora regime
- ▶ Transfer Pricing Exhibits and Questionnaires as part of the Tax Report or the Alternative Information to the Tax Report (DISIF)
- ▶ Relevant Operations Disclosure Return (Formato 76)
- ▶ BEPS TP Informative Returns: CbCR, master file and local file informative returns

b) Transfer pricing-specific returns

Refer to the section above.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

- ▶ Corporate income tax return

31 March of the following year.

- ▶ Other transfer pricing disclosures/return

For those companies that chose to have a Tax Report based on their financial statements prepared by an external auditor (Dictamen Fiscal), the taxpayer's external auditor is required to disclose the company's compliance with all tax obligations, including those related to transfer pricing. This disclosure is made through the Tax Report, which must be filed by 15 July every year. As of 2014, taxpayers are obligated to file an Information Return on the Taxpayer's State of Tax Affairs (DISIF) or may choose to have a Tax Report (Dictamen Fiscal) conducted by an external auditor if they do not want to file the DISIF themselves. According to the FFC, the Tax Report is due no later than 15 July of the following year of the fiscal year reported, while the DISIF for FY 2017 must be submitted together with the annual tax return by 31 March 2018. These deadlines have a direct impact on the taxpayer's transfer pricing obligations because the contemporary transfer pricing documentation must be prepared by no later than the corresponding due date of the Tax Report or DISIF as applicable. It is important to note that the DISIF filing date for fiscal year 2017 represents a significant change from previous years, considering that for FY 2016 the due date was 30 June.

- ▶ CbCR notification

No specific CbCR notification requirements have been established in Mexico.

- ▶ CbC report preparation/submission

31 December of the following year, except for certain cases in which the MNE has a fiscal year closing date (up to May) different than 31 December (only applicable to the CbC and master file deadline).

b) Documentation preparation deadline

Transfer pricing documentation must be in place when the company files its annual income tax return (by the end of March of the following year) and must be kept, along with the company's accounting records, for at least five years after the filing of the last tax return for each year.

c) Documentation submission deadline

- ▶ Is there a statutory deadline for submission of transfer pricing documentation?

There is no formal statutory deadline for the submission of contemporaneous transfer pricing documentation, but if obligated, the taxpayers usually file the corresponding fiscal year's transfer pricing documentation as part of the local file informative return by 31 December of the following year.

- ▶ Time period/deadline for submission on tax authority request

Visita Domiciliaria – The time could vary from an immediate request (for documents that are part of the taxpayer's accounting records) to six working days (other information that is in possession of the taxpayer).

Gabinete – Fifteen working days, plus an extension of ten working days if requested in writing by the taxpayer.

In both cases (Visita Domiciliaria and Gabinete), if the company filed a Tax Report, the audit would initiate through a first request to the tax auditor. In this case, the auditor deadline goes from 6 working days (when it is related to the workpapers developed during the audit procedure) to 10 working days if it is other documentation or information related to the annual tax report, but that is in possession of the taxpayer.

6. Transfer pricing methods

a) Applicability

- ▶ International transactions

Yes.

- ▶ Domestic transactions

Yes.

b) Priority/preference of methods

The transfer pricing methods in Mexico, established in Article 180 of the ITL, are the CUP, resale price, cost-plus, profit split, residual profit split and TNMM. Effective since 2006, the ITL specifically requires a hierarchical consideration of transfer pricing methods, with a particular preference for the CUP method, and then the traditional transactional methods over the transactional profit methods.

7. Benchmarking requirements

a) Local vs. regional comparables

There is no legal requirement for local country comparables. Regional comparable companies (i.e., Canadian, US and Latin American companies) can be accepted in the benchmarking analysis as long as the circumstances of the comparable companies are similar to those of the tested party or specific comparability adjustments are applied.

b) Single-year vs. multi-year analysis

Although a common approach in Mexican practice is to estimate the arm's-length range based on the last three years of available financial information (i.e., multi-year analysis), based on audits performed by the SAT, further arguments are required in order to support the multi-year analysis. Hence, further support for the multi-year analysis is recommended, and single-year analysis should also be evaluated.

c) Use of interquartile range

Interquartile range is calculated according to Article 302 of the ITL Regulations. In particular, the Excel Quartile calculations are acceptable.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

In practice, it is recommended to conduct a fresh benchmarking search every year.

e) Simple vs. weighted average

In practice, there is a preference for the weighted average for transfer pricing analysis.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures

A penalty of MXN68,590 to MXN137,190 can be imposed if the information return for foreign related party transactions is not filed, or is incomplete or incorrect.

Also, failure to comply entirely with the CbC report, master file and local file informative returns triggers penalties ranging from MXN140,540 to MXN200,090, disqualification from entering into contracts with the Mexican public sector, and cancellation on the importers and exporters registry.

There are no penalties if the taxpayer self-corrects its tax results before an audit, and reduced penalties apply if self-correction is made during the audit but before the tax assessment. Waivers and abatements are possible under limited circumstances.

Effective FY 2017, specific definitions for transfer pricing adjustments and rules to follow as to the effects and deductibility of such adjustments when self-applied by taxpayers were incorporated in temporary Rules 3.9.1.1, 3.9.1.2, 3.9.1.3 and 3.9.1.4. In particular, in case of ex-ante and/or ex-post transfer pricing adjustments that result in higher deductions for the taxpayer, several requirements must be met for deductibility purposes. These requirements include several tax compliance items such as filing the regular or amended returns to reflect the adjustment in the corresponding fiscal year, securing an invoice to support the adjustment, and ensuring consistency between accounting and tax records. Furthermore, detailed transfer pricing support documentation must be prepared to demonstrate the requirement to implement the TP adjustment to ensure arm's-length compliance.

► **If an adjustment is sustained, can penalties be assessed?**

If the SAT decides that a transfer pricing adjustment is needed, and unpaid contributions are determined as a consequence, penalties could vary from 55% to 75% of the omitted taxes, plus surcharges and inflation adjustments. Also, if a transfer pricing adjustment reduces the net operating loss (NOL), the penalty ranges from 30% to 40% of the difference between the determined NOL and the NOL in the tax return, plus surcharges and inflation adjustments.

► **Is interest charged on penalties/payable on refund?**

Penalties usually include a portion of the omitted taxes, plus surcharges and inflation adjustments. Surcharge rates from 2004 to 2017 vary from 0.75% to 1.13%, while the surcharge rates for 2018 vary from 0.98% to 1.47%.

b) Penalty relief

Contemporaneous documentation might reduce tax penalties by 50%, as long as the taxpayer complies with the formal requirements established in Article 76 (IX) of the ITL. In the case of overdetermined NOLs, penalties could be reduced to 15% to 20% of the overstated NOL.

9. Statute of limitations on transfer pricing assessments

The statute of limitations for an assessment in Mexico is five years from the date of filing the tax return. The term is affected by amended returns with respect to items changed, and it is suspended by an audit. The SAT has two years to complete a transfer pricing audit.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► **Likelihood of transfer pricing-related audits**
(high/medium/low)

High, considering a broader TP team within the SAT and the TP controversy trends derived from BEPS in Mexico.

► **Likelihood of transfer pricing methodology being challenged**
(high/medium/low)

High, because there is usually a preliminary analysis already conducted by the SAT before an audit is initiated.

► **Likelihood of an adjustment if transfer pricing methodology is challenged**
(high/medium/low)

When a transfer pricing audit is initiated, there is usually a preliminary analysis already conducted by the SAT. If the focus of such audit is in the stage of challenging the overall TP methodology, then the likelihood of an adjustment tends to be high.

► **Specific transactions/industries/situations, if any, more likely to undergo audit**

There is a high audit risk focusing on business restructuring (limited risk structures, migration of intangible property and centralization of functions and risks in favorable tax jurisdictions), highly leveraged structures, CSAs and pro rata-based charges in general, including management fees, as well as on foreign payments such as royalties and interest expenses. Further scrutiny is expected from the SAT in terms of transfer pricing derived from the anti-BEPS environment moving toward transparency, substance and increased compliance disclosure. It is relevant to note that Mexico signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS on 7 June 2017.

11. APA opportunity

► **Availability (unilateral/bilateral/multilateral)**

Unilateral and bilateral APAs are available under Article 34-A of the FFC and Mexico's tax treaties, respectively. Unilateral APAs can cover the fiscal year of the application, the three subsequent fiscal years and a one-year rollback.

As of 14 July 2016, temporary Rule 2.12.8 allowed the SAT to perform a functional analysis as part of the study and evaluation processes of the information, data and documentation, for purposes of identifying and specifying performed functions, assets used and risks borne in transactions under consultation.

Specifically in APA requests, there are measures aligned to the BEPS Action Plan that have been incorporated into domestic legislation. These include temporary Rule 2.12.8, with a requirement of an extensive list of minimum information that shall be included in transfer pricing inquiries made by the taxpayers including a description of the relevant factors that generate profits for the MNE; TP policies; the MNE's consolidated financial statements; global funding schemes; description, financial and accounting information of intangibles; organizational chart; financial information projected in the filing

of the transfer pricing methodology subject to analysis; and support TP documentation for the fiscal year at issue and the previous three fiscal years.

► **Tenure**

Unilateral APAs can cover the fiscal year of the application, the three subsequent fiscal years and a one-year rollback

► **Rollback provisions**

Unilateral APAs can cover the fiscal year of the application, the three subsequent fiscal years and a one-year rollback.

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Mongolia

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

General Department of National Taxation (GDNT).

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

There is no single, all-encompassing piece of transfer pricing legislation in Mongolia. Transfer pricing rules are contained in the General Taxation Law (GTL), Corporate Income Tax (CIT) Law, Personal Income Tax (PIT) Law, Customs Law, Value-Added Tax (VAT) Law and double tax treaties. In addition, various implementation guidelines by the Government of Mongolia, Ministry of Finance and GDNT govern transfer pricing in Mongolia. Among these guidelines, the decree issued by the Ministry of Finance on 4 April 2007 provides the main implementation guidelines (hereafter referred to as Benchmarking Guidelines 2007). The GDNT has published comprehensive transfer pricing guidelines (approved by the GDNT Board, dated 25 December 2014) as an internal transfer pricing reference guideline for GDNT use with the intention of replacing Benchmarking Guidelines 2007.

Various sections in the abovementioned tax laws refer to the need for transactions between related parties to be conducted at arm's length. Failing this, the tax authorities may seek to adjust the transaction to a fair market value.

Article 11 of Mongolia's CIT Law indicates that the transfer of goods and services between related parties should be made at "market price." If the price charged is below or above the market price, then the value of the transaction will be determined with reference to the benchmark price used in transactions between non-related parties.

Article 48.1 of Mongolia's GTL separately indicates that taxable income should be based on fair market prices (prices that are used between unrelated parties, Article 48.2 of the GTL) and allows for the tax office to apply an "indirect assessment method" (i.e., actual or standard price method) to be used if this is not the case.

Article 48.5 of the GTL notes that if market prices cannot be applied, then returns earned by comparable independent companies with similar business operations should be used to determine the appropriate return to be earned in related party transactions.

► Section reference from local regulation

Both transfer pricing provisions in the CIT Law and GTL have clauses that explain related parties, including entities that are connected in terms of management of control or ownership, as follows:

- Article 48.4 of the GTL states that "related party" shall mean "bodies who are authorized to participate directly or indirectly in the management, control or ownership" of other entities.
- Article 6.1 of the CIT Law states that if the following relation is present with a taxpayer, it shall be a related party: it (1) owns 20% or more of the common stock of the other entity, (2) has the right to receive 20% or more of the dividends or distributions from the other entity, or (3) has the right to appoint 20% or more of the management of the other entity or is otherwise able to determine its policies.

2. OECD guidelines treatment/reference

Mongolia is not a member of the OECD.

Benchmarking Guidelines 2007 allow the application of the OECD Guidelines. For domestic purposes, the OECD Guidelines may provide support for applying any pricing methods demonstrating compliance with international principles

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

Yes. According to Benchmarking Guidelines 2007, taxpayers are required to maintain contemporaneous transfer pricing documentation to comply with the arm's-length standard.

► Does transfer pricing documentation have to be prepared annually?

There are no specific timing requirements for preparing transfer pricing documentation in Mongolia. However, the best practice is for taxpayers to prepare these documents yearly – i.e., following the year-end, the transfer pricing documentation is finalized or completed for the related party transactions of the preceding year.

Mongolia

b) Materiality limit/thresholds

▶ Transfer pricing documentation

There is no materiality limit set out by law.

▶ Economic analysis

There is no materiality limit set out by law.

▶ BEPS master and local files

Not applicable; Mongolia currently doesn't require master and local files.

▶ CbCR

Not applicable.

c) Specific requirement(s)

▶ Treatment of domestic transactions

Transfer pricing documentation is required for domestic transactions in the same manner as for a cross-border transaction.

▶ Local language documentation requirement

The documentation should be submitted to taxing authorities in Mongolian language only.

▶ Safe harbor availability

There are no specific safe harbor rules in Mongolia.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No .

▶ Coverage in terms of master and/or local files

Not applicable.

▶ Effective/expected commencement date

Not applicable.

▶ Material differences from OECD report template/format

Not applicable.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

Not applicable.

▶ CbCR notification and CbC report submission requirement

Not applicable.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

A list of related party transactions for the relevant tax year must be disclosed in CIT returns, including information about the name of the related parties, property or goods and services, and value of the transaction.

b) Transfer pricing-specific returns

There are no specific transfer pricing returns. The Mongolian Tax Authority issued Order No. A/96 on 28 April 2017, which introduces a new transfer pricing information disclosure form, tax form XXM-01 – Related Party Transaction Disclosure Form. All taxpayers must submit the form as part of the corporate income tax filing package biannually.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ Corporate income tax return

The annual CIT return must be filed by 10 February following the year-end.

▶ Other transfer pricing disclosures/return

The Related Party Transaction Disclosure Form is filed biannually: by 20 July for the first half of the year and by 10 February of the following year for the full annual transactions.

▶ CbCR notification

Not applicable.

▶ CbC report preparation/submission

Not applicable.

b) Documentation preparation deadline

According to Benchmarking Guidelines 2007, documentation should be prepared at the time of executing related party transactions and must be provided to the GDNT upon request.

c) Documentation submission deadline

- ▶ Is there a statutory deadline for submission of transfer pricing documentation?

There is no specific timing requirement to be followed for submitting the documentation in Mongolia.

- ▶ Time period/deadline for submission on tax authority request

The best practice is for taxpayers to prepare their transfer pricing documents yearly – i.e., following the year-end, the documentation is finalized or completed for the related party transactions of the preceding year.

6. Transfer pricing methods

a) Applicability

- ▶ International transactions

The best-method rule is applied for determining the arm's-length prices. The regulations provide a best-method rule for determining the appropriate method to be applied by the taxpayer for each intercompany transaction.

- ▶ Domestic transactions

Same as international transactions.

b) Priority/preference of methods

The CUP method is preferred.

7. Benchmarking requirements

a) Local vs. regional comparables

Comparables of Pan Asia-Pacific are preferable to the extent possible and if they are available.

b) Single-year vs. multi-year analysis

Multi-year analysis (three to five years) is acceptable.

c) Use of interquartile range

Calculation using Excel Quartile is acceptable.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

None specified.

e) Simple vs. weighted average

Weighted average is preferred.

f) Other specific benchmarking criteria, if any

Not applicable.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures

The failure of tax filing obligations or the failure of transfer pricing documentation is subject to penalties ranging from MNT1.5 million to MNT4 million per noncompliance event.

- ▶ If an adjustment is sustained, can penalties be assessed?

Transfer pricing adjustments are subject to a 30% penalty of tax payable.

- ▶ Is interest charged on penalties/payable on refund?

Daily interest is charged on transfer pricing adjustments, based on a predetermined interest rate that is an average of commercial banking lending rates.

b) Penalty relief

There is no penalty relief available in Mongolia for transfer pricing adjustments made by the GDNT. Tax-related disputes can be resolved at the Tax Dispute Resolution Committee at the GDNT and then brought up in Administrative Court proceedingse.

9. Statute of limitations on transfer pricing assessments

This is five years, with the period starting on the next working day from the date when the due tax in question should have been filed and paid.

10. Frequency of transfer pricing scrutiny/related audit by local authority

- ▶ Likelihood of transfer pricing-related audits (*high/medium/low*)

Medium, because comprehensive tax audits and transfer pricing usually occur every two to three years in Mongolia.

Mongolia

Tax authorities are increasingly focusing on transfer pricing investigations.

- ▶ **Likelihood of transfer pricing methodology being challenged** (*high/medium/low*)

Same as above.

- ▶ **Likelihood of an adjustment if transfer pricing methodology is challenged** (*high/medium/low*)

Same as above.

- ▶ **Specific transactions/industries/situations, if any, more likely to undergo audit**

It is unclear what has a higher likelihood of undergoing audit:

11. APA opportunity

- ▶ **Availability (unilateral/bilateral/multilateral)**

An APA regime is not available.

- ▶ **Tenure**

Not applicable.

- ▶ **Rollback provisions**

Not applicable.

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Montenegro

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Tax Administration of Montenegro.

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

Article 38 of the Corporate Income Tax (CIT) Law (latest update effective as of 1 January 2017) is available at the official website of the Tax Administration of Montenegro.

▶ Section reference from local regulation

Paragraph 2 of Article 38 of the CIT Law defines related party/ associated enterprise.

2. OECD guidelines treatment/reference

Montenegro is not a member of the OECD.

Montenegrin transfer pricing provisions are only loosely based on the OECD Guidelines and do not refer to their application.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Montenegrin transfer pricing legislation does not include transfer pricing documentation guidelines/rules.

▶ Does transfer pricing documentation have to be prepared annually?

The Montenegrin CIT Law does not prescribe any transfer pricing documentation requirements.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

Not applicable.

▶ Economic analysis

Not applicable.

▶ BEPS master and local files

Not applicable.

▶ CbCR

Not applicable.

c) Specific requirement(s)

▶ Treatment of domestic transactions

None specified.

▶ Local language documentation requirement

Not applicable.

▶ Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Montenegro has not yet adopted/implemented BEPS Action 13.

▶ Coverage in terms of master and/or local files

Not applicable.

▶ Effective/expected commencement date

Not applicable.

▶ Material differences from OECD report template/format

Not applicable.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

Not applicable.

▶ CbCR notification and CbC report submission requirement

Montenegrin transfer pricing legislation does not prescribe requirements regarding CbCR notification and CbC report submission.

Montenegro

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

According to Article 38 of the CIT Law, taxpayers are obligated to disclose in their annual CIT return the revenues and expenses resulting from the transactions with related parties, as well as present and compare these with revenues and expenses that would have been realized in the same transactions if they were conducted with unrelated parties. Any difference between the two should be included in the taxable basis.

b) Transfer pricing-specific returns

There is no specific transfer pricing return in Montenegro.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ Corporate income tax return

The deadline for filing a CIT return in Montenegro is three months after the ending date for which corporate income tax is calculated (e.g., 31 March 2018 for a fiscal year ending on 31 December 2017).

▶ Other transfer pricing disclosures/return

Not applicable.

▶ CbCR notification

Not applicable.

▶ CbC report preparation/submission

Not applicable.

b) Documentation preparation deadline

Not applicable.

c) Documentation submission deadline

▶ Is there a statutory deadline for submission of transfer pricing documentation?

Not applicable; the Montenegrin CIT Law does not prescribe deadlines for submission of transfer pricing documentation.

▶ Time period/deadline for submission on tax authority request

Not applicable.

6. Transfer pricing methods

a) Applicability

▶ International transactions

Yes.

▶ Domestic transactions

Yes.

b) Priority/preference of methods

The Montenegrin CIT Law prescribes possible application of the CUP, resale price or cost-plus methods for all related party transactions.

The CUP method has priority in the selection of the transfer pricing method. If the CUP cannot be applied, the CIT Law allows two other traditional transaction methods: the cost-plus and resale price. Montenegrin transfer pricing regulations do not recognize transactional profit-based methods (i.e., the TNMM and profit split method).

7. Benchmarking requirements

a) Local vs. regional comparables

Not applicable; the Montenegrin CIT Law does not prescribe any benchmarking requirements.

b) Single-year vs. multi-year analysis

Refer to the above section.

c) Use of interquartile range

Refer to the above section.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

Refer to the above section.

e) Simple vs. weighted average

Refer to the above section.

f) Other specific benchmarking criteria, if any

Refer to the above section.

8. Transfer pricing penalties/relief**a) Penalty exposure****► Consequences of failure to submit/late submission and/or incorrect disclosures**

There are no specific penalties if a taxpayer fails to disclose related party transactions in the annual CIT return or in transfer pricing documentation.

► If an adjustment is sustained, can penalties be assessed?

Penalties ranging from EUR500 to EUR16,500 could be imposed if the taxpayer does not calculate the tax base in accordance with the CIT Law (i.e., the taxpayer does not include transfer pricing adjustments in its tax base).

► Is interest charged on penalties/payable on refund?

Montenegrin legislation prescribes that the interest is charged on penalties/payable on refund at a daily rate of 0.03%.

b) Penalty relief

Not applicable.

9. Statute of limitations on transfer pricing assessments

The general statute of limitations period of five years for taxes in Montenegro would also apply to transfer pricing assessments. The five-year period starts at the beginning of the year following the year in which the respective tax liability was to be assessed.

10. Likelihood of transfer pricing scrutiny/related audit by local authority**► Likelihood of transfer pricing-related audits (high/medium/low)**

Low, as Montenegrin tax authorities conduct random audits. Typically, audits take place no more often than once in three to five years.

► Likelihood of transfer pricing methodology being challenged (high/medium/low)

Not applicable.

► Likelihood of an adjustment if transfer pricing methodology is challenged (high/medium/low)

Not applicable.

► Specific transactions/industries/situations, if any, more likely to undergo audit

Not applicable.

11. APA opportunity**► Availability (unilateral/bilateral/multilateral)**

Advance rulings and APAs are not available in Montenegro.

► Tenure

Not applicable.

► Rollback provisions

Not applicable.

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Morocco

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Moroccan Tax Administration (Direction Générale des Impôts).

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

Transfer pricing aspects are regulated by articles 213-II and 214-III of the Moroccan Tax Code 2013.

▶ Section reference from local regulation

Article 213-II of the Moroccan tax Code.

2. OECD guidelines treatment/reference

Morocco is not a member of the OECD.

The Moroccan Tax Administration generally accepts references to the OECD Guidelines regarding transfer pricing.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Yes.

▶ Does transfer pricing documentation have to be prepared annually?

No.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

No materiality limit.

▶ Economic analysis

No materiality limit.

▶ BEPS master and local files

No materiality limit.

▶ CbCR

No materiality limit.

c) Specific requirement(s)

▶ Treatment of domestic transactions

Not applicable.

▶ Local language documentation requirement

Not applicable.

▶ Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Morocco has adopted BEPS Action 13 for transfer pricing documentation in their local regulations.

▶ Coverage in terms of master and/or local files

Not applicable.

▶ Effective/expected commencement date

Not applicable.

▶ Material differences from OECD report template/format

Not applicable.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

Not applicable.

▶ CbCR notification and CbC report submission requirement

There is no CbCR notification and CbC report submission requirement in Morocco.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Not applicable.

b) Transfer pricing-specific returns

There is no transfer pricing-specific return to be filed before the tax authorities.

5. Transfer pricing documentation/ disclosure timelines

a) Filing deadline**▶ Corporate income tax return**

Within three months following the closing date.

▶ Other transfer pricing disclosures/return

Not applicable.

▶ CbCR notification

Not applicable.

▶ CbC report preparation/submission

Not applicable.

b) Documentation preparation deadline

Not applicable.

c) Documentation submission deadline**▶ Is there a statutory deadline for submission of transfer pricing documentation?**

No.

▶ Time period/deadline for submission on tax authority request

In the event of a request from the tax authorities on the basis of Article 214-III of the Moroccan Tax Code, the requested documents and information should be provided within 30 days. There is an obligation to disclose the nature of the relationship between the taxpayer and the related parties (i.e., the links of dependence between the Moroccan audited entity and the related parties), the nature of the services provided or the products sold, the method of determining the prices for the operations realized between the Moroccan and foreign companies, and the foreign companies' tax regimes and tax rates.

6. Transfer pricing methods

a) Applicability**▶ International transactions**

Yes.

▶ Domestic transactions

Yes, in case of a different taxation regime.

b) Priority/preference of methods

In Article 213-II of the Moroccan Tax Code, reference is made to profit shifting done through an increase or decrease of purchase/sale prices, or by any other means. As such, no particular method is provided by Moroccan tax law, but it should be relevant from an economic standpoint.

7. Benchmarking requirements

a) Local vs. regional comparables

Local comparables are preferred.

b) Single-year vs. multi-year analysis

Multi-year analysis is acceptable.

c) Use of interquartile range

Interquartile range calculation using Excel Quartile formulas is acceptable.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

Fresh benchmarking searches are conducted every year.

e) Simple vs. weighted average

Both are acceptable.

f) Other specific benchmarking criteria, if any

Mandated independence criteria.

8. Transfer pricing penalties/relief

a) Penalty exposure

► Consequences of failure to submit/late submission and/or incorrect disclosures

Generally, penalties apply as a result of a transfer pricing reassessment (regardless of compliance with any transfer pricing documentation requirement), as follows:

- In terms of corporate income tax (CIT), the amounts reassessed are reinstated in the taxable income of the company and taxed at the applicable CIT rate. In addition, the following penalties apply:
 - a. 20% for reassessment of the taxable basis, and a 100% penalty applies in cases where bad faith is demonstrated
 - b. 10% for late payment
 - c. 5% for the first month of late payment and 0.5% for each month thereafter
- When reassessing transfer pricing, the Moroccan Tax Administration also reassesses the corresponding value-added tax (VAT) and withholding tax (WHT). In addition, penalties regarding VAT and WHT apply as follows:
 - a. 30% penalty for reassessment of the taxable basis, and a 100% penalty applies in cases where bad faith is demonstrated
 - b. 20% penalty for late payment
 - c. 5% penalty for the first month of late payment and 0.5% penalty for each month thereafter
- If an adjustment is sustained, can penalties be assessed?

The applicable penalty is 15%, which can reach 100% if bad faith is established.

► Is interest charged on penalties/payable on refund?

5% for the first month; 0.5% for any additional month.

b) Penalty relief

In the case of a reassessment regarding penalties, a reduction might be granted to taxpayers that introduce a tax claim before the Moroccan Tax Administration.

Having transfer pricing documentation does not grant taxpayers with any penalty relief. However, it could help during a tax audit to support the company's pricing policy.

A penalty relief may be granted in the case of a settlement between the Moroccan Tax Administration and the taxpayer in the frame of a tax audit.

9. Statute of limitations on transfer pricing assessments

The statute of limitations for transfer pricing adjustments is the same as for all other tax assessments – generally, four years following the year for which the tax is due (it might be longer when loss carries forward or a VAT credit exists).

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► Likelihood of transfer pricing-related audits (*high/medium/low*)

The likelihood of transfer pricing issues being raised within a tax audit is high. In fact, in most MNC tax audits, transfer prices are challenged.

► Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

Same as the above section.

► Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

Same as the above section.

► Specific transactions/industries/situations, if any, more likely to undergo audit

All sectors.

Morocco

11. APA opportunity

► **Availability (unilateral/bilateral/multilateral)**

There is an APA program available in Morocco; only unilateral APAs are available.

► **Tenure**

The APA application should be filed at least six months before the beginning of the fiscal year of the period covered by the APA.

The term is four years.

► **Rollback provisions**

None specified.

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Namibia

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Directorate Inland Revenue (Inland Revenue).

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

Section 95A of the Income Tax Act 24 of 1981 authorizes Inland Revenue to adjust the consideration for goods or services to an arm's-length price for the purposes of calculating the Namibian taxable income of a person.

▶ Section reference from local regulation

While the Income Tax Act does not contain a definition of a "connected person," a definition is provided in Income Tax Practice Note 2/2006, on the "determination of the taxable income of certain persons from international transactions: transfer pricing" (Practice Note 2/2006).

2. OECD guidelines treatment/reference

Namibia is not a member of the OECD; however, Inland Revenue accepts the OECD Guidelines and has largely based its practice on them.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Namibia does not have guidelines/rules in terms of which transfer pricing documentation is required to be submitted. That being said, Practice Note 2/2006 states that it is in taxpayers' interests to prepare transfer pricing documentation to demonstrate that they have developed sound transfer pricing policies under which transfer prices are determined in accordance with the arm's-length principle by documenting the policies and procedures for determining those prices.

▶ Does transfer pricing documentation have to be prepared annually?

No.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

Not applicable.

▶ Economic analysis

Not applicable.

▶ BEPS master and local files

Not applicable.

▶ CbCR

Not applicable.

c) Specific requirement(s)

▶ Treatment of domestic transactions

There is no documentation obligation for domestic transactions.

▶ Local language documentation requirement

The TP documentation does not need to be submitted in the local language.

▶ Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No.

▶ Coverage in terms of master and/or local files

Not applicable.

▶ Effective/expected commencement date

Not applicable.

Namibia

▶ **Material differences from OECD report template/format**

Not applicable.

▶ **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

Not applicable.

▶ **CbCR notification and CbC report submission requirement**

There is no CbCR notification or CbC report submission requirement in Namibia.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

There were no disclosure requirements at the time of this publication.

b) Transfer pricing-specific returns

Not applicable.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ **Corporate income tax return**

Due within seven months from the year-end

▶ **Other transfer pricing disclosures/return**

Not applicable.

▶ **CbCR notification**

Not applicable.

▶ **CbC report preparation/submission**

Not applicable.

b) Documentation preparation deadline

Transfer pricing documentation needs to be finalized and submitted if requested by Inland Revenue at the date requested by it.

c) Documentation submission deadline

▶ **Is there a statutory deadline for submission of transfer pricing documentation?**

No.

▶ **Time period/deadline for submission on tax authority request**

Taxpayers must deliver the transfer pricing documents within 30 days if requested by Inland Revenue.

6. Transfer pricing methods

a) Applicability

▶ **International transactions**

Yes.

▶ **Domestic transactions**

Not applicable.

b) Priority/preference of methods

Inland Revenue accepts the methods prescribed by the OECD (i.e., CUP, resale price, cost-plus, TNMM and profit split).

According to Practice Note 2/2006, “the suitability and reliability of a method will depend on the facts and circumstances of each case. The most reliable method will be the one that requires fewer and more reliable adjustments.” Method selection should be based on the characteristics of the transaction under analysis. The selected method should be the one that best reflects the economic reality of the transaction, provides the best information and requires the fewest adjustments.

7. Benchmarking requirements

a) Local vs. regional comparables

There is no legal requirement for local country comparables, and global and regional comparables will be acceptable, subject to adjustments.

b) Single-year vs. multi-year analysis

Generally three-year testing.

c) Use of interquartile range

Interquartile range calculation using Excel Quartile formulas is acceptable.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

There is no need to conduct a fresh benchmarking search every year; financial updates are acceptable.

e) Simple vs. weighted average

There is a preference for the weighted average for arm's-length analysis.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

► Consequences of failure to submit/late submission and/or incorrect disclosures

No specific transfer pricing penalties are imposed in the act. With this said, taxpayers face the following penalties:

- Additional tax of up to 100% of the provisional tax amount underpaid
- 200% of the additional tax resulting from an adjustment (in the event of default, omission, incorrect disclosure or misrepresentation)

► If an adjustment is sustained, can penalties be assessed?

Refer to the section above.

► Is interest charged on penalties/payable on refund?

Interest of 20% per year is charged.

b) Penalty relief

When a taxpayer has made conscientious efforts to establish transfer prices that comply with the arm's-length principle and has prepared documentation to provide evidence of such compliance, Inland Revenue will likely take the view that the taxpayer's transfer pricing practices represent a lower tax risk. Such evidence may provide some mitigation against the 200% penalty.

No formal dispute resolution mechanisms exist, but taxpayers that disagree with additional assessments may object to such assessments and, if unsuccessful, lodge an appeal in terms of the Income Tax Act.

9. Statute of limitations on transfer pricing assessments

Namibia does not have a statute of limitations. Inland Revenue may indefinitely conduct reviews and audits. However, in terms of the act, records must be maintained for five years, so it is unlikely that periods older than five years will be reviewed.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► Likelihood of transfer pricing-related audits (*high/medium/low*)

Not applicable; Inland Revenue was not conducting transfer pricing reviews or audits at the time of this publication and did not have a dedicated transfer pricing team.

► Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

Refer to the above section.

► Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

Refer to the above section.

Namibia

- ▶ **Specific transactions/industries/situations, if any, more likely to undergo audit**

None.

11. APA opportunity

- ▶ **Availability (unilateral/bilateral/multilateral)**

Namibia did not have an APA program at the time of this publication.

- ▶ **Tenure**

Not applicable.

- ▶ **Rollback provisions**

Not applicable.

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Netherlands

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Dutch Tax Administration (Belastingdienst).

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

Transfer pricing (TP) documentation requirements are codified in Article 8b (3) of the Corporate income Tax Act 1969. Pursuant to the publication of the OECD Action 13 guidance, supplementary TP documentation requirements have been introduced in articles 29b to 29h of the Corporate income Tax Act 1969. The supplementary documentation requirements are applicable for book years starting on or after 1 January 2016.

► Section reference from local regulation

The definitions of related party/associated party are codified in Article 8b (1) and (2) of the Corporate income Tax Act 1969.

2. OECD guidelines treatment/reference

Netherlands is member of the OECD.

The tax authority generally follows the OECD Guidelines.

The Dutch transfer pricing decree (as published by the Under-Minister of Finance in November 2013) provides further guidance regarding how the arm's-length principle is interpreted and applied. According to this decree, the OECD Guidelines leave room for interpretation or require clarification on several issues. The goal of the decree is to provide insight into the position of the Dutch Tax Administration regarding these issues.

The transfer pricing decree of November 2013, No. IFZ2013-184M, provides specific guidance on intragroup services and shareholder activities, support services, contract research, cost contribution arrangements, arm's-length price determination when the value at the time of the transaction is uncertain, financial transactions, captive insurance companies, intangible and tangible fixed assets, centralized purchasing companies and other transfer pricing topics. With respect to business restructurings, no specific guidance has been issued to date. However, the tax authority generally follows the OECD guidance on this subject.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

Yes. Transfer pricing documentation requirements are codified in Article 8b (3) of the Corporate income Tax Act 1969. Pursuant to the publication of the OECD Action 13 guidance, supplementary transfer pricing documentation requirements have been introduced in Articles 29b to 29h of the Corporate income Tax Act 1969.

► Does transfer pricing documentation have to be prepared annually?

Transfer pricing documentation has to be contemporaneous. Taxpayers are obligated to prepare documentation that describes how the transfer prices have been established, and this must be included in the accounting records. Furthermore, the documentation needs to include sufficient information that would enable the tax authority to evaluate the arm's-length nature of the transfer prices applied between associated enterprises. The parliamentary explanations to Article 8b do not provide an exhaustive list of information that should be documented.

Transfer pricing documentation could include:

- Information about the associated enterprises involved.
- Information about the intercompany transactions between these associated enterprises.
- A comparability analysis describing the five comparability factors as set forth in Chapter I of the OECD Guidelines
- A substantiation of the choice of the transfer pricing method applied.
- A substantiation of the transfer price charged.
- Other documents, such as management accounts, budgets and minutes of shareholder and board meetings

In the event that the supplementary documentation requirements are applicable (i.e., the taxpayer is part of an MNE with a global consolidated turnover of EUR50 million or more), specific content and format requirements have to be met. These requirements are specified in the Ministerial Regulations dated 30 December 2015, No. DB2015/462M.

Netherlands

With respect to benchmarks, common practice is to update the financials yearly, whereas a new benchmark is conducted every three years.

b) Materiality limit/thresholds

► Transfer pricing documentation

Not applicable.

► Economic analysis

Not applicable.

► BEPS master and local files

Dutch tax resident entities of a multinational companies group having a consolidated group turnover equal to or exceeding EUR50 million in the fiscal year preceding the year for which the tax return applies will have to prepare master and local files. If a taxpayer does not meet the consolidated group turnover threshold, then only the existing Dutch TP documentation requirements under Article 8b (3) of the Corporate income Tax Act 1969 are applicable.

► CbCR

The requirement to prepare a CbC report is applicable to Dutch tax resident entities, members of a multinational companies group, with a consolidated group turnover equal to or exceeding EUR750 million in the fiscal year preceding the fiscal year to which the CbC report applies.

c) Specific requirement(s)

► Treatment of domestic transactions

There is a documentation obligation for domestic transactions. Domestic transactions are covered by the transfer pricing documentation obligations that are codified in Article 8b (3) of the Corporate income Tax Act 1969. The supplementary transfer pricing documentation obligations only apply to cross-border transactions.

► Local language documentation requirement

The TP documentation need not be submitted in the local language. The master file, local file and CbC report can be submitted in Dutch or in English.

► Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

► Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Yes, the Netherlands has adopted/implemented BEPS Action 13 for transfer pricing documentation in articles 29b to 29h of the Corporate income Tax Act 1969.

► Coverage in terms of master and/or local files

The Action 13 transfer pricing documentation regulations that were implemented in the Netherlands cover both the master file and local file.

► Effective/expected commencement date

The law is applicable for book years starting on or after 1 January 2016.

► Material differences from OECD report template/format

There are no material differences between the OECD report template/format and the Netherlands' regulations.

► Sufficiency of BEPS Action 13 format report to achieve penalty protection

There is no specific penalty protection regime. However, a BEPS Action 13 format report is sufficient to achieve penalty protection. No additional items are needed to achieve penalty protection for having noncompliant TP documentation in place if the Action 13/Article 8b (3) regulations are being complied with.

► CbCR notification and CbC report submission requirement

There is a CbCR notification requirement in the Netherlands. Based on the additional transfer pricing documentation requirements that took effect 1 January FY 2016, a Dutch group entity of an MNE with a minimum consolidated group turnover of EUR750 million that is a tax resident in the Netherlands must notify the tax inspector by the last day of the reporting fiscal year. A Dutch decree extends the notification deadline until 1 September 2017 for reporting fiscal years that end before that date. No extension has been granted to MNEs with a reporting fiscal year ending after 31 August 2017.

The requirement to prepare a CbC report is applicable to Dutch tax resident entities, members of a multinational companies group, with a consolidated group turnover equal to or exceeding EUR750 million in the fiscal year preceding the fiscal year to which the CbC report applies. A Dutch tax resident entity not being the ultimate parent company or the "surrogate parent entity" would need to file a CbC report in the Netherlands when:

- The country in which the ultimate/surrogate parent entity is a tax resident has not established CbCR obligations

- ▶ The country in which the ultimate/surrogate parent entity is a tax resident – at the latest, 12 months after the last day of the fiscal year – has an agreement in place under which information can be exchanged (including automatic exchange) but does not have a signed agreement in place between the competent authority of that state and the competent authority of the Netherlands for the automatic information exchange of CbC reports

Or

- ▶ The inspector has informed the group entity that the country in which the ultimate/surrogate parent entity is a tax resident has systematically failed to comply

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Dutch corporate income taxpayers are required to confirm in the corporate income tax return (by checking a separate box) whether they have been involved in cross-border related party transactions involving tangible and intangible fixed assets during the fiscal year. Furthermore, Dutch corporate income taxpayers are required to confirm in a separate appendix whether they have conducted financial services on a group level without having any substance in the Netherlands or without assuming any risks during the fiscal year.

b) Transfer pricing-specific returns

Dutch corporate income taxpayers are not required to file a specific transfer pricing return in addition to the regular corporate income tax return.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ Corporate income tax return

Within five months after the end of the fiscal year, but this can be extended.

▶ Other transfer pricing disclosures/return

The master file and local file should be available in the administration of the taxpayer by the end of the period within which the tax return for the fiscal year has to be submitted.

▶ CbCR notification

By the last day of the fiscal year; for fiscal years ending up to and including 31 August 2017, an extension is provided to 1 September 2017.

▶ CbC report preparation/submission

Within 12 months after the end of the fiscal year.

b) Documentation preparation deadline

Transfer pricing documentation needs to be finalized by the time of lodging the tax return to achieve penalty protection (e.g., where there is a contemporaneous requirement).

Documentation is generally expected to be complete when the taxpayer enters into a transaction. Dutch tax resident entities of a multinational companies group that will have to prepare a master file and a local file should have included these files in their records within the term set for submitting their respective corporate income tax returns. Dutch tax resident entities of a multinational companies group that do not qualify for the documentation rules under articles 29b to 29h of the Corporate Income Tax Act 1969 are granted four weeks to prepare the TP documentation if such documentation is not available upon the request of the tax authority. This period may be extended up to three months, depending on the complexity of the intercompany transactions.

c) Documentation submission deadline

▶ Is there a statutory deadline for submission of transfer pricing documentation?

No.

▶ Time period/deadline for submission on tax authority request

Documentation is generally expected to be complete when the taxpayer enters into a transaction. Dutch tax resident entities of a multinational companies group that will have to prepare a master file and a local file should have included these files in their records within the term set for submitting their respective corporate income tax returns. As such, documentation is expected to be available when an inquiry or audit is undertaken, and no grace period is formally available. However, Dutch tax resident entities of a multinational companies group that do not qualify for the documentation rules under articles 29b to 29h of the Corporate Income Tax Act 1969 are granted four weeks to prepare the TP documentation if such documentation is not available upon the request of the tax authority. This period may be extended up to three months, depending on the complexity of the intercompany transactions.

6. Transfer pricing methods

a) Applicability

- ▶ International transactions

Yes.

- ▶ Domestic transactions

Yes.

b) Priority/preference of methods

There is no “best method” rule. Taxpayers are, in principle, free to choose any OECD transfer pricing method, as long as the method chosen results in arm’s-length pricing for the transaction.

Since the 2010 revision of the OECD Guidelines, which establishes the “most-appropriate method” rule for selecting the transfer pricing method, there is no longer a hierarchy among the methods. Nevertheless, the OECD Guidelines do state that when the CUP method and another transfer pricing method can be applied in an equally reliable manner, the CUP method is preferred. Taxpayers are not obligated to test all of the methods, though they must substantiate the method chosen.

7. Benchmarking requirements

a) Local vs. regional comparables

Pan-European benchmarks are accepted.

b) Single-year vs. multi-year analysis

Multiple-year analysis, as per common practice.

c) Use of interquartile range

Interquartile range, as per common practice.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

In line with the OECD TP Guidelines, a fresh benchmarking search is to be conducted every three years, with a financial update in the other two years. This is not specifically codified in Dutch regulations, but instead follows from the general principle to substantiate the arm’s-length nature of the intercompany transaction. Further, the benchmarking practice is prescribed in the OECD Transfer Pricing Guidelines, which are generally followed in practice by the Dutch tax authorities as well as taxpayers.

e) Simple vs. weighted average

The weighted average, as per common practice.

f) Other specific benchmarking criteria, if any

- ▶ **Independence:** (not mandated but best practice) companies with at least one shareholder that owns 25% or more of the company’s shares and companies owning subsidiaries with a share of 25% or more are excluded.

▶ Industry classification

▶ Financial data:

- ▶ Turnover criterion
- ▶ Availability operating profit/loss
- ▶ If consolidated data available, company is rejected
- ▶ Active/inactive

8. Transfer pricing penalties/relief

a) Penalty exposure

▶ Consequences of failure to submit/late submission and/or incorrect disclosures

The Dutch general penalty regime is also applicable for transfer pricing. According to this regime, an administrative and, under certain circumstances, a criminal penalty can be imposed in case of noncompliance. Under this regime, for the master file and local file this could mean a monetary fine of the third category (currently EUR8,100) or custody of six months. In the case of intention, this could mean a fine of the fourth category (currently EUR20,250) or an imprisonment of four years at the most. For the CbC report and notification of CbCR, this could mean a monetary fine of the third category (currently EUR8,100) or custody of six months. In the case of intention, this could mean a fine of the sixth category (currently EUR820,000) or an imprisonment of four years at the most.

▶ If an adjustment is sustained, can penalties be assessed?

During the Parliament’s discussions regarding the introduction of the arm’s-length principle and transfer pricing documentation requirements (i.e., Article 8b) into the Dutch Corporate Income Tax Act 1969, a question was raised regarding the Dutch policy in connection with the levy of administrative penalties in the case of a transfer price adjustment. The Dutch Under-Minister of Finance declared that penalties in such instances should be limited to cases in which it is plausible that the agreed-upon transfer price is not regarded as

arm's-length as a result of a purely intentional act. Therefore, an administrative penalty will not be imposed, even in the event of gross negligence or a conditional intentional act.

In the case of a purely intentional act, as set forth above, the tax may be increased with a maximum penalty of 100% of the (additional) tax due, plus interest.

In addition to the above-described penalties, so-called administrative fines might be applicable (e.g., for not meeting filing a deadline).

The lack of TP documentation will shift the burden of proof regarding the arm's-length nature of the transfer price used by the taxpayer.

From the additional documentation requirements implemented in the Dutch Corporate Income Tax Act 1969 following OECD BEPS Action 13, it follows that the same general penalty regime would be applicable. Noncompliance with the CbCR requirements in principle will be regarded as a criminal offense for which a criminal penalty can be imposed. However, under certain circumstances, as an alternative, an administrative penalty can be imposed. During the Parliament's discussion related to this proposal, it was mentioned that criminal charges will be reserved for the most severe cases.

► **Is interest charged on penalties/payable on refund?**

The interest rate for corporate income tax is 8% (period of 1 September 2016 to 1 March 2018).

b) Penalty relief

Transfer pricing penalties are unlikely if the taxpayer prepares proper transfer pricing documentation that adequately substantiates the arm's-length nature of the taxpayer's intercompany transactions.

If an adjustment is proposed by the tax authority, the following dispute resolution options are available:

- Domestic litigation
- MAP, under applicable treaty

9. Statute of limitations on transfer pricing assessments

The Statute of limitations on transfer pricing assessments is the same as the statute of limitations on tax assessments (as covered by the General Tax Act). The statute of limitations

for making an assessment is three years from the end of the taxpayer's fiscal year. If the tax inspector has granted an extension for filing the tax return, the assessment period is extended to the end of the extension period. Once a final assessment for a financial year is imposed, additional assessments relating to that financial year can still be issued for up to five years after the end of the financial year (respectively, 12 years in the case of foreign-source income). Similarly, this period is extended with the extension of the filing period granted to file the Dutch corporate income tax return. However, an additional assessment can be imposed only if either:

- The Dutch tax authority discovers a new fact that it reasonably should not have known at the moment the final assessment was issued
- Or
- The taxpayer acted in bad faith

An additional assessment is possible only up to two years after the tax assessment has been issued in the case of a mistake, which is recognized if no tax assessment has been issued at all or the tax assessment is too low, while the taxpayer reasonably should have known that the final tax assessment was incorrect (if the difference amounts to at least 30% of the total taxes due, the taxpayer is deemed to have been aware of the mistake).

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► **Likelihood of transfer pricing-related audits**
(*high/medium/low*)

The likelihood of being audited by the tax authority is considered medium. However, during an audit, the likelihood of transfer pricing issues being scrutinized is high; consequently, the controversy risk is high, as well.

► **Likelihood of transfer pricing methodology being challenged**
(*high/medium/low*)

It is highly likely that the transfer pricing methodology will be assessed relative to the specific facts and circumstances.

Transfer pricing is a key issue in any tax audit, and many companies are subject to separate transfer pricing audits. A functional analysis is incorporated into many of these audits and forms the basis of the transfer pricing risk analysis of taxpayers.

Netherlands

► **Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)**

In the event that the compensation falls outside the annual range, it is verified whether the average compensation would fall within a multiple-year range. In the event that the compensation would fall outside the annual range and the multiple-year range, an adjustment will be made.

► **Specific transactions/industries/situations, if any, more likely to undergo audit**

The tax authority, among others, has shown interest in performing head-office audits (which include intragroup services and other activities performed by the head office) and in analyzing the economic substance of transactions, in terms of alignment of functions and risks. Next to head-office activities, intangible transactions are often evaluated, as well as business reorganizations, centralized purchasing companies, captive insurance companies and financial services transactions (including loans and guarantees). During these transfer pricing audits, the tax authority appears to have a particular interest in potential internal CUPs and the economic substance of a transaction.

The tax authority has also focused, as a natural result of the risk analysis, on transactions with entities in countries with low effective tax rates.

11. APA opportunity

► **Availability (unilateral/bilateral/multilateral)**

Unilateral, bilateral and multilateral APAs are available. The APA process works very efficiently in the Netherlands.

Specific features enable an efficient and transparent process, including the option to hold pre-filing meetings, the opportunity to develop a case management plan with the APA team to agree upon timing and key steps, and even specific support regarding economic analysis that is available to small taxpayers.

There are specific (unilateral) APA options for Dutch financial services entities. Financial services entities consist of both financing (mere receipt and payment of intercompany interest) and licensing (mere receipt and payment of intercompany royalties) companies.

The Dutch tax authorities process many unilateral and bilateral APAs annually. The Dutch competent authority has bilateral APA experience across all continents.

► **Tenure**

In general, the term for an APA is four to five years.

► **Rollback provisions**

Rollback features are available for unilateral, bilateral and multilateral APAs.

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New Zealand

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Inland Revenue Department (IRD).

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

- ▶ Sections YD 5, GB 2 and GC 6 to GC 14 of the Income Tax Act 2007 (ITA)
- ▶ Tax Administration Act 1994 (TAA)
- ▶ New Zealand's double tax agreements

New Zealand is introducing new legislation addressing OECD's BEPS initiative, which is expected to be enacted by July 2018 and effective for income years commencing on or after 1 July 2018.

The final New Zealand Transfer Pricing Guidelines (IRD Guidelines) were issued in October 2000. While the IRD Guidelines are still relevant, the IRD is not updating them and is now applying the 2017 OECD Guidelines, which are considered to be broadly consistent with New Zealand's transfer pricing legislation and double taxation treaties.

▶ Section reference from local regulation

Subpart YB of the ITA.

2. OECD guidelines treatment/reference

New Zealand is a member of the OECD.

The IRD endorses the positions set out in Chapters I to IX of the OECD Guidelines and generally follows those positions in administering New Zealand's transfer pricing rules. Consequently, the IRD Guidelines should be read as supplementing, rather than superseding, the OECD Guidelines.

3. Transfer pricing documentation requirements

a) Applicability

- ▶ Does your country have transfer pricing documentation guidelines/rules?

There are no explicit requirements in New Zealand's transfer pricing legislation (sections GC 6 to GC 14 of the ITA) for any particular information to be included in transfer pricing documentation. Section GC 13 requires taxpayers to select and apply an appropriate transfer pricing method for tax return purposes and determine their own transfer prices. The IRD Guidelines indicate that a taxpayer's main purpose in maintaining documentation should be to place the taxpayer in a position where it can readily demonstrate to the IRD that a transfer pricing method has been used to establish that the taxpayer's transfer prices are consistent with the arm's-length principle, in light of the relevant facts and circumstances.

New Zealand has transfer pricing documentation guidelines/rules.

▶ Does transfer pricing documentation have to be prepared annually?

New Zealand requires taxpayers to prepare transfer pricing documentation annually. Contemporaneous transfer pricing documentation showing that covered transactions were priced in line with the arm's-length standard from a New Zealand perspective is fundamental to support tax positions taken by New Zealand taxpayers in their income tax returns.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

There is no materiality for transfer pricing documentation. However, a cost-risk assessment when producing transfer pricing documentation is endorsed by the IRD, and hence the level of requirements will be directly linked to the nature, value and complexity of the covered transactions.

▶ Economic analysis

There is no materiality limit for economic analysis.

▶ BEPS master and local files

There is no materiality limit; the BEPS master file and local file are expected to be made available to the IRD on request.

▶ CbCR

Only New Zealand-based groups with revenues higher than EUR750 million (set initially at NZD1.3 billion) are required to lodge CbC reports in New Zealand.

New Zealand

c) Specific requirement(s)

▶ Treatment of domestic transactions

There is no documentation obligation for domestic transactions.

▶ Local language documentation requirement

The transfer pricing documentation needs to be submitted in the local language (English).

▶ Safe harbor availability

According to IRD guidance, New Zealand taxpayers can apply administrative practices in connection to:

- ▶ Services (de minimis, and non-core services)
- ▶ Small value loans (i.e., cross-border associated-party loans by groups of companies for up to NZD10 million principal in total).

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Inland Revenue endorses OECD's recommendations and believes that the master file/local file approach provides a platform through which taxpayers, subject to the local transfer pricing regime, can meaningfully describe their compliance with the arm's-length standard. Inland Revenue expects New Zealand taxpayers to maintain contemporaneous transfer pricing documentation in two forms:

- ▶ A master file providing an overview of the multinational's global business operations and transfer pricing policies
- ▶ A local file providing detailed information regarding the operations of the New Zealand taxpayer(s) and main cross-border associated party transactions, as well as transfer pricing analysis supporting the arm's-length nature of these transactions from a New Zealand perspective

▶ Coverage in terms of master and/or local files

These are expected to comply with OECD requirements.

▶ Effective/expected commencement date

Expected for income years commencing on or after 1 January 2016.

▶ Material differences from OECD report template/format

No material difference.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

No explicit protection is given simply because a master file or local file is prepared that meets the requirements of BEPS Action 13.

▶ CbCR notification and CbC report submission requirement

Only New Zealand-based groups with revenues higher than EUR750 million are required to lodge CbC reports.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

A company's income tax return requires disclosure of:

- ▶ Payments to nonresidents, such as dividends, interest, management fees, "know-how" payments, royalties or contract payments made
- ▶ Whether the company is controlled or owned by nonresidents
- ▶ Whether the company holds an interest in a CFC

More-detailed disclosure of various financial information and other data is required for interests held in CFCs.

b) Transfer pricing-specific returns

There is no separate transfer pricing return required to be filed in New Zealand (notwithstanding the disclosures outlined above). However, the IRD does require that multinational companies and branches complete detailed transfer pricing questionnaires as part of their routine transfer pricing risk assessment activities.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ Corporate income tax return

For balance dates ending from 1 October to 31 March, the Filing deadline is 7 July. For balance dates 1 April to 30 September, the deadline is the seventh day of the fourth month following the balance date. Where the company is on a tax agency list, an extension to the following 31 March is granted.

► **Other transfer pricing disclosures/return**

The lodging of transfer pricing documentation and/or specific transfer pricing forms is not required in New Zealand.

► **CbCR notification**

There are no notification requirements.

► **CbC report preparation/submission**

A CbC report, if required, must be filed within 12 months after the relevant balance date.

b) Documentation preparation deadline

Although there is no explicit legislative requirement for a taxpayer to document its transfer pricing policies and practices, the IRD Guidelines indicate that taxpayers that prepare and maintain transfer pricing documentation are more likely to ensure that the burden of proof (that there exists a more reliable measure of an arm's-length amount) remains with the Commissioner. The IRD will generally request a copy of a taxpayer's transfer pricing documentation as part of an income tax audit or transfer pricing risk assessment. The transfer pricing documentation should be prepared before the date the relevant tax return is filed.

c) Documentation submission deadline

► **Is there a statutory deadline for submission of transfer pricing documentation?**

No.

► **Time period/deadline for submission on tax authority request**

While each case is different, a taxpayer generally is given 20 working days to submit the documentation upon request.

6. Transfer pricing methods

a) Applicability

► **International transactions**

Yes.

► **Domestic transactions**

Not applicable.

b) Priority/preference of methods

New Zealand legislation presents five available transfer pricing methods to determine an arm's-length consideration for those

cross-border associated-party transactions entered by a New Zealand taxpayer. The IRD accepts the most reliable method (or combination of methods) chosen from among the comparable uncontrolled price, resale price, cost-plus, profit split and comparable profit (or TNMM) methods.

7. Benchmarking requirements

a) Local vs. regional comparables

Local benchmarking is preferred (Australian comparables are the best option if New Zealand benchmarks are not available); however, reliable benchmarks based on other jurisdictions are also acceptable.

b) Single-year vs. multi-year analysis

Multi-year testing is acceptable.

c) Use of interquartile range

Rather than requiring the use of an arm's-length range and/or statistical measure, IRD focuses on the reliability of the benchmarks. When a range comprises results of relatively equal and highly reliable benchmarks, then any point in the range can be regarded as arm's-length.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

There is no need to conduct a fresh search every year; however, comparability of the benchmarks should be assessed periodically.

e) Simple vs. weighted average

Generally, weighted average and Excel Quartiles are used for arm's-length analysis when relevant.

f) Other specific benchmarking criteria, if any

Benchmarks should be independent. That said, there is no guidance related to specific independence criteria when completing benchmarking analysis. Comparability is a key aspect when completing benchmarking analysis, and the IRD endorses OECD guidance related to this.

8. Transfer pricing penalties/relief

a) Penalty exposure

► **Consequences of failure to submit/late submission and/or incorrect disclosures**

Even though there are no specific submission documents, any

New Zealand

failure to provide information or documentation when requested can constitute an offense.

► **If an adjustment is sustained, can penalties be assessed?**

Under sections 141A-141K of the TAA, the following penalties could potentially be imposed depending on the culpability of the taxpayer:

- 20% penalty for not taking reasonable care
- 20% penalty for an unacceptable tax position
- 40% penalty for gross carelessness
- 100% penalty for an abusive tax position
- 150% penalty for evasion or a similar act

► **Is interest charged on penalties/payable on refund?**

Interest would usually be imposed by the IRD at a rate of 8.22% (rate applying from May 2017).

b) Penalty relief

Tax disputes are usually initiated by the IRD following a lengthy period of review and/or audit activity by the IRD. In some cases, a taxpayer can initiate a dispute. The local tax dispute process is formal and complex, involving seven distinct steps. If, during this process, the IRD and taxpayers cannot resolve the dispute, they will likely resort to litigation.

Shortfall penalties may be reduced upon voluntary disclosure to the Commissioner of the details of the shortfall, as follows:

- If disclosure occurs before notification of an investigation, the penalty may be reduced by 100% (only for lack of reasonable care or unacceptable tax position categories) or 75% for other shortfall penalties.
- If disclosure occurs after notification of an investigation, but before the investigation commences, the penalty may be reduced by 40%.

Shortfall penalties may be reduced by a further 50% if a taxpayer has good compliance records.

9. Statute of limitations on transfer pricing assessments

The Commissioner's power to issue amended assessments is subject to a four-year time limit from the end of the year in which the tax return is filed. A taxpayer can extend the applicable statute of limitations by up to an additional 18 months by signing up to two waivers, which generally arises

when a dispute is not resolved and more time would allow either completion of the dispute process by mutual agreement of both parties or where another case before the court is likely to resolve the issue in the current dispute. Under the proposed changes to New Zealand legislation, the statute of limitations on transfer pricing matters will likely be extended to seven years.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► **Likelihood of transfer pricing-related audits (high/medium/low)**

Medium to high. Tax reviews and audits are undertaken at the IRD's discretion. The IRD selects audit targets based on certain criteria, such as low profitability or losses, industry performance, transaction types (e.g., large, intercompany finance arrangements) and media reports. However, most large companies can typically expect to be audited every five years. The risk of transfer pricing scrutiny during a tax audit is characterized as high.

In addition to this, New Zealand taxpayers with annual revenues exceeding NZD30 million are subject to an annual Basic Compliance Package review under which the taxpayer will be required to provide various tax-related information to the IRD, and this information usually covers transfer pricing matters. A review can lead to an audit

► **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood of the transfer pricing methodology being challenged depends on the complexity of the cross-border associated-party transaction. Transactions involving provision of intangibles, financing and intragroup services tend to receive higher scrutiny during a transfer pricing risk review. New Zealand subsidiaries that provide sales/marketing services to an offshore principal or carry on various marketing-related activities can expect a more detailed transfer pricing review. Once a review has been completed and an audit has commenced, there is usually a high risk that the methodology will be challenged. Financing transactions are also subject to a high level of challenge.

► **Likelihood of an adjustment if transfer pricing methodology is challenged (high/medium/low)**

If a methodology has been challenged, there is a high risk that an adjustment will be proposed and a dispute process will commence. Disputes have typically been resolved through settlement before litigation.

- ▶ Specific transactions/industries/situations, if any, more likely to undergo audit

The IRD states that it will maintain a special focus on:

- ▶ Unexplained tax losses returned by foreign-owned groups
- ▶ Loans in excess of NZD10 million principal and guarantee fees
- ▶ Cash pooling arrangements
- ▶ Payment of unsustainable levels of royalties and/or service charges
- ▶ Material associated-party transactions with no- or low-tax jurisdictions, including the use of offshore hubs for marketing, logistics and procurement services
- ▶ Appropriate booking of income arising from e-commerce transactions
- ▶ Supply chain restructures involving the shifting of any major functions, assets or risks away from New Zealand
- ▶ Any unusual arrangements or outcomes that may be identified in controlled foreign company disclosures

11. APA opportunity

▶ Availability (unilateral/bilateral/multilateral)

Section 91E of the TAA allows a unilateral APA to be issued in the form of a binding ruling. Bilateral or multilateral APAs may be entered into pursuant to New Zealand's double tax agreements under the MAP provisions. The IRD has not established any formal process for APAs, as each case is considered to be different, depending on a taxpayer's specific facts and circumstances. The IRD encourages pre-application conferences to make the APA application process less time-consuming.

▶ Tenure

There is not a fixed term; however, they are usually agreed upon for five-year periods.

▶ Rollback provisions

There are no rollback provisions in New Zealand for unilateral APAs. However, a unilateral APA can apply to a tax year in which a tax return has not yet been assessed.

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Nicaragua

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Tax Administration of Nicaragua (Dirección General de Ingresos, or DGI).

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

From Article 93 to Article 106 of Law No. 822, effective 30 June 2017.

▶ Section reference from local regulation

Refer to the section above.

2. OECD guidelines treatment/reference

Nicaragua is not a member of the OECD. Neither does it refer to nor follow the OECD Guidelines in practice.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Yes.

▶ Does transfer pricing documentation have to be prepared annually?

Transfer pricing documentation needs to be prepared annually by updating all the information that allows a correct transfer pricing analysis, including the use of the most recent available financial information for the comparables and the tested party.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

Not applicable.

▶ Economic analysis

Not applicable.

▶ BEPS master and local files

Not applicable.

▶ CbCR

Not applicable.

c) Specific requirement(s)

▶ Treatment of domestic transactions

There is no documentation obligation for domestic transactions.

▶ Local language documentation requirement

Transfer pricing documentation needs to be submitted in the local language as per the Political Constitution and Civil Code of Nicaragua. If the documentation is prepared in a different language, it must be translated to Spanish in public deed.

▶ Safe harbor availability

There is no specific safe harbor available in Nicaragua.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No.

▶ Coverage in terms of master and/or local files

Not applicable.

▶ Effective/expected commencement date

Not applicable.

▶ Material differences from OECD report template/format

Not applicable.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

Not applicable.

▶ CbCR notification and CbC report submission requirement

There is no CbCR notification or CbC report submission requirement in Nicaragua.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

To date, there are no related appendices or additional forms to disclose related party transactions.

b) Transfer pricing-specific returns

To date, there are no transfer pricing-specific returns.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ Corporate income tax return

31 March for fiscal years that end in December; for special periods, three months after the fiscal year ends.

▶ Other transfer pricing disclosures/return

Not applicable.

▶ CbCR notification

Not applicable.

▶ CbC report preparation/submission

Not applicable.

b) Documentation preparation deadline

The transfer pricing documentation report must be readily available by the time the tax return is filed.

c) Documentation submission deadline

▶ Is there a statutory deadline for submission of transfer pricing documentation?

It should be submitted only by request of the tax authorities.

▶ Time period/deadline for submission on tax authority request

Within 10 days.

6. Transfer pricing methods

a) Applicability

▶ International transactions

Yes.

▶ Domestic transactions

Not applicable.

b) Priority/preference of methods

The provisions require the application of the most appropriate transfer pricing method. The specified methods are the CUP, resale price, cost-plus, profit split and TNMM.

7. Benchmarking requirements

a) Local vs. regional comparables

Considering the lack of financial information available on local comparables, international comparables are accepted by the tax authorities.

b) Single-year vs. multi-year analysis

Multiple-year testing for the comparables only; in practice, the number of years is three.

c) Use of interquartile range

There is no specific guidance on the use of interquartile range. However, the use of the Excel interquartile range is common practice.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

A fresh benchmarking search vs. a financial update needs to be conducted every year. The transfer pricing report and return must be prepared annually, updating all the information that allows a correct transfer pricing analysis. Additionally, in practice, local tax authorities expect to see the most recent comparable information and to use the most recent available financial information for the comparables and the tested party.

e) Simple vs. weighted average

Weighted average is common practice.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures

Article 124 of the Nicaraguan Tax Code (NTC) states that failure to comply with the obligations described in the NTC could result in penalties that range from 70 to 90 fine units, closure of business and loss of tax benefits, among others. Article 8 of the NTC defines each fine unit as equivalent to NIO25.

- ▶ If an adjustment is sustained, can penalties be assessed?

Yes, penalties include 25% of the omitted taxable income.

- ▶ Is interest charged on penalties/payable on refund?

Interest charges are applied to omitted taxable income.

b) Penalty relief

There is currently no penalty relief regime in place. Administrative procedures are available if an adjustment is proposed by the tax authority.

9. Statute of limitations on transfer pricing assessments

The statute of limitations is currently four years. In the case of omitted information, the tax authority could extend it for two additional years.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

- ▶ Likelihood of transfer pricing-related audits (*high/medium/low*)

The DGI has recently initiated tax audits regarding transfer pricing because the regulations came into force as of tax year 2017. Thus, the frequency of transfer pricing-related audits is low.

- ▶ Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

The likelihood that methodology will be challenged is not yet known.

- ▶ Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

Refer to the section above.

- ▶ Specific transactions/industries/situations, if any, more likely to undergo audit

Unknown.

11. APA opportunity

- ▶ Availability (unilateral/bilateral/multilateral)

There is an APA program available in Nicaragua; however, the corresponding regulations have not yet been enacted.

- ▶ Tenure

Four years.

- ▶ Rollback provisions

None specified.

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Nigeria

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Federal Inland Revenue Service (FIRS).

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

The Income Tax (Transfer Pricing) Regulations No. 1, 2012, govern transfer pricing (TP) in Nigeria. The Regulations are effective from financial years that begin after 2 August 2012.

► Section reference from local regulation

Regulation 10 of the Nigerian TP Regulations defines connected taxable persons.

2. OECD guidelines treatment/reference

Nigeria is not a member of the OECD; however, the transfer pricing regulations are to be applied in a manner consistent with the OECD Guidelines and the arm's-length principle in Article 9 of the UN and OECD model tax conventions.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

Yes.

► Does transfer pricing documentation have to be prepared annually?

Transfer pricing documentation must be prepared annually under the Nigerian TP Regulations. There is no specific provision on what information and documents are sufficient to prove that related party transactions are conducted at arm's length. However, it is required that the documentation take into account the volume and complexity of transactions. In practice, the FIRS sends communications to taxpayers on what it expects the documentation to contain when it makes an official request. However, this should not be mistaken as a requirement – the taxpayers bear the burden of proof that

conditions of transactions are in accordance with the arm's-length principle.

Furthermore, the common approach to benchmarking is to roll over the result of a study with financial updates for a period of two subsequent years, after which a fresh benchmarking analysis is done. Also, updates in the company, industry and functional analyses are expected to be documented annually, if applicable.

b) Materiality limit/thresholds

► Transfer pricing documentation

No materiality threshold.

► Economic analysis

No materiality threshold.

► BEPS master and local files

Not applicable currently, in practice. However, since the TP Regulations are to be applied in a manner consistent with the OECD Guidelines as updated from time to time and the 2017 edition of the OECD Guidelines incorporates TP-related recommendations within the BEPS package, including Action 13, it is expected that the master and local files approach to TP documentation will apply. Furthermore, Nigeria has signed up as a BEPS associate, which means it should implement BEPS Action 13 along with other minimum standards. But there is uncertainty as to the timing and mode of implementation, as the FIRS has not yet issued guidance on this.

In view of this, the master and local files approach is not a requirement at the moment, in practice. That said, some early adopters may choose to apply this BEPS-recommended approach.

► CbCR

CbCR has not been introduced in Nigeria. However, Nigeria has signed up as a BEPS associate, and the FIRS is working on the CbCR regulations. They were recently signed by the Nigerian President, but a signed copy has not yet been released.

c) Specific requirement(s)

► Treatment of domestic transactions

There is a documentation obligation for domestic transactions. The Nigerian TP Regulations cover both domestic and cross-border transactions.

Nigeria

► Local language documentation requirement

Regulation 17 provides that English is the official language for submission of the TP documentation.

► Safe harbor availability

Regulation 15 provides for safe harbor. However, the safe harbor in the Regulations still requires transactions for which prices are subject to the approval of Government regulatory authorities to be arm's-length to the satisfaction of the FIRS.

d) BEPS Action 13 implementation overview

► Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No. However, Nigeria has signed up as a BEPS associate for the implementation of the minimum standards, which includes BEPS Action 13.

► Coverage in terms of master and/or local files

Not applicable.

► Effective/expected commencement date

Not applicable.

► Material differences from OECD report template/format

Not applicable.

► Sufficiency of BEPS Action 13 format report to achieve penalty protection

Not applicable.

► CbCR notification and CbC report submission requirement

There is no CbCR notification or CbC report submission requirement in Nigeria.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Taxpayers are required to complete and attach a Transfer Pricing Declaration form to the annual tax return, as well as a Transfer Pricing Disclosure form. The Transfer Pricing Declaration form requires taxpayers to provide nonfinancial information about the taxpayer, such as details on the directors, parent company, related parties, auditors, tax consultants, company secretary and contact persons in the company. The Transfer

Pricing Disclosure form requires the taxpayer to indicate whether it has complied with the TP Regulations and prepared TP documentation. The Transfer Pricing Disclosure form also requires disclosure of financial information about intercompany transactions and business restructuring.

b) Transfer pricing-specific returns

Taxpayers are required to complete the Transfer Pricing Declaration and Disclosure forms, which are to be submitted as part of an annual TP return, due at the same time that the tax return is filed. The tax return will be deemed incomplete without the TP return. The TP return consists of the Transfer Pricing Disclosure form, the Transfer Pricing Declaration form (for the first annual filing only, unless there are material changes to the information disclosed on the first form submitted), a copy of audited financial statements, a copy of the income tax self-assessment, and the income tax computation and all relevant schedules.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► Corporate income tax return

No later than six months after the company's year-end (e.g., 30 June for companies with a year-end of 31 December).

► Other transfer pricing disclosures/return

30 June for companies with a year-end of 31 December.

► CbCR notification

Not applicable.

► CbC report preparation/submission

Not applicable.

b) Documentation preparation deadline

The TP documentation is required to be prepared contemporaneously as the transactions occur. It is required to be in place at the date of filing of the TP returns.

c) Documentation submission deadline

► Is there a statutory deadline for submission of transfer pricing documentation?

TP documentation should be in place at the due date for filing the income tax return for the year in which the documented transactions occurred.

► **Time period/deadline for submission on tax authority request**

The TP documentation is required to be submitted to the FIRS within 21 days upon request.

6. Transfer pricing methods

a) Applicability

► International transactions

The Nigerian Transfer Pricing Regulations do not differentiate between domestic and international transactions in their treatment of ensuring compliance with the arm's-length principle. Thus, the five recommended transfer pricing methods by the OECD TP Guidelines apply to related party transactions conducted by a Nigerian company. Also, the Regulations provide for the application of any other method, provided that the taxpayer can prove that none of the recommended TP methods are appropriate for testing the arm's-length nature of the transaction and that the chosen method gives results consistent with what is obtained for comparable uncontrolled transactions.

► Domestic transactions

See the above section.

b) Priority/preference of methods

The Nigerian Transfer Pricing Regulations do not give preference to a particular method above others. However, the traditional methods are preferred to the transactional profit methods, as recommended by the OECD TP Guidelines, if there is reliable information to apply the methods.

7. Benchmarking requirements

a) Local vs. regional comparables

The FIRS prefers comparables from comparable economies to Nigeria – i.e., developing countries of Africa, the Middle East and Eastern Europe – as Nigeria is faced with a lack of data.

b) Single-year vs. multi-year analysis

No specific requirement in the law. However, single-year analysis for the tested party and multiple-year for comparables are common in practice.

c) Use of interquartile range

Interquartile range calculation using Excel Quartile formulas is acceptable.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

Rollover of financials of comparables is allowed for two years, with a fresh benchmarking analysis performed the third year.

e) Simple vs. weighted average

The weighted average is acceptable.

f) Other specific benchmarking criteria, if any

The comparables are required to be independent entities, with no shareholder owning more than 25% of the share capital of the comparable companies.

8. Transfer pricing penalties/relief

a) Penalty exposure

► **Consequences of failure to submit/late submission and/or incorrect disclosures**

Under the Companies Income Tax Act, the penalty for filing corporate income tax returns late is NGN25,000 in the first month in which the failure occurs and NGN5,000 for each subsequent month. This should also apply to TP returns. However, we are not aware of the FIRS enforcing this.

► **If an adjustment is sustained, can penalties be assessed?**

A 10% penalty rate is applicable.

► **Is interest charged on penalties/payable on refund?**

Late payment of taxes attracts a penalty of 10%, plus interest at the bank lending rate.

b) Penalty relief

There is no specific penalty relief in the Nigerian Transfer Pricing Regulations. A decision review panel is composed of FIRS senior officers, and a court of competent jurisdiction is available when a taxpayer is dissatisfied with the decision of the panel.

9. Statute of limitations on transfer pricing assessments

The statute of limitation is six years; thus, all supporting documentation for the taxpayer's returns has to be retained for six years. In cases of criminal tendencies, such as fraud or willful default, there is no statute of limitations.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► Likelihood of transfer pricing-related audits (*high/medium/low*)

Medium, because we are in the early years of TP implementation, so FIRS' TP team is still gathering experience and expertise and going through internal and external trainings. Also, the FIRS currently has resource constraints, so it is unable to open too many cases at the same time. This notwithstanding, the FIRS maximizes its resources on groups with more than one entity operating in Nigeria by extending its audit scope to cover all Nigerian entities within that group.

► Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

Medium. This is more likely when the FIRS requests certain information/documents required to fully test the appropriateness of the methodology adopted by the company and the company is unable to provide this – either because the information is not locally available, or because the head office or foreign custodian of such information believes that the requested information is not relevant for Nigerian purposes.

In practice, the FIRS typically adopts a methodology that supports higher adjustments and guarantees more taxes in such instances.

► Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

High, because many taxpayers are unwilling to refer a matter to court, so they may agree to reasonable adjustments to close the audits. In instances in which FIRS finally agrees to taxpayers' applied methodologies without receiving requested information/documents, the FIRS' bargaining power to sustain higher adjustments is higher, and taxpayers usually agree to a reasonable adjustment to close the audits.

► Specific transactions/industries/situations, if any, more likely to undergo audit

All cross-border receipts of services or purchases of goods are highly challenged. Also, industries such as fast-moving consumer goods, shipping, manufacturing, oil servicing and commercial trading are highly scrutinized at the moment.

11. APA opportunity

► Availability (unilateral/bilateral/multilateral)

The Transfer Pricing Regulations indicate that a connected taxable person may request that the FIRS enter into an APA to establish an appropriate set of criteria for determining whether the taxpayer has complied with the arm's-length principle for certain future controlled transactions over a fixed period. The taxpayer may request a unilateral, bilateral or multilateral APA. However, no APAs have been concluded.

► Tenure

Three years.

► Rollback provisions

Not applicable.

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Norway

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Norwegian Tax Authority (NTA)

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

The arm's-length principle is stated in Taxation Act (1999) Section 13-1, and the transfer pricing filing and documentation requirements are stated in Tax Administration Act (2017) sections 8-11 and 8-12.

► Section reference from local regulation

Taxation Act Section 13-1 and Tax Administration Act sections 8-11 and 8-12.

2. OECD guidelines treatment/reference

Norway is an OECD member.

The NTA has a long history of following the OECD Guidelines. The Norwegian regulations follow OECD principles, and documentation prepared in line with the OECD Guidelines will generally meet Norwegian requirements.

Taxation Act (1999) Section 13-1 gives the OECD Guidelines a strong and formal status under Norwegian tax law. However, OECD Guidelines Chapter IV ("Administrative Approaches to Avoiding and Resolving Transfer Pricing Disputes") and Chapter V ("Documentation") are not included. The status of the OECD Guidelines is limited to that of guidance, and they do not constitute binding rules.

The NTA seems to be applying the principles outlined in OECD Guidelines Chapter IX ("Transfer Pricing Aspects of Business Restructurings"). Recent tax audits and court cases have shown that the principles described in the chapter are applied in practice.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

Yes.

► Does transfer pricing documentation have to be prepared annually?

In principle, Norway requires the preparation of transfer pricing documentation annually. However, companies have 45 days to submit transfer pricing documentation upon request from the tax authorities. There is a requirement to retain transfer pricing documentation for 10 years.

b) Materiality limit/thresholds

► Transfer pricing documentation

There is a materiality threshold for transfer pricing documentation. Documentation requirements do not apply to enterprises with controlled transactions totaling less than NOK10 million during the tax year and intergroup outstanding values below NOK25 million. Further, there is an exemption for smaller groups with fewer than 250 employees and either group revenue not above NOK400 million or total balance not above NOK350 million.

► Economic analysis

There is no materiality limit.

► BEPS master and local files

Currently not implemented through Norwegian regulations.

► CbCR

CbC report filing and CbCR notification requirements apply, basically in line with the OECD guidance. The threshold for CbCR is NOK6.5 billion.

c) Specific requirement(s)

► Treatment of domestic transactions

The regulations apply to domestic transactions.

Norway

▶ Local language documentation requirement

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

▶ Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No.

▶ Coverage in terms of master and/or local files

BEPS Action 13 has not been formally adopted, but a master file/local file format is accepted, as long as the information is also in line with current Norwegian regulations.

▶ Effective/expected commencement date

Not applicable.

▶ Material differences from OECD report template/format

The fundamental elements of Norwegian transfer pricing documentation requirements align with those under BEPS Action 13. In addition, the following information needs to be provided by the Norwegian local entity (either as part of a master file or in the local file):

- ▶ A description of the group's operational model.
- ▶ A brief historic description of the group and the local entity.
- ▶ A description of the industry, with important competition parameters.
- ▶ Financial information of the group and the local entity for the last three years, and an explanation for any major reduction in the local entity's operating profits.
- ▶ In case of centralized services within the group, one must explain the receiving entities' expected benefit of the service. In case of a cost-based allocation, one must explain the cost base, allocation ratio and any markup.
- ▶ Transaction analysis, including a two-sided function, asset and risk (FAR) analysis and a description of the transfer pricing method (how the price is determined and how it is tested).

- ▶ If no comparable transaction exists or it would be unreasonably difficult or costly to gather such information, the local entity may not include such a comparability analysis for a transaction.

- ▶ A list of immaterial transactions that the local entity engages in.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

Not relevant, as there are no direct penalties for noncompliant transfer pricing documentation. A surtax may apply if there is a tax adjustment and the taxpayer has provided incomplete or insufficient information.

▶ CbCR notification and CbC report submission requirement

There is a CbCR notification and CbC report submission requirement in Norway.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

The filing requirement is an attachment to the annual corporate income tax return (RF-1123), which includes a listing of all intercompany transactions. The form serves as a basis for the NTA when targeting transfer pricing tax audits. The filing requirements apply to all transactions reported in the tax return.

b) Transfer pricing-specific returns

There is one transfer pricing-specific return, to be submitted together with RF-1123.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ Corporate income tax return

31 May.

▶ Other transfer pricing disclosures/return

31 May.

► **CbCR notification**

CbCR notification is part of the tax return and is to be submitted by 31 May.

► **CbC report preparation/submission**

12 months after the close of the fiscal year.

b) Documentation preparation deadline

The transfer pricing documentation must be submitted within 45 days of a request by the NTA. All documentation must be retained for 10 years. The NTA assumes that documentation is made contemporaneously and, accordingly, does not allow for extensions.

c) Documentation submission deadline

► **Is there a statutory deadline for submission of transfer pricing documentation?**

No.

► **Time period/deadline for submission on tax authority request**

45 days from the date of request by the Norwegian tax authority.

6. Transfer pricing methods

a) Applicability

► **International transactions**

Yes

► **Domestic transactions**

Yes

b) Priority/preference of methods

The NTA accepts the pricing methods contained in the OECD Guidelines. The traditional transactional methods (CUP, resale price and cost-plus) are generally preferred over the profit-based methods (TNMM and profit split). However, support for applying the profit-based methods under certain circumstances is increasing. The NTA generally does not accept the use of Pan-European searches anymore because the tax authorities believe that the Norwegian market, in general, has higher profit margins since Norway has not been affected by the financial crisis in the same way as many other European countries.

There is no specified priority of methods under Norwegian tax law. As stated by the Norwegian Supreme Court, Taxation Act (1999) Section 13-1 allows for the use of several transfer pricing methods, including methods not described in the OECD Guidelines, if those methods provide arm's-length results.

7. Benchmarking requirements

a) Local vs. regional comparables

The NTA tends to prefer local/Nordic comparables over foreign comparables. However, in the absence of local comparables, it is generally recommended to provide information on foreign comparables. Pan-European benchmarks are accepted.

There have been incidents in which the NTA has made use of secret comparables, although this is not deemed common practice

b) Single-year vs. multi-year analysis

Multi-year testing, as per common practice.

c) Use of interquartile range

No specific requirement, but practice tends toward acceptance of the interquartile range.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

There is no need to conduct a fresh search every year, although it can be requested. The normal practice currently is three years.

e) Simple vs. weighted average

Weighted average, as per common practice.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

► **Consequences of failure to submit/late submission and/or incorrect disclosures**

There are no specific transfer pricing penalties. A surtax may apply in cases of tax adjustments, if the taxpayer is deemed to have provided incomplete or insufficient information. The surtax is 20% of the tax that would have applied on

Norway

the adjusted amount. In cases of gross negligence, an additional surtax of 20% or 40% may be applied.

Failure to comply with the filing requirement carries the same penalties as failure to complete the annual tax return. The same is applicable if the documentation is not submitted by the deadline.

► **If an adjustment is sustained, can penalties be assessed?**

A surtax may apply in cases of tax adjustments, if the taxpayer is deemed to have provided incomplete or insufficient information. The surtax is 20% of the tax that would have applied on the adjusted amount. In cases of gross negligence, an additional surtax of 20% or 40% may be applied.

► **Is interest charged on penalties/payable on refund?**

Nondeductible interest is applied.

Additionally, a nondeductible annual interest charge will apply on the tax amount.

b) Penalty relief

The risk of a penalty being imposed may be reduced if proper documentation is prepared. Disclosure in the tax return may, in principle, relieve penalties because the Tax Authority technically will have been informed and may further investigate the transfer pricing case. The assessment of penalties is becoming increasingly common.

9. Statute of limitations on transfer pricing assessments

The general statute of limitations for tax assessments in Norway is five years. Transfer pricing documentation must be retained for at least 10 years.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood of a full corporate tax audit is, in general, low. However, the likelihood of a separate transfer pricing tax examination is considered high. For both separate transfer pricing tax examinations and full corporate tax audits,

the taxpayer's related party transactions will likely be scrutinized and challenged. If transfer pricing is reviewed, the likelihood of the transfer pricing methodology being challenged is considered high.

► **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

Medium; the NTA is likely to increase its focus on substance and reallocation of profits as it applies the BEPS concepts across a taxpayer's value chain.

► **Likelihood of an adjustment if transfer pricing methodology is challenged (high/medium/low)**

Medium; taxpayers with foreign related party transactions resulting in low or negative margins are more likely to face adjustment, but each case is objectively assessed on the facts.

► **Specific transactions/industries/situations, if any, more likely to undergo audit**

Currently, any company with a low or negative margin transacting with a foreign related party has a high risk of a tax audit. The same goes for business restructurings or transfer of intellectual property (IP), as well as management fees and financial transactions. In addition, year-end adjustments are often challenged. The NTA often uses this as an argument to claim that the result is not at arm's length.

The NTA has a strong focus on intercompany transactions and has established a national transfer pricing project involving all the major tax offices to further its focus on transfer pricing. This focus continues to increase, in line with the rising number of dedicated transfer pricing tax inspectors within the NTA. The NTA selects companies for audit based on the submitted Form RF-1123 and the tax return.

Based on the initial review, the company is selected for audit if the documentation does not provide sufficient information and answers about the internal transactions and the profitability of the company.

11. APA opportunity

► **Availability (unilateral/bilateral/multilateral)**

APAs are in their infancy in Norway, and a separate MAP or APA unit was established in 2015. No formal guidelines have been issued regarding procedures for the application. However,

it will not be possible to engage the APA unit on a no-name basis. The APA process is free.

Transactions involving the sale of gas may be covered by APAs in accordance with Petroleum Tax Act Section 6 (5) (1).

► **Tenure**

Not applicable.

► **Rollback provisions**

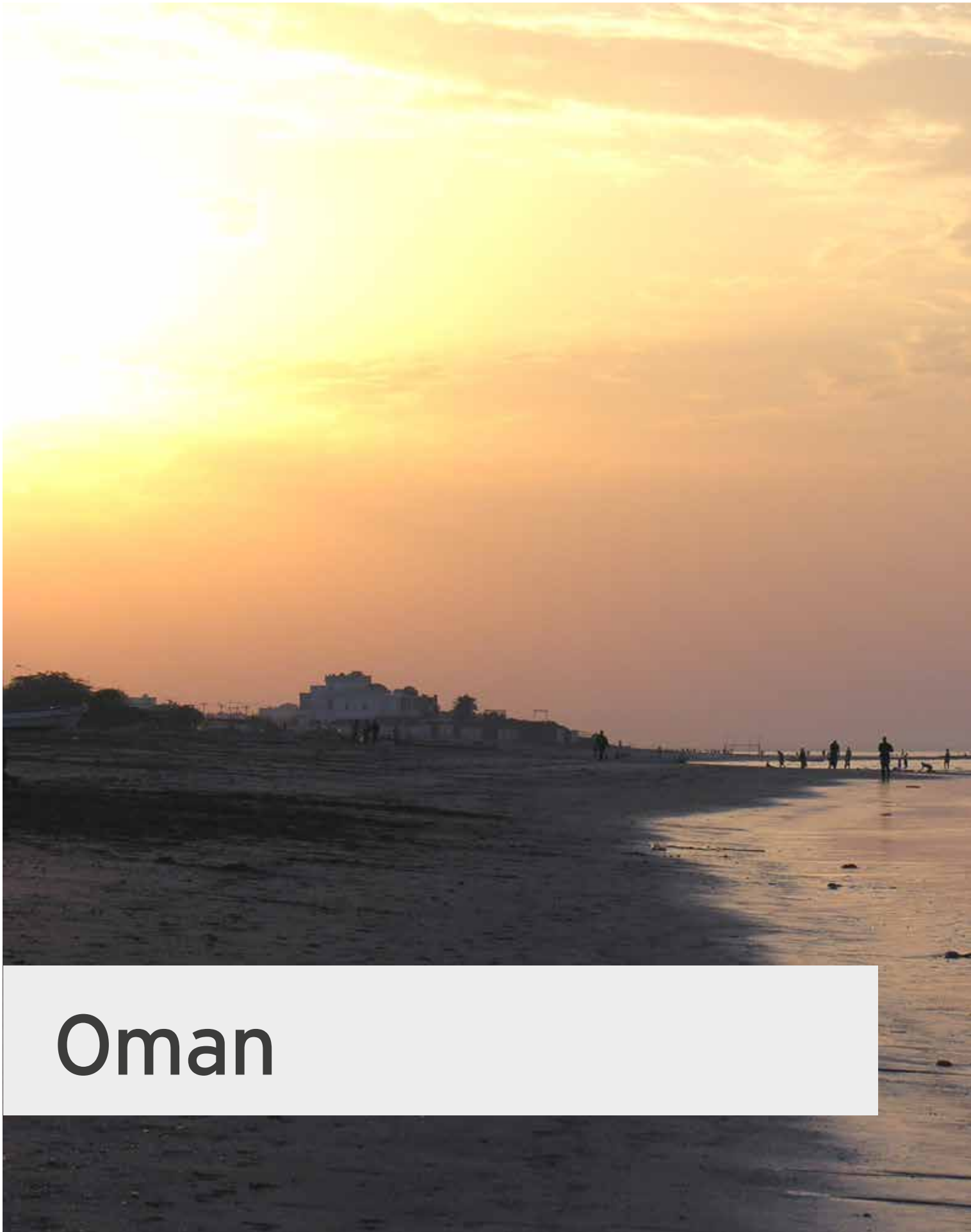
Not applicable.

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Oman

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Secretariat General for Taxation (SGT), a part of the Ministry of Finance)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

Income Tax Law (ITL) issued by Royal Decree 28/2009 – Articles 126 to 128 of the ITL contain the transfer pricing (TP) regulations.

▶ Section reference from local regulation

Refer to the section above.

2. OECD guidelines treatment/reference

Oman is not a member of the OECD, and OECD Guidelines are not binding in Oman. However, in the past, the SGT has taken OECD Guidelines into account.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

No. However, in October 2017, Oman joined the BEPS Inclusive Framework, committing to the implementation of the four minimum standards, including transfer pricing documentation and CbCR (Action 13).

The Omani tax authorities expect that appropriate TP documentation will be made available under a tax audit or investigation. With the increased focus on TP as part of the BEPS measures, and CbCR as one of the minimum standards, it is likely that explicit documentation requirements may be introduced in Oman.

▶ Does transfer pricing documentation have to be prepared annually?

It is not mandatory that TP documentation be prepared annually. However, it is recommended that it be prepared and maintained on an annual basis.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

Not applicable.

▶ Economic analysis

Not applicable.

▶ BEPS master and local files

Not applicable.

▶ CbCR

Not applicable.

c) Specific requirement(s)

▶ Treatment of domestic transactions

The tax authority does not distinguish domestic transactions from overseas transactions in scrutinizing charges from related parties during a tax assessment.

▶ Local language documentation requirement

The TP documentation need not be submitted in the local language; documentation in English is acceptable. However, a summary in Arabic could be requested by the tax authority.

▶ Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Oman has not implemented BEPS Action 13 for TP documentation.

▶ Coverage in terms of master and/or local files

Not applicable.

▶ Effective/expected commencement date

Not applicable.

▶ **Material differences from OECD report template/format**

Not applicable.

▶ **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

Not applicable.

▶ **CbCR notification and CbC report submission requirement**

There is no CbCR notification or CbC report submission requirement in Oman.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Oman follows International Financial Reporting Standards (IFRS). Therefore, the SGT expects taxpayers to disclose related party transactions in their financial statements in accordance with IFRS. The introduction of e-filing of tax returns in the near future may augment additional related party transaction disclosures, along with the tax returns.

b) Transfer pricing-specific returns

Under the Executive Regulations that were issued in 2012, formats of the tax returns have been modified to collect information from the taxpayer about related party transactions. The disclosure requirement has been in effect since 2012.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ **Corporate income tax return**

30 June.

▶ **Other transfer pricing disclosures/return**

Together with the corporate income tax return.

▶ **CbCR notification**

Not applicable.

▶ **CbC report preparation/submission**

Not applicable; expected to be announced shortly.

b) Documentation preparation deadline

The transfer pricing file needs to be prepared and maintained contemporaneously and can be submitted upon request.

c) Documentation submission deadline

▶ **Is there a statutory deadline for submission of transfer pricing documentation?**

No.

▶ **Time period/deadline for submission on tax authority request**

Within 30 days.

6. Transfer pricing methods

a) Applicability

▶ **International transactions**

Yes.

▶ **Domestic transactions**

Yes.

b) Priority/preference of methods

No pricing methods have been prescribed in the law or under the existing regulations. The law mentions that pricing shall be taken into account, assuming the terms upon which transactions would have been entered into by independent persons. This suggests the CUP method may be preferred. The SGT is expected to enact more rules and publish more guidance in the coming years. Method selection should be based on the characteristics of the transaction under analysis. The selected method should be the one that best reflects the economic reality of the transaction, provides the best information and requires the fewest adjustments.

7. Benchmarking requirements

a) Local vs. regional comparables

Even though they are not specifically mentioned in the regulations, local comparables are preferred over regional

comparables. A regional search covering countries in the Gulf Cooperation Council or the Middle East and North Africa region could be accepted.

b) Single-year vs. multi-year analysis

None specified.

c) Use of interquartile range

None specified.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

There is no specific requirement to conduct a fresh benchmarking search every year. However, it is recommended that a fresh search be conducted once every three years and that financial data be updated for the rest of the years.

e) Simple vs. weighted average

Not specified; however, the weighted average could be preferred over the simple average for arm's-length analysis.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

► Consequences of failure to submit/late submission and/or incorrect disclosures

Currently, there are no specific TP penalty provisions prescribed in the law. However, normal tax provisions will be applicable.

► If an adjustment is sustained, can penalties be assessed?

The SGT looks at each case independently.

► Is interest charged on penalties/payable on refund?

Not specified.

b) Penalty relief

Because there are no specific transfer pricing penalties, no penalty relief is currently applicable. While there are no specific provisions for relief, the SGT does look at each case

independently and has waived the delay penalty on late submissions of tax returns.

Taxpayers can file a formal objection to the adjustment proposed by the tax authority. The next step would be to appeal to the tax committee and to the commercial court.

9. Statute of limitations on transfer pricing assessments

There are no separate TP assessments conducted in Oman. The transfer pricing assessment will be conducted as part of the regular tax assessment for a tax year. The statute of limitations to complete the regular tax assessment is five years from the end of the year for which a tax return is submitted.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► Likelihood of transfer pricing-related audits (high/medium/low)

The likelihood of transfer pricing being reviewed as part of an audit is characterized as high, because transfer pricing is a key area of focus and has been the subject of inquiries and tax assessments by the Oman tax authority.

► Likelihood of transfer pricing methodology being challenged (high/medium/low)

Considering that the domestic tax law does not prescribe pricing methodologies, the likelihood of the methodology being challenged in a transfer pricing audit is also high.

► Likelihood of an adjustment if transfer pricing methodology is challenged (high/medium/low)

The absence of TP guidelines makes it difficult for a taxpayer to prove the arm's-length basis of a related party transaction. Hence, in case the tax authority challenges the transfer pricing methodology, adjustments to related party transactions are highly likely to arise during a tax audit.

► Specific transactions/industries/situations, if any, more likely to undergo audit

None specified.

11. APA opportunity

▶ **Availability (unilateral/bilateral/multilateral)**

There is no APA program available in Oman.

▶ **Tenure**

Not applicable.

▶ **Rollback provisions**

Not applicable.

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Pakistan



1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Federal Board of Revenue (FBR)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

In 2016, the Pakistani Government approved new legislation to effectively implement CbCR and introduce formal transfer pricing (TP) documentation requirements in Pakistan through Finance Act 2016. On 16 November 2017, the FBR finalized the draft rules previously issued in June 2017 to provide details on the requirements for the CbCR and TP documentation.

▶ Section reference from local regulation

Section 108 of the Income Tax Ordinance of 2001.

2. OECD guidelines treatment/reference

Pakistan is not a member of the OECD.

The legislation on transfer pricing documentation has implemented the OECD's model legislation into the Pakistan income tax law, including the three-tiered approach for TP documentation.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Yes.

▶ Does transfer pricing documentation have to be prepared annually?

Yes. The minimum requirement to achieve this has not been specified yet.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

PKR50 million (approximately USD475,000)

▶ Economic analysis

Not applicable.

▶ BEPS master and local files

Master file – MNE group turnover of more than PKR100 million (approximately USD950,000)

Local file – needs to be maintained if related party transactions exceed PKR50 million (approximately USD475,000)

▶ CbCR

EUR750 million or equivalent in PKR

c) Specific requirement(s)

▶ Treatment of domestic transactions

None specified.

▶ Local language documentation requirement

The TP documentation need not be submitted in the local language.

▶ Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Yes.

▶ Coverage in terms of master and/or local files

This covers both the master file and local file.

▶ Effective/expected commencement date

From 1 July 2016.

▶ Material differences from OECD report template/format

There are no material differences between the OECD report template/format and Pakistan's regulations.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

Yes, a BEPS Action 13 format report would typically be sufficient to achieve penalty protection.

► CbCR notification and CbC report submission requirement

There are CbCR notification and report submission requirements in Pakistan. All MNE groups with annual consolidated group revenue equal to or exceeding EUR750 million, or an equivalent amount in PKR, would be required to prepare and file a CbC report. Every Pakistani constituent entity, ultimate parent entity or surrogate parent entity, as the case may be, will need to submit a notification to the tax authority about the identity and country of residence of the reporting entity before the tax return Filing deadline.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Pakistan follows International Financial Reporting Standards (IFRS). Therefore, the FBR expects taxpayers to disclose related party transactions in their financial statements in accordance with IFRS.

b) Transfer pricing-specific returns

No specific TP returns.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► Corporate income tax return

31 December for companies with a financial year-end of 30 June, and 30 September for companies with a financial year-end of 31 December.

► Other transfer pricing disclosures/return

The TP documentation shall be available when submitting the income tax return and must be submitted to the tax authorities within one month after the receipt of the tax authority's written request.

► CbCR notification

By the tax return due date of the notifying entity. For the fiscal year relating to tax year 2017, the information shall be provided by 15 February 2018.

► CbC report preparation/submission

12 months after the last day of the reporting fiscal year of the MNE group. For the fiscal year relating to tax year 2017, the CbC report must be filed by 31 March 2018.

b) Documentation preparation deadline

There is no statutory deadline for preparation of TP documentation.

c) Documentation submission deadline

► Is there a statutory deadline for submission of transfer pricing documentation?

No.

► Time period/deadline for submission on tax authority request

The master file and local file should be available to the tax authority within 30 days from the date of the request.

6. Transfer pricing methods

a) Applicability

► International transactions

Yes

► Domestic transactions

None specified

b) Priority/preference of methods

The Income Tax Rules of 2002 (the Rules) state that the following methods may be applied by the Commissioner to determine the arm's-length result:

- CUP method: The price quoted in a transaction between uncontrolled parties on similar terms and conditions would be considered.
- Resale price method: The difference in the resale gross margin of the two transactions would be considered and compared for determining whether the transaction between controlled parties is on an arm's-length basis.
- Cost-plus method: The cost-plus markup realized in an uncontrolled transaction would be considered as a basis to determine whether a similar transaction between controlled parties is on an arm's-length basis.

- ▶ Profit split method: Where a group of associates is formed and the transactions are so interrelated that a separate basis is not possible to identify the arm's-length results for a similar transaction between uncontrolled persons, the profit-sharing basis agreed to between independent persons forming an association would be considered.

Of the first three methods, the one that provides the most reliable measure of an arm's-length result with regard to all of the facts and circumstances, in the opinion of the Commissioner, shall be applied. The fourth method shall apply only if the other methods cannot be reliably applied.

7. Benchmarking requirements

a) Local vs. regional comparables

Even though it is not specifically mentioned in the regulations, local comparables are preferred over regional comparables. A regional search covering countries in Asia-Pacific or the Middle East could be accepted.

b) Single-year vs. multi-year analysis

Not specified.

c) Use of interquartile range

Not specified.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

There is no specific requirement to conduct a fresh benchmarking search every year. However, it is recommended that a fresh search be conducted once every three years and that the financial data be updated for the rest of the years.

e) Simple vs. weighted average

None specified.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures

Failure to furnish a CbC report is subject to penalties of PKR2,000 for each day of default, with a minimum penalty of PKR25,000. Failure to maintain the master file or local file is subject to penalties of 1% of the transaction value.

Failure to maintain or furnish documents by the taxpayer shall also be subject to penalties mentioned under Section 182.

- ▶ If an adjustment is sustained, can penalties be assessed?

None specified.

- ▶ Is interest charged on penalties/payable on refund?

None specified.

b) Penalty relief

Penalty relief was not applicable at the time of this publication.

9. Statute of limitations on transfer pricing assessments

There are no separate transfer pricing assessments conducted in Pakistan. A TP assessment, if any, will be conducted as part of the regular tax assessment for a tax year.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

- ▶ Likelihood of transfer pricing-related audits (*high/medium/low*)

Since the regulations are in place, the likelihood of TP audits may be high in the future.

- ▶ Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

Medium; there is no clear definition or standards for the likelihood of audits. However, this is done on a random basis in which the tax authorities would choose certain clients for audit.

Pakistan

- ▶ **Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)**

Refer to the section above.

- ▶ **Specific transactions/industries/situations, if any, more likely to undergo audit**

None specified.

11. APA opportunity

- ▶ **Availability (unilateral/bilateral/multilateral)**

There is no opportunity to conclude an APA. However, an advance ruling is possible.

- ▶ **Tenure**

Not applicable.

- ▶ **Rollback provisions**

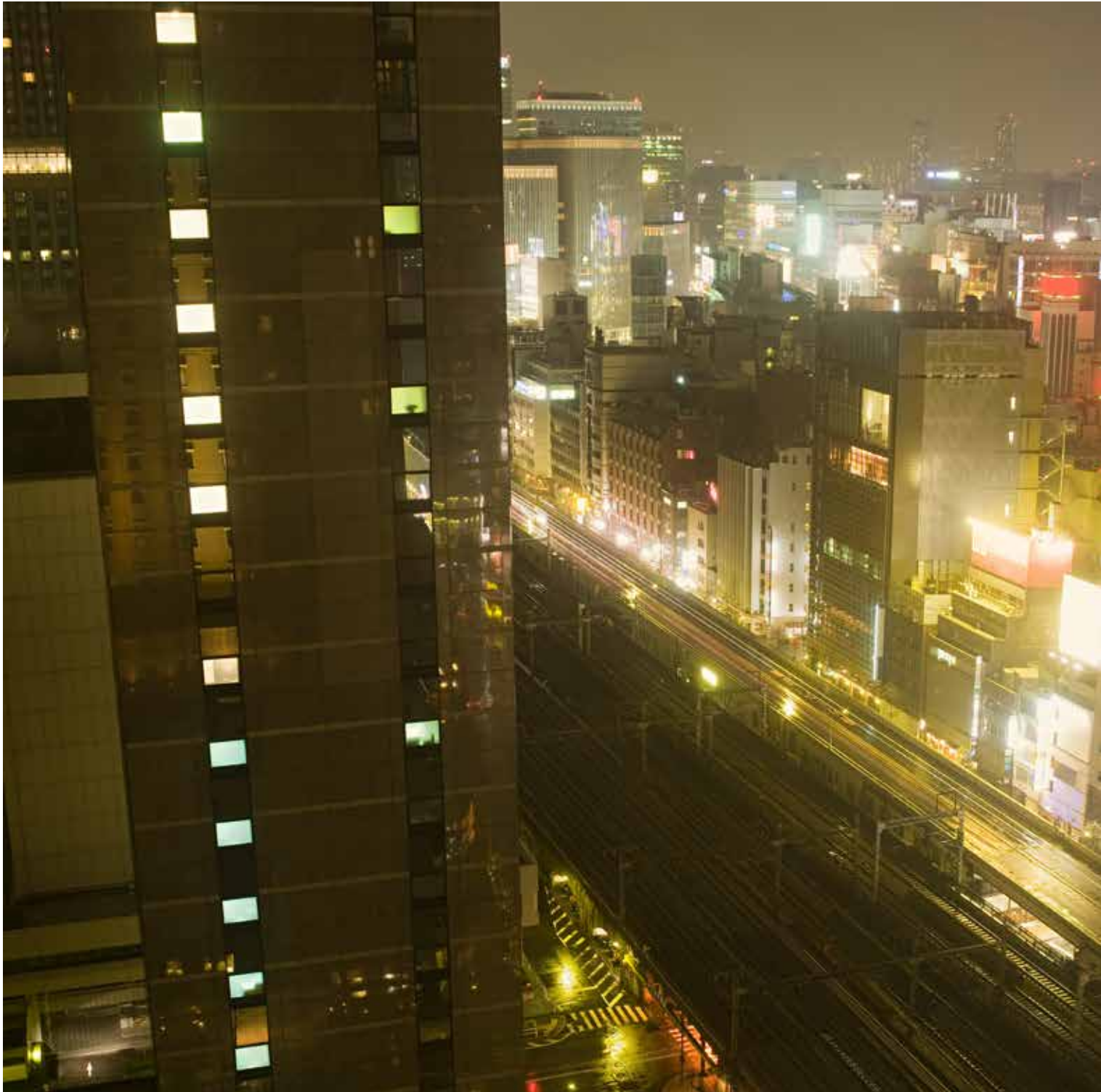
Not applicable.

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Panama

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Tax Administration of Panama (Dirección General de Ingresos, or DGI).

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

Articles 762-A to 762-K of the Tax Fiscal Code. In addition, articles 1 to 14 of the Transfer Pricing (TP) Regulation in force in Panama.

Law No. 33, enacted in 2010 and applicable as of fiscal year 2011, established the transfer pricing provisions in the Tax Code (Chapter IX of Title I of the Fourth Book) in articles 762-A to 762-K.

Law No. 52, which modified Law 33 and related sections of the Tax Code, was enacted in August 2012 and is applicable to fiscal years ending after August 2012.

Executive Decree No. 390, enacted in October 2016, repealed Executive Decree No. 958, with its regulations on transfer pricing, and is in the related sections of the Tax Code (Chapter IX of Title I of the Fourth Book).

▶ Section reference from local regulation

Refer to the section above.

2. OECD guidelines treatment/reference

Panama is not a member of the OECD. The OECD Guidelines can be relied upon for interpretation of the rules, as long as they do not contradict the Tax Code.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Yes

▶ Does transfer pricing documentation have to be prepared annually?

Yes The TP report and return must be prepared annually, updating all the information that allows a correct TP analysis. The local tax authorities require use of the most recent available financial information for the comparables and the tested party.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

Not applicable.

▶ Economic analysis

Not applicable.

▶ BEPS master and local files

Not applicable.

▶ CbCR

Has not been introduced in Panama.

c) Specific requirement(s)

▶ Treatment of domestic transactions

There is no documentation obligation for domestic transactions.

▶ Local language documentation requirement

The transfer pricing documentation needs to be submitted in the local language, per Decree 390, Article 10

▶ Safe harbor availability

There are no prescribed safe harbor rules in Panama's transfer pricing regulations.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Yes, but only regarding the master file.

▶ Coverage in terms of master and/or local files

Only the master file.

▶ Effective/expected commencement date

Taxpayers that file the TP return after 1 January 2017 must comply with the master file provisions.

Panama

► Material differences from OECD report template/format

There are no material differences between the OECD report template/format and the country's regulations.

► Sufficiency of BEPS Action 13 format report to achieve penalty protection

A transfer pricing study and return will also be required.

► CbCR notification and CbC report submission requirement

There is no CbCR notification and CbC report submission requirement in Panama.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Taxpayers must report on the income tax return whether they conducted related party transactions and disclose the total amount of such transactions, depending on their nature – that is, if they are income, purchases or other expense items.

b) Transfer pricing-specific returns

An information return (Form 930) on the transactions conducted with related parties resident abroad should be filed within six months of the close of the fiscal year.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► Corporate income tax return

Must be filed within three months of the close of the fiscal year; there is a possibility of a one-month extension.

► Other transfer pricing disclosures/return

Only Form 930, mentioned above.

► CbCR notification

Not applicable.

► CbC report preparation/submission

Not applicable.

b) Documentation preparation deadline

The TP documentation report must be finalized by the time the TP return is filed.

c) Documentation submission deadline

► Is there a statutory deadline for submission of transfer pricing documentation?

No.

► Time period/deadline for submission on tax authority request

The taxpayer has 45 days to submit the transfer pricing documentation report once requested by the tax authorities in an audit or inquiry. However, in case the tax authorities request the master file, the taxpayer has only 10 days, approximately, to submit it.

6. Transfer pricing methods

a) Applicability

► International transactions

Yes

► Domestic transactions

Not applicable.

b) Priority/preference of methods

The transfer pricing methods in Panama are CUP, resale price, CPM, profit split, residual profit split and TNMM. The selection of the method should be based on the characteristics of the transaction under analysis and the circumstances of the case and should aim to be the one that best respects the arm's-length principle.

7. Benchmarking requirements

a) Local vs. regional comparables

Under current regulations, local comparables prevail over international comparables. However, because of a lack of information on local comparables, international comparables are well-accepted by the tax authorities.

b) Single-year vs. multi-year analysis

Multiple-year testing for the comparables only; in practice, the number of years is three.

c) Use of interquartile range

Yes, interquartile range calculation using Excel Quartile formulas is acceptable.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

Fresh benchmarking search every year. A TP report must be prepared annually, updating all the information that allows a correct analysis. Additionally, in practice, local tax authorities expect to see the most recent comparable information and to use the most recent available financial information for the comparables and the tested party.

e) Simple vs. weighted average

Weighted average is common in practice.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief**a) Penalty exposure****► Consequences of failure to submit/late submission and/or incorrect disclosures**

Failure to file the transfer pricing return results in a penalty of 1% of the total amount of intercompany transactions. However, the penalty will not exceed USD1 million. For the penalty calculation, the gross amount of the transactions will be considered regardless of their nature (i.e., regardless of whether they are items of income, expense or deduction).

With regards to the transfer pricing documentation report, no express monetary penalties are specified in the TP rules when taxpayers fail to maintain contemporaneous transfer pricing documentation. Nevertheless, the monetary penalties for noncompliance set forth in the Tax Code should apply by default.

► If an adjustment is sustained, can penalties be assessed?

Transfer pricing income adjustments imposed by the DGI can result in a penalty of 10% over the unpaid taxes, plus interest (currently, 0.8% monthly interest).

► Is interest charged on penalties/payable on refund?

Refer to the section above.

b) Penalty relief

There is currently no penalty relief regime in place.

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

- Reconsideration request (first administrative instance)
- Administrative tax court (second administrative instance)
- Supreme Court (last instance).

9. Statute of limitations on transfer pricing assessments

The statute of limitations on assessments is three years from the date of filing the income tax return. The term is extended with the filing of an amended return.

10. Likelihood of transfer pricing scrutiny/related audit by local authority**► Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood of a general tax audit currently is categorized as medium, whereas the likelihood of a transfer pricing assessment as part of a general tax audit is high. As part of a general tax audit, the tax authorities usually review compliance with transfer pricing regulations. In the past couple of years, the DGI has requested transfer pricing documentation from most taxpayers annually regarding fiscal years 2013 through 2016 and has been performing tax audits regarding transfer pricing issues. For the last few years, the DGI has worked on creating a specialized transfer pricing unit. In the past five years, the DGI has been active in tax audits regarding transfer pricing issues.

► Likelihood of transfer pricing methodology being challenged (high/medium/low)

When transfer pricing is scrutinized, the likelihood that the methodology will be challenged is high. In practice, the DGI has been questioning the use of the transfer pricing methods (i.e., the TNMM instead of resale price or cost-plus) and comparables with losses, mainly.

► Likelihood of an adjustment if transfer pricing methodology is challenged (high/medium/low)

High, because in most audits the DGI challenges either the methodology or the comparables.

Panama

- ▶ **Specific transactions/industries/situations, if any, more likely to undergo audit**

None.

11. APA opportunity

- ▶ **Availability (unilateral/bilateral/multilateral)**

Currently, no APA program has been established. However, the DGI is working on draft regulations to be published in the near future.

- ▶ **Tenure**

Not applicable.

- ▶ **Rollback provisions**

Not applicable.

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Papua New Guinea

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Internal Revenue Commission (IRC)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

Division 15 of the Income Tax Act (ITA), "Transfer Pricing: Determination of the taxable income of certain persons from international transactions" and Papua New Guinea's double tax agreements (Division 15).

IRC Taxation Circular No. 2011/2 – "Commissioner General's interpretation and application of the Taxation Laws on Division 15 of the ITA 1959" (the Circular). The Circular was authorized by the Commissioner General on 21 December 2012 and applies to years commencing both before and after its date of issue (Paragraph 251).

▶ Section reference from local regulation

Division 15 does not require any formal control or relationship between the parties to an international agreement for it to apply. Under Section 197, Division 15 applies when the Commissioner General, having regard to any connection between the parties, is satisfied that the parties to an international agreement were not dealing with each other at arm's length and the consideration was less than the arm's-length consideration in respect of that supply.

2. OECD guidelines treatment/reference

Papua New Guinea (PNG) is not a member of the OECD.

The Circular states that the OECD Guidelines should be followed in the absence of guidance in terms of the Circular, the provisions of Division 15 or the double tax agreements entered into by PNG.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Yes.

▶ Does transfer pricing documentation have to be prepared annually?

The general requirements of the ITA require taxpayers to keep proper records relating to their income and expenses to enable the assessable income and allowable deductions to be ascertained. However, there is no specific statutory requirement to prepare and maintain transfer pricing documentation. The Circular notes that it is in the taxpayer's best interest to document how transfer prices have been determined, since adequate documentation is the best way to demonstrate that transfer prices are consistent with the arm's-length principle.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

There are no materiality limits specified in either Division 15 or the Circular. The Circular does note that preparation of documentation is time-consuming and expensive. It will therefore not be expected that taxpayers go to such lengths that the compliance costs are disproportionate to the nature, scope and complexity of the international agreements entered into.

▶ Economic analysis

No materiality limit.

▶ BEPS master and local files

There is no requirement for master or local files.

▶ CbCR

Consolidated group revenue of PGK2.3 billion.

c) Specific requirement(s)

▶ Treatment of domestic transactions

Not applicable.

▶ Local language documentation requirement

The notifications and reports need to be filed in English.

▶ Safe harbor availability

Multinational groups with consolidated group revenue of less than PGK2.3 billion are excluded from CbC notification and reporting.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Papua New Guinea

PNG has adopted BEPS Action 13 for transfer pricing documentation in terms of CbCR to the extent of articles 3 and 4.

▶ **Coverage in terms of master and/or local files**

Not applicable.

▶ **Effective/expected commencement date**

First CbC reports due to be lodged by 31 December 2018 for MNEs with a 31 December year-end.

▶ **Material differences from OECD report template/format**

No.

▶ **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

Yes.

▶ **CbCR notification and CbC report submission requirement**

There is a CbCR notification and CbC report submission requirement in Papua New Guinea. Each constituent entity resident in PNG is required to notify the Commissioner General whether it is the ultimate parent entity (UPE) or surrogate parent entity (SPE) by the last day of the reporting fiscal year of the MNE. If it is not a UPE or SPE, the constituent entity is required to notify the Commissioner General of the identity and tax residence of the reporting entity by the last day of the reporting fiscal year of the MNE. The CbC report needs to be lodged no later than 12 months after the reporting fiscal year of the MNE group. The CbC report is required to be in a form identical to and applying the definitions and instructions contained in the standard template set out at Annex III of Chapter V of the OECD Guidelines.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

The company income tax return requires completion of an International Dealings Schedule (IDS) to be included as part of the company return when the international related party dealings exceed PGK100,000 in value (excluding the capital value of any related party loans) or when loans with related parties have an aggregate capital value exceeding PGK2 million at any time during the year.

▶ The IDS requires disclosure of:

- a. International related party transaction types and quantum
- b. Countries with which the taxpayer has international related party transactions
- c. Percentage of transactions covered by contemporaneous documentation
- d. Transfer pricing methodologies selected and applied for each international related party type
- e. Details of branch operations

b) Transfer pricing-specific returns

Refer to the section above.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ **Corporate income tax return**

The statutory lodgment deadline is two months after the year-end (i.e., 28 February for 31 December balance dates). However, extensions are available if lodged under a tax agent's extension program. In this case, company returns with taxable incomes above PGK100,000 are required to be lodged by 30 June. All other taxable returns are required to be lodged by 31 August, and all nontaxable returns lodged by 31 October.

▶ **Other transfer pricing disclosures/return**

The IDS, if required, is included as part of the company tax return.

▶ **CbCR notification**

Required by the end of the reporting fiscal year of the MNE.

▶ **CbC report preparation/submission**

Required within 12 months following the end of the reporting fiscal year of the MNE.

b) Documentation preparation deadline

Disclosure of the methodology used and percentages of the related party dealings, supported by documentation, must be disclosed in the IDS. It is therefore recommended that if the documentation has not been prepared at or before the time of the actual transaction, it should be available by the due date for lodging the company tax return.

c) Documentation submission deadline

- ▶ **Is there a statutory deadline for submission of transfer pricing documentation?**

Transfer pricing documentation is not required to be lodged unless a specific request is received from the Commissioner General. An exception applies for management fees in excess of the statutory limit of 2%, in which case the documentation must be filed with the annual income tax return.

- ▶ **Time period/deadline for submission on tax authority request**

The normal time limit for responding to a request for information is 14 days.

6. Transfer pricing methods

a) Applicability

- ▶ International transactions

There are no methods prescribed in the legislation. Per the Circular, the appropriate method per the OECD Guidelines should be acceptable.

- ▶ Domestic transactions

Not applicable.

b) Priority/preference of methods

Division 15 and the double tax agreements entered into by PNG do not prescribe any particular methodology for ascertaining an arm's-length consideration. Given that there is no prescribed legislative preference, the Commissioner General generally would seek to use the most appropriate method, per the OECD Guidelines.

7. Benchmarking requirements

a) Local vs. regional comparables

Because limited local data is available, use of regional data would be acceptable with appropriate adjustments for local conditions if relevant.

b) Single-year vs. multi-year analysis

Per the Circular, multi-year data analysis should be used.

c) Use of interquartile range

Per the Circular, the interquartile range may be used to enhance reliability of the analysis.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

There is no specific guidance provided. Per the OECD Guidelines, prior-year data may be used, provided it is reasonable to conclude that conditions have not changed.

e) Simple vs. weighted average

None specified; it depends on the reliability of data.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ **Consequences of failure to submit/late submission and/or incorrect disclosures**

Failure to furnish any return or information by the required date renders the taxpayer liable to a fine of not less than PGK500 and not exceeding PGK5,000 plus PGK50 for each day during which the failure continues. When there are adjustments to tax payable as a result of incorrect disclosures, the penalty exposure is noted below.

- ▶ **If an adjustment is sustained, can penalties be assessed?**

The ITA does not impose specific penalties in respect to non-arm's-length pricing practices, and the general additional tax and penalty provisions will apply to default, evasion or omission related to transfer pricing.

The penalty, additional tax and offense provisions applicable in the event of default or omission in the completion of the tax return or evasion of taxation contained in the act stipulate a liability for additional tax or penalty of double the difference between the tax properly payable and the tax that would be payable based on the return as lodged. The Commissioner General has the discretion to remit the additional tax either in whole or in part. If an incorrect return is lodged, the taxpayer may be prosecuted and liable for a fine not less than PGK1,000 and not exceeding PGK50,000. In addition, the court may order the taxpayer to pay to the Commissioner General a sum not exceeding double the amount of income tax or dividend

Papua New Guinea

(withholding) tax that would have been avoided if the statement in the return had been accepted as correct. When additional tax is imposed under prosecution, the amount of that additional tax will reduce the amount of additional tax imposed by the Commissioner General.

► Is interest charged on penalties/payable on refund?

There is no provision for interest to be paid on refunds of overpaid tax or penalties.

b) Penalty relief

The Commissioner General has the discretion to remit the penalty amount for any reasons considered sufficient.

Taxpayers dissatisfied with an assessment may lodge an objection within 60 days of being served notice of the assessment. A taxpayer dissatisfied with a decision on the objection may, within 60 days after service of the notice, apply for a review of the decision by the Review Tribunal or file an appeal with the National Court.

9. Statute of limitations on transfer pricing assessments

There generally is no statute of limitations with respect to transfer pricing adjustments.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► Likelihood of transfer pricing-related audits (*high/medium/low*)

The likelihood of an audit is low, because limited resources are available to the IRC. But if an audit is initiated, the likelihood of transfer pricing being reviewed as part of an audit is characterized as high.

► Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

It depends on the supporting documentation available. If the IRC considers that a different methodology should be used and there is insufficient documentation to support the methodology adopted, there would be a high risk that the methodology would be challenged.

► Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

If the IRC applies a different methodology that results in increased tax liability and there is insufficient documentation to dispute that methodology, the risk of an adjustment is high.

► Specific transactions/industries/situations, if any, more likely to undergo audit

The Commissioner General may pay closer attention to a transaction involving an associated entity resident in a country with lower tax rates than PNG. The perception exists that transactions involving low-tax jurisdictions are often motivated by tax reasons, rather than strictly commercial reasons. This will be the case, particularly, when the PNG entity has ongoing tax losses as a result of its dealings with a related party in a lower-tax jurisdiction.

11. APA opportunity

► Availability (unilateral/bilateral/multilateral)

The Commissioner General supports having an APA program operating in PNG, but no current APA program exists.

► Tenure

Not applicable.

► Rollback provisions

Not applicable.

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Paraguay

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Paraguay Tax Authority (Subsecretaría de Estado de Tributación)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

Paraguay does not have a specific transfer pricing law; however, in October 2013, the National Congress enacted a new tax law that states a general disposition related to sale price adjustments (Law No. 5061/13). This new disposition is considered a kind of transfer pricing regulation and allows the Paraguay Tax Authority to amend prices related to export operations for corporate income tax purposes only. Decree No. 1.832/2014 establishes the sale price adjustments on soybeans and their derivatives. The Paraguay Tax Authority could include other products in the future.

▶ Section reference from local regulation

Refer to the section above.

2. OECD guidelines treatment/reference

Paraguay is not a member of the OECD. In February 2017, Paraguay became an associate member of the OECD Development Centre.

It also doesn't refer to or follow the OECD Guidelines in practice, given that it doesn't have a specific transfer pricing law.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

No.

▶ Does transfer pricing documentation have to be prepared annually?

Not applicable.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

There is no materiality limit.

▶ Economic analysis

There is no materiality limit.

▶ BEPS master and local files

Not applicable.

▶ CbCR

CbCR has not been introduced in Paraguay.

c) Specific requirement(s)

▶ Treatment of domestic transactions

Not applicable.

▶ Local language documentation requirement

Not applicable.

▶ Safe harbor availability

Not applicable.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No.

▶ Coverage in terms of master and/or local files

Not applicable.

▶ Effective/expected commencement date

Not applicable.

▶ Material differences from OECD report template/format

Not applicable.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

Not applicable.

Paraguay

▶ CbCR notification and CbC report submission requirement

There is no CbCR notification and CbC report submission requirement in Paraguay.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Not applicable.

b) Transfer pricing-specific returns

Not applicable.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ Corporate income tax return

31 December

▶ Other transfer pricing disclosures/return

Not applicable.

▶ CbCR notification

Not applicable.

▶ CbC report preparation/submission

Not applicable.

b) Documentation preparation deadline

Not applicable.

c) Documentation submission deadline

▶ Is there a statutory deadline for submission of transfer pricing documentation?

Not applicable.

▶ Time period/deadline for submission on tax authority request

Not applicable.

6. Transfer pricing methods

a) Applicability

▶ International transactions

Not applicable.

▶ Domestic transactions

Not applicable.

b) Priority/preference of methods

Not applicable.

7. Benchmarking requirements

a) Local vs. regional comparables

Local comparables prevail over international comparables.

b) Single-year vs. multi-year analysis

Multiple-year analysis is preferred; three years is the common practice.

c) Use of interquartile range

Yes, interquartile range calculation using Excel Quartile formulas is acceptable.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

A fresh benchmarking search is not required every year; roll-forward/updates are acceptable.

e) Simple vs. weighted average

The weighted average for arm's-length analysis is preferred. In practice, three-year weighted average arm's-length ranges are frequently calculated.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

▶ Consequences of failure to submit/late submission and/or incorrect disclosures

Not applicable.

- ▶ If an adjustment is sustained, can penalties be assessed?

Not applicable.

- ▶ Is interest charged on penalties/payable on refund?

Not applicable.

b) Penalty relief

Not applicable.

9. Statute of limitations on transfer pricing assessments

Not applicable.

10. Likelihood of transfer pricing scrutiny/ related audit by local authority

- ▶ Likelihood of transfer pricing-related audits (*high/medium/low*)

Low, as there is no specific transfer pricing law in place.

- ▶ Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

Not applicable.

- ▶ Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

Not applicable.

- ▶ Specific transactions/industries/situations, if any, more likely to undergo audit

None.

11. APA opportunity

- ▶ Availability (unilateral/bilateral/multilateral)

None specified

- ▶ Tenure

Not applicable.

- ▶ Rollback provisions

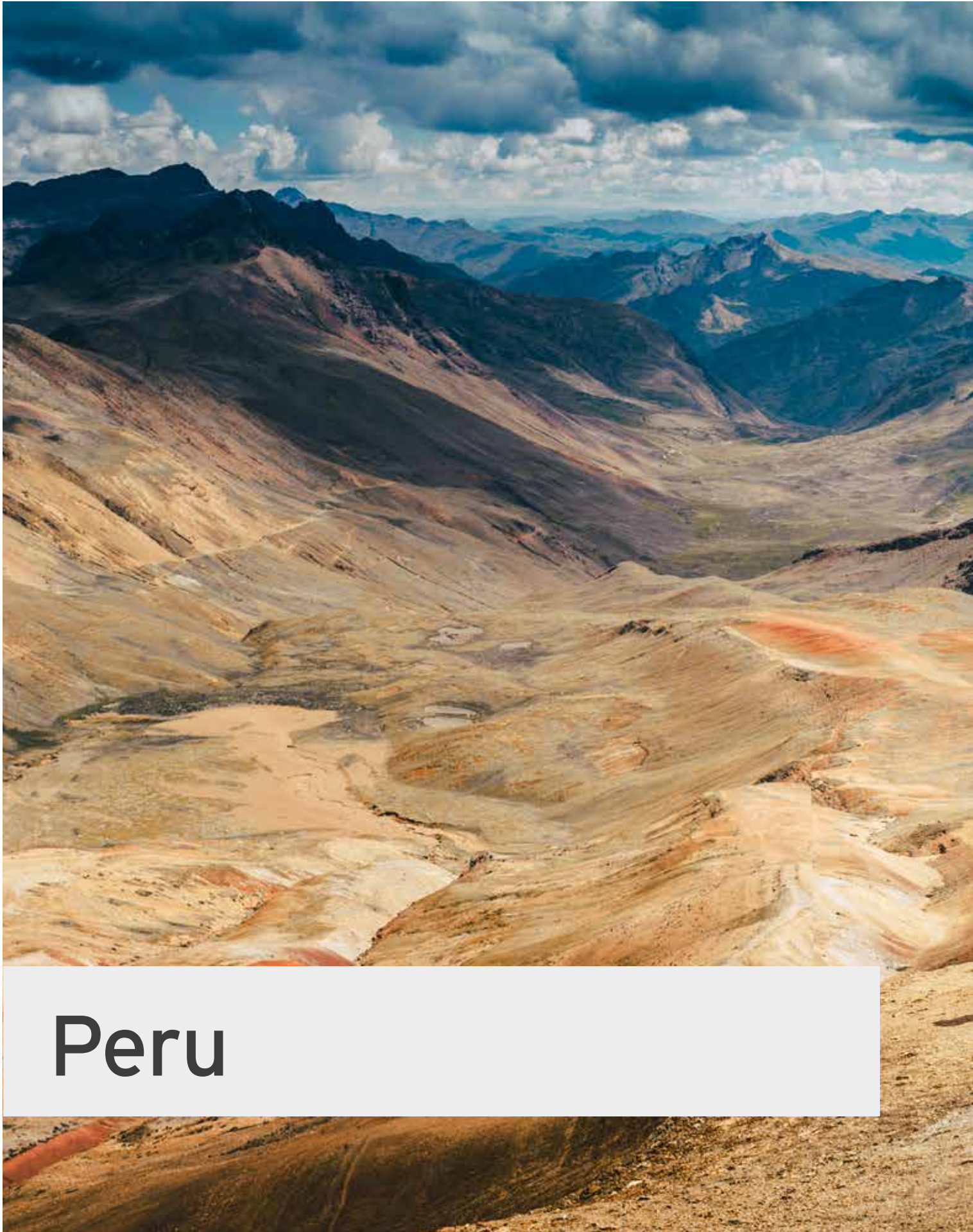
Not applicable.

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Peru

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

National Superintendency of Tax Administration (Superintendencia Nacional de Administración Tributaria, or SUNAT)

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

Article 32 (Item 4) and Article 32-A of the Peruvian Income Tax Law (PITL) and Article 24 and Chapter XIX (articles 108 to 119) of the PITL detail transfer pricing (TP) regulations in Peru.

TP rules have been effective in Peru since 1 January 2001. Over the years, these rules have undergone several changes with amendments to the PITL and Tax Code. Most recently, on 31 December 2016, Legislative Decree 1312 was published, amending the Peruvian TP reporting requirements by implementing the changes proposed by the OECD under the BEPS Action 13 final report, in force since 1 January 2017.

Peruvian TP rules apply both to cross-border and domestic transactions between related parties and all transactions with residents in tax haven jurisdictions.

The TP adjustments are applicable solely when the value agreed upon by the related parties determines a lower taxable income than the one at arm's length, or in any other case, if the tax authority considers that the TP adjustment affects the tax determined in Peru for another related party transaction. The regulations consider that a lower amount of income tax is determined when, among other conditions:

- A deferral of income is evidenced.
- Higher tax losses have been determined than those that would have accrued at arm's length.

► Section reference from local regulation

Refer to the section above.

2. OECD guidelines treatment/reference

Peru is not an OECD member country. The PITL refers to the OECD Guidelines as a source of interpretation for TP analysis, as long as they do not contradict the PITL.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

Peru has TP documentation guidelines/rules.

► Does transfer pricing documentation have to be prepared annually?

Peru requires TP documentation preparation annually under its local country regulations. All taxpayers that exceed the threshold levels need to prepare and submit a full TP documentation report for each fiscal year.

b) Materiality limit/thresholds

► Transfer pricing documentation

As of 2017, Peruvian TP formal obligations are aligned with the three-tiered proposal from BEPS, subject to the following conditions:

- Local file: the local file documentation requirement applies only to taxpayers whose annual revenue for the fiscal year exceeds 2,300 tax units (approximately USD2.9 million). The local file provides detailed information relating to intercompany transactions (both domestic and cross-border) and transactions between local taxpayers and residents in tax haven jurisdictions. The first local file is required for FY 2016 and should be filed in April 2018.
- Master file: taxpayers that are constituents of a group of companies (both domestic and multinational) and have an annual revenue for the fiscal year of more than 20,000 tax units (approximately USD25 million) will be required to submit a master file with high-level information of the group's business operations, its TP policies and its global allocation of income and economic activity. The master file requirements in Peru are largely consistent with those under Action 13 of the BEPS Action Plan. The information required in the master file provides a blueprint of the group and contains relevant information that has been grouped into five categories: (1) the group's organizational structure; (2) a description of its business or businesses; (3) the group's intangibles; (4) the group's intercompany financial activities; and (5) the group's financial and tax positions.

► Economic analysis

The local file documentation requirement will apply only to taxpayers whose annual revenue for the fiscal year exceeds 2,300 tax units (approximately USD2.9 million). SUNAT's ruling has now provided that taxpayers that exceed that threshold will only be required to prepare and submit the local file if, during the year concerned, either of the following conditions are met:

- Annual related party transactions in aggregate are equal to or greater than 100 tax units (approximately USD129,000) but less than 400 tax units (approximately USD515,000). In this case, SUNAT only requests general information about the related parties involved and the transactions analyzed.
- Annual related party transactions in aggregate are equal to or greater than 400 tax units (approximately USD515,000). In this case, the local file requirements are largely consistent with those under Action 13 of the BEPS Action Plan. A local file with detailed information will also be required when the taxpayer has intercompany transactions involving the transfer of goods that have a fair market value lower than their cost basis, regardless of the amount of the transaction.

► BEPS master and local files

Refer to the section above.

► CbCR

In Peru, a CbC report should be filed annually by resident parent entities of MNE groups with annual revenue, as reflected in the consolidated financial statements for the immediately preceding fiscal year, equal or greater than PEN2.7 billion (approximately USD830 million). For these purposes, an MNE has been defined to include two or more enterprises or entities that are resident of different countries or territories, where at least one of them is resident in Peru.

The CbC report requires aggregate tax jurisdiction-wide information relating to the global allocation of the revenue, profits (or losses), income taxes paid (and accrued) and certain indicators of the location of economic activity among tax jurisdictions in which the MNE group operates. The report also requires a listing of all the constituent entities of the MNE group, including the tax jurisdiction of incorporation, where different from the tax jurisdiction of residence, as well as the nature of the main business activities carried out by that constituent entity.

Resident entities that are constituents of a foreign-based MNE group whose consolidated annual revenue exceeds the threshold

will also be required to file the CbCR under the following circumstances:

- The ultimate parent of the MNE group is not required to file the CbCR in its country of residence.
- The CbCR is submitted to the country of residence of the ultimate parent company, but Peru has not established an Information Exchange Mechanism with that jurisdiction.
- The parent company has submitted the CbCR, and even though Peru has an Information Exchange Mechanism with that jurisdiction, there has been systematic failure to exchange information that has been communicated to the resident constituent entity by SUNAT.
- The resident constituent entity has been designated by the foreign-based MNE group as the alternate reporting entity (which files the CbCR instead of the ultimate parent company) and such designation is properly communicated to SUNAT.

c) Specific requirement(s)

► Treatment of domestic transactions

There is a documentation obligation for domestic transactions.

► Local language documentation requirement

The TP documentation needs to be submitted in the local language. According to Legislative Decree 1312, in general, the master file, the local file and the CbC report should be translated to Spanish and kept for five years or during the statute of limitations period established by the Tax Code, whichever is longer.

► Safe harbor availability

There is no requirement for performing economic analysis or safe harbor availability.

d) BEPS Action 13 implementation overview

► Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

In December 2016, through Legislative Decree 1312, Peru introduced a three-tiered TP documentation structure, consisting of a local file, a master file and a CbC report, as set out in the final reports under Action 13 of the OECD BEPS Action Plan. Subsequently, on 17 November 2017, the Peruvian Government issued Supreme Decree 333-2007-EF, which approved the regulations with guidance for the preparation and submission of the local file, master file and CbC report.

▶ **Coverage in terms of master and/or local files**

Both the master and local files are covered.

▶ **Effective/expected commencement date**

The law is effective for taxable years beginning on or after 1 January 2017.

▶ **Material differences from OECD report template/format**

There are no material differences between the OECD report template/format and Peru's regulations

▶ **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

Refer to the section "Penalty relief."

▶ **CbCR notification and CbC report submission requirement**

There is no requirement of a CbCR notification; however, there is a CbC report submission requirement in Peru.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

The main details to be disclosed in the TP information return include the amount of the transactions, the TP method selected and the related party with which the transactions were made, as well as the results of the tested party, the interquartile range of selected comparables and the amount of the TP adjustments.

b) Transfer pricing-specific returns

Up to FY 2015, an annual TP informative return had to be filed by taxpayers in June, if they met the following conditions:

- ▶ The amount of intercompany transactions exceeds PEN200,000.
- ▶ The company has been engaged in transactions from, to or through a low-tax jurisdiction for which the market value is less than the computable cost.

From FY 2016, the reporting requirements are as follows:

- ▶ **Local file:** the local file documentation requirement will apply only to taxpayers whose annual revenue for the fiscal year exceeds 2,300 tax units (approximately USD2.9 million). SUNAT's ruling has now provided that taxpayers

that exceed that threshold will only be required to prepare and submit the local file if, during the year concerned, either of the following conditions are met:

- ▶ Annual related party transactions in aggregate are equal to or greater than 100 tax units (approximately USD129,000) but less than 400 tax units (approximately USD515,000). In this case, SUNAT only requests general information about the related parties involved and the transactions analyzed.
- ▶ Annual related party transactions in aggregate are equal to or greater than 400 tax units (approximately USD515,000). In this case, the local file requirements are largely consistent with those under Action 13 of the BEPS Action Plan. A local file with detailed information will also be required when the taxpayer has intercompany transactions involving the transfer of goods that have a fair market value lower than their cost basis, regardless of the amount of the transaction.
- ▶ **Master file:** taxpayers that are constituents of a group of companies (both domestic and multinational), whose annual revenue for the fiscal year exceeds 20,000 tax units (approximately USD25 million).
- ▶ The CbC report is to be filed annually by resident parent entities of MNE groups with annual revenue, as reflected in the consolidated financial statements for the immediately preceding year, equal to or greater than PEN2.7 billion (approximately USD830 million).

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ **Corporate income tax return**

End of March/beginning of April based on a schedule.

▶ **Other transfer pricing disclosures/return**

The date for filing of the first local file for FY 2016 is in April 2018. Beginning in FY 2017, the submission deadline is in June of the following year. The exact filing date for each taxpayer depends on an official schedule based on the taxpayer's identification number.

▶ **CbCR notification**

There is no requirement.

► **CbC report preparation/submission**

Yet to be disclosed.

b) Documentation preparation deadline

The date for filing of the first local file for FY 2016 is in April 2018. From FY 2017 and onward, the submission deadline is in June of the following year. The exact filing date for each taxpayer depends on an official schedule based on the taxpayer's identification number.

c) Documentation submission deadline

► **Is there a statutory deadline for submission of transfer pricing documentation?**

The date for filing of the first local file for FY 2016 is in April 2018. Beginning in FY 2017, the submission deadline is in June of the following year. The exact filing date for each taxpayer depends on an official schedule based on the taxpayer's identification number.

► **Time period/deadline for submission on tax authority request**

On the assumption that the taxpayer did not file the TP documentation when it was due, the time given to submit it depends on each audit or inquiry.

6. Transfer pricing methods

a) Applicability

► International transactions

Yes.

► Domestic transactions

Yes.

b) Priority/preference of methods

Peruvian law implicitly adopts a "best method" rule, unless the transaction being evaluated is a sale or purchase of commodities or their derivatives. Under Peruvian legislation, the TP methods identified are CUP, resale price, cost-plus, profit split, residual profit split and TNMM.

For cross-border transactions involving commodities and other products whose prices are set by reference to commodity prices, the CUP method can be the most appropriate TP method. These rules establish that the arm's-length price for Peruvian income tax purposes shall be determined by reference to the quoted price of (i) the date of shipment of the commodities exported or (ii) the date of disembarkation of the commodities imported.

Additional guidance and clarification are expected to be established in forthcoming tax regulations as to the products that will be covered by these new TP rules, the commodity prices and quotes to be considered, the international market, the commodity exchanges or similar markets that may be taken as a reference, and the adjustments that shall be accepted to reflect the commodity features and the economically relevant characteristics of the particular transaction.

7. Benchmarking requirements

a) Local vs. regional comparables

Use of local, regional and global comparable operations are accepted by the law.

b) Single-year vs. multi-year analysis

Multi-year testing is preferred.

c) Use of interquartile range

Use of interquartile range is mandatory for the application of TP methods, as set forth by the PITL, whenever there are two or more comparable operations.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

The regulations do not refer to this point. However, a good practice is to update the financials of the comparables for searches undertaken a year before and to conduct a full fresh benchmarking study for searches that have been undertaken two or more years previously.

e) Simple vs. weighted average

The weighted average is preferred.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

► Consequences of failure to submit/late submission and/or incorrect disclosures

Noncompliance with the obligation to file a TP local file informative return is penalized with a fine of 0.6% of the company's net income for the year preceding that which is under scrutiny. The penalty cannot be less than 10% of a tax unit or more than 25 tax units. Likewise, noncompliance with the obligation to file the TP return according to the dates established by SUNAT subjects the taxpayer to a fine of 0.6% of the company's net income for the year preceding that which is under scrutiny. The penalty cannot be less than 10% of a tax unit or more than 25 tax units.

► If an adjustment is sustained, can penalties be assessed?

The adjustments to annual taxable income resulting from the tax authority's application of the TP provisions will be subject to additional penalties of up to 50% of the resulting tax deficiency (income misstatement penalties).

► Is interest charged on penalties/payable on refund?

The annual interest rate on any underpayment of tax on penalties is 14.4%, whereas the annual interest rate on any overpayment of tax on refund is 6.0%.

b) Penalty relief

The penalty reductions that a taxpayer can be subject to for not complying with the obligation to have a TP technical study or present the TP information return are:

- A 100% penalty reduction if the taxpayer files the TP informative return after the due date but before it is detected and compelled to do so by SUNAT
- An 80% (with a TP study) or 90% (with a TP return) penalty reduction if the taxpayer rectifies the infraction and pays the corresponding fine within the time frame established by SUNAT
- A 50% (with a TP study) or 80% (with a TP return) penalty reduction if the taxpayer rectifies the infraction but does not pay the corresponding fine within the time frame established by SUNAT

9. Statute of limitations on transfer pricing assessments

According to articles 87-7 and 43 of the Peruvian Tax Code, the statute of limitations for income tax assessments is four years after 1 January of the year that follows the year the annual income tax return is due (generally, 31 March) and six years if returns were never filed.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► Likelihood of transfer pricing-related audits (*high/medium/low*)

The likelihood of an annual tax audit is characterized as medium, as is the likelihood of TP issues being reviewed as part of a general audit. From an estimate of 3,500 taxpayers who are subject to TP documentation requirements, around 50 are being audited. However, SUNAT is duplicating the number of auditors to audit more than 100 taxpayers per year.

► Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

The Peruvian tax administration has already initiated TP audits. Also, it has issued letters requesting that taxpayers amend their tax returns based on the results of the TP studies previously presented. The likelihood that the TP methodology will be challenged during a TP review is characterized as high.

It is expected that SUNAT will significantly increase its TP audits during the coming years.

► Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

High (refer to the section above for details)

► Specific transactions/industries/situations, if any, more likely to undergo audit

The mining industry is more likely to undergo audit given that 60% of Peru's exports are minerals and approximately 30% are sold to related parties.

11. APA opportunity

► **Availability (unilateral/bilateral/multilateral)**

Since 2013, unilateral and multilateral APAs have been available for all transactions (cross-border and domestic transactions between related parties and with tax haven residents). Multilateral APAs will be available only for countries that have entered into double tax avoidance treaties with the Peruvian fiscal administration. Draft regulations detailing the procedures to be followed were recently issued.

► **Tenure**

APAs would be agreed upon for a maximum term of four years.

► **Rollback provisions**

None specified.

Contact

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Philippines

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Bureau of Internal Revenue (BIR)

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

Section 50 of the National Internal Revenue Code of 1997, as amended (Tax Code), gives the Commissioner of Internal Revenue the power to allocate income and expenses between or among related parties and taxpayers or make transfer pricing adjustments to reflect the true taxable income of taxpayers.

To implement Section 50, the BIR came out with several issuances expounding on the power of the Commissioner to allocate income and expenses among related taxpayers and prescribing the arm's-length standard for the pricing of transactions between or among related taxpayers, as well as the methods for determining the arm's-length price for related party transactions.

On 29 March 2012, the BIR issued Revenue Memorandum Order (RMO) No. 5-2012, prescribing guidelines and policies under the Performance Benchmarking Method. Under this RMO, benchmarking shall be done separately for individual and corporate taxpayers. The BIR will categorize taxpayers as high-risk (more than 30% below the benchmark), medium-risk (16% to 30% below the benchmark) and low-risk (15% or less below the benchmark). Taxpayers classified as high-risk shall be the top priority for enforcement actions such as an audit.

On 23 January 2013, the BIR released Revenue Regulations (RR) No. 2-2013, known as the Transfer Pricing Guidelines. The regulations provide guidelines in determining the appropriate revenues and taxable income of parties in the controlled transaction by prescribing the arm's-length principle as the standard to determine transfer prices of related parties. The transfer pricing regulations apply to cross-border transactions between associated enterprises and domestic transactions between associated enterprises.

The transfer pricing regulations took effect on 9 February 2013.

► Section reference from local regulation

Refer to the section above.

2. OECD guidelines treatment/reference

The Philippines is not a member of the OECD.

The transfer pricing regulations are largely based on the OECD Guidelines and refer to them for further guidance and examples

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

Yes, there are transfer pricing documentation rules in the Philippines.

► Does transfer pricing documentation have to be prepared annually?

Transfer pricing documentation has to be prepared annually under local country regulations. RR 2-2013 is silent on the manner of preparation but, being largely based on the OECD Guidelines, the preparation of transfer pricing documentation on year one and benchmarking updates on years two and three should be sufficient.

b) Materiality limit/thresholds

► Transfer pricing documentation

None specified.

► Economic analysis

None specified.

► BEPS master and local files

Not applicable.

► CbCR

Not applicable.

c) Specific requirement(s)

► Treatment of domestic transactions

There is a documentation obligation for domestic transactions.

► **Local language documentation requirement**

The transfer pricing documentation is prepared in English, which is an official business language in the Philippines.

► **Safe harbor availability**

There is no specific safe harbor available.

d) BEPS Action 13 implementation overview

► **Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?**

The Philippines has not yet adopted BEPS Action 13 for transfer pricing documentation.

► **Coverage in terms of master and/or local files**

Not applicable.

► **Effective/expected commencement date**

Not applicable.

► **Material differences from OECD report template/format**

Not applicable.

► **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

Not applicable.

► **CbCR notification and CbC report submission requirement**

There is no CbCR notification or CbC report submission requirement in the Philippines.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Related party disclosures are required only in the notes to the audited financial statements, which must be filed along with the annual income tax return.

b) Transfer pricing-specific returns

There is no requirement for filing transfer pricing-specific returns.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► **Corporate income tax return**

Fifteenth day of the fourth month following the close of the taxable year.

► **Other transfer pricing disclosures/return**

Not applicable.

► **CbCR notification**

Not applicable.

► **CbC report preparation/submission**

Not applicable.

b) Documentation preparation deadline

The transfer pricing regulations require contemporaneous documentation to be maintained and retained. It is contemporaneous if it exists or is brought into existence at the time the associated enterprises develop or implement any arrangement that might raise transfer pricing issues. These arrangements should be reviewed when preparing tax returns.

c) Documentation submission deadline

► **Is there a statutory deadline for submission of transfer pricing documentation?**

Transfer pricing documentation is not required to be submitted together with the income tax return but should be submitted to the BIR when authorities require or request it.

► **Time period/deadline for submission on tax authority request**

The documentation should be immediately available because of the requirement for contemporaneous documentation.

6. Transfer pricing methods

a) Applicability

► **International transactions**

Yes.

- ▶ Domestic transactions

Yes.

b) Priority/preference of methods

The transfer pricing regulations adopt the methods to determine the arm's-length price under the OECD Guidelines (i.e., CUP, resale price, cost-plus, profit split and TNMM).

There is no specific preference for any one method. In determining the arm's-length result, the most appropriate method for a particular case shall be used.

7. Benchmarking requirements

a) Local vs. regional comparables

There is no legal requirement for local country comparables, but local comparable companies are used on the grounds that the BIR requires most reliable companies and uses local companies in determining the arm's-length price of intercompany transactions. Asia-Pacific comparables would be acceptable if it can be shown that there are no local comparables available.

b) Single-year vs. multi-year analysis

The regulations do not specify, but three-year testing is generally used.

c) Use of interquartile range

The regulations do not specify, but this is generally used in practice.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

RR 2-2013 is silent on the manner of preparation but, being largely based on the OECD Guidelines, the preparation of transfer pricing documentation on year one and update of the financials on years two and three should be sufficient as long as the operating conditions remain unchanged.

e) Simple vs. weighted average

The regulations do not specify; either simple or weighted average may be used for arm's-length analysis.

f) Other specific benchmarking criteria, if any

The regulations do not specify, but OECD-based independence and benchmarking criteria should be acceptable.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures

The transfer pricing regulations adopt the provisions of the Tax Code and other applicable laws in imposing penalties on any person who fails to comply with or violates the regulations.

- ▶ If an adjustment is sustained, can penalties be assessed?

In the case of a deficiency assessment due to a transfer pricing adjustment, the general penalties apply: a 25% surcharge (50% in fraud cases) and 20% interest per annum. Effective January 1, 2018, the deficiency interest is 12% per annum.

- ▶ Is interest charged on penalties/payable on refund?

Delinquency interest at the rate of 20% per year may also be imposed. Effective January 1, 2018, the delinquency interest is 12% per annum.

b) Penalty relief

There is no penalty relief regime in the transfer pricing regulations. The regulations provide for a MAP mechanism, but this has not been implemented.

9. Statute of limitations on transfer pricing assessments

The general statute of limitations applies, which is three years after the last day prescribed by law for filing the return. In cases of fraud with the intent to evade tax, the statute of limitations is 10 years from the discovery of fraud.

10. Frequency of transfer pricing scrutiny/related audit by local authority

- ▶ Likelihood of transfer pricing-related audits (*high/medium/low*)

High. The BIR has included transfer pricing audits in its priority programs for 2018.

- ▶ Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

High. If transfer pricing is reviewed, then the transfer pricing methodology may be challenged.

Philippines

► **Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)**

High, for the same reason as above.

► **Specific transactions/industries/situations, if any, more likely to undergo audit**

None specified.

11. APA opportunity

► **Availability (unilateral/bilateral/multilateral)**

The transfer pricing regulations give taxpayers the option to use an APA for their controlled transactions and MAP relief as prescribed under the Philippines' bilateral tax treaties. However, these have not been implemented yet, as the BIR has not yet issued separate guidelines for the application of an APA and for MAP relief.

► **Tenure**

Not applicable. APA guidelines have not been issued.

► **Rollback provisions**

Not applicable. APA guidelines have not been issued.

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Poland

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

- ▶ Tax Inspection Department in the Ministry of Finance, which coordinates and supervises the work of the local Tax Inspection offices and bureaus
- ▶ Tax System Department in the Ministry of Finance, which is a newly created department dealing with tax avoidance, APAs and supervision of the uniform application of the tax law

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

Tax laws and decrees that govern transfer pricing (TP) in Poland are:

- ▶ Corporate Income Tax (CIT) Act, dated 15 February 1992: articles 9a, 11 and 19 Section 4 (Journal of Laws 2014, Item 851, as amended)
- ▶ Personal Income Tax (PIT) Act, dated 26 July 1991: articles 25, 25a and 30d (Journal of Laws 2012, Item 361, as amended)
- ▶ Tax Ordinance Act, dated 29 August 1997: articles 20a-20r (Journal of Laws 2015, Item 613, as amended)
- ▶ Ministry of Finance Decree of 9 April 2013, regarding the countries and territories applying harmful tax competition rules for the purpose of corporate income tax (Journal of Laws 2015, No. 600)
- ▶ Ministry of Finance Decree of 9 April 2013, regarding the countries and territories applying harmful tax competition rules for the purpose of personal income tax (Journal of Laws 2015, No. 599)
- ▶ Ministry of Finance Decree of 10 September 2009, regarding the method and procedure for assessing corporate taxpayers' income by estimating the prices in transactions conducted by these taxpayers, and regarding the method and procedure for eliminating double taxation of taxpayers in case of related parties' income adjustment (Journal of Laws 2014, Item 1186, as amended)
- ▶ Ministry of Finance Decree of 10 September 2009, regarding the method and procedure for assessing personal

taxpayers' income by estimating the prices in transactions conducted by these taxpayers, and regarding the method and procedure for eliminating double taxation of taxpayers in case of related parties' income adjustment (Journal of Laws 2014, Item 1176, as amended) – hereinafter referred to as the TP Decree

- ▶ TP Decree of the Minister of Development and Finance from 12 September 2017, regarding the information to be included in the tax documentation with regards to corporate income tax

Article 11 of the CIT Act and Article 25 of the PIT Act introduce the arm's-length principle, providing a definition of "affiliation" and the criteria for determining the size of direct and indirect shares held in another entity. Documentation requirements can be found in Article 9a of the CIT Act and Article 25a of the PIT Act. Transfer pricing penalties are defined in Article 19, Clause 4 of the CIT Act and Article 30d of the PIT Act.

Article 9a of the CIT Act and Article 25a of the PIT Act provide detailed guidance regarding transactions that are subject to documentation requirements, including the value limits and categories of such transactions.

According to Article 9a of the CIT Act and Article 25a of the PIT Act, the documentation requirements also encompass transactions in which payment is made directly or indirectly to an entity considered to be in a tax haven. The list of these territories and countries is presented in the Ministry of Finance Decree of 9 April 2013, regarding the countries and territories applying harmful tax competition rules. The decree was issued separately for personal and corporate taxation purposes.

As of 1 January 2007, documentation requirements also apply to Poland-based permanent establishments of foreign companies.

Since January 2015, documentation requirements have also applied to partnerships, joint-venture agreements and agreements establishing partnerships.

New TP regulations, introducing BEPS Action 13 guidelines to Polish legislation, came into force in January 2017 (new requirements regarding CbCR are binding as of January 2016). The respective regulations result in increased transfer pricing requirements (as mentioned below).

▶ Section reference from local regulation

Refer to the section above.

2. OECD guidelines treatment/reference

Poland is a member of the OECD.

The Polish tax authorities sometimes refer to the OECD Guidelines when applying transfer pricing principles (e.g., during APA negotiations).

Also, reference to the OECD Guidelines is made with respect to tax havens. According to Article 9a, Clause 6 of the CIT Act (and Article 25a, Clause 6 of the PIT Act), the list of countries recognized as tax havens is issued in regard to settlements made by the OECD. At the same time, the TP methods presented in the Polish rules are based on the authorized OECD approach.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

Yes. New transfer pricing regulations (binding from January 2017, and from January 2016 for CbCR) introduce fundamental changes to the scope of the mandatory TP documentation reflecting the guidelines of BEPS Action 13, as outlined below:

- Local file and master file, requiring the presentation in the transfer pricing documentation:
 - Group transfer pricing policy, information about local transactions, but with the justification for the adopted methods of calculating remuneration and confirmation of the arm's-length character of prices, including benchmarking analyses, detailed financial data showing the impact of the transactions on the profits and losses and income of the company, organizational and reporting structures, and other information, but:
 - Benchmarking analyses mandatory for entities with revenues or costs of more than EUR10 million
 - Obligation to prepare master file only for entities with revenues or costs of more than EUR20 million
- CbCR:
 - For capital groups with consolidated revenues or costs of more than EUR750 million, the parent company will have to prepare the CbC report

► Does transfer pricing documentation have to be prepared annually?

Yes. The whole documentation needs to be updated with the financial data and facts being reviewed.

b) Materiality limit/thresholds

► Transfer pricing documentation

- a. Yes. The whole documentation needs to be updated with the financial data and facts being reviewed.
 - a. For revenues/costs of the company between EUR2 million and EUR20 million, the threshold per transaction is EUR50,000, increased by EUR5,000 for each EUR1 million of revenue higher than EUR2 million.
 - b. For revenues/costs between EUR20 million and EUR100 million, EUR140,000, increased by EUR45,000 for each EUR10 million of revenues higher than EUR20 million.
 - c. For revenues/costs above EUR100 million, the threshold is EUR500,000.

► Economic analysis

Benchmarking analyses are mandatory for entities with revenues/costs above EUR10 million.

► BEPS master and local files

- a. Master file – for entities with costs/revenues above EUR20 million.
- b. Local file – for entities with costs/revenues above EUR2 million.
- c. Benchmarks – for entities with costs/revenues above EUR10 million.

► CbCR

Consolidated revenues or costs of more than EUR750 million.

c) Specific requirement(s)

► Treatment of domestic transactions

There is a documentation obligation for domestic transactions.

► Local language documentation requirement

The law mandates the use of Polish language in TP documentation.

► **Safe harbor availability**

There is an applicable materiality limit for performing safe harbor. Entities with revenues/costs below EUR2 million are not obligated to prepare local file documentation. Benchmarking analyses are mandatory for entities with revenues/costs above EUR10 million.

d) BEPS Action 13 implementation overview

► **Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?**

Yes, Poland has adopted/implemented it. There are some specific elements incorporated in the Polish law.

► **Coverage in terms of master and/or local files**

Both the master and local files are covered.

► **Effective/expected commencement date**

The law is effective for taxable years beginning on or after 1 January 2017.

► **Material differences from OECD report template/format**

There are material differences between the OECD report template/format and Poland's regulations. The relevant sections from the regulations state that:

- Local benchmarks are recommended.
- An indication of how particular transactions influence tax to be paid in Poland needs to be presented in the documentation.
- Local management needs to sign off for the local file in a written statement.
- In the CIT TP return form, local facts are expected by Polish tax authorities.

► **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

None specified.

► **CbCR notification and CbC report submission requirement**

There is a CbCR notification and CbC report submission requirement in Poland as below:

- For 2016 – within 10 months from the year-end
- For the following years – until the end of the financial year

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Information about related party transactions is one of the elements of the annual income tax return. The taxpayer is required to indicate in the return whether it was required to prepare transfer pricing documentation.

Taxpayers transacting with related entities are subject to the following reporting and information requirements:

- Disclosing in annual income tax returns whether the taxpayer was required to prepare statutory transfer pricing documentation of transactions with related entities
- Reporting to the Polish tax authorities agreements with nonresidents; such information should be submitted within three months of the end of a tax year (by filing the ORD-U form), and this reporting requirement applies to agreements in which:
 - A one-off amount of receivables or liabilities resulting from the agreement with a nonresident exceeds EUR5,000 and the nonresident owns an enterprise, branch or representative office in Poland
 - The total amount of liabilities or receivables resulting from all agreements concluded with the same nonresident in the tax year exceeds EUR300,000.
 - One party to the agreement participates directly or indirectly in the management or control of the other party to the agreement or has a share in its capital entitling it to at least 5% of all voting rights
 - Another entity, not being party to an agreement, at the same time participates directly or indirectly in the management or control of each party to the agreement or has a share in their capital entitling it to at least 5% of all voting rights in each of the parties to the agreement
- Preparing information about payments to nonresidents from which withholding tax is collected and submitting it to the tax office responsible for taxation of foreign persons and to the beneficiary of the payment by the end of the third month of the year following the tax year in which withholding tax was paid (IFT 2/IFT-2 form); moreover, the taxpayer is required to (at the related party's

request) prepare and send information to the taxpayer and competent tax office within 14 days of the date when the request is submitted

Those taxpayers that have obtained an APA decision from the Polish Minister of Finance must submit, along with their annual CIT return, a progress report on the implementation of the method stipulated in the APA decision. The format of this report is detailed in the Ministry of Finance Decree of 31 May 2006, which contains the model report on the implementation of a selected transfer pricing method for corporate income tax purposes (Journal of Laws No. 99, Item 687).

- ▶ The obligation of preparing transfer pricing documentation would not apply to transactions for which a taxpayer obtains an APA.
- ▶ Poland's new CIT law restrictions would not apply to transactions for which a taxpayer obtains an APA with the Polish Ministry of Finance. The new rules became effective 1 January 2018.

The bill transposes a number of the measures set out in the European Union Anti-Tax Avoidance Directive (ATAD). As such, this bill includes, among other things, a 30% EBITDA (earnings before interest, taxes, depreciation and amortization) interest limitation rule and changes to the controlled foreign company (CFC) legislation, which may broaden the scope of foreign subsidiaries that meet CFC criteria. The majority of royalties and service fees might become nondeductible (restrictions go much further than the OECD BEPS recommendations), if exceeding certain thresholds.

b) Transfer pricing-specific returns

Polish tax law does not require any transfer pricing-specific returns.

New TP regulations (binding from January 2017) introduce an additional obligation to attach the simplified report on intragroup transactions to the CIT return for entities with revenues or costs of more than EUR10 million.

In addition, Polish taxpayers will be obligated to file, together with the CIT return, a statement confirming the preparation of local file documentation in line with the amended requirement. As indicated in the justification for the law, tax authorities expect that this document will be signed by a member of the management board.

5. Transfer pricing documentation/ disclosure timelines

a) Filing deadline

▶ Corporate income tax return

The Filing deadline for the CIT return is 31 March (within three months from the year-end, together with the CIT TP return form and statement on preparation of the local file). Recently, the Ministry of Finance stated that it was working on a special decree shifting this deadline by six months.

▶ Other transfer pricing disclosures/return

The Filing deadline for other transfer pricing disclosures is 31 March (within three months from the year-end, together with the CIT TP return form and statement on preparation of local file).

▶ CbCR notification

- ▶ For 2016 – within 10 months from the year-end
- ▶ For the following years – until the end of the financial year

▶ CbC report preparation/submission

The Filing deadline for the CbC report is 31 December of the next year.

b) Documentation preparation deadline

There is a statutory deadline/recommendation for preparation of transfer pricing documentation. It has to be finalized by the time of lodging the tax return to achieve penalty protection (e.g., where there is a contemporaneous requirement). Recently, the Ministry of Finance stated that it was working on a special decree shifting this deadline by six months.

In practice, together with the CIT return will be a statement signed by a representative of the company confirming that preparation of the local file will be filed with tax authorities. Thus, within this deadline, the local file needs to be ready. There is no such requirement for the master file, and the master file will be required within seven days upon request of the tax authorities.

c) Documentation submission deadline

- ▶ Is there a statutory deadline for submission of transfer pricing documentation?

No, but it must be provided within seven days upon the request of the tax authorities.

- ▶ **Time period/deadline for submission on tax authority request**

Within seven days of the request.

6. Transfer pricing methods

a) Applicability

- ▶ International transactions

Yes.

- ▶ Domestic transactions

Yes.

b) Priority/preference of methods

Generally, the transfer pricing methods accepted by the tax authorities are based on the OECD Guidelines. These methods are the CUP, resale price, cost-plus, profit split and TNMM. The most appropriate method for assessing income should be chosen.

The amended decrees give traditional methods priority for the purpose of assessing income in related party transactions (previously, only the CUP method was indicated as the first-choice method). When the transfer price is determined by the tax authorities, the application of traditional methods is verified in the first instance.

Additionally, the amended decrees provide specific criteria for selecting the TP method. During the selection process, tax authorities will consider:

- ▶ The specifics of the transaction, including the parties' contribution to the transaction
- ▶ Access to reliable data about similar transactions and companies in the market
- ▶ Comparability of the respective transactions and companies

If a taxpayer has determined the arm's-length value of a transaction by applying one of the three accepted traditional methods (i.e., CUP, resale price, profit split) and there is no doubt about the objectivity in choosing the method, the method is also binding on the tax authorities.

7. Benchmarking requirements

a) Local vs. regional comparables

Local benchmarks are recommended, and the tax authority treats them as mandatory.

b) Single-year vs. multi-year analysis

There is a preference for multi-year testing. Three-year analysis is recommended.

c) Use of interquartile range

There is no formal requirement to determine a particular point in the range, but generally, the interquartile range is a starting point to consider the arm's-length price (there is no particular regulation in this regard).

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

No fresh benchmarking needs to be conducted every year, but financial data for the final sample needs to be updated. A fresh benchmark is required every three years.

e) Simple vs. weighted average

There is a preference for the weighted average for arm's-length analysis.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ **Consequences of failure to submit/late submission and/or incorrect disclosures**

If the taxpayer does not submit transfer pricing documentation at the request of the Polish tax authorities, a 50% tax rate penalty is applied for income assessed by these authorities, instead of the standard tax rates that generally apply. Moreover, the taxpayer will be required to pay interest on tax in arrears and fiscal penalties resulting from personal responsibility.

- ▶ **If an adjustment is sustained, can penalties be assessed?**

The questioning of some costs as tax-deductible by the tax authorities may result in their exclusion from the cost base and an increase of the profit taxed. Such a write-up will be taxed:

- ▶ With the penal rate of 50% in case there is no TP documentation meeting all the formal requirements to support these services (plus interest for delay in tax payment)
- ▶ With the standard CIT rate of 19% in case such documentation is in place (plus interest for delay in tax payment)

Moreover, the persons responsible for tax matters locally may be penalized based on the penal and fiscal code for noncompliance (with a fine or imprisonment, depending on materiality of the case). As a result, the magnitude of the risk may be measured by the exposure to personal penal responsibility of the company's representatives. Please find the summary of Fiscal Penal Code (KKS) regulations below:

- ▶ Missing or failure in the delivery of the required tax documentation: a fine of up to 120 daily rates (i.e., up to PLN3.36 million) (Article 80 Section 1 KKS)
- ▶ Unreliable preparation of documentation: fine of up to 720 daily rates (i.e., up to PLN20.16 million), imprisonment or both (Article 54 Section 1 KKS)
- ▶ Submission of false information: a fine of up to 240 daily rates (i.e., PLN6.72 million) (Article 80 Section 3 KKS)
- ▶ Failure to monitor compliance of the business activities with the regulations (Article 84 Section 1 KKS)
- ▶ Entry into the National Court Register for a minimum of one year (in case of a fiscal offense)

Such KKS penalties might impact the board members and the person responsible for the tax settlements of the taxpayer.

▶ **Is interest charged on penalties/payable on refund?**

Yes, the current rate is 8%.

b) Penalty relief

If the taxpayer provides the required TP documentation on time as specified by the tax authorities (i.e., within seven days of the date of a request), the penalty rate for income assessed can be reduced to the normal tax rate (i.e., 19%).

9. Statute of limitations on transfer pricing assessments

There are no special time limit provisions applicable to intercompany transactions. The general statute of limitations for tax assessment applies, in accordance with the Tax Ordinance Act. Under Article 70 Section 1 of the Tax Ordinance Act, tax liability shall expire after five years from the end of the calendar year in which the tax falls due.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

▶ Likelihood of transfer pricing-related audits (high/medium/low)

High; the likelihood of an annual transfer pricing audit, in general, has been high since the beginning of 2016. The deepest scrutiny is put on the biggest taxpayers with a given financial position (i.e., incurring losses, with significant revenues but low profitability, claiming an overpaid tax return, with very low profitability, or with fluctuating revenues or EBIT). Polish tax authorities in 2017 acquired access to the Orbis database, purchasing more licenses. This information will allow them to conduct more detailed screenings of entities before starting tax audits and help them make a more precise selection of entities for audits.

▶ Likelihood of transfer pricing methodology being challenged (high/medium/low)

There is a high likelihood that the transfer pricing methodology will be challenged if TP is reviewed as part of the audit. The tax authorities usually engage in a dedicated transfer pricing audit if they notice irregularities in intercompany settlements or believe that the financial result is biased by transfer pricing. In such cases, they often challenge the TP methodology applied.

On 15 July 2016, new regulations were introduced to the Tax Ordinance Act aiming to limit aggressive tax planning (the so-called law circumvention clause). These regulations allow authorities to disregard the actions taken by a taxpayer if its main aim was to achieve tax gains. Based on this clause, the Minister of Finance will be able to disregard the existence of certain corporate structures if their existence is artificial and mainly aims to bring tax benefits. New rules are applicable for the tax gains that exceed PLN100,000 in the settlement period and after the Minister of Finance had utilized a certain process before applying the new clause.

In the first half of 2016, the tax authorities assessed additional income that resulted in PLN9.6 billion of income tax gain – i.e., 36.6% more than in the first half of 2015. This success of the tax administration was largely due to the new system of remuneration for tax officers, better cooperation with the prosecutors' offices and access to international databases regarding market prices.

► **Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)**

High. During transfer pricing audits, tax authorities are especially interested in substantial intercompany charges for intangibles, services or financing; changes in the business model; sudden reduction in profitability (e.g., as a result of business restructurings); and year-end adjustments (especially if they are one-off profit transfers).

► **Specific transactions/industries/situations, if any, more likely to undergo audit**

In practice, there is no focus on particular industries.

11. APA opportunity

► **Availability (unilateral/bilateral/multilateral)**

Under Polish rules, unilateral, bilateral or multilateral APAs are available. There are no transaction value limits to be covered by the APAs. To submit an application for an APA, the taxpayer must pay a fee, usually 1% of the transaction value. The Tax Ordinance Act sets the following fee limits:

- Unilateral APA: PLN5,000 to PLN50,000.

- Unilateral APA concerning a foreign entity: PLN20,000 to PLN100,000
- Bilateral or multilateral APA: PLN50,000 to PLN200,000

The Tax Ordinance Act precisely defines the terms under which the APA procedure is to be completed:

- The unilateral APA must be issued without unnecessary delay within six months of the start of the APA application procedure
- The bilateral APA must be issued without unnecessary delay within 12 months of the start of the APA application procedure
- The multilateral APA must be issued without unnecessary delay within 18 months of the start of the APA application procedure

► **Tenure**

The period for which the APA may be concluded is no longer than five years. The APA may be extended for another five years if the criteria applied in concluding the APA have not changed, or the entity applies for an extension of the APA no later than six months before it expires. The decision is valid from the date of its delivery to all parties (including Polish and foreign, if applicable, tax authorities).

► **Rollback provisions**

None.

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Portugal

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Portuguese Tax and Customs Authority
(Autoridade Tributária e Aduaneira)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

Article 63 of the Corporate Income Tax Code articulates the arm's-length principle and provides guidance about transfer pricing (TP) in Portugal. An updated Article 63 of the Corporate Income Tax Code came into force on 16 January 2015 following the publication of Law No. 2/2014.

A detailed APA procedure, setting out the APA submission requirements, process and fees, was implemented by Ministerial Order 620-A/2008 on 16 July 2015 (which came into force on 17 July 2015) and is currently foreseen in Article 138 of the Corporate Income Tax Code.

Furthermore, a general anti-avoidance provision applies to all simulated transactions, and the rules embodied in the thin capitalization, CFCs and anti-tax-haven regimes may be used in the general context of transfer pricing.

The new articles 121-A and 121-B added to the Corporate Income Tax Code introduced an obligation for multinational groups to submit CbC reports.

▶ Section reference from local regulation

Point 4 of Article 63 of the Corporate Income Tax Code.

2. OECD Guidelines treatment/reference

Portugal is a member of the OECD. The Portuguese regulations and tax practice follow the OECD Guidelines.

Business restructurings are specifically addressed in the Portuguese transfer pricing regulations as activities that must rely on the arm's-length principle; however, the approaches stated in Chapter IX of the OECD Guidelines are likely to affect the transfer pricing audit activity.

The master file concept established in the EU Code of Conduct on transfer pricing documentation for associated enterprises

is not yet adopted in the Portuguese legislation; however, the transfer pricing documentation prepared locally addresses all of the relevant topics covered in the master and local files.

The part of Action 13 of the OECD BEPS Action Plan devoted to the CbC reports has been introduced in Portugal.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Yes. The Portuguese transfer pricing rules require taxpayers with turnover and other income in excess of EUR3 million in the prior year to prepare contemporaneous documentation in the Portuguese language, which should provide evidence of market parity regarding the terms and conditions agreed to, accepted and practiced in the operations made with related parties, as well as evidence that the best method was selected and used.

▶ Does transfer pricing documentation have to be prepared annually?

Yes.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

EUR3 million in net sales and other operating revenue in the previous tax year.

▶ Economic analysis

Not applicable.

▶ BEPS master and local files

Not available.

▶ CbCR

Consistent with OECD requirements (i.e., group consolidated revenue of EUR750 million).

c) Specific requirement(s)**► Treatment of domestic transactions**

There is a documentation obligation for domestic transactions.

► Local language documentation requirement

The law mandates the use of Portuguese in TP documentation.

► Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview**► Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?**

Portugal adopted the global minimum standard included in Action 13 of the OECD BEPS project for the international automatic exchange of CbC reports.

► Coverage in terms of master and/or local files

Not applicable.

► Effective/expected commencement date

CbCR rules apply to fiscal years starting on or after 1 January 2016. Master file/local file rules have not been introduced, and it is hard to foresee when they will be.

► Material differences from OECD report template/format

The BEPS Action 13 TP documentation format has not been adopted in Portugal. Full local TP documentation (combining information from both the master file and local file in terms of contents) should be prepared.

► Sufficiency of BEPS Action 13 format report to achieve penalty protection

The BEPS Action 13 format report is not sufficient to achieve penalty protection. There is no indication of Portugal adopting BEPS Action 13 for TP documentation, which is why only full TP documentation prepared following the local rules can serve as a penalty protection. Only the CbCR part has been adopted.

► CbCR notification and CbC report submission requirement

There is a CbCR notification requirement in Portugal. The deadline for preparation/submission for the CbCR notification is the end of the fifth month following the fiscal year-end.

The deadline for submission of the CbC report is the end of the 12th month following the fiscal year-end.

4. Transfer pricing return/related party disclosures**a) Related party disclosures/transfer pricing-related appendices**

The main disclosure requirements at this level are contained in annexes A, B, C and H (transfer pricing annexes) of the Annual Tax and Accounting Information Return (Informação Empresarial Simplificada, or IES), which include (on a yearly basis) the following information:

- Identity of the related entities
- Amount of transactions conducted with each of the related parties
- Confirmation that proper contemporaneous (annual) transfer pricing documentation is prepared on a timely basis and is currently retained

The deadline for the submission of such return corresponds to the 15th day of the 7th month after the corresponding tax year-end. Taxpayers have to state in good faith in this annual return that they have complied with the contemporaneous documentation requirements. Misleading information may result in tax penalties and criminal proceedings.

Multinational groups engaged in activities in the Portuguese territory with aggregated turnover exceeding EUR750 million in the reporting period are obligated to submit the CbC report. It should be completed on an aggregated basis (per jurisdiction) and should contain information about allocation of revenues (separating those received in intragroup transactions from those received in third-party transactions), profits, employees, earnings before tax, amounts of taxes due and paid, as well as other information. The CbC report should be submitted to the tax authorities by the end of the 12th month of the year following the reporting year.

b) Transfer pricing-specific returns

Only the appendices referred to above (within the IES).

5. Transfer pricing documentation/disclosure timelines**a) Filing deadline****► Corporate income tax return**

31 May (end of the fifth month following the fiscal year-end).

► **Other transfer pricing disclosures/return**

15 July (7 months and 15 days after tax year-end).

► **CbCR notification**

The end of the fifth month following the fiscal year-end.

► **CbC report preparation/submission**

The end of the 12th month of the year following the reporting year.

b) Documentation preparation deadline

Transfer pricing documentation should be prepared contemporaneously. The statutory deadline to have a final transfer pricing documentation ready is by the 15th day of the 7th month following the fiscal year-end.

c) Documentation submission deadline

► **Is there a statutory deadline for submission of transfer pricing documentation?**

No. It should only be submitted upon request.

► **Time period/deadline for submission on tax authority request**

The taxpayer is normally given 10 days' notice to submit the transfer pricing documentation once requested by the tax authorities in an audit or inquiry.

6. Transfer pricing methods

a) Applicability

► International transactions

Yes.

► Domestic transactions

Yes.

b) Priority/preference of methods

The transfer pricing methods described in the Portuguese legislation are based on the OECD Guidelines and therefore do not introduce significant changes to the widely accepted methods recognized among transfer pricing administrators and practitioners.

In fact, Portuguese rules also state (in paragraphs 1 and 2 of Article 4 of the Transfer Pricing Ministerial Order) that the most appropriate method should be applied to a controlled transaction or to a series of transactions to determine whether those transactions comply with the arm's-length principle.

This principle reflects a best-method rule. This implies that a taxpayer is expected to use the method or methods most suitable to each case, explaining not only the reason a certain method is considered the most appropriate to test whether the controlled transactions comply with the transfer pricing rules, but also why other methods are rejected.

7. Benchmarking requirements

a) Local vs. regional comparables

Local comparables are required. In the absence (or insufficiency) of purely local comparables, Iberian comparables may be included; if these prove scarce, European comparables may be accepted.

b) Single-year vs. multi-year analysis

Single-year analysis of the tested-party results is required. Single-year tested-party results are normally compared with multi-year comparables' range.

c) Use of interquartile range

Interquartile range calculations are used following general statistics rules for respective calculations.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

Fresh benchmarking is required.

e) Simple vs. weighted average

There is a preference for the weighted average for arm's-length analysis.

f) Other specific benchmarking criteria, if any

Local independence threshold/criteria (20%) should be used in benchmarking studies.

8. Transfer pricing penalties/relief

a) Penalty exposure

► Consequences of failure to submit/late submission and/or incorrect disclosures

Failure to comply with documentation requirements may result in a possible shift of the burden of proof.

Under the General Regime of Tax Infringements (RGIT), penalties for late filing of transfer pricing documentation apply. Article 117/6 of the RGIT establishes specific transfer pricing penalties up to EUR10,000 (per year and per taxpayer) apply for failure to present transfer pricing documentation within the period determined in the request made by the Portuguese Tax Authorities plus 5% for each day of delay in fulfilling this obligation.

Other general penalties reaching as high as EUR150,000 may be applied by the Portuguese Tax Authorities, depending on the circumstances, if the entity refuses to provide information or if the entity provides incorrect or incomplete information.

Furthermore, possible income tax adjustments and compensatory interest can also be assessed if applicable.

In addition, special penalties are foreseen for late submission of the CbC report that may reach up to EUR10,000 per year and per taxpayer plus 5% for each day of delay in fulfilling this obligation.

► If an adjustment is sustained, can penalties be assessed?

Transfer pricing adjustments are subject to the general tax penalty regime. A late-payment interest penalty is also applicable for transfer pricing adjustments at the rate of 4% per year.

► Is interest charged on penalties/payable on refund?

Refer to the section above.

b) Penalty relief

The general tax penalty regime applies in Portugal. The determination of penalties will be made on a case-by-case basis.

Taxpayers can challenge adjustments (if any) and tax assessments in court.

9. Statute of limitations on transfer pricing assessments

In Portugal, an assessment is possible during the four years after the end of the assessment year. All Portugal-based companies have a statutory obligation to keep their transfer pricing documentation available (at the Portuguese establishment or premises) and in good order for the relevant year for a 10-year period.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► Likelihood of transfer pricing-related audits (*high/medium/low*)

The likelihood of an annual tax audit, in general, is medium, as is the likelihood that transfer pricing will be reviewed as part of that audit.

► Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

The likelihood is high that the transfer pricing methodology will be challenged if transfer pricing is reviewed as part of the audit.

► Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

The likelihood of an annual tax audit, in general, is medium, as is the likelihood that transfer pricing will be reviewed as part of that audit.

► Specific transactions/industries/situations, if any, more likely to undergo audit

Special emphasis is being put on the quality of comparables – namely, on the royalty CUP analysis. Head-office interest charged to branches is the most recent area of scrutiny and adjustment. Limited-risk commissioner structures have been increasingly challenged recently. Cross-border restructurings are also under intense scrutiny, as well as intercompany financial transactions.

11. APA opportunity

► Availability (unilateral/bilateral/multilateral)

An APA program was included in the Portuguese Corporate Income Tax Code in 2008 (Article 138). Ministerial Order 620-A/2008 allows taxpayers to negotiate the unilateral, bilateral and multilateral APAs.

► Tenure

APAs may not exceed a three-year period, which may be renewable upon a written request to the tax authority. The Portuguese legal time frame foresees the following phases:

- Pre-filing phase: entails a preliminary evaluation of the initial taxpayer proposal and may involve joint meetings with the tax authorities
- Submission phase: involves analysis and negotiation of the APA proposal, which, in any case, should be presented at least 180 days before the beginning of the applicable tax

year; tax authorities' time frame to evaluate the content of an APA proposal is within 180 days in the case of unilateral agreements and extends to a 360-day period in the case of bilateral and multilateral agreements

- Conclusion of the APA process

► Rollback provisions

Generally, the focus of the APA is on prospective years; however, open years may be brought into the APA process as rollback years.

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Qatar

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

State tax regime: Qatar Tax Department (QTD)

Qatar Financial Centre (QFC) tax regime: QFC Authority (QFCA) Tax Department

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

State tax regime – Income Tax Law No. 21 of 2009 (Qatar Income Tax Law) and its related Executive Regulations should be applied to taxpayers in Qatar, except for those registered in the Qatar Financial Centre.

“Related party” is defined under Section 53 of the Executive Regulations of the Qatar Income Tax Law.

QFC tax regime – This tax regime is separate and distinct from the state tax regime. The QFC Regulations, which were enacted pursuant to Law No. 7 of 2005 on the promulgation of the law for the QFC, and the QFCA Tax Manual (TP Manual) should be applied to QFC-registered entities.

► Section reference from local regulation

“Associated person” is defined under Section 56 of the QFC Regulations.

2. OECD guidelines treatment/reference

Qatar is not a member of the OECD; in practice, Qatar generally follows the OECD Guidelines.

In November 2017, Qatar signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (the Convention) and joined the BEPS Inclusive Framework. On 19 December 2017, Qatar also signed the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

State tax regime: The Qatar Income Tax Law does not provide specific documentation requirements; however, because the Qatar Income Tax Law requires the use of the CUP method, or other transfer pricing (TP) methods also authorized by the OECD, there is an implied requirement to have documentation in place.

QFC tax regime: The burden of proof is on the QFC-registered taxpayer to establish that the actual conditions are consistent with the arm's-length conditions. There are four classes of records or evidence that will need to be considered, including:

- i. Primary accounting records
- ii. Tax adjustment records
- iii. Records of transactions with an associated business
- iv. Evidence to demonstrate an arm's-length result (this includes a description of the intercompany transactions and a functional analysis)

► Does transfer pricing documentation have to be prepared annually?

State tax regime: In practice, taxpayers are recommended to maintain annual TP documentation, which should be readily available in the event of a tax inquiry by the QTD.

QFC tax regime: A TP study is specifically recommended when there is a risk that it may be perceived that the QFC-registered taxpayer's intercompany transactions are not based on the arm's-length principle (e.g., the taxpayer is incurring losses during the taxable year or profits appear lower than previous years or compared with competitors in the industry, among other exceptional circumstances).

b) Materiality limit/thresholds

► Transfer pricing documentation

No materiality limit.

► Economic analysis

No materiality limit.

► BEPS master and local files

With Qatar joining the BEPS Inclusive Framework, it is expected to adopt the BEPS Action 13 master file and local file documentation requirements into its domestic legislation.

► **CbCR**

With the aforementioned OECD BEPS project-related development in Qatar, it was highly expected that CbCR legislation would be introduced in 2017.

c) Specific requirement(s)

► **Treatment of domestic transactions**

There is no distinction between domestic and international transactions under the current transfer pricing legislation. Therefore, it is expected that all related party transactions comply with the arm's-length standard/transfer pricing rules.

► **Local language documentation requirement**

State tax regime: TP documentation prepared in English is currently acceptable by the QTD. However, in practice, in the event of a pre-approval application to use an OECD method other than CUP, a summary memorandum should also be prepared in Arabic and submitted to the QTD to facilitate its TP review.

QFC tax regime: English documents are acceptable to the QFC.

► **Safe harbor availability**

State tax regime: There currently are no safe harbor rules.

QFC tax regime: Under the TP Manual, the safe harbor debt/equity ratios are as follows:

- 2:1 for a nonfinancial institution
- 4:1 for a financial institution

The safe harbor debt/equity ratios relate only to the quantum (not the interest rate) of the loan.

d) BEPS Action 13 implementation overview

► **Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?**

Qatar has not adopted/implemented BEPS Action 13 for transfer pricing documentation in its domestic legislation.

► **Coverage in terms of master and/or local files**

Not applicable.

► **Effective/expected commencement date**

Not applicable.

► **Material differences from OECD report template/format**

Not applicable.

► **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

Not applicable.

► **CbCR notification and CbC report submission requirement**

Not applicable.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

State tax regime: Related party disclosures must be in the notes to the audited financial statements, which are filed with the QTD in support of the annual tax declaration.

There is currently no related party disclosures or transfer pricing-related appendices/additional forms/documents.

QFC tax regime: Related party transactions must be disclosed in the notes to the audited financial statements, which are filed with the QFC Tax Department, along with the income tax return. A QFC branch is not required to submit full financial statements.

There is currently no related party disclosures or transfer pricing-related appendices/additional forms/documents.

b) Transfer pricing-specific returns

For both the state and QFC tax regimes, there is currently no requirement to prepare a transfer pricing-specific return separately or with the corporate income tax return.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► **Corporate income tax return**

Within four months of the end of the accounting period.

► **Other transfer pricing disclosures/return**

Not applicable.

▶ **CbCR notification**

Not applicable.

▶ **CbC report preparation/submission**

Not applicable.

b) Documentation preparation deadline

It is recommended that the transfer pricing documentation be available on or before the annual tax return is filed with the QTD.

c) Documentation submission deadline

▶ **Is there a statutory deadline for submission of transfer pricing documentation?**

No.

▶ **Time period/deadline for submission on tax authority request**

The transfer pricing documentation may be required by the Qatar tax authorities within two to four weeks, depending on the tax inspector. This is generally determined on a case-by-case basis.

6. Transfer pricing methods

a) Applicability

▶ International transactions

Yes.

▶ Domestic transactions

Yes.

b) Priority/preference of methods

There is no distinction between domestic and international transactions under the current TP legislation. Therefore, it is expected that transfer pricing methods would equally apply.

State tax regime: Under the Executive Regulations to the Qatar Income Tax Law, the arm's-length price should be determined using the CUP method. This price is determined on the basis of a comparison with similar goods or services provided between unrelated parties, particularly accounting for the:

- ▶ Characteristics of the goods or service
- ▶ Contractual terms

▶ Functions performed, assets used and risks incurred

▶ Economic circumstances

When the CUP method cannot be applied, any other OECD method can be used, subject to approval by the QTD.

The QTD expects comparables from Qatar or the Middle East and North Africa (MENA) region. However, if this is not possible, Asian, African or European comparables should also be acceptable.

QFC tax regime: When the CUP method is available as evidence, the QFCA Tax Department is likely to consider it the preferred method. A discussion should be included in the documentation about the appropriateness of the selected method.

The QFCA Tax Department prefers comparables from the MENA region or, failing that, Asian or African comparables in preference to European comparables.

7. Benchmarking requirements

a) Local vs. regional comparables

Qatar tax authorities prefer local country and MENA region comparables.

Geographic preference is given to MENA; however, if a MENA search cannot provide sufficient comparable companies, the search may be expanded to other regions (generally in the following order of preference: Asia, Africa, Europe).

b) Single-year vs. multi-year analysis

Multi-year analysis is adopted.

c) Use of interquartile range

The interquartile range is used.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

Rollforward/update of the financials of a prior study is used, provided that the benchmarking search is not more than three years old.

e) Simple vs. weighted average

The weighted average is adopted.

f) Other specific benchmarking criteria, if any

Independence threshold of 50% and above.

8. Transfer pricing penalties/relief**a) Penalty exposure****► Consequences of failure to submit/late submission and/or incorrect disclosures**

There are currently no specific transfer pricing penalties for failure to maintain TP documentation.

The transfer pricing assessment of the Qatar tax authorities may become final in the event of failure to provide transfer pricing documentation and supporting information upon request.

► If an adjustment is sustained, can penalties be assessed?

State tax regime: Financial penalties, in the form of interest imposed for noncompliance with income tax rules under the Qatar Income Tax Law, may apply in the case of a deficiency assessment due to transfer pricing adjustments.

Interest on any additional income tax due resulting from a transfer pricing adjustment may be levied at a rate of 1.5% per month of delay (capped at the amount of income tax due).

QFC tax regime: If the QFC-registered taxpayer fraudulently or negligently files a tax return, the QFC-registered taxpayer may be exposed to a financial sanction of an amount not exceeding the tax understated. The late payment of tax is subject to a delay payment charge of 5% per year, calculated for the period from the due date of the tax to the actual payment date.

If a QFC-registered taxpayer fails to maintain adequate records to support the pricing of transactions with associates, or claims in its return that no adjustment is required under the TP regulations without being able to substantiate that claim, then there may be a penalty liability for failure to maintain adequate records (not exceeding QAR20,000) or for filing an incorrect return (financial sanctions not exceeding the tax understated).

► Is interest charged on penalties/payable on refund?

Refer to the section above.

b) Penalty relief

There is currently no penalty relief regime in Qatar.

An appeal may be lodged to the Qatar tax authorities or to a body designated by the relevant local tax regulations.

9. Statute of limitations on transfer pricing assessments

State tax regime: A transfer pricing assessment is a part of the regular corporate income tax audit by the QTD. The statute of limitations to complete a regular tax audit is five years following the year in which the taxpayer submitted the tax return.

QFC tax regime: The time limit for the QFCA Tax Department to conduct a tax assessment is six years after the end of the accounting period to which it relates.

10. Likelihood of transfer pricing scrutiny/related audit by local authority**► Likelihood of transfer pricing-related audits (high/medium/low)**

State tax regime: Medium to high; the related party disclosure of the audited financial statement is submitted to the Qatar tax authority as part of the corporate income tax filing.

QFC tax regime: High; the QFCA Tax Department is more sophisticated and aggressive than the QTD with respect to TP reviews/audits.

► Likelihood of transfer pricing methodology being challenged (high/medium/low)

State tax regime: The likelihood of a challenge to the transfer pricing methodology is characterized as low to medium, provided that sufficient TP documentation is available.

QFC tax regime: The likelihood of a challenge to the transfer pricing methodology is characterized as medium.

► Likelihood of an adjustment if transfer pricing methodology is challenged (high/medium/low)

State tax regime: The likelihood of an adjustment is characterized as low to medium, provided that sufficient TP documentation is available.

QFC tax regime: The likelihood of an adjustment is characterized as medium to high.

- ▶ **Specific transactions/industries/situations, if any, more likely to undergo audit**

State tax regime: The QTD recently has challenged management fees and head-office cost allocations.

QFC tax regime: The QFCA Tax Department has recently focused significantly on intragroup services and thin capitalization.

▶ **Tenure**

None specified.

▶ **Rollback provisions**

None specified.

11. APA opportunity

▶ **Availability (unilateral/bilateral/multilateral)**

State tax regime: There is currently no APA program in place.

QFC tax regime: The QFCA Tax Department has an advance ruling regime and welcomes QFC-registered entities to apply for an APA to obtain certainty about their tax position.

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Romania

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Romanian taxes are administrated by the Ministry of Public Finance, National Agency for Fiscal Administration (ANAF).

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

- Law 227/2015 regarding the Fiscal Code, as subsequently completed and amended
- Government Decision 1/2016, for the approval of the norms for the application of Law 227/2015 regarding the Fiscal Code, as subsequently completed and amended
- ANAF Order 222/2008, on the content of the transfer pricing (TP) documentation file applicable for administrative procedures initiated before 1 January 2016
- ANAF Order 442/2016, on the content of the transfer pricing documentation file applicable for administrative procedures initiated after 1 January 2016
- ANAF Order 3737/2015, approving the form of the decision issued by the tax authority in application of the procedure for elimination of double taxation between Romanian related parties
- ANAF Order 3735/2015, approving the procedure for the issuance/amendment of APAs and the content of the respective APA request
- ANAF Order 3736/2015, approving the procedure for the issuance of advance individual rulings and the content of the respective request
- Law 207/2015, regarding the Fiscal Procedure Code, as subsequently completed and amended
- ANAF Order 3049/2017, approving the template and content of the country-by-country report

► Section reference from local regulation

Refer to the section above.

2. OECD guidelines treatment/reference

Romania is not a member of the OECD.

The Romanian Fiscal Code and the related norms provide that the tax authority should also consider the OECD Guidelines when analyzing the prices applied in related party transactions. In addition, the legislation on transfer pricing documentation requirements in Romania refers to the EU Code of Conduct on Transfer Pricing Documentation (C176/1 of 28 July 2006).

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

Yes, there are transfer pricing documentation rules. TP documentation compliant with the specific TP documentation regulations in Romania (i.e., ANAF Order 442/2016) must be provided to the Romanian tax authorities upon their request in order to sustain that the transactions performed with related parties were carried out at arm's length. Taxpayers that entered into APAs for related party transactions are not required to prepare and submit a TP documentation file for the periods and transactions covered by the APA.

► Does transfer pricing documentation have to be prepared annually?

Yes.

The requirement to prepare TP documentation annually is only applicable from 2016 onward for Romanian taxpayers that qualify as large taxpayers (per the specific criteria established annually by the Romanian tax authorities), with respect to the transaction types carried out with related parties exceeding the following thresholds (obtained by cumulating the value of all transactions of that specific type undertaken during the year with all related parties, excluding value-added tax): EUR200,000 in the case of interest for financial services, EUR250,000 in the case of services and EUR350,000 in the case of acquisitions/sales of tangible or intangible assets. The standard TP documentation content requirements are applicable also in the case of reports that must be prepared annually (no specific minimum requirement is provided under the local regulations). The term for the preparation of the annual TP documentation is within the legal deadline

Romania

for submission of the annual corporate income tax return (the 25th day of the 3rd month after the tax year-end).

In all other cases, TP documentation has to be prepared and provided upon specific request from the tax authority and within the required term.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

- ▶ EUR50,000 in the case of interest for financial services
- ▶ EUR50,000 in the case of services
- ▶ EUR100,000 in the case of acquisitions/sales of tangible or intangible assets

▶ Economic analysis

Not applicable.

▶ BEPS master and local files

Not applicable.

▶ CbCR

Not applicable.

c) Specific requirement(s)

▶ Treatment of domestic transactions

There is a documentation obligation for domestic transactions. No distinction is made with respect to the content of TP documentation required for cross-border vs. domestic related party transactions.

▶ Local language documentation requirement

The TP documentation (including all appendices attached to the TP documentation – e.g., intercompany agreements) needs to be submitted in Romanian.

Per the provisions of Order 442/2016, “in case of documents in a foreign language, these shall be accompanied by Romanian translations, according to the law.”

▶ Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Romanian TP regulations have been amended in view of implementing the changes introduced by BEPS Action 13 for transfer pricing documentation.

In 2016, the Romanian regulations regarding the required content of the TP documentation have been revised in consideration of the elements recommended to be contained by the master file and local file under the OECD TP Guidelines revised further to BEPS Action 13; such revised TP documentation regulations are applicable for tax audits performed by the Romanian tax authorities from 2016 onward, which may also cover tax years prior to 2016.

▶ Coverage in terms of master and/or local files

Yes, although a three-tier documentation format as per BEPS Action 13 (master file/local file/CbCR) has not been formally prescribed in the local legislation, the TP documentation regulations in Romania are, from an overall content requirement perspective, aligned with the prescribed content requirements of the master file and local file under BEPS Action 13. Furthermore, the Romanian TP legislation refers to and is considered to be in line with the OECD TP Guidelines as amended/ revised and the EU Code of Conduct on TP documentation. No specific thresholds are applicable for differentiating between the types of elements to be included in the TP documentation or to be prepared in line with the Romanian TP documentation requirements.

▶ Effective/expected commencement date

Revised TP documentation regulations are applicable for tax audits performed by the Romanian tax authorities from 2016 onward, which may also cover tax years prior to 2016.

▶ Material differences from OECD report template/format

There are no material differences between the OECD report template/format and Romania's regulations.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

The Romanian regulations on the required content of the TP documentation are broadly aligned with the OECD standard from an overall content perspective (though no specific format is required). Additional specific items would, however, be required in the TP documentation prepared in accordance with the local regulations in Romania (e.g., actual payments made for related party transactions).

► **CbCR notification and CbC report submission requirement**

There is a CbCR notification as well as CbC report submission requirement in Romania.

Notification to the competent authority in Romania is required until the last day of the reporting fiscal year of the MNE group, but no later than the last day of filing of a tax return by the constituent entity in Romania for the preceding fiscal year. Romanian entities qualifying as a CbCR entity based on the local regulations have to submit the CbC report within 12 months from the last day of the reporting fiscal year of the MNE group.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Generally, information about related party transactions undertaken by a Romanian entity is disclosed only upon the specific request of the Romanian tax authority. For statutory accounting reporting purposes, Romanian companies are required to disclose the transactions undertaken with related parties.

Separately from the above, the Romanian legislation provides for the following general disclosure requirements:

- Disclosure of transactions performed by Romanian entities with nonresident companies for which the Romanian company has an obligation to withhold taxes
- Disclosure or registration of contracts concluded by Romanian entities with nonresident companies and individuals performing services in Romania that may trigger Romanian permanent establishment exposure
- Disclosure of long-term financing contracted by a Romanian entity with nonresident companies or individuals

b) Transfer pricing-specific returns

No specific transfer pricing returns for related party transactions are currently in place under the transfer pricing rules.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► **Corporate income tax return**

25 March (in the case of taxpayers with calendar tax years, the deadline for filing the annual corporate income tax return is generally the 25th day of the 3rd month following the tax year-end)

► **Other transfer pricing disclosures/return**

Not applicable.

► **CbCR notification**

Notification to the competent authority in Romania is required until the last day of the reporting fiscal year of the MNE group, but no later than the last day of filing of the annual corporate income tax return by the constituent entity in Romania for the preceding fiscal year.

► **CbC report preparation/submission**

31 December (applicable in the case of groups with reporting fiscal years ending 31 December – generally, the deadline is within 12 months from the last day of the reporting fiscal year of the group).

b) Documentation preparation deadline

Transfer pricing documentation subject to preparation annually by large taxpayers (for transactions that exceed the specific thresholds provided under the local regulations) has to be prepared within the statutory deadline of filing the annual corporate income tax return. In all other cases, TP documentation has to be prepared only upon request and within the term established by the tax authorities (between 30 and 60 days, with one possible extension upon request of up to 30 additional days).

c) Documentation submission deadline

► **Is there a statutory deadline for submission of transfer pricing documentation?**

No; submission is to be performed only upon request from the tax authorities.

► **Time period/deadline for submission on tax authority request**

In cases in which the annual TP documentation is required to be prepared by large taxpayers by the legal deadline of filing

the tax return, such TP documentation must be provided to the tax authorities upon their request during or outside an audit within 10 days. In all other cases of TP documentation prepared upon receiving a formal request from the tax authorities during an audit, the Romanian tax authorities establish a term for the preparation and submission of such TP documentation that can be 30 to 60 days (one extension of up to 30 days can be obtained upon request).

6. Transfer pricing methods

a) Applicability

- ▶ International transactions

Yes.

- ▶ Domestic transactions

Yes.

b) Priority/preference of methods

The tax authority accepts transfer pricing methods provided by the OECD Guidelines. The traditional methods (CUP, resale price and cost-plus) are generally preferred over the profit-based methods (TNMM and profit split).

When selecting the most adequate method, the following must be taken into consideration:

- ▶ The method that is the most appropriate given the circumstances in which the prices that are subject to free competition on the commercial comparable markets are established
- ▶ The method for which information resulting from the actual related parties involved in the transactions subject to free competition is available
- ▶ The degree of accuracy to which adjustments can be made in order to achieve comparability
- ▶ The circumstances of the individual case
- ▶ The activities effectively conducted by various related parties
- ▶ The documentation that can be made available by the taxpayer

In addition, the selected method should reflect the circumstances of the market and the taxpayer's activity.

7. Benchmarking requirements

a) Local vs. regional comparables

According to the provisions of Order 442/2016, in the case of a benchmarking analysis performed to determine the arm's-length nature of the related party transactions, the territorial criteria should be considered in the following sequence: local, EU, Pan-European and international. In the absence of local comparables, foreign comparables are accepted.

b) Single-year vs. multi-year analysis

There is a preference for single-year testing; multi-year analysis might also be acceptable if properly justified.

c) Use of interquartile range

The Romanian TP documentation regulations prescribe the use of the interquartile range for transfer pricing analyses.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

A fresh benchmarking search is required to be performed periodically; a rollforward/update of financial results of a prior study might also be acceptable for a certain period, depending on the circumstances of the case. With respect to comparable searches required to be included in the TP documentation for supporting the appropriateness of the pricing for the related party transactions, the local regulations provide that "justification of compliance with the arm's-length principle shall be based on the information reasonably available to the taxpayer at the moment of establishing/documenting the transfer prices, by presenting the supporting evidence in this respect."

e) Simple vs. weighted average

No preference is indicated based on the Romanian TP regulations. Romanian tax authorities have been observed to conduct TP analyses on a year-on-year basis. Both simple-average and weighted-average methods have been accepted in case of multi-year analyses.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

► Consequences of failure to submit/late submission and/or incorrect disclosures

Large-, medium- and small-sized taxpayers failing to provide the transfer pricing documentation to the tax authority upon request are sanctioned as follows:

- In the case of non-submission of the transfer pricing documentation by large taxpayers (that have the obligation to prepare the transfer pricing documentation within the legal deadline for submission of the annual corporate income tax return) upon the request of the tax authority outside of a tax audit, a penalty between RON25,000 and RON27,000 (approximately EUR5,600 and EUR6,000) will be imposed.
- In the case of non-submission of the transfer pricing documentation upon the request of the tax authority during a tax audit, a penalty between RON12,000 and RON14,000 (approximately EUR2,700 and EUR3,200) will be imposed on the large- and medium-sized taxpayers, respectively, and between RON2,000 and RON3,500 (approximately EUR450 and EUR800) on small taxpayers.

► If an adjustment is sustained, can penalties be assessed?

In the case of a transaction between related parties, the tax authority may adjust/estimate the amount of the respective income or expenses of either party as necessary to the level considered to reflect the central tendency of the market (i.e., median), either in the case that the tax authority determines that the arm's-length principle is not observed for the respective transaction or that the taxpayer does not provide to the tax authority sufficient evidence to establish if the arm's-length principle was observed.

The resulting adjustments/estimation would trigger a profits tax liability of 16% (the standard profits tax rate) and late-payment interest and penalties according to the provisions of the legislation. Currently, the late-payment interest is 0.02% per day of delay. Late-payment penalties of 0.01% per day of delay can also be imposed.

In addition, a penalty for undeclared or incorrectly declared tax liabilities established by the tax authorities through tax decisions of 0.08% for each day of delayed payment can be imposed. If this type of penalty is applicable, then it is a substitute for the late-payment penalty (only one type of penalty can be

applied). If the tax claims are paid within a specific term after the tax decision assessing the tax liabilities is issued, then this penalty is reduced by 75%; however, if the tax liabilities are the result of tax evasion, then this penalty is increased by 100%. This penalty is applicable for tax liabilities due starting from 2016 onward.

► Is interest charged on penalties/payable on refund?

Not applicable.

b) Penalty relief

In case a transfer pricing adjustment is imposed by the tax authorities, the taxpayer may challenge the decision at an administrative level or in court. A MAP might also be initiated depending on the circumstances of the case, under the provisions of the EU Arbitration Convention or the double tax treaties entered into by Romania.

9. Statute of limitations on transfer pricing assessments

No specific statute of limitations exists for transfer pricing assessments. However, general rules for statutes of limitations are applicable – i.e., the Romanian tax authority may normally review tax-related matters retroactively for 5 years (or 10 years in the case of fiscal evasion or fraud).

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► Likelihood of transfer pricing-related audits (high/medium/low)

Considering the current transfer pricing environment in Romania and the declared focus of the Romanian tax authorities on transfer pricing matters, the likelihood of a transfer pricing-related audit, in general, can be characterized as medium to high, specifically in the case of entities incurring operating losses over a period of time.

► Likelihood of transfer pricing methodology being challenged (high/medium/low)

Based on the observed practice of the tax authorities, the likelihood is medium that the transfer pricing methodology will be challenged if transfer pricing is reviewed as part of the audit.

Romania

► **Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)**

Based on the observed practice of the tax authorities, the likelihood of an adjustment in case the transfer pricing methodology is challenged is rather high.

► **Specific transactions/industries/situations, if any, more likely to undergo audit**

There are no such specific transactions/industries. Companies with operating losses present a higher likelihood of undergoing transfer pricing-related audits.

The fees payable to the ANAF for the issuance or amendment of an APA are:

- EUR20,000 (issuance), EUR15,000 (amendment) – in the case of large taxpayers or for agreements on transactions with a consolidated value exceeding EUR4 million
- EUR10,000 (issuance), EUR6,000 (amendment) – in all other cases

► **Tenure**

As a general rule, APAs are issued for a period of up to five years; however, this term may be extended in certain cases.

► **Rollback provisions**

None.

11. APA opportunity

► **Availability (unilateral/bilateral/multilateral)**

Comprehensive APA procedures and requirements have been in effect in Romania since June 2007. An APA may be unilateral, bilateral or multilateral.

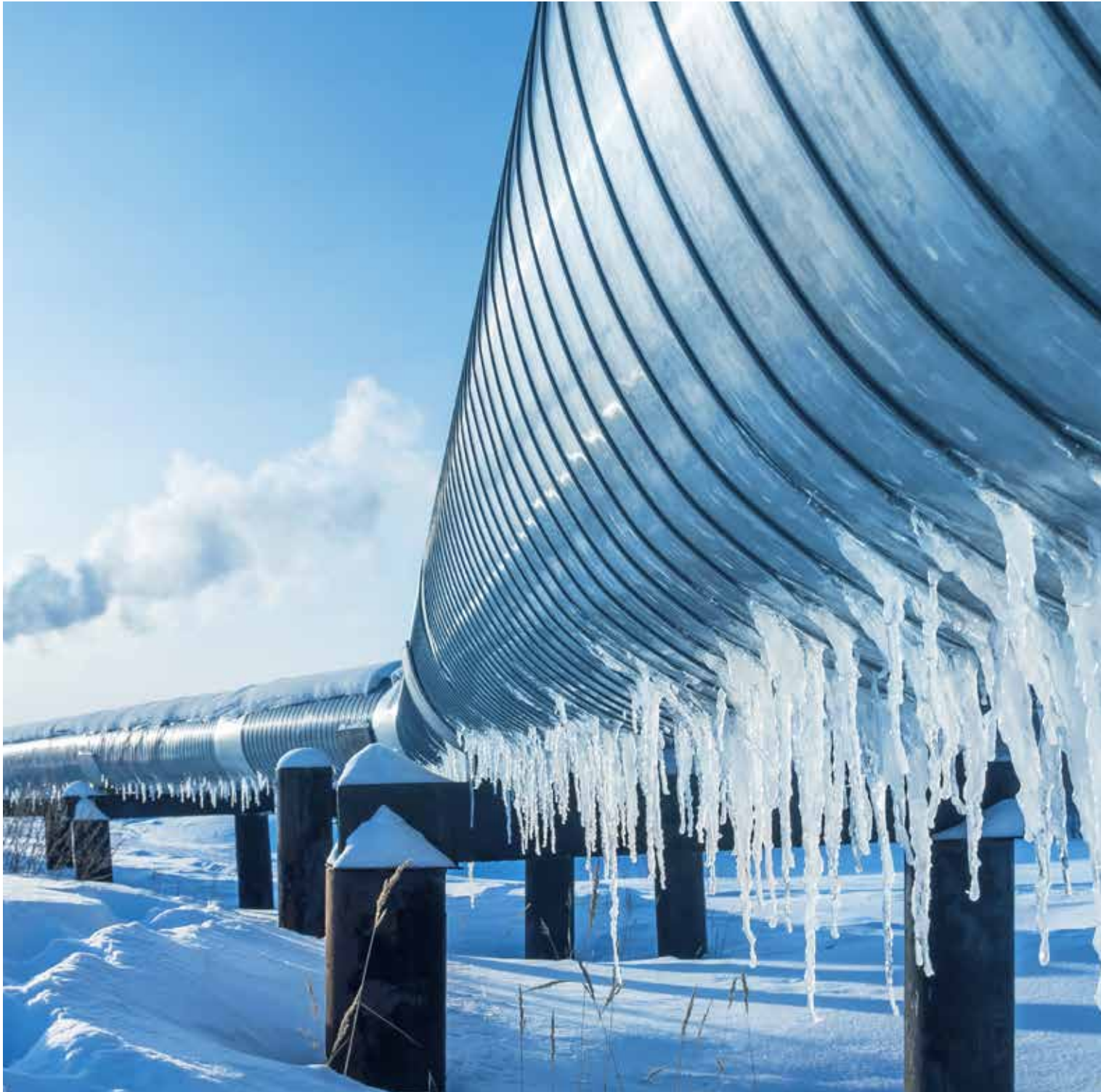
By means of an APA, the ANAF approves the specific transfer pricing method utilized by a multinational entity prior to the actual transaction. APAs are binding on the tax authority as long as taxpayers observe their terms and conditions. Unilateral APAs are issued for a term of 12 months, while bilateral and multilateral APAs are issued for a term of 18 months.

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Russia

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Federal Tax Service of the Russian Federation (FTS)

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

Tax Code of the Russian Federation, Section V.1: interdependent persons and multinational groups of companies, general provisions concerning prices and taxation, tax control in connection with the conclusion of transactions between interdependent persons, pricing agreement, documentation for multinational groups of companies, effective from 1 January 2012.

► Section reference from local regulation

Major transfer pricing (TP) regulations are contained in articles 105.1 to 105.25 of the Tax Code (which were introduced by Federal Law No. 227-FZ of 18 July 2011). Regulations regarding transfer pricing penalties are also contained in articles 129.3, 129.4 and 126 of the Tax Code.

There is no system of rulings in Russia. Private letters issued by the FTS or the Ministry of Finance at the request of taxpayers are not binding for the tax authorities or companies.

Besides the articles in the Tax Code mentioned above, the Ministry of Finance and the FTS regularly issue letters that provide clarifications on their positions in applying the arm's-length principle in general and on specific questions of taxpayers regarding the application of current regulations. These letters provide the formal positions of the Ministry of Finance and the FTS but do not legally bind taxpayers.

2. OECD guidelines treatment/reference

Russia is not a member of the OECD.

The Russian transfer pricing regulations are largely based on the principles stipulated by the OECD Guidelines, although the Guidelines do not have a force of law. In practice, the law prevails if there are any differences with the OECD Guidelines.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

Yes.

► Does transfer pricing documentation have to be prepared annually?

Yes. The full-scope TP documentation should be prepared annually; a mere update will not be accepted by the tax authorities.

b) Materiality limit/thresholds

► Transfer pricing documentation

- Cross-border transactions between related parties: no materiality limit
- Cross-border transactions between unrelated parties concerning sale of commodities or in case a party to transactions is located in a low-tax jurisdiction: threshold of RUB60 million
- Domestic transactions between related parties: refer to the "Specific requirement(s)" section below

► Economic analysis

No materiality limit.

► BEPS master and local files

RUB50 billion for MNEs with an ultimate parent entity (UPE) in Russia, and the applicable CbCR threshold as established by the home country of the UPE if outside Russia.

► CbCR

RUB50 billion for MNEs with a UPE in Russia, or the applicable CbCR threshold as established by the home country of the UPE if outside Russia.

c) Specific requirement(s)

► Treatment of domestic transactions

There is a documentation obligation for domestic transactions. The local TP documentation requirements cover domestic related party transactions exceeding RUB1 billion (or from

Russia

RUB60 million to RUB100 million if a party to a transaction is, for instance, subject to certain tax incentives). Certain exemptions may apply when, for example, both taxpayers are located in the same region of Russia, do not have losses, do not have representative offices in other regions, etc.,. These exemptions may not be relevant for all domestic transactions, though.

► Local language documentation requirement

The TP documentation needs to be submitted in the local language. This comes from the general provisions of the Russian legislation, pursuant to which office work of the state authorities must be in Russian only.

► Safe harbor availability

Safe harbors are stipulated for financial transactions (minimum and maximum interest rates). In case the interest rate is outside the safe harbors, a taxpayer is still able to conduct an economic analysis to sustain the rate.

d) BEPS Action 13 implementation overview

► Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Yes, Russia adopted BEPS Action 13 documentation requirements in November 2017.

► Coverage in terms of master and/or local files

Yes, both the master file and local file are covered. The threshold is the same as established for the CbCR in the jurisdiction of the UPE. If the UPE is a Russian taxpayer, the threshold is RUB50 billion.

► Effective/expected commencement date

The BEPS Action 13 requirements apply to financial years starting on or after 1 January 2017, with optional CbCR for financial years starting in 2016.

► Material differences from OECD report template/format

There are a few material differences between the OECD report template/format and Russian regulations. The relevant sections from the regulation are mentioned below and mainly relate to the master file content:

a. A brief functional analysis must be provided for members of an MNE that have influence on the financial performance of the group (vs. the OECD Guidelines referring to material influence)

b. A brief description of all transactions related to transfer of rights for intangible assets is required (vs. the OECD Guidelines referring only to material transactions) – not only unilateral APAs, as recommended by the OECD BEPS Action 13, but all other APAs (i.e., bilateral and multilateral agreements) are to be disclosed if the FTS was not part of these APAs

► Sufficiency of BEPS Action 13 format report to achieve penalty protection

For a master file, penalties may only apply for a late submission or non-submission of the file, and there is no penalty protection as such.

For a local file, penalty protection should be available, provided that all local documentation requirements are met, including Russian translation, local comparability analysis and financial analysis of a local tested party based on local GAAP, etc.

Penalties will not apply for financial years starting in 2017, 2018 and 2019.

► CbCR notification and CbC report submission requirement

There is a CbCR notification requirement in Russia. A CbCR notification should be submitted within eight months after the end of the reporting financial year. As mentioned above, the first mandatory filing period will be financial years starting on or after 1 January 2017, with years starting in 2016 available for optional reporting.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Disclosure of transactions with related parties and third-party transactions that are subject to transfer pricing control is required by way of filing a transfer pricing notification. This notification is due for each year by 20 May of the following year (e.g., by 20 May 2017 for 2016).

b) Transfer pricing-specific returns

There are no other specific transfer pricing returns in Russia.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ Corporate income tax return

28 March.

▶ Other transfer pricing disclosures/return

20 May.

▶ CbCR notification

Eight months after the end of the reporting financial year. The first mandatory filing period will be financial years starting on or after 1 January 2017.

▶ CbC report preparation/submission

Twelve months after the end of the reporting financial year. The first mandatory filing period will be financial years starting on or after 1 January 2017, with financial years starting in 2016 available for optional reporting.

b) Documentation preparation deadline

There is no statutory deadline/recommendation for preparation of transfer pricing documentation. It only needs to be finalized by the time of submitting upon request.

- ▶ Both the existing local TP documentation and BEPS Action 13-compliant local file may be requested from 1 June of the calendar year following the reporting calendar year and should be provided within 30 days of request. The BEPS Action 13-compliant local file may be requested only in relation to calendar year 2018 and onward.
- ▶ A BEPS Action 13-compliant master file may be requested from a taxpayer not earlier than 12 months and not later than 36 months after the end of the reporting financial year and should be provided within 3 months of request. The first master file may be requested for financial years starting on or after 1 January 2017.

c) Documentation submission deadline

▶ Is there a statutory deadline for submission of transfer pricing documentation?

No. TP documentation should not be provided along with the tax return but may be requested by the tax authorities annually.

▶ Time period/deadline for submission on tax authority request

- ▶ Both the existing local TP documentation and BEPS Action 13-compliant local file should be submitted within 30 days of request.
- ▶ A BEPS Action 13-compliant master file should be submitted within 3 months of request.

6. Transfer pricing methods

a) Applicability

▶ International transactions

Yes.

▶ Domestic transactions

▶ Yes.

b) Priority/preference of methods

The Tax Code includes five methods similar to those used in international transfer pricing practice.

The resale-minus method has first priority for a routine distributor reselling goods to unrelated customers. In all other cases, the CUP method prevails, whereas the profit split is a method of last resort.

7. Benchmarking requirements

a) Local vs. regional comparables

Searching for local comparables is a must in the case of a Russian tested party. In the case of a foreign tested party, foreign comparables are possible (it is recommended, however, to consider the applicable region – e.g., Pan-European search, Pan-Asian search).

b) Single-year vs. multi-year analysis

Each year is to be tested on a stand-alone basis. A benchmarking analysis should cover three years preceding the reporting year.

c) Use of interquartile range

The interquartile range is a must unless there is a CUP application based on the recognized pricing agencies' data – in the latter case, the full range of pricing data is acceptable.

Russia

There are specific requirements in relation to the formula to be used for the interquartile range calculation.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

A fresh benchmarking search is to be conducted every year. Pursuant to the official clarifications of the FTS dated 30 August 2012, a fresh benchmarking study should be conducted annually. Exceptions are made for long-term transactions (i.e., license agreements, loans), assuming that the terms and conditions are not changed.

e) Simple vs. weighted average

The law is not specific on this; however, the way the interquartile range is to be calculated mandates the use of a pooled range on the basis of the three-year period as opposed to single/weighted averages.

f) Other specific benchmarking criteria, if any

- ▶ Net assets criteria: Companies' net assets should not have a negative value as of 31 December of the last of three years preceding the reporting period.
- ▶ Losses: Companies should not have reported losses in more than one year during the three-year period preceding the reporting year.
- ▶ Independence: Companies are eliminated as dependent if they have subsidiaries where direct, indirect or total participation exceeded 25%, or have a shareholder in the form of a legal entity that reported direct, indirect or total participation in excess of 25% in any year during the reviewed period.
- ▶ The independence threshold may be increased up to 50% if less than four comparable companies are found based on the combination of the above criteria.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures
 - ▶ Failure to submit/late submission or inaccurate information submitted with respect to the transfer pricing disclosure (notification) may result in a penalty of RUB5,000.
 - ▶ Failure to submit/late submission or inaccurate information submitted with respect to the CbCR notification may result

in a penalty of RUB50,000 (applies for financial years starting in 2020).

- ▶ Failure to submit/late submission or inaccurate information submitted with respect to the CbC report may result in a penalty of RUB100,000 (applies for financial years starting in 2020).
- ▶ Failure to submit/late submission of a master file may result in a penalty of RUB100,000 (applies for financial years starting in 2020).
- ▶ Failure to submit/late submission of the Action 13 BEPS local file may result in a penalty of RUB100,000 (applies for financial years starting in 2017).

▶ If an adjustment is sustained, can penalties be assessed?

If a tax assessment is made by the tax authority as a result of a transfer pricing adjustment, a penalty of 40% of the tax understatement (but not less than RUB30,000) may be assessed, plus a late-payment interest at a rate of 1/300 of the Central Bank of Russia refinancing rate (up to 30 days of delay) and 1/150 of the Central Bank of Russia refinancing rate (starting from the 31st day of delay).

▶ Is interest charged on penalties/payable on refund?

Interest is payable by the tax authorities on a tax refund starting from the day following the due date of the refund. The interest rate shall be the refinancing rate of the Central Bank of the Russian Federation, which is effective on each day of the delayed refund.

b) Penalty relief

Penalties will be imposed if a taxpayer's taxable income is adjusted as a result of a transfer pricing audit, and if the taxpayer did not provide the transfer pricing documentation supporting the prices in a controlled transaction. Penalties cannot apply if prices were established in accordance with an applicable APA.

If an adjustment is made by the tax authority, the available dispute resolution mechanism is through litigation.

9. Statute of limitations on transfer pricing assessments

The general rule is that the tax authority may audit the controlled transactions within two years from the moment of submission of a transfer pricing disclosure (notification) form (due by 20 May following the reporting year).

10. Likelihood of transfer pricing scrutiny/ related audit by local authority

▶ Likelihood of transfer pricing-related audits (*high/medium/low*)

Russian tax authorities use a risk-oriented approach to open a transfer pricing audit. As a result, the number of transfer pricing audits is limited in practice. Once a transfer pricing audit is launched, and if it results in a transfer pricing assessment, it would normally be expected to repeat annually until pricing in controlled transactions is confirmed to be at arm's length.

A transfer pricing audit may cover only three preceding calendar years. Controlled transactions may be audited only once for a specific calendar year.

▶ Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

Considering the risk-oriented approach of the Russian tax authorities, the likelihood that a transfer pricing methodology will be challenged is high. If tax authorities are able to apply a comparable price method that is a priority method under Russian transfer pricing rules, the likelihood of an alternative methodology, if any, to be challenged would normally increase in practice.

▶ Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

Based on the risk-oriented approach of the tax authorities, the likelihood of an adjustment is expected to be high in practice.

▶ Specific transactions/industries/situations, if any, more likely to undergo audit

Transfer pricing matters in controlled transactions are subject to special transfer pricing audits, which are separate from general tax audits and should be performed by the FTS rather than local tax authorities. To date, transfer pricing audits have been focused on cross-border commodity transactions and transactions involving low-tax jurisdictions. Additional high-risk factors include S service fees, royalties and losses, as well as significant reductions in a tax base and deviations from the industry-wide benchmarks. Some domestic transactions may also be regarded as high-risk if they involve entities resident in special economic zones, if they are subject to advantageous tax regimes or if they involve loss-making entities. Transactions that are viewed by the tax authorities as leading to a receipt of an unjustified tax benefit may also be scrutinized using the transfer pricing approach.

11. APA opportunity

▶ Availability (unilateral/bilateral/multilateral)

The APA program has been available since 1 January 2012 and is only for "major taxpayers." A non-Russian company cannot apply for an APA. The Tax Code envisages a possibility to conclude multilateral APAs when the transactional counterparties are located in a jurisdiction with which Russia has a double tax treaty.

▶ Tenure

APAs are available for up to a three-year term.

▶ Rollback provisions

None specified.

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Saudi Arabia

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

General Authority of Zakat and Tax (GAZT)

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

Kingdom of Saudi Arabia (KSA) income tax law has the following provisions:

- Article 63(c) of the KSA income tax law authorizes GAZT to reallocate revenues and expenses in transactions between related parties to reflect the returns that would have resulted if the parties were independent or unrelated.
- Article 58 requires a taxpayer to maintain documentation (in Arabic) to support the "precise determination of tax payable by it."
- Article 61 provides the GAZT with the authority to examine a taxpayer's records.
- Article 10(11) of the bylaws to the tax law contains a prohibition on tax deductibility of expenses that are not at arm's length.

Currently, there are no specific transfer pricing (TP) regulations in place.

► Section reference from local regulation

Article 64 of the KSA income tax law – 50% or more of control through voting rights, rights of income or capital.

2. OECD guidelines treatment/reference

Saudi Arabia is not a member of the OECD.

The OECD Guidelines are not binding on the Saudi tax authority, but the GAZT does expect transactions between related parties to be in accordance with the arm's-length principle.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

No. However, Saudi tax law mandates related party transactions to be at arm's length. In a recent case, the Saudi Arabian Higher Appeal Committee (HAC) upheld a taxpayer's related party transaction primarily because the taxpayer had demonstrated the arm's-length nature of the arrangement through a transfer pricing analysis. It is also expected that the GAZT will release transfer pricing rules that will include a TP documentation requirement in line with BEPS Action 13 in the near future. These effectively mean that TP documentation is strongly recommended.

► Does transfer pricing documentation have to be prepared annually?

There are no specific guidelines on TP documentation. Documentation might need to be presented in case of a tax assessment.

b) Materiality limit/thresholds

► Transfer pricing documentation

Not applicable.

► Economic analysis

Not applicable.

► BEPS master and local files

Not applicable.

► CbCR

Not applicable (for FY 2017).

c) Specific requirement(s)

► Treatment of domestic transactions

There are no specific TP requirements for domestic transactions.

Saudi Arabia

► Local language documentation requirement

The TP documentation needs to be maintained in the local language. Article 58 of the Saudi tax law requires a taxpayer to maintain documentation (in Arabic) to support the “precise determination of tax payable by it.”

► Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

► Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Saudi Arabia has not implemented BEPS Action 13 for transfer pricing documentation, at least for FY 2017. However, as a member of the G20 countries and the BEPS Inclusive Framework, Saudi Arabia is expected to implement a transfer pricing documentation requirement in line with BEPS Action 13.

► Coverage in terms of master and/or local files

Not applicable.

► Effective/expected commencement date

Not applicable.

► Material differences from OECD report template/format

Not applicable.

► Sufficiency of BEPS Action 13 format report to achieve penalty protection

Not applicable.

► CbCR notification and CbC report submission requirement

There is currently no CbCR notification or CbC report submission requirement in Saudi Arabia for FY 2017.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

The online tax return form that was introduced in February 2016 requires a taxpayer to disclose the “value differences” of a material or service provided by a related entity in excess of normal prices. The term “normal price,” which is not explicitly

defined, can be interpreted as the arm’s-length price of such materials and services. A taxpayer that makes a disclosure that such prices are as per the arm’s-length principle might be expected to support it with documentation.

Taxpayers are also required to disclose the amount due to and due from related parties, as part of the balance sheet disclosures. In addition, taxpayers should disclose the name of the related party, nature of dealings, opening and closing payable/receivable balance, as well as movements in the related party payable/receivable balance, as part of the explanatory schedules accompanying the balance sheet disclosures.

b) Transfer pricing-specific returns

There is currently no requirement to prepare transfer pricing-specific returns for related party transactions.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► Corporate income tax return

120 days from the end of the taxable year.

► Other transfer pricing disclosures/return

No specific requirement to file. The online corporate tax filing form has certain TP-related disclosures as mentioned above.

► CbCR notification

Currently not applicable for FY 2017.

► CbC report preparation/submission

Currently not applicable for FY 2017.

b) Documentation preparation deadline

Documentation might need to be produced during a tax assessment, but there is no mandatory filing.

c) Documentation submission deadline

► Is there a statutory deadline for submission of transfer pricing documentation?

No, there is currently no statutory deadline for submission of transfer pricing documentation. The TP documentation will need to be submitted upon request.

- ▶ **Time period/deadline for submission on tax authority request**

The time available to the taxpayer for submitting the documentation is usually negotiable in case of a query.

6. Transfer pricing methods

a) Applicability

- ▶ International transactions

Yes.

- ▶ Domestic transactions

Not applicable.

b) Priority/preference of methods

No specific TP methods have been prescribed in Saudi tax law and, as such, there is no hierarchy or priority as to which methods should be applied.

If a taxpayer in Saudi Arabia adopts and properly implements a global transfer pricing policy that is based on the commonly accepted transfer pricing methods set out in the OECD Guidelines, then it may be possible for the GAZT to accept the methodology that has been applied, although this has not been tested extensively in the context of the KSA market.

7. Benchmarking requirements

a) Local vs. regional comparables

There is no legal requirement for local country comparables, and the Middle East and North Africa region and European comparables might be acceptable.

b) Single-year vs. multi-year analysis

No specific guidance; multiple-year results for comparable companies might be acceptable.

c) Use of interquartile range

Interquartile range calculation using Excel Quartile formulas is acceptable.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

There is no requirement to conduct a fresh benchmarking search every year.

e) Simple vs. weighted average

No specific guidelines.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ **Consequences of failure to submit/late submission and/or incorrect disclosures**

Not prescribed.

- ▶ **If an adjustment is sustained, can penalties be assessed?**

There is currently no specific transfer pricing penalty prescribed under the law. However, penalties as prescribed under the general provisions of Saudi tax law apply in cases of a deficiency assessment relating to a TP adjustment.

- ▶ **Is interest charged on penalties/payable on refund?**

Not applicable.

b) Penalty relief

No penalty relief is currently applicable under Saudi tax law.

9. Statute of limitations on transfer pricing assessments

There is no specific statute of limitations set out in Saudi tax law regarding transfer pricing assessments. The general statute of limitations for the Saudi tax authority to make or amend a tax assessment is five years from the end of the deadline specified for filing the tax declaration for the taxable year. The GAZT may, however, make or amend an assessment within 10 years of the deadline specified for filing the tax declaration for the taxable year in cases when the tax return was not filed, or if filed, was found to be incomplete or incorrect with the intent of tax evasion.

10. Likelihood of transfer pricing scrutiny/ related audit by local authority

► Likelihood of transfer pricing-related audits (*high/medium/low*)

Medium; there is no clear definition or standards for the likelihood of audits. However, this is done on a random basis, in which the tax authorities choose certain clients for audit.

► Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

Refer to the section above.

► Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

This depends on whether the taxpayers have TP documentation.

► Specific transactions/industries/situations, if any, more likely to undergo audit

None specified.

11. APA opportunity

► Availability (unilateral/bilateral/multilateral)

Currently, there is no APA procedure in place. However, taxpayers can apply for advance rulings with the tax authorities on specific matters.

► Tenure

Not applicable.

► Rollback provisions

Not applicable.

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Serbia (Republic of)



1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Tax Administration of Serbia.

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

Articles 59 through 61b of the Corporate Income Tax (CIT) Law define the arm's-length principle, the acceptable methods, and the obligation to prepare and file transfer pricing (TP) documentation (latest update effective from 1 January 2016).

The Rule Book on transfer pricing and methods for the determination of arm's-length prices in intragroup transactions provides further details about these and prescribes obligatory content of the transfer pricing documentation (effective from 30 January 2014).

► Section reference from local regulation

Article 59 of the CIT Law defines related parties and associated enterprises.

2. OECD guidelines treatment/reference

Serbia is not an OECD member; however, Serbian TP provisions and documentation requirements are generally based on the OECD Guidelines.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

Yes, the Rule Book on transfer pricing and methods for the determination of arm's-length prices in intragroup transactions provides rules for transfer pricing documentation in Serbia.

► Does transfer pricing documentation have to be prepared annually?

Yes. Every section of TP documentation should be updated with the latest available information.

b) Materiality limit/thresholds

► Transfer pricing documentation

If a taxpayer did not realize intercompany transactions exceeding RSD8 million (approximately EUR65,000) with either of the related parties, its TP disclosure can be fulfilled in a summary form.

► Economic analysis

RSD8 million (approximately EUR65,000).

► BEPS master and local files

Not applicable.

► CbCR

Not applicable.

c) Specific requirement(s)

► Treatment of domestic transactions

There is a documentation obligation for domestic transactions.

► Local language documentation requirement

The TP documentation needs to be submitted in the local language.

Per Article 6 of the Law on Tax Procedure and Tax Administration, if a taxpayer submits a document in a language and letter not used officially by the tax authorities in accordance with the law governing the official use of language and letter, the tax authority shall set a time limit that may not be shorter than five days for the taxpayer to deliver a certified translation into Serbian. If the taxpayer fails to deliver the certified translation within the provided time limit, the document shall be deemed not submitted.

► Safe harbor availability

Serbia-prescribed safe harbor interest rates for intercompany loans, which are updated every year.

d) BEPS Action 13 implementation overview

► Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No.

► Coverage in terms of master and/or local files

Not applicable.

Serbia (Republic of)

▶ **Effective/expected commencement date**

Not applicable.

▶ **Material differences from OECD report template/format**

Not applicable.

▶ **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

Not applicable.

▶ **CbCR notification and CbC report submission requirement**

Not applicable.

▶ **CbCR notification**

Not applicable.

▶ **CbC report preparation/submission**

Not applicable.

b) Documentation preparation deadline

There is a statutory deadline/recommendation for preparation of transfer pricing documentation – by the time of lodging the tax return to achieve penalty protection (e.g., where there is a contemporaneous requirement).

c) Documentation submission deadline

▶ **Is there a statutory deadline for submission of transfer pricing documentation?**

Yes. TP documentation must be submitted with the CIT return. The deadline for submission of the CIT return and TP documentation is set within 180 days from the date of expiration of the period for which the tax is assessed.

▶ **Time period/deadline for submission on tax authority request**

If TP documentation is not submitted, the CIT Law prescribes that the tax authorities could ask in writing for a taxpayer to submit TP documentation and are obligated to give a deadline of 30 to 90 days to act upon the request.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Taxpayers are obligated to disclose in their annual CIT return revenues and expenses resulting from transactions with related parties, as well as disclose tax-based adjustments based on the transfer pricing analysis.

In addition, related party disclosures and details of transactions are to be documented through obligatory TP documentation, which needs to be prepared and filed along with the CIT return.

b) Transfer pricing-specific returns

There is no specific transfer pricing return in Serbia.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ **Corporate income tax return**

29 June 2018. The deadline for submission of the CIT return is set within 180 days from the date of expiration of the period for which the tax is assessed.

▶ **Other transfer pricing disclosures/return**

29 June.

6. Transfer pricing methods

a) Applicability

▶ **International transactions**

Yes.

▶ **Domestic transactions**

Yes.

b) Priority/preference of methods

The taxpayer is required to select the most appropriate method for determining that the transaction price is at arm's length. Selection of the most appropriate method is based on the following criteria:

- ▶ Nature of transactions that are subject to the analysis
- ▶ Availability and reliability of data for the analysis

- ▶ Level of comparability between transactions affected by transfer prices and transactions carried out with or between unrelated parties
- ▶ The appropriateness of using financial data of unrelated parties for the analysis of transfer pricing compliance by certain types of transactions
- ▶ The nature and reliability of assumptions

To determine the arm's-length price of a transaction, the regulations prescribe the following methods: CUP, resale-minus method, cost-plus method, TNMM and profit split method.

The taxpayer is also allowed to use any other unspecified method that is reasonable to apply in a given circumstance, assuming that the above specified methods cannot be applied.

Foreign comparables are accepted for the purpose of a benchmark analysis if no local comparables can be identified.

There is no priority in the selection of methods.

7. Benchmarking requirements

a) Local vs. regional comparables

Foreign comparables are accepted for the purpose of a benchmark analysis if no local comparables can be identified.

b) Single-year vs. multi-year analysis

Use of a multi-year analysis is mandatory.

c) Use of interquartile range

Use of the interquartile range is mandatory.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

There is no need to conduct a fresh benchmarking search every year. TP documentation has to be prepared and submitted annually, and there is no need to conduct a fresh benchmarking search every year – i.e., a rollforward (update of financials of comparable companies) of the previous year's benchmarking analysis could be acceptable, too. Furthermore, financials of a taxpayer should be updated every year in accordance with financial statements for that year.

e) Simple vs. weighted average

Application of the weighted average for arm's-length analysis is mandatory.

f) Other specific benchmarking criteria, if any

Independence of a company is evaluated by related party rules stating that an entity shall be considered a related party if it has 25% of shares or votes of the taxpayer. Also, a related party is considered to be a person closely related to the taxpayer or an entity registered in a tax haven.

8. Transfer pricing penalties/relief

a) Penalty exposure

▶ Consequences of failure to submit/late submission and/or incorrect disclosures

Generally, each taxpayer is obligated to file annual transfer pricing documentation together with the annual corporate profits tax return. However, penalties are prescribed only if the taxpayer fails to submit the TP documentation upon official written request by the tax authorities, subject to an additional filing deadline between 30 and 90 days. The range of penalties for eventual noncompliance is between RSD100,000 (approximately EUR800) and RSD2 million (approximately EUR16,500) for the legal entity and up to RSD100,000 (approximately EUR800) for the responsible individual in the legal entity.

▶ If an adjustment is sustained, can penalties be assessed?

In addition, the possible adjustment of taxable income on a transfer pricing basis may result in a penalty of up to 30% of the understated tax liabilities and may further result in increased interest for late tax payments.

▶ Is interest charged on penalties/payable on refund?

Legislation in the Republic of Serbia prescribes that the interest is charged on penalties/payable on refund at a yearly rate set by the National Bank of Serbia and increased by 10%.

b) Penalty relief

Taxpayers may opt to 50% of imposed penalties (if imposed to tax offense) no later than eight days from the receipt of the TP order, whereas they would be exempt from payment of the remainder 50% of imposed penalties. Additionally, taxpayers may be approved for an additional period of up to 90 days to comply with the transfer pricing documentation requirements (i.e., to submit to the tax authorities the prescribed transfer pricing document).

Serbia (Republic of)

9. Statute of limitations on transfer pricing assessments

The general statute-of-limitations period of five years for taxes in Serbia also applies to TP assessments. A five-year period starts from the beginning of the year following the year in which the respective tax liability arose.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

▶ **Likelihood of transfer pricing-related audits**
(*high/medium/low*)

Medium, although audits by the Serbian tax authorities are not conducted regularly, and audited periods are not considered irrevocably closed. Typically, audits take place only once every three to five years, and they cover all taxes. Transfer pricing is likely to be within the scope of most tax audits.

▶ **Likelihood of transfer pricing methodology being challenged**
(*high/medium/low*)

Medium; currently, tax authorities have a limited level of practice with transfer pricing methodology, but they have raised pertinent questions in certain previous situations.

▶ **Likelihood of an adjustment if transfer pricing methodology is challenged** (*high/medium/low*)

Medium, for the same reasons given above.

▶ **Specific transactions/industries/situations, if any, more likely to undergo audit**

The transactions that have the highest likelihood of undergoing audit are management and consulting services, while no specific industry has a special audit treatment in this regard. There is a more frequent audit of large taxpayers concerning transfer pricing than other taxpayers.

11. APA opportunity

▶ **Availability (unilateral/bilateral/multilateral)**

Advance rulings and APAs are not available in the Republic of Serbia.

▶ **Tenure**

Not applicable.

▶ **Rollback provisions**

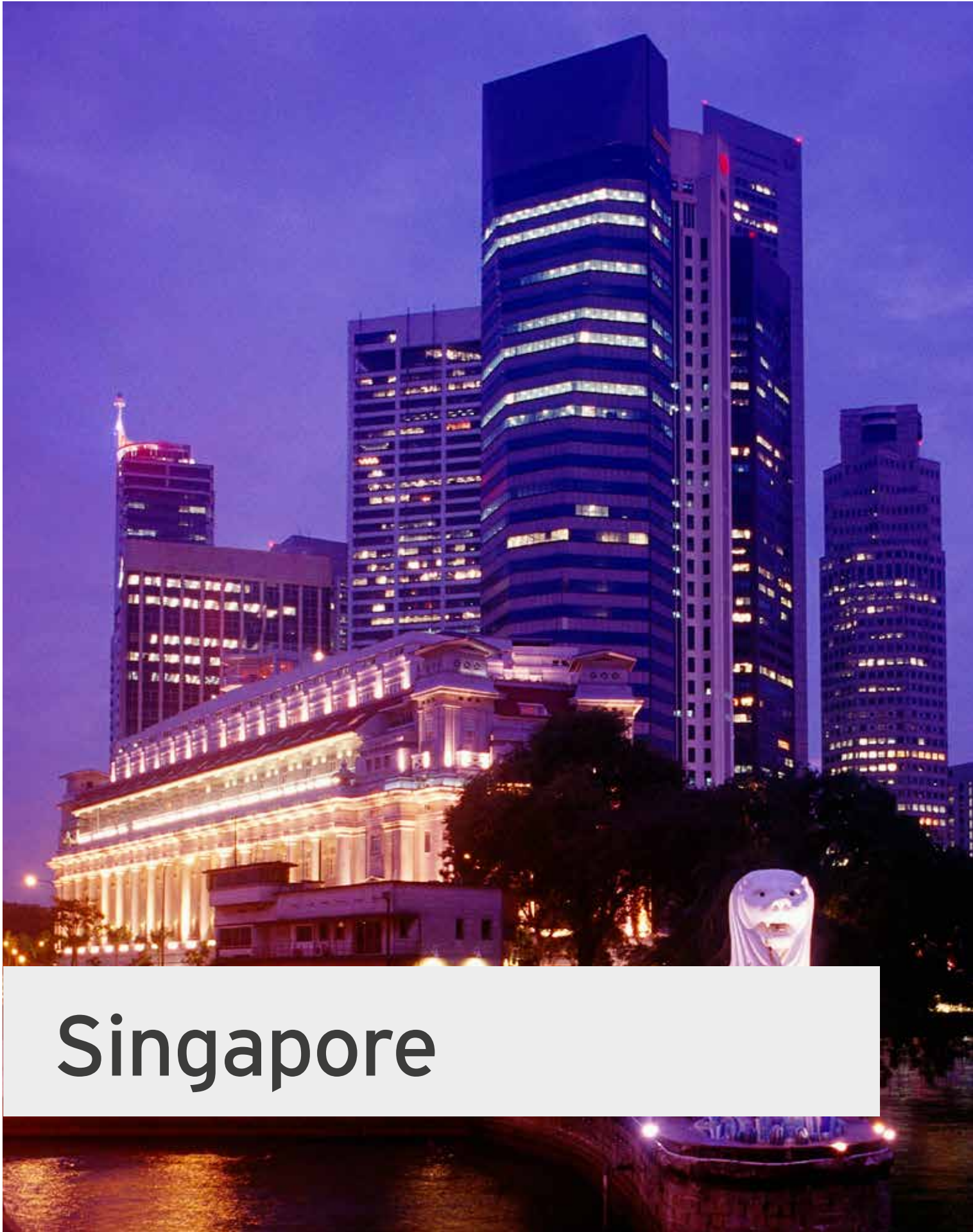
Not applicable.

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Singapore

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Inland Revenue Authority of Singapore (IRAS)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

Section 34D of the Income Tax Act (ITA)¹ relates to transfer pricing and empowers the IRAS to make transfer pricing adjustments in cases where a Singapore taxpayer's transfer pricing practices are not consistent with the arm's-length principle.

On 12 January 2017, the IRAS issued the fourth edition of its transfer pricing guidelines (2017 Singapore Transfer Pricing Guidelines).² The changes include enhanced guidance to support the fact that profits should be taxed where real economic activity is performed and value is created, as well as additional information requirements for transfer pricing documentation and the introduction of an indicative margin or "safe harbor" for related party loans.

On 2 October 2017, the Income Tax (Amendment) Bill 2017 (ITB 2017) was passed by Parliament and subsequently assented to by the President on 19 October 2017. The ITB 2017 includes specific transfer pricing-related changes, including the amendment of existing sections 34D, 74, 93A and 105K, as well as the insertion of new sections 34E and 34F in the ITA.

A brief overview of the transfer pricing-related amendments are as follows:

- ▶ Section 34D – clarifies the types of adjustments the Comptroller may make to enforce the arm's-length principle
- ▶ Section 34E – introduces a surcharge on the transfer pricing adjustments made by the Comptroller with effect from the year of assessment³ (YA) 2019

¹ Relevant sections of the Singapore Income Tax Act are available at <http://statutes.agc.gov.sg/aol/search/display/view.w3p;page=0;query=DocId%3A45fc380e-12d4-4935-b138-c42dc45d377c%20Depth%3A0%20Status%3Ainforce;rec=0>.

² https://www.iras.gov.sg/irashome/uploadedFiles/IRASHome/e-Tax_Guides/etaxguide_CIT_Transfer%20Pricing%20Guidelines_4th.pdf.

³ "Year of assessment" (YA) refers to the year in which income tax is calculated and charged. The assessment is for the income earned in the preceding year, starting on 1 January and ending on 31 December. As an example, for YA 2018, the assessment is for income earned from January to December 2017

- ▶ Section 34F – introduces the mandatory requirement for contemporaneous and adequate transfer pricing documentation, and penalties for noncompliance from YA 2019
- ▶ Section 74 – lifts the statutory time bar so as to allow the Comptroller to raise additional assessments for MAP cases
- ▶ Section 93A – clarifies that any claim for relief for error or mistake in relation to a related party transaction must be supported by contemporaneous and adequate transfer pricing documentation from YA 2019
- ▶ Section 105K – clarifies that the Minister may declare CbCR exchange agreements and other similar agreements as international tax compliance agreements

▶ Section reference from local regulation

A "related party" is defined in Section 13(16) of the ITA as "any other person who, directly or indirectly, controls that person, or is controlled, directly or indirectly, by that person, or where he and that other person, directly or indirectly, are under the control of a common person."⁴

2. OECD guidelines treatment/reference

Singapore is not an OECD member country; however, it is a BEPS Associate country (as announced on 16 June 2016).

The 2017 Singapore Transfer Pricing Guidelines, as codified in Section 34F of the ITA (from YA 2019 onward), are generally consistent with the OECD Guidelines.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Yes. With effect from YA 2019, Singapore will have compulsory transfer pricing documentation requirements.

▶ Does transfer pricing documentation have to be prepared annually?

Transfer pricing documentation should be prepared annually under the 2017 Singapore Transfer Pricing Guidelines. Assuming the related party transactions covered remain the same, and there are no significant

⁴ : <https://sso.agc.gov.sg/Act/ITA1947?Provlds=pr13-#pr13->

Singapore

changes to the functions, assets and risks of the entities and the operating environment, the Singapore taxpayer should test the transactions against the benchmarked range on an annual basis and put together appropriate documentation providing evidence that the transfer prices of the transactions remained arm's-length. The transfer pricing documentation must be updated at least once every three years.

As mentioned above, with effect from YA 2019, Section 34F legislates the requirement for Singapore taxpayers to prepare contemporaneous transfer pricing documentation, as well as codifies the guidance found in the 2017 Singapore Transfer Pricing Guidelines issued by the IRAS. Taxpayers are required to prepare transfer pricing documentation if they meet certain threshold requirements. Transfer pricing documentation is required to be prepared no later than the statutory deadline for the filing of the income tax return.

Additionally, per paragraphs 6.4 and 6.5 of the 2017 Singapore Transfer Pricing Guidelines, the preparation of contemporaneous transfer pricing documentation is important to help avoid the consequences of being unable to deal with transfer pricing enforcement actions by tax authorities and double taxation arising from those actions. This includes:

- ▶ Defending the taxpayer's transfer pricing in the event of a transfer pricing audit by tax authorities
- ▶ Helping tax authorities resolve potential transfer pricing issues under the MAP
- ▶ Facilitating the discussion and conclusion of APAs

b) Materiality limit/thresholds

▶ Transfer pricing documentation

As per the 2017 Singapore Transfer Pricing Guidelines, the IRAS expects taxpayers to prepare transfer pricing documentation where the value or amount of the related party transactions exceeds the following thresholds:

- ▶ SGD15 million for purchase/sale of goods (respectively)
- ▶ SGD15 million for loans owned to/by related parties (respectively)
- ▶ SGD1 million for all other categories of transactions (e.g., service income/expenses, royalty income/expense, rental income/expense, guarantee income/expense); for the purpose of determining if the threshold is met, aggregation should be done for each category of transactions (strict pass-through costs should be included in the computation to determine if the threshold is met) –

for example, all service income received from related parties is to be aggregated

Transfer pricing documentation is not required in the following situations:

- ▶ When the taxpayer transacts with a related party in Singapore and such local transactions (excluding related party loans) are subject to the same Singapore tax rates for both parties
- ▶ When a domestic loan is provided between the taxpayer and a related party in Singapore and the lender is not in the business of borrowing and lending
- ▶ When the taxpayer applies the "safe harbor" 5% cost markup for routine services (see below for further explanation)
- ▶ Where the taxpayer applies the indicative margin for related party loans in accordance with the administrative practice (see below for further explanation)
- ▶ When the related party transactions are covered under an APA, although annual compliance reports are still required under an APA

In addition, the new Section 34F states that a company, the person making the return for a firm (including a partnership) or the trustee of a trust is required to prepare transfer pricing documentation if:

- ▶ The gross revenue (derived from trade or business) of the company, firm or trust in the basis period for a year of assessment (current basis period) exceeds SGD10 million and its related party transactions in the current basis period are not exempted by rules under Section 7
- ▶ The company, firm or trustee of the trust was required to prepare transfer pricing documentation for a transaction in the previous basis period and its related party transactions in the current basis

▶ Economic analysis

- ▶ 5% markup on total costs for routine support services (defined in Annex C of the 2017 Singapore Transfer Pricing Guidelines). Note that certain other conditions apply as per Paragraph 12.26 of the 2017 Singapore Transfer Pricing Guidelines.
- ▶ Taxpayers need not prepare transfer pricing documentation for related party loans below SGD15 million obtained or provided from 1 January 2017, where the indicative margin is applied. The indicative margin will be published on the IRAS website and updated at the beginning of each year

► **BEPS master and local files**

The IRAS has not adopted the application of the BEPS master file and local file concepts as separate documents. Nonetheless, the information requirements for Singapore transfer pricing documentation are largely aligned to the OECD approaches. The 2017 Singapore Transfer Pricing Guidelines contain a two-tiered approach in which both group and entity-level details are required when preparing Singapore transfer pricing documentation.

► **CbCR**

The IRAS has published an e-tax guide on CbCR. Broadly, CbCR is required for an MNE group in relation to a financial year beginning on or after 1 January 2017 (but before 1 January 2018), where:

- The MNE group is a Singapore MNE group
- The consolidated group revenue in the preceding financial year is at least SGD1,125 million
- The MNE group has subsidiaries or operations in at least one foreign jurisdiction

c) Specific requirement(s)

► **Treatment of domestic transactions**

There is a documentation obligation for domestic transactions. Still, taxpayers are not expected to prepare transfer pricing documentation in the following situations:

- Where the taxpayer transacts with a related party in Singapore and such local transactions (excluding related party loans) are subject to the same Singapore tax rates for both parties
- Where a related domestic loan is provided between the taxpayer and a related party in Singapore and the lender is not in the business of borrowing and lending

► **Local language documentation requirement**

The transfer pricing documentation needs to be prepared in English. Paragraph 6.22(f) of the 2017 Singapore Transfer Pricing Guidelines specifies that the IRAS may request translation of any transfer pricing documentation not written in English.

► **Safe harbor availability**

As mentioned above, safe harbor is available for routine services and related party loans if certain conditions are met (refer to Paragraph 12.26 of the 2017 Singapore Transfer

Pricing Guidelines for routine services and Paragraph 13.27 of the 2017 Singapore Transfer Pricing Guidelines for related party loans).

d) BEPS Action 13 implementation overview

► **Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?**

► **Coverage in terms of master and/or local files**

Under Action 13, the IRAS has not adopted the application of the OECD master file and local file concepts as separate documents. Nonetheless, the information requirements for Singapore transfer pricing documentation are largely aligned to the OECD approaches.

► **Effective/expected commencement date**

This is already in place (under the requirements for local Singapore transfer pricing documentation).

► **Material differences from OECD report template/format**

There are no material differences, apart from the fact that the requirements under both the OECD master file and local file need to be met in the Singapore transfer pricing documentation.

► **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

A BEPS Action 13 format report (including both OECD master file and local file requirements) will help in mitigating penalties, particularly record-keeping requirements for tax.

However, it will not mitigate the surcharge of 5% on the amount of the transfer pricing adjustment under Section 34E (applicable from YA 2019 onward), as Singapore surcharge provisions apply when there is an adjustment made regardless of whether the taxpayer has prepared documentation.

► **CbCR notification and CbC report submission requirement**

Singapore-headquartered MNEs that wish to voluntarily file their CbC report for FY 2016 need to inform the IRAS at least three months before the Filing deadline via email. As mentioned above, the CbCR requirements in Singapore are effective from financial years beginning on or after 1 January 2017.

Singapore's CbCR requirements are only applicable to Singapore-headquartered MNEs. There is no secondary mechanism in Singapore, and the IRAS will not accept surrogate filing by foreign MNEs in Singapore

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

No specified disclosures are required on Form C, the Singapore income tax return for YA 2017.

With effect from YA 2018, the IRAS will be introducing a new related party transactions reporting requirement for companies. Under the related party transactions reporting requirement, a company is to state in Form C whether the value of related party transactions as disclosed in the audited accounts exceeds SGD15 million for the relevant YA. If the value of related party transactions exceeds SGD15 million, the company has to complete the Related Party Transactions Form and submit it together with Form C

b) Transfer pricing-specific returns

Other than the above, there is no transfer pricing return required to be filed, either separately or along with the Singapore Income Tax Return.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► Corporate income tax return

30 November (paper filing) or 15 December (electronic filing).

► Other transfer pricing disclosures/return

With effect from YA 2018, 30 November (paper filing) or 15 December (electronic filing).

► CbCR notification

Singapore-headquartered MNEs that wish to voluntarily file their CbC report for FY 2016 need to inform the IRAS at least three months before the Filing deadline via email.

► CbC report preparation/submission

For financial years beginning on or after 1 January 2017, Singapore MNE groups are required to submit a CbC report to the Comptroller within 12 months from the end of that financial year.

b) Documentation preparation deadline

To be considered contemporaneous, the transfer pricing documentation is required to be prepared no later than the statutory deadline for the filing of the income tax return.

c) Documentation submission deadline

► Is there a statutory deadline for submission of transfer pricing documentation?

Taxpayers should have evidence that their transfer pricing documentation was prepared in accordance with the contemporaneous requirements (e.g.,, dating of the report).

► Time period/deadline for submission on tax authority request

Transfer pricing documentation should be submitted within 30 days upon request.

6. Transfer pricing methods

a) Applicability

► International transactions

Yes.

► Domestic transactions

Yes.

b) Priority/preference of methods

The IRAS generally does not have a specific preference for any of the five prescribed methods outlined in the OECD Guidelines, and it stipulates that the transfer pricing method that produces the most reliable results should be selected and applied.

However, there is an exception for loan transactions, and the 2017 Singapore Transfer Pricing Guidelines state that the CUP method is preferred for substantiating the arm's-length nature of interest charges.

To apply the arm's-length principle, the 2017 Singapore Transfer Pricing Guidelines recommend a three-step approach:

1. Conduct a comparability analysis
2. Identify the most appropriate transfer pricing method and tested party
3. Determine the arm's-length results

7. Benchmarking requirements

a) Local vs. regional comparables

As much as possible, taxpayers should use local comparables in their comparability analysis. When taxpayers are unable to find sufficiently reliable local comparables, they may expand their search to regional comparables (such as Pan-Asian region).

b) Single-year vs. multi-year analysis

Single-year results of the tested party are expected to be compared with single- or multiple-year results of the comparables.

c) Use of interquartile range

Interquartile range calculation is acceptable.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

There is no need to conduct a fresh benchmarking search every year; however, the 2017 Singapore Transfer Pricing Guidelines state that taxpayers should update their transfer pricing documentation, including the benchmarking set, when there are material changes to the operating conditions that impact the functional analysis or transfer pricing analysis. Taxpayers are also encouraged to update their transfer pricing documentation at least once every three years.

e) Simple vs. weighted average

There is a preference for weighted average for arm's-length analysis.

f) Other specific benchmarking criteria, if any

Per Paragraph 5.33 (a) to (d), the IRAS has clarified that:

- ▶ The IRAS has no preference for any particular commercial database, as long as it provides a reliable source of information that assists taxpayers in performing comparability analysis
- ▶ Taxpayers should only use comparables with publicly available information; such information can be readily obtained from various sources and verified, making the analyses of these comparables more reliable, compared with those based on privately held information
- ▶ Taxpayers should exclude comparables that have weighted average loss for the tested period, or loss incurred for more than half of the tested period

8. Transfer pricing penalties/relief

a) Penalty exposure

▶ Consequences of failure to submit/late submission and/or incorrect disclosures

Currently penalties may apply if taxpayers fail to provide adequate transfer pricing documentation upon request by the IRAS. Such penalties will be invoked under Section 94(2) of the ITA for not complying with statutory record-keeping requirements.

In addition, with effect from YA 2019, taxpayers will be fined not more than SGD10,000 if they fail to comply with any of the following:

- ▶ Prepare contemporaneous transfer pricing documentation if required to do so under Section 34F
- ▶ Retain the transfer pricing documentation for a period of at least five years from the end of the basis period in which the transaction took place
- ▶ Furnish the Comptroller with a copy of the transfer pricing documentation within 30 days of notice to submit

Similar penalties apply to a person who knowingly provides materially false or misleading transfer pricing documentation to the Comptroller.

▶ If an adjustment is sustained, can penalties be assessed?

Applicable from YA 2019 onward, Section 34E introduces the penalty regime, which allows the Comptroller to apply a surcharge of 5% on the transfer pricing adjustment made for noncompliance with the arm's-length principle. The surcharge applies even in situations where the taxpayer has prepared contemporaneous documentation.

▶ Is interest charged on penalties/payable on refund?

Not applicable.

b) Penalty relief

Adequate and contemporaneous transfer pricing documentation to support the pricing of the taxpayer's related party transactions will help in mitigating penalties, particularly record-keeping requirements for tax.

However, it will not mitigate the surcharge of 5% on the transfer pricing adjustments under Section 34E (applicable from YA 2019 onward).

9. Statute of limitations on transfer pricing assessments

The statute of limitations is four years from the end of the YA (i.e., the latest date the IRAS may make an additional assessment for YA 2013 is 31 December 2017).

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► Likelihood of transfer pricing-related audits (*high/medium/low*)

Medium to high. The IRAS may raise transfer pricing queries as part of its routine corporate income tax reviews, as well as through more detailed transfer pricing consultations with taxpayers.

► Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

Medium to high. In examining the related party transaction under audit, the IRAS may question the applicability of the transfer pricing methodology adopted. This may include the profit level indicator applied; the specific margin/results arrived at; and the transfer pricing method applied, as well as economic substance questions and request for evidence.

► Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

Medium to high. This depends on whether the taxpayer's position is defensible. The risk of an adjustment may be mitigated through contemporaneous transfer pricing documentation.

► Specific transactions/industries/situations, if any, more likely to undergo audit

None specified.

11. APA opportunity

► Availability (unilateral/bilateral/multilateral)

Unilateral, bilateral and multilateral APAs are available; requests for APAs have markedly increased in recent years.

► Tenure

The IRAS will generally accept an APA request to cover three to five financial years.

► Rollback provisions

The IRAS accepts taxpayers' requests to extend APAs to prior years for bilateral or multilateral APAs. The number of rollback years will generally not exceed two financial years immediately prior to the covered period. Depending on the facts and circumstances, the IRAS may exercise discretion to vary the number of rollback years.

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Slovak Republic/ Slovakia

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Slovak Financial Directorate, local tax authorities and Ministry of Finance.

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

The Slovak transfer pricing (TP) rules established in the Income Tax Act generally conform to the OECD Guidelines. The OECD Guidelines were published in the Slovak Financial Newsletter but are not legally binding. Nevertheless, the tax authorities generally follow them in practice.

Since 2009, taxpayers have been obligated to prepare and keep transfer pricing documentation supporting the TP method used in transactions with foreign related parties. The Slovak Ministry of Finance regularly issues official guidance on the contents of TP documentation.

Transfer pricing rules in Slovak Republic are stipulated by:

- ▶ Sections 2, 17 (5, 6, 7) and 18 of the Income Tax Act
- ▶ Relevant sections of the Act on Tax Administration (Tax Code)
- ▶ Section reference from local regulation

See the previous section.

2. OECD guidelines treatment/reference

The Slovak Republic is a member of the OECD.

The tax authority usually follows the provisions of the OECD Guidelines (e.g., the acceptable methods listed in the Income Tax Act correspond with the methods listed in the OECD Guidelines). As of 1 January 2014, the Slovak Income Tax Act reflects the 2010 version of the OECD Guidelines (e.g., elimination of preference in applying the selected transfer pricing method).

At the time of this publication, there was no formal acknowledgment of the 2016 BEPS-updated version of the OECD Guidelines in the Slovak legislation.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Yes.

▶ Does transfer pricing documentation have to be prepared annually?

Yes.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

None specified.

▶ Economic analysis

Not applicable.

▶ BEPS master and local files

Not applicable.

▶ CbCR

Not applicable.

c) Specific requirement(s)

▶ Treatment of domestic transactions

There is a documentation obligation for domestic transactions.

▶ Local language documentation requirement

The TP documentation needs to be submitted in the local language. It is also possible to submit the documentation in English if permitted by the tax authority.

▶ Safe harbor availability

This is not reflected formally in Slovak tax regulations but, in general, abides by OECD TP guidelines.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Yes.

► **Coverage in terms of master and/or local files**

Both the master and local files are covered.

► **Effective/expected commencement date**

The law is applicable for the fiscal year beginning on 1 January 2016.

► **Material differences from OECD report template/format**

None specified.

► **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

BEPS Action 13 format report is not sufficient to achieve penalty protection. Usually, the OECD templates do not match with local reality and do not have all the details either in functions, assets and risk (FAR) analysis or intercompany transactions.

► **CbCR notification and CbC report submission requirement**

There is a CbCR notification and CbC report submission requirement in the Slovak Republic.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

The taxpayer should state (on a specific row of the tax return) the difference, if any, between the prices charged in transactions with related parties and the arm's-length prices that decreased the tax base/increased the tax loss. The tax base must be increased by this difference at the same time. The corporate income tax (CIT) return includes a summary table in which the amounts of various types of related party sales and purchases must be stated (regardless of whether they diverge from arm's-length prices).

Transfer pricing documentation does not need to be enclosed with the tax return.

b) Transfer pricing-specific returns

There are no transfer pricing-specific returns in the Slovak Republic. The CIT form contains an overview of the transactions in a summarized format.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► **Corporate income tax return**

Usually three months after the end of the fiscal year, with the possibility of a three-month extension.

► **Other transfer pricing disclosures/return**

The high-level information on the TP return as established in the CIT form is submitted along with the CIT return.

► **CbCR notification**

Yes, the CIT deadline.

► **CbC report preparation/submission**

12 months after the fiscal year-end.

b) Documentation preparation deadline

It should be available at the time the CIT return is filed.

c) Documentation submission deadline

► **Is there a statutory deadline for submission of transfer pricing documentation?**

No,

► **Time period/deadline for submission on tax authority request**

The taxpayer has 15 days to submit the transfer pricing documentation once requested by the tax authorities in an audit or inquiry.

6. Transfer pricing methods

a) Applicability

► **International transactions**

The Slovak Income Tax Act is in line with the OECD Guidelines. A combination of methods is permitted. Non-listed methods may be used if they comply with the arm's-length principle.

► **Domestic transactions**

The same conditions apply as listed above.

b) Priority/preference of methods

There is no direct preference, though the most appropriate method should be used (in line with the OECD TP Guidelines).

7. Benchmarking requirements

a) Local vs. regional comparables

Regional searches are acceptable.

b) Single-year vs. multi-year analysis

Multi-year analysis is acceptable.

c) Use of interquartile range

Interquartile range calculation using Excel Quartile formulas is acceptable.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

There is a need to conduct a fresh benchmarking search every year. It is not in the regulations but is a best practice followed in the Slovak Republic.

e) Simple vs. weighted average

None specified (not formally mentioned in regulations).

f) Other specific benchmarking criteria, if any

Comparables with not more than 25% ownership.

8. Transfer pricing penalties/relief

a) Penalty exposure

- Consequences of failure to submit/late submission and/or incorrect disclosures

EUR3,000 per any type of noncompliance; can be assessed repeatedly.

- If an adjustment is sustained, can penalties be assessed?

Refer to the section below.

- Is interest charged on penalties/payable on refund?

If any discrepancies are identified in transfer prices, the Slovak Tax Authorities (SKTA) would levy an additional tax at the rate of 22% from an adjusted amount plus a penalty of 10% per year or three times the base interest rate of the European Central Bank (ECB) – whichever is higher – from additional levied tax.

In this regard, we note that there is a new system of TP-related penalties as part of an amendment to the Slovak Income Tax Act. Under the amended system, SKTA can impose a maximum penalty, doubling a sanction of 10% or three times the base interest rate of the ECB (whichever is higher) on the sums equal to differences in the newly determined tax liability of the taxpayer. This would apply if SKTA determines that the tax base is not calculated by using arm's-length prices in transactions with the taxpayer's related parties and that the general anti-abuse rule stated in the Slovak tax legislation has been breached. If the taxpayer does not file an appeal against a decision of the SKTA on an increase of the tax liability stated in the tax return, a double penalty increase should not apply (i.e., only three times the base interest rate of the ECB should be applied).

b) Penalty relief

As of 2016, there is a general option to submit a supplementary tax return within 15 days from the beginning of the tax audit, which offers taxpayers a possibility of reducing the imposed penalty, compared with a tax audit determination of the tax assessment, i.e., a penalty at 7% per year or twice the base interest rate of the ECB per year (whichever is higher) could be assessed (instead of 10% per year/three times the ECB base rate per year).

9. Statute of limitations on transfer pricing assessments

The statute of limitations in the Slovak Republic in the case of applying a double tax treaty is 10 years from the end of the year in which the tax return is filed.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

- Likelihood of transfer pricing-related audits (*high/medium/low*)

In general, the likelihood of a corporate income tax audit in Slovakia is high, while the likelihood that the taxpayer's related party transactions will be reviewed as part of that audit is medium to high.

Based on experience with transfer pricing audits in Slovakia, if transfer pricing is reviewed as part of the tax audit, the risk of a challenge by the Slovak tax authorities of the taxpayer's methodology is also medium to high. Since the obligation to prepare and keep TP documentation was introduced, the tax authority has intensified its activity on transfer

Slovak Republic/Slovakia

pricing and is increasingly focused on the transfer pricing and related documentation when auditing companies that form part of a multinational group. In 2013, a group specializing in transfer pricing was established within the structure of the tax authorities, and the first audits focused solely on TP issues have commenced.

Notwithstanding the focus of documentation rules on taxpayers that are obligated to maintain the so-called full transfer pricing documentation, transfer pricing audits do not focus only on such taxpayers. The likelihood of a transfer pricing audit is roughly the same for companies falling in the "basic" documentation scope (e.g., for midsize companies).

► **Likelihood of transfer pricing methodology being challenged (*high/medium/low*)**

Medium to high, since the SKTA normally has internal control to select the taxpayer to which an audit should be performed. Therefore, once an audit takes place, there is a medium to high probability that the SKTA will focus on challenging the transfer pricing structure.

► **Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)**

Medium to high, as per experience the SKTA usually tries to push for its position, but many circumstances apply during the audit process from the standpoint of both the client and authorities.

► **Specific transactions/industries/situations, if any, more likely to undergo audit**

This can vary depending on TP structure, though structure on royalties, services, financial transactions and limited-risk manufacturers is an area of relatively straightforward challenge.

11. APA opportunity

► **Availability (unilateral/bilateral/multilateral)**

According to Section 18(4) of the Slovak Income Tax Act, in the cases of related party transactions, the taxpayer may request that the tax authority approve the selected transfer pricing method. If approved, the method should be applied for a maximum of five tax periods. The Income Tax Act does not explicitly stipulate that the tax authority may approve the particular price or margin percentage used. Nevertheless, the Slovak tax authority may approve the practical application of the transfer pricing method (e.g., process of identifying comparable transactions or entities) and request in anticipation information regarding the specific target remuneration in the model under application. Given this, an APA should provide a reasonable level of comfort for taxpayers.

► **Tenure**

Up to five years from the approved fiscal year (if business circumstances don't change).

► **Rollback provisions**

For a unilateral APA, no rollback provisions exist.

For a bilateral APA, there may be a five-year rollback if the tax authority agrees.

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Slovenia

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Financial Administration of the Republic of Slovenia
(Finančna uprava Republike Slovenije, or FURS)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

Transfer pricing (TP) rules are provided under the:

- ▶ Corporate Income Tax Act (Official Gazette of the Republic of Slovenia, Nos. 117/06, 56/08, 76/08, 5/09, 96/09, 110/09 – ZDavP-2B, 43/10, 59/1, 24/12, 30/12, 94/12, 81/13, 50/14, 23/15, 82/15, 68/16 and 69/17) (Zakon o Davku od Dohodkov Pravnih Oseb (ZDDPO-2))
- ▶ Rules on Transfer Prices (Official Gazette of the Republic of Slovenia, No. 141/06 in 4/12) (Pravilnik o Transfernih cenah)
- ▶ Rules Amending the Rules on Transfer Pricing (Official Gazette of the Republic of Slovenia, No. 4/12) (Pravilnik o spremembah in dopolnitvah Pravilnika o transfernih cenah)
- ▶ Tax Procedure Act (Official Gazette of the Republic of Slovenia, Nos. 13/11 – official consolidated text, 32/12, 94/12, 101/13 – ZDavNepr, 111/13, 25/14 – ZFU, 40/14 – ZIN-B, 90/14, 91/15, 63/16 and 69/17) (Zakon o Davčnem Postopku (ZDavP-2))

▶ Section reference from local regulation

Articles 16 and 17 of the Corporate Income Tax Act provide the definition of “related party” and the general requirements with which related parties need to comply.

2. OECD guidelines treatment/reference

Slovenia is a member of the OECD.

As the Slovenian transfer pricing regulations follow the principles established in the OECD Guidelines, the tax authority, in the absence of guidance in Slovenian legislation, will also consider the OECD Guidelines during tax audits.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Yes. The Slovenian transfer pricing documentation requirements are based on a master file concept. Under this concept, as recommended by the European Community (EC) Council and the EUJTPF, the transfer pricing documentation should consist of a master file and a country-specific file. Disclosure of any related party transaction amounts should be provided with the tax return when it is filed with the tax authority. Following the implementation of CbCR rules in 2016, relevant multinational entities are required to file CbC reports, which are commonly considered a part of TP documentation.

▶ Does transfer pricing documentation have to be prepared annually?

TP documentation should be prepared annually and for each year separately. A mere memo that outlines changes vis-à-vis previous year(s) is not acceptable.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

No materiality limit.

▶ Economic analysis

No materiality limit.

▶ BEPS master and local files

Not applicable.

▶ CbCR

The CbCR requirement applies to multinational groups with consolidated revenues of EUR750 million or above in the reporting period.

c) Specific requirement(s)

▶ Treatment of domestic transactions

All transactions with related parties should be included in the transfer pricing documentation.

Slovenia

▶ Local language documentation requirement

The TP documentation should be prepared in Slovenian. However, an entity may decide to prepare it in another language and translate it in Slovenian upon tax authorities' (the tax authorities should grant a minimum of 60 days to translate the documentation).

▶ Safe harbor availability

Safe harbor rules are available for related party loans.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Based on BEPS Action 13, Slovenia implemented the CbCR requirement for certain multinational entities. The master file and local file concepts according to BEPS Action 13 have not yet been implemented in the law.

▶ Coverage in terms of master and/or local files

Not applicable.

▶ Effective/expected commencement date

Relevant legislation for CbCR was adopted in 2016 and 2017. The first CbC reports are due for FY 2016 and should be filed within 12 months after the end of the fiscal year of the entity.

▶ Material differences from OECD report template/format

Slovenian requirements on the CbCR template/format follow the OECD report template/format on essential items. Information on financing and intellectual property (IP) is not explicitly required by the Slovenian documentation rules.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

Yes, it is sufficient.

▶ CbCR notification and CbC report submission requirement

There is a CbCR notification and CbC report submission requirement.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Related party transactions are reported as a component of the annual corporate income tax return.

b) Transfer pricing-specific returns

As mentioned above, related party transactions must be reported as part of the information included on the annual corporate income tax return. In addition, if certain conditions are fulfilled, specifically prescribed attachments must be enclosed with the corporate income tax return. Such conditions include:

- ▶ If the cumulative amount of given or received loans from a particular related party exceeds EUR50,000 in a tax period, the taxpayer must disclose the name of the related party, its state of residence and tax number, the cumulative amount of the loan given or received, and the relationship with the related party.
- ▶ Similarly, if the cumulative amount of other intercompany receivables or liabilities toward a particular related party exceeds EUR50,000 in a tax period, the taxpayer must disclose the name of the related party, its state of residence and tax number, the cumulative amount of receivables or liabilities toward the related party, and the relationship with the related party.

A similar attachment is required if the resident taxpayer has tax losses generated from previous periods, if it is taxed at a 0% corporate income tax (CIT) rate or at a lower rate than the general one, or if the resident related party is tax-exempt

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ Corporate income tax return

Within three months after the end of the fiscal year (i.e., by 31 March for a fiscal year ending on 31 December).

► **Other transfer pricing disclosures/return**

Related party transaction volumes should be reported in an appendix to the CIT return.

► **CbCR notification**

The CbCR notification should be filed as an appendix to the CIT return.

► **CbC report preparation/submission**

The CbC report should be filed within 12 months after the end of the fiscal year of the entity (i.e., first reports due by 31 December 2017 for a fiscal year ending on 31 December 2016).

b) Documentation preparation deadline

The TP documentation should be prepared by the time the corporate income tax reporting is due. It also should be submitted upon the request of the tax authorities.

c) Documentation submission deadline

► **Is there a statutory deadline for submission of transfer pricing documentation?**

There is no statutory deadline for submission of transfer pricing documentation apart from the CbC report.

In line with provisions of the Tax Procedure Act, the CbC report should be submitted to the tax authorities within 12 months following the fiscal year-end.

► **Time period/deadline for submission on tax authority request**

The documentation should be provided to the tax authority upon request, which is usually made in the course of a tax audit. If it is not possible to submit the documentation immediately, an extension of up to 90 days (depending on the extent and complexity of the information) may be granted. If the master file is not kept in the Slovenian language, the tax authority may request that it be translated before submission, with an extension of 60 days granted to do so.

In line with provisions of the Tax Procedure Act, the CbC report should be submitted to the tax authorities within 12 months following the fiscal year-end.

6. Transfer pricing methods

a) Applicability

► **International transactions**

Following the changes to the OECD Guidelines regarding the hierarchy of TP methods, the Regulation on Transfer Prices introduced the “best-method rule” in the beginning of 2012. The best-method rule replaced the previous hierarchy, which preferred traditional transactional methods over transactional profit methods.

► **Domestic transactions**

Refer to the section above.

b) Priority/preference of methods

To some degree, the preference for transactional methods over profit methods still exists; when both can be applied in an “equally reliable manner,” the traditional transactional method should be selected. There is a similar conclusion regarding the application of the CUP method, which will trump any other method if both can be applied in an equally reliable manner.

7. Benchmarking requirements

a) Local vs. regional comparables

Pan-European benchmarks are acceptable in Slovenia.

b) Single-year vs. multi-year analysis

There are no specific rules on this; it should be examined on a case-by-case basis. As the tax authorities usually review multiple periods, it is possible to apply a multi-year analysis.

c) Use of interquartile range

An interquartile range is determined in such a way that 25% of the lower values and 25% of the upper values are eliminated from the total observed range of comparable market prices. The comparable market price is considered to be the median of the interquartile range of comparable market prices.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

A benchmarking study may be updated by a refresh of the financials in the study. There is no legal requirement

to perform a new benchmarking study each year. Updating it every three years is recommended.

e) Simple vs. weighted average

The comparable market price is considered to be the median of the interquartile range of comparable market prices.

f) Other specific benchmarking criteria, if any

When establishing comparable market prices, the conditions from related transactions must be compared with the conditions in identical or comparable transactions between unrelated parties.

8. Transfer pricing penalties/relief

a) Penalty exposure

► Consequences of failure to submit/late submission and/or incorrect disclosures

A taxpayer may be fined up to EUR30,000 if the transfer pricing documentation is not submitted in the prescribed manner; additionally, the individual responsible for preparing the documentation on behalf of the taxpayer may also be fined up to EUR4,000.

► If an adjustment is sustained, can penalties be assessed?

In the case of a tax adjustment, late-payment interest and penalties for offenses may be charged.

Interest rates for noncompliance as of 1 January 2017 are:

- For postponement of payment or payment in installments, 2% per year
- For submitting a tax return based on voluntary self-disclosure, 3% per year
- For submitting a tax return during tax audit (new institute), 5% per year
- Penalty interest based on decision issued by the tax authorities in tax audit, 7% per year
- Interest rate for late payment of tax and late filing of tax returns, 9% per year

If the additional tax exceeds EUR5,000, the tax offense qualifies as severe, and fines in the amount of 45% of the additional tax may be levied.

► Is interest charged on penalties/payable on refund?

No, there is no interest on penalties or on penalty interest. Late-payment interest is applied only on the tax underpayment arising from adjustments of income and costs corresponding to related party transactions as a result of the tax audit process.

b) Penalty relief

Penalties (fines) for a tax offense may be avoided if the taxpayer makes a voluntary disclosure before receiving the notice at the beginning of a tax audit or the notice at the beginning of a tax offense procedure or criminal procedure. When making a voluntary disclosure, the taxpayer should adjust the tax liability accordingly.

When making the voluntary disclosure, the taxpayer also must pay the amount of tax due and late-payment interest. When tax and late-payment interest are paid simultaneously while making the disclosure, the taxpayer avoids facing penalties for a tax offense.

9. Statute of limitations on transfer pricing assessments

The statute of limitations on corporate income tax assessments is generally five years.

If the tax authorities intervene with any official action against the taxpayer with a purpose to assess or collect tax, the relevant period is reset, without taking into account any previous lapse of time. Nevertheless, the right of the tax authorities to assess and collect tax will cease after 10 years. The transfer pricing documentation must be archived for 10 years.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► Likelihood of transfer pricing-related audits (high/medium/low)

In general, the risk of an annual tax audit is characterized as medium; however, the risk of an immediate tax audit after a taxpayer applies for a tax refund is high.

In practice, taxpayers that exhibit the following characteristics are at a higher risk of being subject to a transfer pricing audit in Slovenia:

- ▶ Losses for more than three consecutive years
- ▶ An increase in gross revenue or receipts, but no change in net profit
- ▶ Lower net profit in comparison with other comparable enterprises or with the industry average (i.e., those taxpayers whose profits fall below the range of profit ratios are exposed to increased transfer pricing audit risk)
- ▶ Fluctuating profit and loss histories
- ▶ Related parties in tax havens
- ▶ A high number of related party transactions

In addition, there is a high risk for a tax audit:

- ▶ For a branch that operates in Slovenia that does not pay corporate income tax
- ▶ For a taxpayer for which a specific risk was recognized in a previous tax audit
- ▶ For a taxpayer subject to an exchange of information between tax authorities

Despite the medium likelihood of a transfer pricing-related audit, the likelihood that transfer pricing will be reviewed as part of the audit is high.

▶ **Likelihood of transfer pricing methodology being challenged (*high/medium/low*)**

Generally medium. The likelihood depends on the appropriateness of the transfer pricing system in place (i.e., if the TP system of the company under review seems to be reasonable and is supported by TP documentation).

For example, if an entity having a limited risk profile incurs tax losses, the tax authorities will most likely challenge the transfer pricing method.

▶ **Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)**

Generally high. The tax authorities make a transfer pricing adjustment for controlled transactions especially when they can support such a decision with a benchmark study. In this respect, the tax authorities recommend to the company what kind of PLI it should have based on the benchmark study performed by the tax authorities. Since the recommended PLI is usually different from the current one, the company should make a transfer pricing adjustment in its CIT return.

▶ **Specific transactions/industries/situations, if any, more likely to undergo audit**

The tax authority mainly initiates a transfer pricing audit when a Slovenian taxable person is part of a multinational group. The tax authority is currently putting the following transactions under increased scrutiny:

- ▶ Limited function and risk entities with tax losses carried forward
- ▶ Intragroup services
- ▶ Intangible goods (e.g., royalties and licensing)
- ▶ Financial transactions (e.g., loans and cash pooling)

Additional risk factors are the profitability of the local taxpayer, business restructurings, the nature and volume of related party transactions, transfer pricing issues identified in previous tax audits and information available from the media.

11. APA opportunity

▶ **Availability (unilateral/bilateral/multilateral)**

As of 2017, a taxable entity can request a unilateral, bilateral or multilateral APA with the Slovenian tax authorities.

However, the following conditions apply:

- ▶ The taxable entity and the tax authorities have met beforehand and agreed on the feasibility of an APA.
- ▶ The transaction that is subject to the APA has economic substance.
- ▶ The taxable entity has a genuine intention to perform such a transaction.
- ▶ The taxable entity and the tax authorities agree on concluding an APA.
- ▶ The transaction that is subject to the APA will be performed for a longer period of time and is not due to end shortly after the APA is concluded.

The duration of the APA is determined at the tax authorities' discretion. Administrative fees of EUR15,000 for first conclusion and EUR7,500 for extension of an APA apply.

Slovenia

► Tenure

The duration of the APA is determined at the tax authorities' discretion. The maximum duration is five years, with the possibility of an extension.

► Rollback provisions

None specified.

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South Africa

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Commissioner of the South African Revenue Service (SARS)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

Section 31 of Income Tax Act No. 58 of 1962 (the Act) contains the main legislative provisions concerning transfer pricing (TP).

▶ Section reference from local regulation

Section 1 of the Act contains the definition of "connected person," which is used to determine whether a related party can be considered to be within the scope of Section 31 of the Act.

2. OECD guidelines treatment/reference

South Africa is not a member of the OECD. However, the SARS accepts the OECD Guidelines and has largely based its practice on them.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Yes.

▶ Does transfer pricing documentation have to be prepared annually?

Transfer pricing documentation can be prepared anew every three years and updated annually. This is true for a benchmark. However, documentation as a whole needs to be updated annually.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

Not applicable.

▶ Economic analysis

Not applicable.

▶ BEPS master and local files

The threshold for filing information pertaining to the master and local files is the aggregate of cross-border intercompany transactions (without offsetting any transactions against each other) exceeding or reasonably expected to exceed ZAR100 million.

▶ CbCR

Total consolidated group revenue of more than ZAR10 billion (EUR750 million) during the fiscal year immediately preceding the reporting fiscal year.

c) Specific requirement(s)

▶ Treatment of domestic transactions

None specified.

▶ Local language documentation requirement

TP documentation should be prepared in English.

▶ Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Yes.

▶ Coverage in terms of master and/or local files

It covers the master file and local file.

▶ Effective/expected commencement date

1 January 2016, for financial years commencing after 1 October 2016 (if not a reporting entity) to submit the master and local files.

▶ Material differences from OECD report template/format

There are no material differences between the OECD report template/format and South Africa's regulations. True but manual data would need to be completed on a separate e filing form for each local entity, together with the information related to the constituent entities.

South Africa

► **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

A BEPS Action 13 format is sufficient.

► **CbCR notification and CbC report submission requirement**

Yes, there is a CbCR notification and CbC report submission requirement in South Africa for years of assessment commencing 1 January 2016.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Income Tax Return 14 (ITR14) provides for specific information pertaining to cross-border transactions with “connected persons.” In particular, taxpayers are required to provide the values of individual cross-border transactions entered into with foreign-connected persons. This includes information such as the amounts received/receivable from foreign-connected persons and amounts paid/payable to foreign-connected persons, and whether there have been any changes to the taxpayer’s transfer pricing methodologies. In addition, taxpayers are required to provide certain financial ratios that indicate the level of borrowings and the overall performance of the South African entity.

b) Transfer pricing-specific returns

There are no transfer pricing returns.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► **Corporate income tax return**

An ITR14 return must be submitted to the SARS within 12 months after the taxpayer’s financial year-end.

► **Other transfer pricing disclosures/return**

Not applicable.

► **CbCR notification**

A CbCR notification must be submitted to the SARS within 12 months after the taxpayer’s financial year-end.

► **CbC report preparation/submission**

A CbC report must be submitted to the SARS within 12 months after the taxpayer’s financial year-end.

b) Documentation preparation deadline

Transfer pricing documentation is typically recommended to be finalized by the time of lodging the tax return to achieve penalty protection (e.g., where there is a contemporaneous requirement).

c) Documentation submission deadline

► **Is there a statutory deadline for submission of transfer pricing documentation?**

No.

► **Time period/deadline for submission on tax authority request**

Taxpayers have to submit the TP documentation within 21 business days once requested by the tax authorities in an audit or inquiry.

6. Transfer pricing methods

a) Applicability

► **International transactions**

Yes.

► **Domestic transactions**

Not Applicable.

b) Priority/preference of methods

The SARS accepts the methods prescribed by the OECD (i.e., CUP, resale price, cost-plus, TNMM and profit split).

The SARS has indicated that it will subscribe to the OECD’s view of accepting a best-method approach as long as it is substantiated. The SARS may require that adjustments be made to foreign comparable company results used for benchmarking the results of the South African entity to compensate for differences in risks assumed by entities operating in a different jurisdiction.

7. Benchmarking requirements

a) Local vs. regional comparables

There is no legal requirement for local country comparables; however, it is preferable to have comparables that operate similarly to that of South Africa.

b) Single-year vs. multi-year analysis

Multiple-year analysis.

c) Use of interquartile range

Interquartile range is applicable.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

There is no need to conduct a fresh benchmarking search every year. A fresh benchmarking search is to be conducted every three years, with a financial update annually.

e) Simple vs. weighted average

There is a preference for the weighted average for arm's-length analysis.

f) Other specific benchmarking criteria, if any

Regarding independence criteria, South African statutory rules stipulate that companies are considered to be related parties if ownership share is above 20% and should be excluded from a comparables search, as per the definition of "connected person" in Section 1 of the Act. This provision does not apply for financial services transactions (specifically excluded in Section 31 of the Act).

8. Transfer pricing penalties/relief

a) Penalty exposure

- Consequences of failure to submit/late submission and/or incorrect disclosures

An administrative penalty of up to ZAR16,000 can be levied for every month that the documentation remains outstanding. The administrative penalty is based on the assessed loss or taxable income for the preceding year.

- If an adjustment is sustained, can penalties be assessed?

Penalties could reach 200% of the additional tax resulting from an adjustment in the event of default, omission, incorrect disclosure or misrepresentation.

- Is interest charged on penalties/payable on refund?

Yes, interest is levied at the prescribed rate, which is determined by the Minister of Finance from time to time by notice in the *Government Gazette*.

b) Penalty relief

With respect to other penalties that may be imposed under the Tax Administration Act, if taxpayers have made conscientious efforts to establish transfer prices that comply with the arm's-length principle and have prepared documentation as evidence of such compliance, the SARS will likely take the view that the taxpayer's transfer pricing practices represent a lower tax risk. Such evidence may provide some mitigation against the maximum penalty for the underpayment of income tax of 200%, as provided by the Tax Administration Act.

Should the transfer pricing report be prepared by a South African registered tax practitioner, a substantial understatement penalty would not be levied by the SARS.

The taxpayer can object to the adjustment, or a portion thereof.

9. Statute of limitations on transfer pricing assessments

The normal statute of limitations is three years from the date of assessment of the taxpayer. Under the Tax Administration Act, self-assessment provisions have an extended statute of limitations of five years. As transfer pricing is now a self-assessment provision, the statute of limitations is arguably now five years. This can be extended or removed in the cases of fraud, misrepresentation or nondisclosure of material facts.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

- Likelihood of transfer pricing-related audits (*high/medium/low*)

The likelihood of a general annual tax audit is currently assessed as medium, and the likelihood of transfer pricing forming a part of such an audit is high. To the extent that the SARS requests information from a taxpayer, including transfer pricing documentation that the taxpayer does not have, this is grounds for an automatic transfer pricing audit.

South Africa

▶ **Likelihood of transfer pricing methodology being challenged**
(*high/medium/low*)

It depends on a case by case basis, however the methodology is normally challenged within the audit process. Likelihood is Medium.

▶ **Likelihood of an adjustment if transfer pricing methodology is challenged** (*high/medium/low*)

The likelihood of an adjustment is high, should SARS challenged the methodology.

▶ **Specific transactions/industries/situations, if any, more likely to undergo audit**

None specified.

11. APA opportunity

▶ **Availability (unilateral/bilateral/multilateral)**

South Africa currently does not have an APA program, although one is being considered. The legislation also currently prohibits the SARS from providing an advanced ruling to establish a price.

▶ **Tenure**

Not applicable.

▶ **Rollback provisions**

Not applicable.

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South Korea

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

National Tax Service (NTS)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

- ▶ Law for Coordination of International Tax Affairs (LCITA) (since 2006)
- ▶ Presidential Enforcement Decree (PED) of LCITA (since 2006)
- ▶ Ministerial Decree and Interpretations of LCITA (since 2006)

▶ Section reference from local regulation

LCITA Article 2 (1) 8 defines the term "special relationship" for transfer pricing (TP) purposes.

2. OECD guidelines treatment/reference

South Korea is a member of the OECD.

The LCITA, though enacted based on the OECD Guidelines, takes priority over them. The NTS recognizes the OECD Guidelines, but they are not legally binding. Hence, if a taxpayer's argument is based only on the OECD Guidelines and not on the LCITA, the NTS or regional tax offices may not accept it

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Yes.

▶ Does transfer pricing documentation have to be prepared annually?

Yes, transfer pricing documentation must be prepared annually.

A transfer pricing study report evaluating the arm's-length nature of transfer pricing actually applied must be prepared at the time the corporate income tax return (CITR) is filed, and must be submitted within 60 days upon request from the tax authority

b) Materiality limit/thresholds

▶ Transfer pricing documentation

None specified

▶ Economic analysis

None specified

▶ BEPS master and local files

- a. Entities with annual revenue of more than KRW100 billion
- b. Foreign related party transactions with an amount of more than KRW50 billion.

▶ CbCR

- a. Entities with annual revenue on a prior-year consolidated financial statement that exceeds KRW1 trillion
- b. If the NTS could not successfully obtain relevant CbCR from another tax jurisdiction

c) Specific requirement(s)

▶ Treatment of domestic transactions

There is no documentation obligation for domestic transactions. However, the tax authority may question and challenge the domestic related party transaction based on the Corporate Income Tax Law.

▶ Local language documentation requirement

There is no specific language requirement. However, the tax authority will request a Korean version when submitted in practice. The local file and master file of BEPS documentation must be submitted in Korean. The master file can be submitted in English; however, a Korean version must be submitted within the following month. (See LCITA Presidential Enforcement Decree Article 21-2, Paragraph 5.).

▶ Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

After the OECD's 2015 announcement of the BEPS actions, the NTS revised the LCITA pursuant to BEPS Action 13, requiring the CbCR, master file and local file as a part of Combined Report of International Transactions (CRIT) compliance on the intercompany transactions taken by the taxpayer with its overseas related parties.

South Korea

► Coverage in terms of master and/or local files

It covers both master file and local file.

► Effective/expected commencement date

It was enacted in December 2015, effective for fiscal years starting 1 January 2016.

► Material differences from OECD report template/format

There is no material difference between the OECD report template and the Korean master file and local file template released by the NTS. However, as the NTS released the standardized template for preparation of the master and local files, the taxpayer needs to localize the report provided from a foreign affiliate.

► Sufficiency of BEPS Action 13 format report to achieve penalty protection

The BEPS Action 13 format report is not sufficient to achieve penalty protection in Korea, except for a CbC report. Additional items may include transfer pricing-related forms, such as the Statement of Overseas Related Party Transactions with summary of profits and losses of the overseas related parties, and the Statement of Guarantee Service Transaction (if there is a guarantee transaction).

► CbCR notification and CbC report submission requirement

There is a CbCR notification requirement in South Korea. It is due within six months of the end of the fiscal year.

Pursuant to the amendments to the Korean transfer pricing documentation rules applicable for the fiscal year starting on or after 1 January 2016, if the ultimate parent entity (UPE) has consolidated revenue of the prior year above KRW1 trillion and the NTS could not obtain the relevant CbC report from another tax jurisdiction, then the CbC report must be filed by the Korean entity as a part of the CRIT within 12 months of the end of the fiscal year.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

The LCITA requires a taxpayer to submit the following transfer pricing reporting forms at the time the corporate income tax return is filed:

d. A form stating the transfer pricing method selected and the reason for selecting the method for each related party transaction; there are different forms for tangible property transactions, intangible property transactions, service transactions and CSAs

e. A summary of cross-border transactions with foreign related parties

f. A summary of income statements of foreign related parties that have cross-border transactions with the South Korean entity

There are certain minimum threshold exemptions for the first and third forms mentioned above, based on the transaction amount

b) Transfer pricing-specific returns

The transfer pricing reporting forms mentioned above should be filed with the tax authority at the time of the corporate income tax filing.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► Corporate income tax return

This return is due three months from the fiscal year-end date.

► Other transfer pricing disclosures/return

TP-related information shall be submitted at the time of the CITR filing. Taxpayers can apply for an extension; the application must be submitted 15 days prior to the original deadline. The tax authority may approve the extension due date up to one year.

The master and local files must be submitted within 12 months of the taxpayer's fiscal year-end date. The master file can be submitted in English; however, a Korean version must be submitted within the following month

► CbCR notification

CbCR notification is due within six months of the end of the fiscal year.

► CbC report preparation/submission

If the Korean entity's UPE meets the CbCR filing threshold and the NTS could not obtain CbCR successfully from another

tax jurisdiction, then the Korean entity must submit a CbC report within 12 months of the end of the fiscal year.

b) Documentation preparation deadline

There is no specified deadline for preparation of transfer pricing documentation. It has to be finalized by the time of the lodging of the tax return to achieve penalty protection (e.g., where there is a contemporaneous requirement).

An underreporting penalty can be waived if a TP study report is prepared at the time of the tax return and submitted within 30 days upon request by the tax authority.

c) Documentation submission deadline

- ▶ Is there a statutory deadline for submission of transfer pricing documentation?

There is no statutory deadline for submission of transfer pricing documentation.

- ▶ Time period/deadline for submission on tax authority request

The taxpayer has 60 days to submit the documentation upon request. Under a tax audit, the taxpayer has to submit it on day one of the audit in practice.

6. Transfer pricing methods

a) Applicability

- ▶ International transactions

Yes.

- ▶ Domestic transactions

Not applicable; fair market value gets priority for domestic transactions.

b) Priority/preference of methods

Regulations prescribe the following five transfer pricing methods: CUP, resale price, cost-plus, profit split and TNMM. Other reasonable methods can only be used if the five methods are not applicable. Of the aforementioned methods, the taxpayer is to select the most reasonable one based on the availability and reliability of data.

7. Benchmarking requirements

a) Local vs. regional comparables

The tax authority will request a local benchmark (if the tested party is a Korean company).

b) Single-year vs. multi-year analysis

Multi-year is preferred.

c) Use of interquartile range

The NTS has its own version of calculation for the interquartile range.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

None specified.

e) Simple vs. weighted average

Weighted average is preferred for arm's-length analysis in practice.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures

There are certain penalties for failing to comply with information or documentation requests issued by the NTS. A taxpayer must submit information and documents requested by the NTS within 60 days. A one-time extension of 60 days may be granted if reasonable circumstances specified in the LCITA exist. Failure to provide documentation requested by the NTS by the required due date can result in a penalty of up to KRW100 million.

A penalty of KRW10 million shall be imposed on the taxpayer for omitting or falsifying a part or all of the "Summary of cross-border transactions with foreign related parties" at the time of filing a CITR.

South Korea

Under the current tax law, taxpayers failing to file a master file, local file or country-by-country report, or those found to file false information or omit a filing are subject to penalties of KRW10 million (USD9,000) per documentation. Under the 2017 proposal, penalties would be increased to KRW30 million (USD27,000) per documentation. The revised rule will be effective from the date on which it is enacted (expected in early 2018).

► **If an adjustment is sustained, can penalties be assessed?**

Yes. There are two types of penalties associated with a transfer pricing adjustment: an underreporting penalty and an underpayment penalty.

- The underreporting penalty is approximately 10% of the additional taxes resulting from a transfer pricing adjustment.
- The underpayment penalty, which is an interest payment in nature, is calculated as 0.03% of the additional taxes on a transfer pricing adjustment per day (10.95% per year) on the cumulative days. Counting the cumulative days of the underpayment starts from the day after the statutory tax filing due date, which is three months after the fiscal year-end and ends on the date that a payment for the tax assessment is made.

► **Is interest charged on penalties/payable on refund?**

Refer to the section above.

b) Penalty relief

Under Article 13 of the LCITA, if the taxpayer has prepared and maintained contemporaneous transfer pricing documentation for the transfer pricing methods applied to the cross-border related party transactions reported in the CITR, and such documentation supports the reasonableness of the transfer pricing methods reported, the penalty for underreporting will be waived if a transfer pricing adjustment is made. To be eligible for an underreporting penalty waiver, the transfer pricing documentation must be submitted within 30 days upon a request by the NTS.

- The taxpayer can file an objection to the Regional Tax Office (RTO) within 90 days from the date of receiving the tax bill.
- As the RTO tends to adhere to the notification of tax audit results, most companies tend to skip this procedure.
- The taxpayer can file a tax appeal to the NTS or the National Tax Tribunal (NTT) within 90 days from the date of receiving the tax bill even if it does not file an objection with the RTO.

- If the taxpayer files an objection with the RTO, it may file a tax appeal to the NTS or NTT within 90 days from the date of receiving the feedback to the objection

9. Statute of limitations on transfer pricing assessments

This is generally five years from the day after the income tax return filing due date. It extends to 10 years in the case of fraud or another wrongful act and 7 years if a taxpayer does not submit the tax filing on the due date.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► **Likelihood of transfer pricing-related audits**
(*high/medium/low*)

Companies should expect to be audited every four to five years, depending on their size, or more frequently if other special factors exist. The likelihood of transfer pricing being reviewed during a tax audit is high. The NTS, as a matter of policy, requests transfer pricing documentation, and such requests can be made separately from a tax audit.

► **Likelihood of transfer pricing methodology being challenged**
(*high/medium/low*)

Generally, if transfer pricing is reviewed as part of a tax audit, the tax auditors are likely to challenge the method used by the taxpayer and may propose alternate methods that are less favorable to the taxpayer.

► **Likelihood of an adjustment if transfer pricing methodology is challenged** (*high/medium/low*)

High/medium, depending on the size and nature of transactions, industries and situations. Refer to the section below.

► **Specific transactions/industries/situations, if any, more likely to undergo audit**

The NTS closely monitors companies whose profitability suddenly drops and companies whose profits fluctuate substantially over a number of years. These companies are likely to be subject to tax audits.

Also, the NTS will likely scrutinize companies paying high royalties abroad or receiving high management service fee charges or cost allocations from overseas related parties.

11. APA opportunity

▶ **Availability (unilateral/bilateral/multilateral)**

Unilateral, bilateral and multilateral APAs are available under the LCITA. To encourage the use of APAs, the NTS does not require an application fee, and documents submitted to the NTS with regard to an APA are to be kept confidential. In addition, the APA officials of the NTS are making efforts to shorten the APA processing period.

▶ **Tenure**

None specified. However, an APA with the NTS is generally for three to five years.

▶ **Rollback provisions**

Five-year rollback is applicable for bilateral and multilateral APAs, and three-year rollback is applicable for a unilateral APA.

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South Sudan

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Directorate of Taxation, Ministry of Finance

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

There are no special transfer pricing regulations or rulings in South Sudan; the law is contained in Taxation Act 2009.

▶ Section reference from local regulation

Section 81 and Regulation 1.81.

2. OECD guidelines treatment/reference

South Sudan is not a member of the OECD. Though its regulations do not specifically refer to the OECD Guidelines, the country broadly follows them.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Yes.

▶ Does transfer pricing documentation have to be prepared annually?

No, there is no requirement to prepare transfer pricing documentation annually.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

No materiality limit.

▶ Economic analysis

No materiality limit.

▶ BEPS master and local files

Not applicable.

▶ CbCR

Not applicable.

c) Specific requirement(s)

▶ Treatment of domestic transactions

No requirement for documentation.

▶ Local language documentation requirement

The documentation should be in English.

▶ Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No.

▶ Coverage in terms of master and/or local files

Not applicable.

▶ Effective/expected commencement date

South Sudan is involved in a civil war; nothing is expected on BEPS Action 13 in 2018 and 2019.

▶ Material differences from OECD report template/format

Not applicable.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

Not applicable.

▶ CbCR notification and CbC report submission requirement

There is no CbCR notification or CbC report submission requirement in South Sudan.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Not applicable.

South Sudan

b) Transfer pricing-specific returns

Not applicable.

5. Transfer pricing documentation/ disclosure timelines

a) Filing deadline

- ▶ Corporate income tax return

1 April.

- ▶ Other transfer pricing disclosures/return

Not applicable.

- ▶ CbCR notification

Not applicable.

- ▶ CbC report preparation/submission

Not applicable.

b) Documentation preparation deadline

By the time of lodging the tax return to achieve penalty protection (e.g., where there is a contemporaneous requirement).

c) Documentation submission deadline

- ▶ Is there a statutory deadline for submission of transfer pricing documentation?

No; however, it should be submitted upon request.

- ▶ Time period/deadline for submission on tax authority request

Normally, the tax authority gives seven days.

6. Transfer pricing methods

a) Applicability

- ▶ International transactions

Transfer pricing rules apply.

- ▶ Domestic transactions

Not subject to transfer pricing rules.

b) Priority/preference of methods

The CUP method, followed by the resale price or cost-plus methods.

7. Benchmarking requirements

a) Local vs. regional comparables

There is a preference for local comparables.

b) Single-year vs. multi-year analysis

There is a preference for single-year analysis.

c) Use of interquartile range

None specified.

d) Fresh benchmarking search every year vs. roll-forward/ update of the financials

Fresh benchmarking is not needed every year.

e) Simple vs. weighted average

There is a preference for the simple average.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures

Not applicable, since filing is not a requirement.

- ▶ If an adjustment is sustained, can penalties be assessed?

Yes, additional tax can be assessed – a 5% late-payment penalty per month and 3.6% interest per month.

- ▶ Is interest charged on penalties/payable on refund?

1% per month.

b) Penalty relief

No defense is available; however, an application for a waiver can be submitted to the tax authorities.

Objection to the additional assessment can be lodged with the Director General of Taxation, and an appeal can follow to the tax tribunal.

9. Statute of limitations on transfer pricing assessments

The Statute of limitations on transfer pricing assessments is three years.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

▶ Likelihood of transfer pricing-related audits (*high/medium/low*)

Low, as tax authorities have not started these kinds of audits; South Sudan is a new tax jurisdiction, and taxation is still in its infancy.

▶ Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

Refer to the section above.

▶ Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

Refer to the section above.

▶ Specific transactions/industries/situations, if any, more likely to undergo audit

Refer to the section above.

11. APA opportunity

▶ Availability (unilateral/bilateral/multilateral)

There is no APA program available in South Sudan.

▶ Tenure

Not applicable.

▶ Rollback provisions

Not applicable.

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Spain

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

State Agency of Tax Administration (AEAT) and General Directorate of Taxation (DGT)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

The transfer pricing regulations are contained in Law 27/2014, approved on 27 November 2014, Article 18 of the Corporate Income Tax Law (CITL).

In Royal Decree 634/2015, the Spanish Government approved new regulations on transfer pricing documentation.

▶ Section reference from local regulation

Related party regulations can be found in Article 18.2 of Law 27/2014.

2. OECD guidelines treatment/reference

Spain is a member of the OECD.

Spanish transfer pricing legislation explicitly endorses the application of the OECD Guidelines and those of the EUJTPF.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Yes.

▶ Does transfer pricing documentation have to be prepared annually?

Yes, transfer pricing documentation needs to be prepared annually under local country regulations. However, updating transaction values and preparing a memorandum confirming or listing changes to the prior year's content may suffice, depending on the complexity of transactions and business models.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

Transactions carried out with the same counterparty that, in sum, are lower than EUR250,000 at market value are exempt from documentation obligations.

▶ Economic analysis

There is no materiality limit.

▶ BEPS master and local files

Groups with income lower than EUR45 million are exempt from preparing a master file.

▶ CbCR

Consolidated revenues of the group in the previous fiscal year amounted to at least EUR750 million.

c) Specific requirement(s)

▶ Treatment of domestic transactions

There is a documentation obligation for domestic transactions.

▶ Local language documentation requirement

The transfer pricing documentation need not be submitted in the local language. Although English may be acceptable, a specific tax auditor may request a translation into Spanish. Penalties are not applicable to documentation prepared in English if translated in the course of a tax audit.

▶ Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Yes.

▶ Coverage in terms of master and/or local files

Both the master and local files are covered.

▶ Effective/expected commencement date

1 January 2016.

Spain

► Material differences from OECD report template/format

There are no material differences between the OECD report template/format and the country's regulations.

► Sufficiency of BEPS Action 13 format report to achieve penalty protection

Since there are no material differences, the OECD master file and local file should suffice to achieve penalty protection.

► CbCR notification and CbC report submission requirement

There is a CbCR notification and CbC report submission requirement in Spain.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Specific disclosure rules exist for transactions with tax havens, even with unrelated parties (as per a blacklist).

b) Transfer pricing-specific returns

One of the new measures introduced relates to the reporting obligations of transactions with related parties, which has been traditionally complied with in the annual tax returns and which is now switched to a new model with the aim of simplifying the administrative burden deriving from the annual tax return compliance. The information includes the amount, payer, payee, type of transaction and valuation method applied.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► Corporate income tax return

25 days after a 6-month period after the end of the fiscal year. Normally, 25 July for companies closing books on 31 December.

► Other transfer pricing disclosures/return

30 days after a 10-month period after the end of the fiscal year. Normally, 30 November for companies closing books on 31 December.

► CbCR notification

During the 12-month period after the end of the fiscal year.

► CbC report preparation/submission

By the end of fiscal year X+1 as regards to previous fiscal year (X).

b) Documentation preparation deadline

TP documentation typically must be finalized by the time of lodging the tax return to achieve penalty protection.

c) Documentation submission deadline

► Is there a statutory deadline for submission of transfer pricing documentation?

No.

► Time period/deadline for submission on tax authority request

The taxpayer has to submit the transfer pricing documentation within 10 days once requested by the tax authorities in an audit or inquiry.

6. Transfer pricing methods

a) Applicability

► International transactions

Yes.

► Domestic transactions

Yes.

b) Priority/preference of methods

To determine the market value, the law establishes that one of the following methods should be applied: CUP, cost-plus, resale price, profit split or TNMM. In any case, other methods different from these can be applied if they are more useful to price the transaction at arm's length. All of these methods have the same preferential level. The selection of the transfer pricing methods should be based on the nature of related party transactions, the availability of information and the comparability analysis.

7. Benchmarking requirements

a) Local vs. regional comparables

There is no legal requirement for local country comparables, and Western European and Eastern European comparables are accepted, although Spanish comparables are preferable if available.

b) Single-year vs. multi-year analysis

Multiple-year (three-year) analysis, as per common practice.

c) Use of interquartile range

The Spanish tax authorities always rely on the information publicly available. Thus, they prefer Excel Quartile since they can ascertain the results.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

There is no need to conduct a fresh benchmarking search every year.

e) Simple vs. weighted average

The weighted average, as per common practice.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

► Consequences of failure to submit/late submission and/or incorrect disclosures

When the assessment does not produce a tax adjustment, the penalty will be EUR1,000 per fact or EUR10,000 per group of omitted, inaccurate or false facts.

There will be no penalties if the documentation obligation has been complied with, even if the tax authorities reassess the value of the transactions.

► If an adjustment is sustained, can penalties be assessed?

When the tax authorities adjust the pricing of a transaction, the penalty may be up to 15% of the gross adjustment.

► Is interest charged on penalties/payable on refund?

There is no interest on penalties; if payable, up to 5%, depending on the year.

b) Penalty relief

Some reductions are applicable to penalties. Penalties do not apply if the documentation requirements have been completely fulfilled, even if the tax authorities propose a reassessment.

9. Statute of limitations on transfer pricing assessments

A general statute of limitations of four years applies. The term will be interrupted in the case of a tax audit. If a new income tax return is filed with the tax authorities, the four-year period is suspended and a new one begins.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► Likelihood of transfer pricing-related audits (*high/medium/low*)

The likelihood that transfer pricing will be reviewed as part of an audit is high if the taxpayer regularly enters into cross-border related party transactions. For all other cases, the likelihood of a transfer pricing review during a general audit is medium. This implies that the related transactions will only be audited if they mean less taxes as a consequence of the prices determined by the companies.

► Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

The likelihood of a challenge to the transfer pricing methodology is high: companies normally under audit have been previously selected to be audited because their financial statements show inconsistencies between the transfer pricing methodology and the business rationale (loss-making companies would be a good example of this).

► Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

High; when the methodology is not accepted, an adjustment will normally occur.

Spain

► **Specific transactions/industries/situations, if any, more likely to undergo audit**

The tax authorities have stated that transfer pricing audits are an area of major attention, particularly with regard to business restructurings and intangible transactions.

In this sense, loss-making companies, distributors and limited risk distributors with losses are normally a focus of the tax authorities.

11. APA opportunity

► **Availability (unilateral/bilateral/multilateral)**

There is an APA program available in Spain. Taxpayers may request that the tax authorities issue rulings on related party transactions before they are carried out. This request has to be filed with a proposal based on the arm's-length principle. On the other hand, the tax authorities may also settle agreements with other tax authorities to determine the market value of the transactions jointly (i.e., bilateral APAs).

► **Tenure**

The new regulation has improved the previous regime on APAs by extending the valid term to a six-year period (encompassing the previous year, when the time limit for filing the tax return has not yet expired, the current year and the next four years).

► **Rollback provisions**

An APA can be rolled back to tax periods for which a tax return has already been filed, even in a case in which the AEAT has produced a reassessment. This way, the APA may bring taxpayers an opportunity to settle disputes with the State Agency of Tax Administration.

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Sri Lanka



1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Department of Inland Revenue (IRD)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

The transfer pricing regulations are primarily contained in Gazette Extraordinary No. 1823/5, issued on 12 August 2013, and in sections 104 and 104A of the Inland Revenue Act, No. 10 of 2006 (IRA).

▶ Section reference from local regulation

Refer to the section above.

2. OECD guidelines treatment/reference

Sri Lanka is not a member of the OECD.

However, the IRD generally refers to the OECD Guidelines to resolve matters involving interpretations of its own transfer pricing regulations. By the same token, the IRD broadly recognizes the pricing methods stipulated in the OECD Guidelines.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Yes.

▶ Does transfer pricing documentation have to be prepared annually?

Transfer pricing documentation must be available at the time of the income tax return filing – on or before 30 November following the end of each year of assessment.

The transfer pricing regulations do not prescribe any type or format for the transfer pricing documentation. Any type or format of record should be acceptable to the extent

that at a minimum, it includes the following evidence that transactions with associated undertakings are established on an arm's-length basis:

- ▶ The company and group details
- ▶ Transaction details
- ▶ Pricing policies and details of assumptions and negotiations
- ▶ Functional, economic and market analyses, budgets, estimates and forecasts
- ▶ Results of comparable analysis
- ▶ Contract agreements
- ▶ The selected comparable transactions
- ▶ The basis of application of the selected transfer pricing methods
- ▶ Details of adjustments

b) Materiality limit/thresholds

▶ Transfer pricing documentation

Transfer pricing documentation is required only if aggregate international and domestic transaction values exceed LKR100 million and LKR50 million, respectively, for any year of assessment.

▶ Economic analysis

None specified.

▶ BEPS master and local files

Not applicable.

▶ CbCR

Not applicable.

c) Specific requirement(s)

▶ Treatment of domestic transactions

None specified.

▶ Local language documentation requirement

Taxpayers are required to keep and maintain transfer pricing documentation in English.

Sri Lanka

► Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

► Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

We understand that the IRD is currently drafting a new set of transfer pricing regulations, which consists of a three-tiered approach to transfer pricing documentation (i.e., master file, local file and CbC report). Sri Lanka has agreed to implement the four minimum standards under the Inclusive Framework on BEPS: the model provisions to prevent treaty abuse, standardized CbCR, a revitalized peer review process to address harmful tax practices, and the agreement to secure progress on dispute resolution. Hence, it is likely that the IRD will, at a minimum, implement the CbCR requirement.

► Coverage in terms of master and/or local files

Not applicable.

► Effective/expected commencement date

Not applicable.

► Material differences from OECD report template/format

Not applicable.

► Sufficiency of BEPS Action 13 format report to achieve penalty protection

Not applicable.

► CbCR notification and CbC report submission requirement

Not applicable.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Taxpayers are required to file, together with the annual income tax return, the following, if the aggregate value of international transactions with associated undertakings is LKR100 million or more:

► Disclosures by the director/principal officer/precedent partner

► A Certificate of the Director/Principal Officer/Precedent Partner on Transfer Pricing

► A Transfer Pricing Disclosure Form and a Certificate of the Approved Accountant.

b) Transfer pricing-specific returns

Refer to the section above.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► Corporate income tax return

Taxpayers should file this on or before 30 November following the end of each year of assessment.

► Other transfer pricing disclosures/return

The transfer pricing-related documents listed in Section 4 above should be filed along with the corporate income tax return.

► CbCR notification

Not applicable.

► CbC report preparation/submission

Not applicable.

b) Documentation preparation deadline

Transfer pricing documentation must be available at the time the income tax returns are filed – on or before 30 November following the end of each year of assessment.

c) Documentation submission deadline

► Is there a statutory deadline for submission of transfer pricing documentation?

Transfer pricing documentation should be furnished upon request. The regulations require taxpayers to retain documents for a period of five years.

► Time period/deadline for submission on tax authority request

Usually, the IRD will determine a submission deadline, which can vary greatly from case to case (e.g., from only one week to several weeks).

6. Transfer pricing methods

a) Applicability

- ▶ International transactions

Yes.

- ▶ Domestic transactions

Yes.

b) Priority/preference of methods

The transfer pricing regulations prescribe the following methods for the determination of the arm's-length price:

- ▶ CUP method
- ▶ Resale price method
- ▶ Cost-plus method
- ▶ Profit split method
- ▶ TNMM

The transfer pricing regulations do not provide a hierarchy of methods but require that the process of selecting a method be aimed at finding the most appropriate method. The profit split method is, however, accepted as an appropriate method in circumstances where unique intangibles or interrelated transactions exist.

7. Benchmarking requirements

a) Local vs. regional comparables

Transfer pricing regulations neither provide a clear guidance on benchmarking studies nor prohibit the use of regional comparables. Therefore, regional comparables should be acceptable, provided that differences can be eliminated through appropriate adjustments and/or analyses.

b) Single-year vs. multi-year analysis

In general, the data of the current year of assessment is required to be considered. However, data pertaining to up to two preceding financial years may be used, if such data reveals facts that could affect the determination of transfer prices.

c) Use of interquartile range

The transfer pricing regulations consider the arithmetic mean of various comparable prices to be equivalent to the arm's-length price along with the tolerance range variation of 3% between the arm's-length price and the transfer price.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

Where the associated undertaking transaction spans one or more previous years, the taxpayer is not required to prepare fresh documentation in respect of the transaction conducted in each of the subsequent previous years. However, if there is a significant change in the nature or terms, in the assumptions made or in any other factor, which could influence the transfer price, then fresh documentation should be maintained.

The transfer pricing regulations are silent with regard to roll-forward/update of the financials of a prior study. It is, however, a common practice that taxpayers update transfer pricing documentation from the previous year to reflect current-year financials and adjustments made due to changes in relevant facts, comparables and circumstances.

e) Simple vs. weighted average

Where more than one price is determined by the most appropriate method, the arm's-length price shall be taken to be the arithmetical mean of such prices.

The transfer pricing regulations do not contain guidance regarding the application of simple or weighted average prices in cases where multiple years are considered for benchmarking purposes. In this regard, it is our view that taxpayers should apply the method that represents a proper application of the arm's-length principle

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures
- ▶ If an adjustment is sustained, can penalties be assessed?
- ▶ Is interest charged on penalties/payable on refund?

Sri Lanka

The IRA does not impose penalties targeted specifically at transfer pricing, and there are no provisions for applying penalties for a lack of transfer pricing documentation by itself. However, the IRD is empowered to take punitive action under the IRA against any person who without a reasonable cause files an incorrect income tax return, furnishes any incorrect information, fails to furnish an income tax return on time, fails to inform chargeability of tax or makes an incorrect statement. Offences can lead to a fine, imprisonment or both.

b) Penalty relief

Penalties may be avoided by establishing reasonable cause and good faith via preparation of documentation of the taxpayer's application of the arm's-length principle.

At this stage, the taxpayers have three choices:

- ▶ Accept the adjustment as it is
- ▶ Reach a negotiated settlement
- ▶ Follow the appeal procedure

An appeal against an assessment must be filed with the Commissioner General of Inland Revenue. Other appellate procedures include an appeal with the Tax Appeal Commission, a tax suit filed in the Appeal Court and, finally, a case before the Supreme Court.

9. Statute of limitations on transfer pricing assessments

This is five years from the date of the filing of the income tax return. In the case of fraud or willful evasion, the statute of limitations will not apply.

10. Likelihood of transfer pricing scrutiny/ related audit by local authority

▶ Likelihood of transfer pricing-related audits (*high/medium/low*)

The likelihood depends on the facts and circumstances. The questions below will help taxpayers understand the key risk factors that prompt transfer pricing audits:

- a. Are the transactions with associated undertakings large or complex?
- b. Does the Sri Lankan entity have transactions with associated undertakings in low-tax jurisdictions?
- c. Are there other dealings with associated undertakings that are not charged for?
- d. Has there been a business restructuring recently?
- e. Are there secondments of senior management to associated undertakings?
- f. Are there local entities or permanent establishments in Sri Lanka with operating losses?
- g. Does the Sri Lankan entity pay royalty fees for use of intangible assets to associated undertakings?
- h. Was there a failure to submit the transfer pricing-related documents including the Certificate of Approved Accountant as required by the regulations?
- i. Was there a failure to prepare transfer pricing documentation for the year of assessment?

If any of the responses to the above are yes, there is a higher risk of being selected for audit.

▶ Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

In general, the likelihood is high if the selection of the most appropriate method is not supported with an explanation of the reasons why it was considered the method that best reflected the arm's length principle.

▶ Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

If a methodology has been challenged, there is high risk that an adjustment will be proposed and a dispute process will commence.

▶ Specific transactions/industries/situations, if any, more likely to undergo audit

No particular transaction/industry/situation is more at risk of receiving a tax audit than another. Past experiences indicate that once the IRD has had substantial success with a tax audit of a particular company, other companies in the same industry have been targeted.

11. APA opportunity

▶ **Availability (unilateral/bilateral/multilateral)**

The APA rules provide an opportunity for taxpayers to opt for a unilateral, bilateral or multilateral APA.

▶ **Tenure**

The IRA provides that an APA is available for a fixed period of time. However, the corresponding regulations have not yet been enacted specifying the applicable term and the procedures to be followed.

▶ **Rollback provisions**

As stated above, the corresponding regulations have not yet been enacted.

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Sweden

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Swedish Tax Agency

b) Relevant transfer pricing section reference

- ▶ **Name of transfer pricing regulations/rulings and effective date of applicability**
 - ▶ Sections 14:19-20 of the Income Tax Act (Inkomstskattelagen (1999:1229)) include the arm's-length principle and definition of related party.
 - ▶ Section 33a of the Tax Procedures Act (Skatteförfarandelagen (2011:1244)) includes the CbCR requirements.
 - ▶ Sections 39:15-16 of the Tax Procedures Act (Skatteförfarandelagen (2011:1244)) include the transfer pricing documentation requirements.
 - ▶ The Advance Pricing Agreements Act (Lag (2009:1289) om prissättningsbesked vid internationella transaktioner).

The Swedish Tax Agency issues general taxation guidelines and opinions, including information about transfer pricing.

▶ Section reference from local regulation

Refer to the section above.

2. OECD guidelines treatment/reference

Sweden is an OECD member.

The Swedish tax laws on transfer pricing are based on the OECD Guidelines, and the courts and tax authorities apply the OECD Guidelines.

3. Transfer pricing documentation requirements

a) Applicability

- ▶ **Does your country have transfer pricing documentation guidelines/rules?**

Yes.

- ▶ **Does transfer pricing documentation have to be prepared annually?**

Transfer pricing documentation has to be prepared annually under the local country regulations but is only to be submitted to the Swedish Tax Agency upon request.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

1. Insignificant transactions do not need to be documented.
2. Transactions amounting to less than SEK5 million per counterparty are always considered insignificant and do not need to be analyzed in detail in the local file.
3. For the materiality limit to be applied to transactions involving intangible assets, the intangible assets at hand need to be considered immaterial/insignificant for the business operations engaged.

▶ Economic analysis

Not applicable; refer to the section above.

▶ BEPS master and local files

Only multinational groups with more than 250 employees or more than SEK450 million in consolidated turnover or SEK400 million in balance sheet total have to prepare documentation (both BEPS master and local files).

▶ CbCR

Multinational groups with a total turnover of at least SEK7 billion, or a corresponding amount in foreign currency, are subject to the CbCR rules. Generally, this means that the ultimate parent entity is required to file a CbC report for the entire group in the country where it resides. Swedish parent companies of groups exceeding the threshold are required to file the CbC report with the Swedish Tax Agency within 12 months of the end of the financial year covered by the report, the "reporting year." If the ultimate parent entity resides in a country that has not adopted CbCR filing requirements or has but is not exchanging information with the Swedish Tax Agency, a Swedish entity or permanent establishment/branch may be obligated to file the report in Sweden.

Sweden

c) Specific requirement(s)

► Treatment of domestic transactions

No documentation requirements for domestic transactions.

► Local language documentation requirement

The transfer pricing documentation can be prepared in Swedish, English, Norwegian or Danish.

► Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

► Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Yes. It is effective for financial years starting after 31 March 2017.

► Coverage in terms of master and/or local files

It covers both the master file and local file.

► Effective/expected commencement date

Financial years starting after 31 March 2017.

► Material differences from OECD report template/format

There are no material differences.

► Sufficiency of BEPS Action 13 format report to achieve penalty protection

Transfer pricing documentation does not in and of itself achieve penalty protection. However, submitting the documentation when filing the tax return may eliminate the risk of penalties.

► CbCR notification and CbC report submission requirement

There is a CbCR notification requirement in Sweden, which is before the end of the reporting year. CbC reports shall be submitted within 12 months after the end of the reporting year.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

No specific disclosure requirements currently exist for filing the tax return.

b) Transfer pricing-specific returns

There are no specific returns that have to be filed for transfer pricing purposes.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► Corporate income tax return

There are four different dates for filing the corporate income tax return, depending on the taxpayer's financial year-end. For taxpayers with a calendar year-end, the tax return is due by 1 July (paper return) or 1 August (electronic return).

► Other transfer pricing disclosures/return

None specified.

► CbCR notification

Before the end of the reporting year.

► CbC report preparation/submission

Within 12 months after the end of the financial year covered by the report.

b) Documentation preparation deadline

The documentation does not have to be filed unless requested by the Swedish Tax Agency. The master file may be requested when the parent entity has filed its corporate tax return for the relevant year. The local file may be requested when the Swedish entity has filed its corporate tax return for the relevant year.

c) Documentation submission deadline

► Is there a statutory deadline for submission of transfer pricing documentation?

There is no statutory deadline for submission of transfer pricing documentation.

► Time period/deadline for submission on tax authority request

The taxpayer generally has 30 days to submit the transfer pricing documentation once requested by the tax authorities in an audit or inquiry.

6. Transfer pricing methods

a) Applicability

- ▶ International transactions

Yes.

- ▶ Domestic transactions

Not applicable.

b) Priority/preference of methods

One of the methods described in the OECD Guidelines should be applied. There is no local priority or preference of methods other than what is stated in the OECD Guidelines.

7. Benchmarking requirements

a) Local vs. regional comparables

Local benchmarks are preferred, but regional (Nordic) or Pan-European benchmarks are generally accepted if the comparability criteria are met.

b) Single-year vs. multi-year analysis

Single-year analysis is preferred.

c) Use of interquartile range

Yes, interquartile range calculation using Excel Quartile formulas is preferred.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

Swedish tax law does not explicitly require a fresh benchmarking search every year; financial updates are acceptable.

e) Simple vs. weighted average

The weighted average is generally preferred.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures

Sweden has no specific transfer pricing penalties; however, general penalties apply, ranging from 10% to 40% of the additional tax imposed. In transfer pricing cases, penalties at a rate of 40% are generally imposed.

- ▶ If an adjustment is sustained, can penalties be assessed?

Refer to the section above.

- ▶ Is interest charged on penalties/payable on refund?

Interest is charged on additional tax imposed but not on penalties if paid on a timely basis. The interest rate currently ranges from 1.25% to 16.25%, mainly depending on when the payment is made.

b) Penalty relief

Penalties are imposed on taxpayers for supplying the Swedish Tax Agency with inaccurate or insufficient information.

The risk of penalties may be eliminated if there is full disclosure of the transactions undertaken and the methods used, and all other relevant information is provided. In the preparatory work for the law that introduced transfer pricing documentation requirements, it is stated that if an income adjustment is made because the taxpayer's prices are not deemed to be at arm's length, the penalties might be reduced or eliminated if the taxpayer has prepared proper transfer pricing documentation.

Dispute resolution options include litigation in court, MAPs and the EU Arbitration Convention.

9. Statute of limitations on transfer pricing assessments

A reassessment may be made during the six-year period after the end of the calendar year in which the relevant fiscal year ended.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

- ▶ Likelihood of transfer pricing-related audits (*high/medium/low*)

The likelihood of an annual tax audit, in general, is medium to high. The likelihood depends on a number of factors, including, but not limited to, the industry in which the company operates, the occurrence of certain transactions, the outcome of previous tax audits and changes in turnover or profit levels, compared with prior years.

Sweden

The likelihood that transfer pricing will be reviewed as part of an audit is high. The Swedish Tax Agency's focus on transfer pricing-related issues has increased significantly since formal documentation requirements were introduced in 2007. In some cases, tax audits focus only on transfer pricing.

▶ **Likelihood of transfer pricing methodology being challenged**
(*high/medium/low*)

The likelihood is low to high that the transfer pricing methodology will be challenged if transfer pricing is reviewed as part of the audit. The likelihood depends, for example, on the transactions involved, the transfer pricing methods applied, whether documentation and agreements have been prepared, and whether the documentation and agreements are adhered to in practice.

▶ **Likelihood of an adjustment if transfer pricing methodology is challenged** (*high/medium/low*)

If the transfer pricing methodology is challenged, the likelihood of an adjustment is high, unless the amounts are insignificant.

▶ **Specific transactions/industries/situations, if any, more likely to undergo audit**

Business restructurings and transactions involving intangible assets are often subject to audit.

11. APA opportunity

▶ **Availability (unilateral/bilateral/multilateral)**

In Sweden, formal APA procedures have existed since 1 January 2010. Bilateral and multilateral APAs are available.

▶ **Tenure**

The term for an APA would generally be three to five years unless there are specific reasons for a shorter or longer term.

▶ **Rollback provisions**

Rollbacks may be possible.

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Switzerland



1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Cantonal tax administrations (tax assessments) and Swiss Federal Tax Administration (SFTA, competent authority).

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

There are no specific references to transfer pricing in Swiss tax law. However, legal support for adjusting a taxpayer's taxable profits is derived from the arm's-length principle in Article 58 of the Federal Direct Tax Act on a federal level (14 December 1990), as well as in Article 24 of the Federal Law on the Harmonization of Taxes on a cantonal and communal level (14 December 1990).

Additionally, on 4 March 1997, the SFTA issued a circular letter instructing the cantonal tax administrations to adhere to the OECD Guidelines and the arm's-length principle when assessing cross-border intercompany transactions.

► Section reference from local regulation

There is no definition of the term "related party" in Swiss domestic law or regulations. According to the jurisprudence of the Federal Court, an entity is considered related if a commercial or a close personal relationship exists between two entities/individuals. A direct or indirect participation in the management, control or capital is not required. The crucial criterion is if the tested transaction was conducted only as a consequence of the close relationship or not.

2. OECD guidelines treatment/reference

Switzerland is a member of the OECD. Switzerland relies on the OECD Guidelines for the interpretation of the arm's-length principle.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

Switzerland does not have transfer pricing documentation guidelines/rules concerning the master file and local file. Switzerland does, however, have transfer pricing documentation regulations for CbCR. In fact, Switzerland adopted the global minimum standard included in Action 13 of the OECD BEPS project for the international automatic exchange of CbC reports.

Besides the obligation to file a CbC report for fiscal years starting in or after 2018, there is no specific requirement concerning transfer pricing documentation. In particular, there is no obligation to prepare a master file and/or local file.

► Does transfer pricing documentation have to be prepared annually?

Besides the obligation to file a CbC report for fiscal years starting in or after 2018, there are no specific requirements concerning transfer pricing documentation. Swiss domestic legislation requires the taxpayer to provide all the documents necessary for properly assessing the taxable income. In the case of related party transactions, the taxpayer has to demonstrate that the transfer prices are based on the arm's-length principle. It is hence recommended that a master file and a local file be prepared to document the arm's-length character of transactions in case of an inquiry by the tax administration.

Even though Switzerland has no legal documentation rules for the master file and local file, Swiss taxpayers factually prepare them to defend their transfer pricing system in tax audits.

b) Materiality limit/thresholds

► Transfer pricing documentation

Not applicable for local file and master file. For CbCR, please see below.

► Economic analysis

Not applicable.

► BEPS master and local files

Not applicable.

► CbCR

Multinational groups with an annual consolidated turnover of CHF900 million or more (in the fiscal year immediately preceding the reporting fiscal year) must file a CbC report. Filing of a CbC report is mandatory for fiscal years starting in or after 2018. Voluntary filing is possible for Swiss ultimate parent entities for FY 2016 and FY 2017.

Switzerland

c) Specific requirement(s)

► Treatment of domestic transactions

There is no documentation obligation for domestic transactions.

► Local language documentation requirement

The CbC report must be submitted in one of the Swiss official languages (German, French or Italian) or in English.

Besides the CbC report, other transfer pricing documentation (master file and local file) should be submitted in one of the Swiss official languages (German, French or Italian). Documentation submitted in English is usually accepted by the tax administration. Taxpayers may sometimes be asked to provide translations.

► Safe harbor availability

The SFTA has issued circulars containing safe harbor rules for financing with regard to thin capitalization and interest rates for intragroup debt or receivables in Swiss francs and in foreign currency. The safe harbor interest rates are updated annually.

d) BEPS Action 13 implementation overview

► Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Switzerland adopted the global minimum standard included in Action 13 of the OECD BEPS project for the international automatic exchange of CbCR.

► Coverage in terms of master and/or local files

Not applicable.

► Effective/expected commencement date

Not applicable.

► Material differences from OECD report template/format

Not applicable.

► Sufficiency of BEPS Action 13 format report to achieve penalty protection

Not applicable.

► CbCR notification and CbC report submission requirement

Yes. There is a CbCR notification requirement for Swiss ultimate parent entities or surrogate parent entities. The Government is entitled to put in place notification requirements for other Swiss constituent entities. Mandatory CbC report filing applies for fiscal years starting on or after 1 January 2018. Voluntary

filing is possible for Swiss ultimate parent entities for FY 2016 and FY 2017.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Not applicable.

b) Transfer pricing-specific returns

Not applicable.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► Corporate income tax return

Corporate tax returns must be filed annually (an exemption applies in the first business year in case of an extended business year). The Filing deadlines vary from canton to canton (usually between six and nine months after the close of the business year).

► Other transfer pricing disclosures/return

Not applicable.

► CbCR notification

There is a CbCR notification requirement for Swiss ultimate parent entities or surrogate parent entities of 90 days after the end of the reporting period. The Government is entitled to put in place notification requirements for other Swiss constituent entities.

► CbC report preparation/submission

The CbC report must be filed with the SFTA within 12 months following the end of the reporting period.

b) Documentation preparation deadline

Only applicable for CbCR. The submission deadline is 12 months following the end of the reporting period.

Even though Switzerland has no legal documentation rules for the master file and local file, Swiss taxpayers factually prepare them to defend their transfer pricing system in tax audits.

c) Documentation submission deadline

- ▶ **Is there a statutory deadline for submission of transfer pricing documentation?**

Only applicable for CbCR. The submission deadline is 12 months following the end of the reporting period.

- ▶ **Time period/deadline for submission on tax authority request**

Once requested by the tax authorities, documentation must usually be submitted within 30 days (extendable upon agreement).

6. Transfer pricing methods

a) Applicability

- ▶ International transactions

Yes.

- ▶ Domestic transactions

Not specified. In principle, the same methods as for international transactions should be used.

b) Priority/preference of methods

In practice, Switzerland relies on the most appropriate method as recommended by the OECD Transfer Pricing Guidelines.

7. Benchmarking requirements

a) Local vs. regional comparables

Because of the lack of sufficient independent comparable companies in the Swiss market, Pan-European comparables are generally accepted. Benchmarking searches of local comparable companies are preferred but not mandated by law.

b) Single-year vs. multi-year analysis

Both, in principle, are accepted, but the multi-year analysis is more commonly used.

c) Use of interquartile range

The use of interquartile ranges is usually accepted.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

There is no requirement to conduct a fresh benchmarking search

every year. Typically, annual financial updates are performed, whereas new benchmark searches are performed every three years.

e) Simple vs. weighted average

There is no preference, and both are applied in practice.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ **Consequences of failure to submit/late submission and/or incorrect disclosures**

Swiss tax legislation does not contain specific transfer pricing penalties. In particular, there are no penalties for a lack of transfer pricing documentation (other than for the CbC report – see below). Rather, the general penalty provisions of each relevant tax act apply. Formal penalties include monetary fines for infractions of administrative duties or for tax evasion, and imprisonment in severe cases of tax fraud. In addition, the following penalties may apply:

a. Assessment of the taxable base by the tax authorities. If, in the course of a tax assessment, the taxable base cannot be properly determined (for example, because of inappropriate documentation), the taxable base is estimated at the discretion of the tax authorities. By law, these estimates must be dutiful and based on experience in other cases. However, assessments of the taxable base are rarely in favor of the taxpayer.

b. Withholding tax. If a constructive dividend is paid by a Swiss taxpayer, a withholding tax of 35% is imposed. According to Swiss practice, in most cases, the Swiss recipient has the right to a refund of the withholding tax under the “direct beneficiary theory.” In the case of an international beneficiary that is not the direct parent but a sister company of the Swiss taxpayer, this situation results in a higher rate of nonrefundable withholding tax, even if a double tax treaty is available. This is because double tax treaties generally require direct investment between companies for them to benefit from the higher refund rate.

Regarding the CbC report, there are different layers of penalties:

a. Administrative penalty for late submission: CHF200 per day after the expiration of the deadline, capped at a maximum amount of CHF50,000.

b. Criminal sanctions:

- i. Intentional falsification or incompleteness of CbCR data: up to CHF100,000 to whomever intentionally submits a false or incomplete CbC report that substantially distorts the information requested and provides an inaccurate representation of the facts.
- ii. Noncompliance with the decision of the tax authority: up to CHF10,000 to whomever intentionally does not comply with the decision of the tax authority in the event of an audit.

► If an adjustment is sustained, can penalties be assessed?

Refer to the preceding section.

► Is interest charged on penalties/payable on refund?

Late interest is due on penalties that are not paid on time. The general provisions on late interest apply. The interest rate is determined by the SFTA annually.

b) Penalty relief

There are no special provisions for penalty reductions.

Penalties charged are lower in the case of ordinary negligence and higher in the case of gross negligence.

Many tax disputes can be prevented using the advance ruling process or settled by negotiation with the tax authorities in the course of a tax assessment or tax audit process (by way of formal complaint). In this way, the number of court cases can be reduced. However, if a transaction was not subject to a ruling, or if a ruling was not properly implemented, disputes may still arise and require resolution. Additionally, if transfer prices are adjusted by a foreign tax authority, a dispute resolution mechanism may be needed to avoid double taxation. Each canton has one or two judicial instances that are competent for tax litigation. The highest court for tax litigation is the Federal Court.

According to the Federal Constitution, intercantonal double taxation is prohibited. Therefore, the Federal Court has developed numerous rules on how intercantonal double taxation can be avoided. In practice, these rules often also apply to international cases unless overruled by a double tax treaty.

The Swiss competent authority for tax treaties is the State Secretariat for International Financial Matters (SIF), a division of the Federal Department of Finance. Among other duties, the SIF represents Switzerland's interests in international financial and tax matters, and leads negotiations in these areas.

9. Statute of limitations on transfer pricing assessments

As a general rule, the right to assess a taxpayer in relation to corporate income and capital taxes expires five years after the end of the corresponding tax period (relative statute of limitations). Under certain conditions (e.g., when the relative statute of limitations is interrupted), the absolute statute of limitations of 15 years applies. In the cases of tax fraud or tax evasion (e.g., when specific information was not available to the tax inspector at the time of the assessment), finally assessed tax periods can be reopened. The statute of limitations to reopen finally assessed tax periods is 10 years after the end of the corresponding tax period.

10. Likelihood of transfer pricing scrutiny/related audit by local authority**► Likelihood of transfer pricing-related audits (high/medium/low)**

Tax audits focusing exclusively on transfer pricing are rare. However, the likelihood that transfer pricing will be reviewed as part of an audit is medium. Even though the level of awareness is different from canton to canton, recent experience with tax audits seems to indicate that the tax authorities are becoming more aggressive on transfer pricing issues, notably as a reaction to the OECD's BEPS Action Plan.

► Likelihood of transfer pricing methodology being challenged (high/medium/low)

The likelihood that the transfer pricing methodology will be challenged is low. An exception applies to business valuations in which disputes arise more frequently; tax authorities sometimes apply the "practitioner method" (a method based on past earnings and value of assets), whereas taxpayers use internationally accepted methods such as the discounted cash flow approach. For this reason, it is recommended to request a ruling or APA prior to transactions involving the transfer of a business.

► Likelihood of an adjustment if transfer pricing methodology is challenged (high/medium/low)

In cases in which the transfer pricing methodology is challenged, the likelihood of transfer pricing adjustments is medium, as the disallowance of the methodology regularly leads to an adjustment of profitability.

► **Specific transactions/industries/situations, if any, more likely to undergo audit**

In the case of an audit, there is a higher likelihood that the remuneration for transfers of intangibles, services, intercompany financing and business restructurings will be challenged.

11. APA opportunity

► **Availability (unilateral/bilateral/multilateral)**

The mechanisms available in Switzerland to prevent and/or resolve transfer pricing disputes include rulings, bilateral APAs, multilateral APAs and MAPs.

It is common practice to clarify the taxation of critical or complex transactions, including transfer pricing issues, in an advance ruling from the Swiss tax authorities. An advance ruling can be requested for both the interpretation of a relevant tax law or administrative guideline and/or the actual amount of tax payable on a transaction. The Swiss practice of issuing advance rulings helps reduce the number of disputes.

Bilateral APAs with foreign tax authorities have become a favored option for Swiss-based multinational groups with complex or high-volume transactions. Bilateral APAs are conducted under the corresponding mutual agreement provision in the relevant double tax treaty. In practice, the procedure starts with a presentation of the facts and a formal request to the SIF. The SIF has proved very helpful in supporting the interests of Swiss taxpayers in APA negotiations with foreign tax authorities. The SIF has published guidance on MAPs and APAs, which can be found at www.sif.admin.ch/sif/en/home/themen/doppelbesteuerung-dba/dba-verstaendigungsverfahren.html.

► **Tenure**

Subject to negotiation, but generally three to five years.

► **Rollback provisions**

Depending on the countries involved, taxpayers have the option of requesting rollbacks.

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Taiwan

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

National Taxation Bureau.

b) Relevant transfer pricing section reference

- ▶ Name of transfer pricing regulations/rulings and effective date of applicability
 - ▶ Article 43-1 of the Income Tax Law (ITL)
 - ▶ Article 50 of the Financial Holding Company Law (FHCL)
 - ▶ Article 42 of the Business Mergers and Acquisitions Law (BMAL)

The Regulations Governing Assessment of Profit-Seeking Enterprise Income Tax on Non Arm's-Length Transfer Pricing (transfer pricing guidelines) became effective on 30 December 2004 (amended on 13 November 2017 and 6 March 2015).

▶ Section reference from local regulation

Refer to the section above.

2. OECD guidelines treatment/reference

Taiwan is not a member of the OECD; however, it recognizes the OECD Guidelines.

3. Transfer pricing documentation requirements

a) Applicability

- ▶ Does Taiwan have transfer pricing documentation guidelines/rules?

Taiwan has transfer pricing documentation guidelines/rules.

Taiwan's Taxation Administration, Ministry of Finance (MOF), released the transfer pricing guidelines in December 2004.

Except for immaterial related party transactions, extensive contemporaneous documentation is required. According to the transfer pricing guidelines, an enterprise must have the transfer pricing report (TP report) and relevant documentation prepared when the annual income tax return is filed.

If the enterprise meets the safe harbor threshold and does not

prepare a transfer pricing report, the tax authority may still request "other supporting documents" as evidence of the arm's-length nature of the intercompany transactions (alternate TP documentation). One example of other supporting documents is the parent's or headquarters' TP report, as long as it does not significantly vary from the concepts presented in the transfer pricing guidelines.

If the taxpayer does not meet the safe harbor criteria for the TP report, its TP report must contain:

- ▶ Business overview
- ▶ Organizational structure
- ▶ Description of controlled transactions
- ▶ Industry and economic analysis
- ▶ Functions and risks analysis
- ▶ Application of the arm's-length principle
- ▶ Selection of comparables and related information
- ▶ Comparability analysis
- ▶ Transfer pricing methods selected by the enterprises
- ▶ Transfer pricing methods selected by related parties under the same control
- ▶ Result of comparables search under the best method of transfer pricing
- ▶ A copy of intragroup agreements
- ▶ A copy of unilateral APA concluded with other tax jurisdictions for the same controlled transactions
- ▶ Report of affiliated enterprises under Article 369 of the Taiwan Company Law
- ▶ Any other documents that significantly influence pricing between the related parties

In November 2017, the MOF released the amendment to revise existing articles 21 (addition of new guidance for CbCR notifications) and 22 (amended guidance for the TP report). To be in accordance with OECD BEPS Action 13, the amendment also added two new articles, 21-1 and 22-1, to the transfer pricing guidelines. Article 21-1 added new guidance regarding the master file (MF), and Article 22-1 added new guidance for the CbC report.

Taiwan

► Does transfer pricing documentation have to be prepared annually?

Transfer pricing documentation has to be prepared annually under the local country regulations. The minimum requirement to achieve this includes updating the TP documentation, including the transaction values and benchmarking analysis.

b) Materiality limit/thresholds

► Transfer pricing documentation

Refer to the "Safe harbor availability" section below.

► Economic analysis

Transaction value greater than TWD10 million by type of transaction (e.g., tangible goods, intangible, service, fund).

► BEPS master and local files

This covers both master and local files. Please refer to the "Safe harbor availability" section below.

► CbCR

Refer to the "Safe harbor availability" section below.

c) Specific requirement(s)

► Treatment of domestic transactions

There is a documentation obligation for domestic transactions.

► Local language documentation requirement

The TP report and master file need to be submitted in the local language.

- Article 22, paragraph V – The TP report or alternate TP documentation provided by profit-seeking enterprises pursuant to the preceding paragraphs should contain a table of contents and an index. The Mandarin Chinese translation shall be attached if the materials are provided in a foreign language, unless otherwise agreed upon by the tax collection authorities with the provision of the English documents.
- Article 21-1, paragraph II – The master file is to be prepared in English. A Mandarin Chinese translation shall be provided to the tax authority within one month after receipt of a notice of examination. The submission deadline can be extended for one month with the justification for an extension.

► Safe harbor availability

The safe harbors for TP report (Local File) are provided as follows:

- a. The MOF released a letter ruling¹ to further relax the safe harbor criteria. The rule applies for fiscal years ending December 2008 and afterward. The ruling states that the enterprise is not required to prepare a transfer pricing report if any of the following criteria are met:
 - The total annual revenue (including operating and non-operating) of the enterprise does not exceed TWD300 million
 - The total annual revenue (including operating and non-operating) of the enterprise exceeds TWD300 million but does not exceed TWD500 million, and additionally:
 - i. The enterprise does not utilize tax credits of more than TWD2 million in a particular year or a loss carryforward of more than TWD8 million for the preceding 10 tax years to reduce the income tax or undistributed earnings surplus tax
 - Or
 - ii. The enterprise, under the FHCL or BMAL, has no transactions with any overseas related parties (whether a company or an individual), or the enterprise has no transactions with overseas affiliated companies
 - The total annual controlled transactions amount is less than TWD200 million
 - Or
 - The total annual revenue (including operating and non-operating) of the enterprise exceeds TWD500 million, but the total annual controlled transactions amount is less than TWD200 million

The safe harbors for the master file are provided as follows:

- a. A Taiwan profit-seeking enterprise that is a member of an MNE group can be exempted from the master file requirement if either of the criteria below is met (the letter ruling² was released by the MOF on 13 December 2017):

¹ Tax Letter Ruling No. 09704555160, November 2008.

² Tax Letter Ruling No. 10604700690, December 2017

- ▶ The sum of operating revenue and non-operating revenue in the current year is less than TWD3 billion

Or

- ▶ The aggregated amount of cross-border controlled transactions in the current year is less than TWD1.5 billion

The safe harbor for CbCR is provided as follows (the letter ruling³ was released by the MOF on 13 December 2017):

- An MNE group's total consolidated revenue in the preceding year is less than TWD27 billion, which is consistent with OECD standards (EUR750 million).

d) BEPS Action 13 implementation overview

- ▶ **Has Taiwan adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?**

Taiwan's Taxation Administration, Ministry of Finance, drew up an amendment (the Amendment) to the transfer pricing guidelines based on the BEPS Action 13 final report. The final Amendment was released on 13 November 2017. In line with OECD BEPS Action 13, the Amendment adopts a three-tiered transfer pricing documentation requirement that includes the master file, country-by-country report, and local file or TP report. The Amendment applies to the profit-seeking enterprises' income tax returns starting fiscal year 2017.

- ▶ **Coverage in terms of master and/or local files**

Both the master and local files (TP report) are covered.

- ▶ **Effective/expected commencement date**

The master file and CbCR requirements come into effect starting fiscal year 2017.

- ▶ **Material differences from OECD report template/format**

There are no material differences between the OECD report template/format and Taiwan's regulations.

- ▶ **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

A penalty protection regime is not available. An enterprise that fails to file or submit the required information and documents shall be subject to a fine of no less than TWD3,000 but no more than TWD30,000, as prescribed under Article 46 of the Tax Collection Act.

- ▶ **CbCR notification and CbC report submission requirement**

When filing its current-year income tax return, a profit-seeking enterprise of an MNE group shall disclose information such as the ultimate parent entity responsible for filing a CbC report or the surrogate entity appointed by the group, as well as whether it is required to file a CbC report in its jurisdiction.

A profit-seeking enterprise located within the territory of Taiwan that is the ultimate parent entity of an MNE group is required to file the current-year CbC report under the prescribed format with the tax collection authorities within 12 months from the last day of its fiscal year.

If one of the following conditions applies, a profit-seeking enterprise whose ultimate parent entity of an MNE group located outside the territory of Taiwan shall follow the preceding regulations. For two or more constituent entities of the MNE group located within the territory of Taiwan, the MNE group may appoint one to file the CbC report on behalf of all entities and notify the tax collection authorities.

- The country in which the ultimate parent entity is a tax resident has not established CbCR obligations.
- The ultimate parent entity files a CbC report in its jurisdiction, but the country in which the ultimate parent entity is a tax resident does not have a signed agreement in place for information exchange with Taiwan on CbCR before the preceding Filing deadline.
- The ultimate parent entity files a CbC report in its jurisdiction, and the country in which the ultimate parent entity is a tax resident has a signed agreement in place for information exchange with Taiwan on CbCR. The tax collection authorities, however, cannot obtain a CbCR in accordance with the signed agreement

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

A taxpayer must disclose related party transactions and include the disclosure with the annual income tax return (pages B2-B5), pursuant to the transfer pricing guidelines. The disclosure generally includes:

- ▶ The investing structure
- ▶ Identification of related parties

³ Ibid.

- ▶ The related party transaction amounts by type, including transfer of tangible assets, use of tangible assets, transfer of intangible assets, use of intangible assets, rendering of services, use of funds and other types of transactions prescribed by the MOF
- ▶ The related party transaction balances
- ▶ The related parties' financial information, including total revenues, gross margins, operating margins and net margins
- ▶ Whether the enterprise has prepared transfer pricing documentation for that fiscal year

The tax authority has issued safe-harbor rules for related party transaction disclosures in two rulings. Both rulings provide that the enterprise must disclose related party transactions on its income tax return if the sum of its annual operating and non operating revenue (total annual revenue amount) exceeds TWD30 million and meets one of the following criteria:

- ▶ The enterprise has related parties outside Taiwan (including the headquarters and branches)
- ▶ The enterprise utilizes tax credits of more than TWD500,000, or utilizes loss carryforwards of more than TWD2 million to reduce the income tax or undistributed earnings surplus tax
- ▶ The enterprise has total annual revenue exceeding TWD300 million

b) Transfer pricing-specific returns

Other than the information specified in the "Related party disclosures/transfer pricing-related appendices" section above, the National Tax Administration (NTA) does not currently require transfer pricing-specific returns.

5. Transfer pricing documentation/ disclosure timelines

a) Filing deadline

- ▶ **Corporate income tax return**

31 May (example for a calendar-year profit-seeking enterprise).

- ▶ **Other transfer pricing disclosures/return**

31 May (example for a calendar-year profit-seeking enterprise)

- ▶ **Master file notification** – Notification shall be done upon the filing of an income tax return by completing a form of the tax return.
- ▶ **Master file preparation/submission** – The master file shall be prepared upon the filing of income tax returns and submitted to the tax authority within 12 months after the fiscal year-end.

▶ CbCR notification

Notification shall be done upon filing income tax return by completing a form of the tax return.

▶ CbC report preparation/submission

The CbC report shall be submitted to the tax authority within 12 months after the fiscal year-end.

b) Documentation preparation deadline

The transfer pricing documentation should be prepared by the time of the lodging of the tax return.

c) Documentation submission deadline

- ▶ **Is there a statutory deadline for submission of transfer pricing documentation?**

The TP report shall be prepared upon the filing of income tax returns and submitted to the tax authority within one month after receipt of a notice of examination.

The CbC report shall be submitted to the tax authority within 12 months after the fiscal year-end.

The master file shall be prepared upon the filing of income tax returns and submitted to the tax authority within 12 months after the fiscal year-end

- ▶ **Time period/deadline for submission on tax authority request**

The local file shall be submitted within one month after the receipt of a notice of examination. The CbC report shall be submitted to the tax authority within 12 months after the fiscal year-end. The master file shall be submitted within 12 months after the fiscal year-end.

6. Transfer pricing methods

a) Applicability

- ▶ International transactions

Yes.

- ▶ Domestic transactions

Yes.

b) Priority/preference of methods

In accordance with the OECD Guidelines, the pricing methods are as follows: CUP, resale price, cost-plus, profit split, comparable profit and other methods prescribed by the MOF. The MOF follows the changes in the hierarchy of the methods in favor of the "most appropriate method" approach within the OECD Guidelines.

7. Benchmarking requirements

a) Local vs. regional comparables

Local benchmarks are preferred; this can be expanded to countries in the Asia-Pacific region if necessary.

b) Single-year vs. multi-year analysis

Multi-year analysis is preferred.

c) Use of interquartile range

Interquartile range calculation using Excel Quartile formulas is acceptable.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

There is no specific requirement for a fresh benchmarking search every year. However, the TP guidelines require that the financials of a benchmarking study remain updated to the current year. In case the current year data is not available upon the filing of the income tax return, the enterprise may use the most recent three years' data without the current year.

e) Simple vs. weighted average

The weighted average is required while testing an arm's-length analysis.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures

- ▶ A profit-seeking enterprise that fails to file or submit the relevant information and documents required would be subject to a penalty prescribed under Article 46 of the Tax Collection Act.

- ▶ Pursuant to the transfer pricing guidelines, up to 200% of the tax shortfall could be imposed if assessed by the tax authority, under certain circumstances

- ▶ If an adjustment is sustained, can penalties be assessed?

Not applicable.

- ▶ Is interest charged on penalties/payable on refund?

Not applicable.

b) Penalty relief

Currently, there is no penalty relief regime in place.

9. Statute of limitations on transfer pricing assessments

The statute of limitations is five years (commencing from the date following the expiration date of the period for payment of said tax) if the tax return was filed in a timely manner, and seven years if it was not.

10. Frequency of transfer pricing scrutiny/related audit by local authority

- ▶ Likelihood of transfer pricing-related audits (*high/medium/low*)

In general, the likelihood of an annual tax audit is characterized as high because the NTA frequently conducts corporate income tax audits.

Taiwan

The likelihood that transfer pricing will be reviewed as part of the annual corporate income tax audit is also characterized as high. All corporate income tax audits may include a request and review of the documentation, as well as related supporting materials. In the past year, there has been increased activity by the NTA, especially with respect to requests to see documentation reports

▶ **Likelihood of transfer pricing methodology being challenged (*high/medium/low*)**

The likelihood that the transfer pricing methodology will be challenged during the audit is high, based on any of the factors or circumstances listed below:

- ▶ Whether the tested party is the least-complex entity in a transaction
 - ▶ Why different transactions are tested on an aggregate basis
 - ▶ Whether the denominator for calculating the profit-level indicator is one of the variables in the controlled transaction
 - ▶ Whether the use of intangible assets by related parties is remunerated accordingly and fairly
 - ▶ Whether services provided to related parties are remunerated accordingly and fairly
 - ▶ When the payment terms for accounts receivable are significantly longer between related parties than third parties, or when overseas deferred expenses are significant or out of the ordinary; in each case, Taiwan's tax authority considers these transactions a type of loan and expects interest income to be paid to the lender
 - ▶ Whether reasonable fee income is received for acting as the guarantor for a related party
- ▶ **Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)**

High, because the tax authority in Taiwan has very aggressively conducted transfer pricing audits in recent years.

▶ **Specific transactions/industries/situations, if any, more likely to undergo audit**

The MOF has issued a ruling that sets forth circumstances under which a transfer pricing audit will be triggered, as follows:

- ▶ The gross profit ratio, operating profit ratio and net-income-before-tax ratio are below the industry average.
- ▶ The parent or headquarters reports profit on the global consolidated level, but the local affiliate reports a loss or much less profit than the industry average.
- ▶ The enterprise reports significant fluctuations in profit during the transaction year and in the two preceding years.
- ▶ The enterprise fails to disclose related party transactions in accordance with the related party transactions disclosure requirements.
- ▶ The enterprise fails to determine whether its related party transactions are within an arm's-length range and fails to prepare documents in accordance with the transfer pricing guidelines.
- ▶ The enterprise fails to charge related parties in accordance with the transfer pricing guidelines or charges an abnormal amount.
- ▶ The enterprise fails to provide the transfer pricing report upon a tax audit.
- ▶ The tax authority adjusted the transfer pricing of the enterprise, in which case the tax years preceding and subsequent to the year of a transfer pricing audit are likely to be selected for audit.
- ▶ The enterprise has significant or frequent controlled transactions with related parties in tax havens or low-tax jurisdictions. (In particular, companies conducting business through tax havens have attracted more scrutiny, along with those making losses.)
- ▶ The enterprise has significant or frequent controlled transactions with related parties entitled to tax incentives.
- ▶ Any other transaction fails to meet the arm's-length requirements in accordance with the transfer pricing guidelines.

11. APA opportunity

▶ Availability (unilateral/bilateral/multilateral)

APAs are available under articles 23 through 32 of the transfer pricing guidelines.

If the transactions undertaken by a profit-seeking enterprise with related parties satisfy the following criteria, the enterprise may file an application for an APA with the tax collection authorities pursuant to the following provisions:

- ▶ The total amount of the transactions being applied for APAs shall be no less than TWD500 million, or the annual amount of such transactions is no less than TWD200 million.
- ▶ No significant tax evasion was committed in the past three years.
- ▶ Documentation, as required under subparagraphs 1 to 3 and subparagraphs 5 to 9, paragraph 1 of Article 24, has been well-prepared.
- ▶ A transfer pricing report, as prescribed under subparagraph 4, paragraph 1 of Article 24, has been prepared.
- ▶ Other criteria, as approved by the MOF, have been met.

In addition, the taxpayer may file an application for a pre-meeting with the tax authority, per the Amendment.

According to Tax Letter Ruling No. 9404540920, under an APA, a tax return is not subject to a transfer pricing audit except when:

- ▶ The enterprise fails to provide the tax authority with the annual report regarding the implementation of the APA.
- ▶ The enterprise fails to keep the relevant documents in accordance with transfer pricing guidelines.
- ▶ The enterprise fails to follow the provisions of the APA.
- ▶ The enterprise conceals material facts, provides false information or conducts wrongful acts.

▶ Tenure

Yes, three to five years.

▶ Rollback provisions

None specified.

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Tanzania

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Tanzania Revenue Authority (TRA)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

Section 33 of the Income Tax Act (ITA) 2004 emphasizes the arm's-length principle of transactions between associates. Transfer pricing (TP) regulations were issued on 7 February 2014, and TP guidelines were published in May 2014.

▶ Section reference from local regulation

Associates are defined under Section 3 of the ITA 2004.

Not applicable.

▶ Economic analysis

Not applicable.

▶ BEPS master and local files

Not applicable.

▶ CbCR

Not applicable.

c) Specific requirement(s)

▶ Treatment of domestic transactions

There is a documentation obligation for domestic transactions. The regulations apply to taxpayers dealing with related parties both inside and outside Tanzania.

▶ Local language documentation requirement

The TP documentation need not be submitted in the official languages of Tanzania (English or Swahili). However, in practice, TP documents are normally completed in English.

▶ Safe harbor availability

Not applicable.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

▶ Coverage in terms of master and/or local files

Not applicable.

▶ Effective/expected commencement date

Not applicable.

▶ Material differences from OECD report template/format

Not applicable.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

Not applicable.

▶ CbCR notification and CbC report submission requirement

Not applicable. There is no CbCR notification requirement in Tanzania.

2. OECD guidelines treatment/reference

Tanzania is not a member of the OECD.

Tax authorities and the Commissioner recognize the OECD Guidelines and the United Nations' transfer pricing manual (UN TP Manual).

Nevertheless, the ITA 2004 and the 2014 transfer pricing regulations prevail if there are any inconsistencies between them and the OECD's and the UN's documents.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Yes. The Income Tax (Transfer Pricing) Regulations 2014 were issued by way of a gazette notice published on 7 February 2014 and took effect on the publication date.

▶ Does transfer pricing documentation have to be prepared annually?

Yes. There are no specific minimum requirements; however, the regulations require transfer documentation to be prepared "for the year of income" (Section 7(3)).

b) Materiality limit/thresholds

▶ Transfer pricing documentation

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

The taxpayer is required to disclose the amount of sales, purchases and loans made or received from associates in and outside of Tanzania in its tax return.

b) Transfer pricing-specific returns

Not applicable.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ Corporate income tax return

30 June – six months after the financial year-end of the company.

▶ Other transfer pricing disclosures/return

30 June.

▶ CbCR notification

Not applicable.

▶ CbC report preparation/submission

Not applicable.

b) Documentation preparation deadline

Upon submission of the annual return – by the time of lodging the tax return to achieve penalty protection (e.g., where there is a contemporaneous requirement).

c) Documentation submission deadline

▶ Is there a statutory deadline for submission of transfer pricing documentation?

No.

Time period/deadline for submission on tax authority request

As per Section 7(4), the taxpayer has 30 days to submit the transfer pricing documentation once requested by the tax authorities in an audit or inquiry.

6. Transfer pricing methods

a) Applicability

▶ International transactions

Yes.

▶ Domestic transactions

Yes.

b) Priority/preference of methods

Despite the fact that transfer pricing methods are based on the OECD Guidelines and the UN TP Manual, taxpayers must first apply traditional transactional methods. Transactional profit methods can be applied if traditional transactional methods cannot be reliably applied.

Notwithstanding the above, the transfer pricing regulations reiterate that the most appropriate method should be applied with regard to the nature and specific features of the transaction in question.

7. Benchmarking requirements

a) Local vs. regional comparables

There is a preference for local comparables; however, it is not mandatory.

b) Single-year vs. multi-year analysis

There is a preference for multiple-year testing (preferably three years).

c) Use of interquartile range

Interquartile range calculation using Excel Quartile formulas is acceptable.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

A fresh benchmarking search is needed every year. As per Section 6(3): "When applying the comparability factors in determining the arm's-length price, the results of a controlled transaction shall be compared with the results of uncontrolled transaction for the same basis year for a year of income."

e) Simple vs. weighted average

There is a preference for the weighted average for arm's-length analysis.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief**a) Penalty exposure****► Consequences of failure to submit/late submission and/or incorrect disclosures**

The general rules of penalties for noncompliance and interest for underpayment of tax under the ITA 2004 apply, as does an additional specific penalty of imprisonment for a term not exceeding six months or a fine of not less than TZS50 million.

► If an adjustment is sustained, can penalties be assessed?

Yes, 100% of underpaid tax.

► Is interest charged on penalties/payable on refund?

Yes, currently at 9%.

b) Penalty relief

The Commissioner may grant relief for interest and penalties if he or she is satisfied that the noncompliance or underpayment of tax has reasonable cause.

9. Statute of limitations on transfer pricing assessments

A general rule of five years (effective from 1 July 2016; previously three years) from the date of filing the tax return applies.

The tax authorities can ignore the five-year limitation when they suspect fraud or intent to evade payment of tax.

10. Likelihood of transfer pricing scrutiny/related audit by local authority**► Likelihood of transfer pricing-related audits (high/medium/low)**

There are no special TP audits stated in the law. However, the tax authority stated that the intercompany transactions will be audited in the general tax audits, but a special transfer pricing team will be involved during the audit. The tax authority has recently requested TP documentation for the review. No TP adjustment has been made so far.

► Likelihood of transfer pricing methodology being challenged (high/medium/low)

Refer to the section above.

► Likelihood of an adjustment if transfer pricing methodology is challenged (high/medium/low)

Refer to the section above.

► Specific transactions/industries/situations, if any, more likely to undergo audit

None.

11. APA opportunity**► Availability (unilateral/bilateral/multilateral)**

The transfer pricing regulations provide for an opportunity to enter into unilateral, bilateral or multilateral APAs. In a seminar for taxpayers on transfer pricing, the tax authorities have indicated that, until further notice, no APAs will be stipulated until local expertise has been built.

► Tenure

Not applicable.

► Rollback provisions

Not applicable.

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Thailand

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Thai Revenue Department (TRD)

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

The tax law provisions, agreements and standards related to transfer pricing are:

- Provisions of the Thai Tax Code (TTC) dealing with exchanges at below-market prices:
 - Sections 65 bis (4) and (7)
 - Section 70 ter
 - Sections 65 ter (13), (14), (15) and (19)
 - Section 79/3
- Double tax agreements between Thailand and other countries
- Thai Accounting Standards 18 and 24
- Transfer pricing guidelines: Departmental Instruction No. Paw. 113/2545 (DI 113)

On 16 May 2002, the TRD issued its guidelines that specifically address transfer pricing. DI 113 is written in the form of an internal departmental instruction, which provides guidance to tax officials for tax audit purposes.

On 23 April 2010, the TRD issued the bilateral advance pricing arrangement (bilateral APA) guidelines stipulating the rules governing the bilateral APA process, including procedures for applications, the level of information required, circumstances under which the TRD may discontinue a bilateral APA and taxpayer compliance after a bilateral APA is concluded.

On 3 January 2018, the Thai Cabinet approved the draft Transfer Pricing Act (the draft TP Act), which will add specific transfer pricing provisions to the Revenue Code to prevent tax evasion from transfer pricing applied between related parties. The actual changes to the Revenue Code related to the draft Transfer Pricing Act were not yet released at the time of this publication.

The changes under the new draft TP Act are to apply to financial years that started on or after 1 January 2017.

A key feature of the changes under the draft TP Act is that a taxpayer with related party transactions is required to prepare a report disclosing descriptions of the related party relationships and value of related party transactions for each fiscal year, in accordance with a specified format, and submit it to the tax authority with its tax return. The specific format of the report was not released at the time of this publication.

► Section reference from local regulation

Refer to the “Relevant transfer pricing section reference” section above.

2. OECD guidelines treatment/reference

Thailand is not a member of the OECD.

Thai transfer pricing guidelines generally follow the OECD Guidelines, including allowing all of the methods acceptable under the OECD Guidelines. The OECD Guidelines are not binding on the TRD; however, they may cover areas not addressed by DI 113.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

Yes, there are transfer pricing documentation rules. DI 113 outlines the content requirements for Thai transfer pricing documentation.

► Does transfer pricing documentation have to be prepared annually?

There is no specific regulation requiring transfer pricing documentation to be prepared annually in Thailand. However, the Thai tax authority typically requests transfer pricing documentation before tax/transfer pricing audits.

Moreover, in the recent public hearings regarding the new draft TP Act, the Thai tax authority indicated that taxpayers will usually be required to provide their transfer pricing documentation within 60 days of request by the Thai tax authority.

Thailand

In practice, annual updates are expected. This should include, at a minimum, verification of key facts and data in the transfer pricing documentation, including a financial update of the local benchmarking study. In general, a new benchmarking analysis should be prepared after a three-year period.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

In relation to the draft TP Act, a taxpayer with related party transactions who has revenue not exceeding THB30 million per year will be exempted from the requirement to submit the TP form for each applicable fiscal year.

▶ Economic analysis

Not applicable.

▶ BEPS master and local files

Not applicable.

▶ CbCR

Not applicable.

c) Specific requirement(s)

▶ Treatment of domestic transactions

There is a documentation obligation for domestic transactions. Domestic transactions between related parties should comply with the arm's-length principle, and appropriate transfer pricing documentation should be prepared for these transactions.

▶ Local language documentation requirement

Local Thai language may be required for documentation; taxpayers should review the request from the Thai tax authority as to what language is requested.

▶ Safe harbor availability

Not applicable.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

On 16 May 2017, the Thai cabinet approved the country's action to join the BEPS Inclusive Framework as an associate. This involves implementation of Action 13 as one of the minimum standards. At the time of this publication, no specific timeline for the implementation of Action 13 has been released.

▶ Coverage in terms of master and/or local files

Not applicable.

▶ Effective/expected commencement date

Not applicable.

▶ Material differences from OECD report template/format

Not applicable.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

Not applicable.

▶ CbCR notification and CbC report submission requirement

Not applicable.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Under the draft TP Act, a taxpayer with related party transactions is required to prepare a report disclosing descriptions of the related party relationships and value of related party transactions for each fiscal year, in accordance with a specified format, and submit it to the tax authority with its tax return. The specific format of the report was not released at the time of this publication.

b) Transfer pricing-specific returns

Refer to the section above.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ Corporate income tax return

The tax return is submitted within 150 days after each financial year-end of the taxpayer. There are various financial year-ends that may be applicable, and therefore there is no standard tax return date.

▶ **Other transfer pricing disclosures/return**

These are submitted within 150 days after each financial year-end of the taxpayer, along with the tax return.

▶ **CbCR notification**

Not applicable.

▶ **CbC report preparation/submission**

Not applicable.

b) Documentation preparation deadline

Transfer pricing documentation is typically required to be submitted upon request.

c) Documentation submission deadline

▶ **Is there a statutory deadline for submission of transfer pricing documentation?**

There is no statutory deadline for submission of transfer pricing documentation.

▶ **Time period/deadline for submission on tax authority request**

Based on the recent public hearings conducted by the Thai tax authority, a taxpayer will likely have 60 days to submit transfer pricing documentation to the Thai tax authority upon formal request.

6. Transfer pricing methods

a) Applicability

▶ **International transactions**

The TRD, by default, accepts TNMM, although it would also accept the CUP, resale price, cost-plus and other commercially used methods, such as the profit split method, as specified in the OECD Guidelines.

▶ **Domestic transactions**

Refer to "International transactions" above.

b) Priority/preference of methods

The TRD, by default, accepts TNMM, although it would also accept the CUP, resale price, cost-plus and other commercially used methods, such as the profit split method, as specified in the OECD Guidelines.

7. Benchmarking requirements

a) Local vs. regional comparables

There is no specific regulation; however, based on our transfer pricing audit experience, Thai comparables are required.

b) Single-year vs. multi-year analysis

Both single-year and three-year testing are being reviewed.

c) Use of interquartile range

Interquartile range calculation using Excel Quartile formulas is acceptable.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

Based on our tax audit experience, there is a need to conduct new benchmarking on a three-year basis – i.e., a new benchmarking study prepared in year one and financial updates of that benchmarking in years two and three.

e) Simple vs. weighted average

The preference is for the weighted average for arm's-length analysis.

f) Other specific benchmarking criteria, if any

Selected comparable companies should not be owned with 50% common shareholding (indirectly or directly), and the selected company should not have any related party transactions more than 20%.

8. Transfer pricing penalties/relief

a) Penalty exposure

▶ **Consequences of failure to submit/late submission and/or incorrect disclosures**

There is no explicit penalty for transfer pricing assessments, nor is there an explicit penalty for not having transfer pricing documentation. However, under the new draft TP Act, a fine of THB200,000 will apply to any taxpayer who does not file the required transfer pricing documentation or makes false or misleading statements in such documentation.

Thailand

► **If an adjustment is sustained, can penalties be assessed?**

For tax shortfalls in general, if the TRD assesses a company, a penalty of 100% or 200% of the tax shortfall applies.

► **Is interest charged on penalties/payable on refund?**

A 1.5% per-month surcharge may be imposed. The 1.5% monthly surcharge is capped at 100% of the tax shortfall amount.

b) Penalty relief

In the event of a transfer pricing adjustment, there is no formal penalty relief for having transfer pricing documentation in place.

Penalties may be reduced to half, or waived, if the taxpayer voluntarily files a return and accounts for the tax shortfall. Surcharges are a form of interest and cannot be reduced. Contemporaneous documents cannot be used to reduce the penalty for a transfer pricing shortfall. However, documentation is an important tool in the defense of transfer pricing, should a tax audit take place.

A taxpayer can appeal for review through the tax authority and court process or through a mutual agreement procedure if a double tax agreement with the relevant mutual agreement clause is available or applicable.

9. Statute of limitations on transfer pricing assessments

Under Section 19 of the Thai Tax Code, the statute of limitations is two years from the date of filing the tax return. This period may be extended to five years upon suspicion of tax evasion or fraud.

Changes under the new draft TP Act will apply, where upon the Director-General's approval, the Thai tax authority has the power to request from the taxpayer additional documents or evidence necessary for analyzing the related party transactions, within five years after the taxpayer files the TP form.

10. Frequency of transfer pricing scrutiny/ related audit by local authority

► **Likelihood of transfer pricing-related audits**
(high/medium/low)

The likelihood that transfer pricing will be reviewed as part of an audit is high because the Thai tax authority has internal guidelines (DI 113, as referred to above) that guide it on how to review transfer pricing matters. Based on our observation, the Thai tax authority uses DI 113 as a guideline in conducting tax audits.

► **Likelihood of transfer pricing methodology being challenged**
(high/medium/low)

The likelihood that Transfer Pricing methodology will be challenged is high because the Thai tax authority focuses on the use of appropriate Thai comparables in the application of transfer pricing methodology.

► **Likelihood of an adjustment if transfer pricing methodology is challenged**
(high/medium/low)

The likelihood is high, based on our observation of tax audits in Thailand.

► **Specific transactions/industries/situations, if any, more likely to undergo audit**

The Thai tax authority does not focus on a specific country or industry, but rather on corporations of various industries that incurred intercompany fees, cost allocations, consecutive losses and fluctuations of profitability.

Generally, the Thai tax authority makes transfer pricing adjustments to the deductibility of expense items during its annual routine visits to taxpayers to review their business operations. During such checks, if officials find transactions warranting further scrutiny (including deductibility of expenses arising from intercompany transactions), a further investigation will be conducted.

In most cases, the taxpayer under investigation will be required to add the expenses (to the extent deemed excessive) back to its taxable income and pay the resulting additional tax. The final tax adjustments are then generally settled by way of negotiations.

11. APA opportunity

► **Availability (unilateral/bilateral/multilateral)**

Bilateral APAs are available in Thailand. The Thai transfer pricing and bilateral APA guidelines were issued in 2002 and 2010, respectively.

► **Tenure**

Usually three to five years.

► **Rollback provisions**

None specified.

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Turkey

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Turkish taxes are administered by the Turkish Ministry of Finance or by Turkish state authorities.

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

Transfer pricing is regulated by Article 13 of the Corporate Tax Code No. 5520, published 21 June 2006.

► Section reference from local regulation

Article 13 of the Corporate Tax Code states:

“Income shall be considered to have been wholly or partially distributed in a disguised manner through transfer pricing, if the company engages in purchase of goods and services with related parties at prices or at amounts which they determine do not comply with the arm’s-length principle.”

Transfer pricing provisions have been effective since January 2007. There are two relevant Cabinet decrees, published in December 2007 and April 2008. Further, three communiqués have been issued by the Ministry of Finance: the General Communiqué on Disguised Profit Distribution by Means of Transfer Pricing Serial Nos. 1, 2 and 3. A fourth was issued as a draft communiqué on March 2016 to aim to introduce OECD BEPS Action Plan 13 in the local transfer pricing legislation in Turkey.

Additionally, the Turkish Revenue Administration (TRA) under the Ministry of Finance issued guidance in 2009 regarding MAPs and in 2010 regarding disguised profit distribution through transfer pricing.

2. OECD guidelines treatment/reference

Turkey is a member of the OECD.

The preamble to the law covering transfer pricing states that the provisions of international regulations, especially the OECD Guidelines, are taken as a reference. However, there is no particular reference to the OECD Guidelines in the actual content of the regulations, including Article 13 of the Corporate Tax Code, the related decrees and communiqués. In addition, the law diverges from the OECD approach on two major points: the term “related party” is broadly defined, and it also applies to domestic related party transactions.

In local transfer pricing rules, business restructurings are not referenced. However, there are strict provisions in local tax codes regarding anti-abuse rules and the substance-over-form principle.

In general, transfer pricing rules place significant documentation and disclosure requirements on Turkish taxpayers, and with the latest changes, having appropriate and on-time transfer documentation provides 50% penalty protection to taxpayers. On the other hand, the tax inspectors are still not fully aligned with the OECD Guidelines, and there is a very strong tendency toward using the CUP method despite the difficulties in comparability and the fact that the regulations endorse all of the transfer pricing methods listed in the OECD Guidelines.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

Yes, there are transfer pricing documentation guidelines/rules and strict documentation requirements.

► Does transfer pricing documentation have to be prepared annually?

The transfer pricing documentation report has to be prepared annually under the local country regulations. Updating transaction values might be a solution only in case there are no changes in the operations, functions, supply chain, organization, shareholder structure, etc., of the entity. Otherwise, the expectation of the tax authority is to have a full documentation report.

b) Materiality limit/thresholds

► Transfer pricing documentation

None specified.

► Economic analysis

None specified.

► BEPS master and local files

TRY250 million net sales and assets for the master file and no threshold for the local file (draft legislation).

► CbCR

TRY2.037 million consolidated group revenue (draft).

c) Specific requirement(s)**► Treatment of domestic transactions**

There is a documentation requirement for domestic intercompany transactions in the case that the company is registered with the Large Taxpayers Tax Office (Büyük Mükellefler Vergi Dairesi Başkanlığı).

► Local language documentation requirement

The transfer pricing documentation needs to be submitted in the local language.

"If the relevant information and documents are presented in a foreign language, their Turkish translations are required to be submitted," according to the General Communiqué on Disguised Profit Distribution by Means of Transfer Pricing (Serial No. 1).

► Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview**► Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?**

Still in draft stage

► Coverage in terms of master and/or local files

Not applicable.

► Effective/expected commencement date

None specified.

► Material differences from OECD report template/format

Not applicable.

► Sufficiency of BEPS Action 13 format report to achieve penalty protection

Not applicable.

► CbCR notification and CbC report submission requirement

Not applicable.

4. Transfer pricing return/related party disclosures**a) Related party disclosures/transfer pricing-related appendices**

Taxpayers are required to disclose information about all related party transactions (domestic and cross-border) performed with related parties with a minimum 10% share, regardless of the magnitude, on their transfer pricing form, which should also include the following information in detail:

- Name or title of the local related party
- Taxpayer identification number
- Name of the foreign related party and the country in which it resides

Other required disclosures include the sale and purchase of commodities, both in the form of raw material and finished goods; the lease of any property; construction, R&D and commission-based services; all related party financial transactions, including lending and borrowing funds, marketable securities, insurance and other transactions; and intragroup services. Taxpayers must also disclose the transfer pricing methods applied in the related party transactions.

b) Transfer pricing-specific returns

Taxpayers are required to submit a transfer pricing form detailing related party transactions. This form should be submitted as an attachment to the corporate income tax return.

On the transfer pricing form, the taxpayer has to disclose information about its related parties (both domestic and international) that engage in intercompany transactions with the taxpayer, the nature (purchase of raw materials, licensing of intangible assets, etc.) and amounts of the transactions, and the total amount of intercompany transactions priced according to each transfer pricing method applied by the taxpayer.

A draft general communiqué, in compliance with Action 13, requires that the following appendices be submitted:

- Appendix 2 – If corporate taxpayers' sales or purchases of goods or services with related parties during a fiscal year exceed TRY30,000, they will be required to complete the form on transfer pricing, controlled foreign corporation and thin capitalization regarding such transactions, and submit it to the relevant tax office in the attachment of the corporate tax return.

- ▶ Appendix 4 – If corporate taxpayers have assets on the balance sheet of the previous year-end and net sales revenue in the income statement of TRY100 million and above, they will be obligated to electronically submit the transfer pricing form on transactions conducted with related parties exceeding TRY30,000 within a fiscal year by the end of the second month following the Filing deadline of the corporate tax return.

5. Transfer pricing documentation/ disclosure timelines

a) Filing deadline

- ▶ Corporate income tax return

25 April.

- ▶ Other transfer pricing disclosures/return

25 April.

- ▶ CbCR notification

Not applicable (draft legislation not yet finalized).

- ▶ CbC report preparation/submission

Not applicable (draft legislation not yet finalized).

b) Documentation preparation deadline

The transfer pricing documentation should be finalized by the time of lodging the tax return to achieve penalty protection (e.g., where there is a contemporaneous requirement).

c) Documentation submission deadline

- ▶ Is there a statutory deadline for submission of transfer pricing documentation?

Documentation reports are required to be prepared by 25 April of the following fiscal year, which is also the due date of the corporate income tax return.

- ▶ Time period/deadline for submission on tax authority request

The taxpayer has to submit the transfer pricing documentation within 15 days once requested by the tax authorities in an audit or inquiry.

6. Transfer pricing methods

a) Applicability

- ▶ International transactions

Yes.

- ▶ Domestic transactions

Yes.

b) Priority/preference of methods

There is no priority among the methods. However, there is a priority among comparables, and if there are internal comparables, they should be analyzed first. Only if there is a lack of internal comparables (or if these internal comparables are not accurate or reliable enough) can external comparables then be used.

7. Benchmarking requirements

a) Local vs. regional comparables

Local comparables are preferred.

b) Single-year vs. multi-year analysis

A multi-year analysis is preferred.

c) Use of interquartile range

The interquartile range is preferred.

d) Fresh benchmarking search every year vs. roll-forward/ update of the financials

Fresh benchmarking is preferred.

e) Simple vs. weighted average

The weighted average is preferred.

f) Other specific benchmarking criteria, if any

There is a preference for applying independence and unconsolidated financials criteria.

8. Transfer pricing penalties/relief

a) Penalty exposure

- Consequences of failure to submit/late submission and/or incorrect disclosures

There are no specific transfer pricing penalties, but failure to submit, late submission or incorrect disclosures trigger a tax audit.

- If an adjustment is sustained, can penalties be assessed?

If such a disguised distribution is assessed during a tax audit:

- For corporate income tax purposes, 20% of the corporate income tax is recalculated as if the disguised distribution had not been made.
- A dividend withholding tax of 15% is calculated for the net amount of the disguised distribution.

- Is interest charged on penalties/payable on refund?

Additionally, late-payment interest (1.4% monthly) and a tax loss penalty (which is the same as the tax loss amount) are charged to the taxpayer.

b) Penalty relief

A 50% penalty relief will be applied to residual taxes due to disguised profit distribution, provided for taxpayers that have submitted proper transfer pricing documentation.

It is also possible to come to a settlement regarding the tax loss amount and the tax penalty assessed. In settlement negotiations, taxpayers may assert a good-faith defense.

It is possible to come to a settlement regarding the tax loss amount and the tax penalty assessed by the tax authority or the filing of a lawsuit against the assessment. Additionally, although not widely applied in Turkey, taxpayers can file a request to begin a MAP with the competent authorities.

9. Statute of limitations on transfer pricing assessments

There is no specific Statute of limitations on transfer pricing assessments. Rather, the general rule for the statute of limitations is applicable, which is five years from the accrual of the tax payment.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

- Likelihood of transfer pricing-related audits (*high/medium/low*)

For medium- and large-sized multinational firms, the likelihood of an annual tax audit is high. Most large-sized multinationals are handled by a specific tax office (Large Taxpayers Tax Office) that requests information from these taxpayers throughout the year.

In this respect, the risk of transfer pricing scrutiny during a tax audit is high, as tax inspectors generally focus on related party transactions.

- Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

The likelihood of a challenge to the transfer pricing methodology is similarly high. Among tax inspectors, there is a strong tendency for using the CUP method, regardless of the inherent difficulties based on comparability. It has also been common practice to use secret comparables, which the taxpayer can challenge if the case is taken to litigation.

- Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

For medium- and large-sized multinational firms, the likelihood of an annual tax audit is high.

- Specific transactions/industries/situations, if any, more likely to undergo audit

The frequency of transfer pricing audits has increased, and these audits are mainly focused on intragroup charges, such as management fees and cost allocations. Tax inspectors often look to find out whether specific services or projects were provided to the recipient under management services (e.g., preparation of a procurement agreement, redesign of a compensation policy or legal advice for a court case). If the service charges are not documented with specificity about the type of service being provided to the Turkish entity, then they are likely to be treated as royalties (and therefore subject to withholding tax), based on the claim that industrial or commercial experience is used.

Also, taxpayers in sectors such as pharmaceuticals, telecommunications, banking and finance and automotive are often continuously audited. Moreover, most of the tax revenue in Turkey is generated through indirect taxes; thus, companies subject to excise taxes are usually subject to closer examination.

11. APA opportunity

► Availability (unilateral/bilateral/multilateral)

Companies can apply for unilateral, bilateral or multilateral APAs for their cross-border intercompany transactions.

► Tenure

The Council of Ministers has been authorized to increase the current three-year term for APAs up to five years.

► Rollback provisions

With APAs, it has been uncertain as to the actions that would be applied for previous periods outside the scope of the agreement. Although taxpayers with an APA have determined their transfer pricing methods prospectively by agreeing with the Ministry of Finance, thereby eliminating the risk in this way, they would still be subject to the tax risks relating to previous periods when the method in question was not applied.

The following provisions have been added to Sub-article 5 of Article 13 of Law No. 5520:

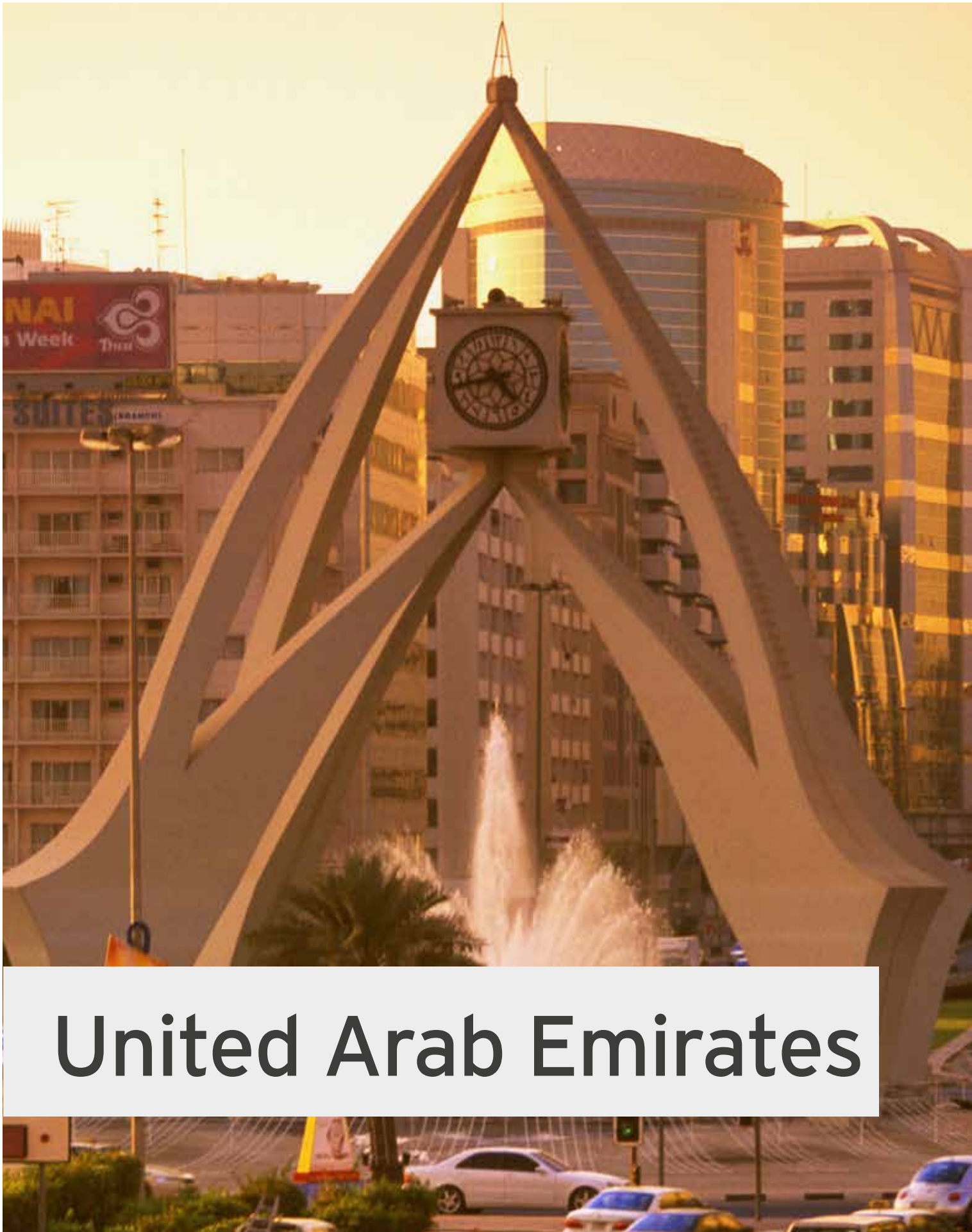
- The taxpayer and Ministry can ensure the application of the designated method to previous taxation periods that have not lapsed by including the periods in the scope of the agreement, provided that it is possible to apply the penalty and correction provisions of the Tax Procedures Law and the conditions of the agreement are also effective in those periods. In this case, the agreement shall substitute for the petition on notification mentioned in the relevant provisions, and declaration and payment transactions shall be consummated accordingly. The taxes paid previously shall not be rejected and refunded due to the application of the agreement to previous taxation periods.
- This amendment has allowed the application of the method determined under the agreement to be applied to the taxation periods that have not lapsed in the case of agreement between the taxpayer and the Ministry of Finance. Therefore, taxpayers have been allowed to retroactively apply the relevant APA (rollback) and hence eliminate tax risks, provided they retroactively pay the tax principal and interest charge.

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United Arab Emirates

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Federal Tax Authority (FTA)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

There are currently no local transfer pricing (TP) regulations in place.

▶ Section reference from local regulation

Refer to the section above.

2. OECD guidelines treatment/reference

The United Arab Emirates (UAE) are not a member of the OECD.

The OECD Transfer Pricing Guidelines are not adopted in the local legislation.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

At the time of this publication, the UAE did not have transfer pricing documentation guidelines/rules in place.

▶ Does transfer pricing documentation have to be prepared annually?

No.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

Not applicable.

▶ Economic analysis

Not applicable.

▶ BEPS master and local files

Not applicable.

▶ CbCR

Not applicable.

c) Specific requirement(s)

▶ Treatment of domestic transactions

There is no documentation obligation for domestic transactions.

▶ Local language documentation requirement

The TP documentation need not be submitted in the local language.

▶ Safe harbor availability

Not applicable.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

The UAE has not adopted BEPS Action 13 for transfer pricing documentation. However, following its listing as a noncooperative tax jurisdiction by the Council of the European Union, the UAE is expected to soon comply with the BEPS minimum standards, including Action 13.

▶ Coverage in terms of master and/or local files

Not applicable.

▶ Effective/expected commencement date

Not applicable.

▶ Material differences from OECD report template/format

Not applicable.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

Not applicable.

▶ CbCR notification and CbC report submission requirement

Not applicable.

United Arab Emirates

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Not applicable.

b) Transfer pricing-specific returns

Not applicable.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

- ▶ Corporate income tax return

Not applicable.

- ▶ Other transfer pricing disclosures/return

Not applicable.

- ▶ CbCR notification

Not applicable.

- ▶ CbC report preparation/submission

Not applicable.

b) Documentation preparation deadline

Not applicable.

c) Documentation submission deadline

- ▶ Is there a statutory deadline for submission of transfer pricing documentation?

Not applicable.

- ▶ Time period/deadline for submission on tax authority request

Not applicable.

6. Transfer pricing methods

a) Applicability

- ▶ International transactions

Not applicable.

- ▶ Domestic transactions

Not applicable.

b) Priority/preference of methods

Not applicable.

7. Benchmarking requirements

a) Local vs. regional comparables

Even though they are not specifically mentioned in the regulations, local comparables are preferred over regional comparables. A regional search covering countries in the Gulf Cooperation Council or the Middle East and North Africa region could be accepted.

b) Single-year vs. multi-year analysis

Not applicable.

c) Use of interquartile range

Not applicable.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

There is no specific requirement to conduct a fresh benchmarking search every year. However, it is recommended that a fresh search be conducted once every three years and that financial data be updated for the rest of the years.

e) Simple vs. weighted average

None specified.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures

Not applicable.

- ▶ If an adjustment is sustained, can penalties be assessed?

Not applicable.

- ▶ Is interest charged on penalties/payable on refund?

Not applicable.

b) Penalty relief

Not applicable.

9. Statute of limitations on transfer pricing assessments

Not applicable.

10. Likelihood of transfer pricing scrutiny/ related audit by local authority

- ▶ Likelihood of transfer pricing-related audits (*high/medium/low*)

Not applicable; TP regulations are not in place.

- ▶ Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

See the above section.

- ▶ Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

See the above section.

- ▶ Specific transactions/industries/situations, if any, more likely to undergo audit

None.

11. APA opportunity

- ▶ Availability (unilateral/bilateral/multilateral)

Not applicable.

- ▶ Tenure

Not applicable.

- ▶ Rollback provisions

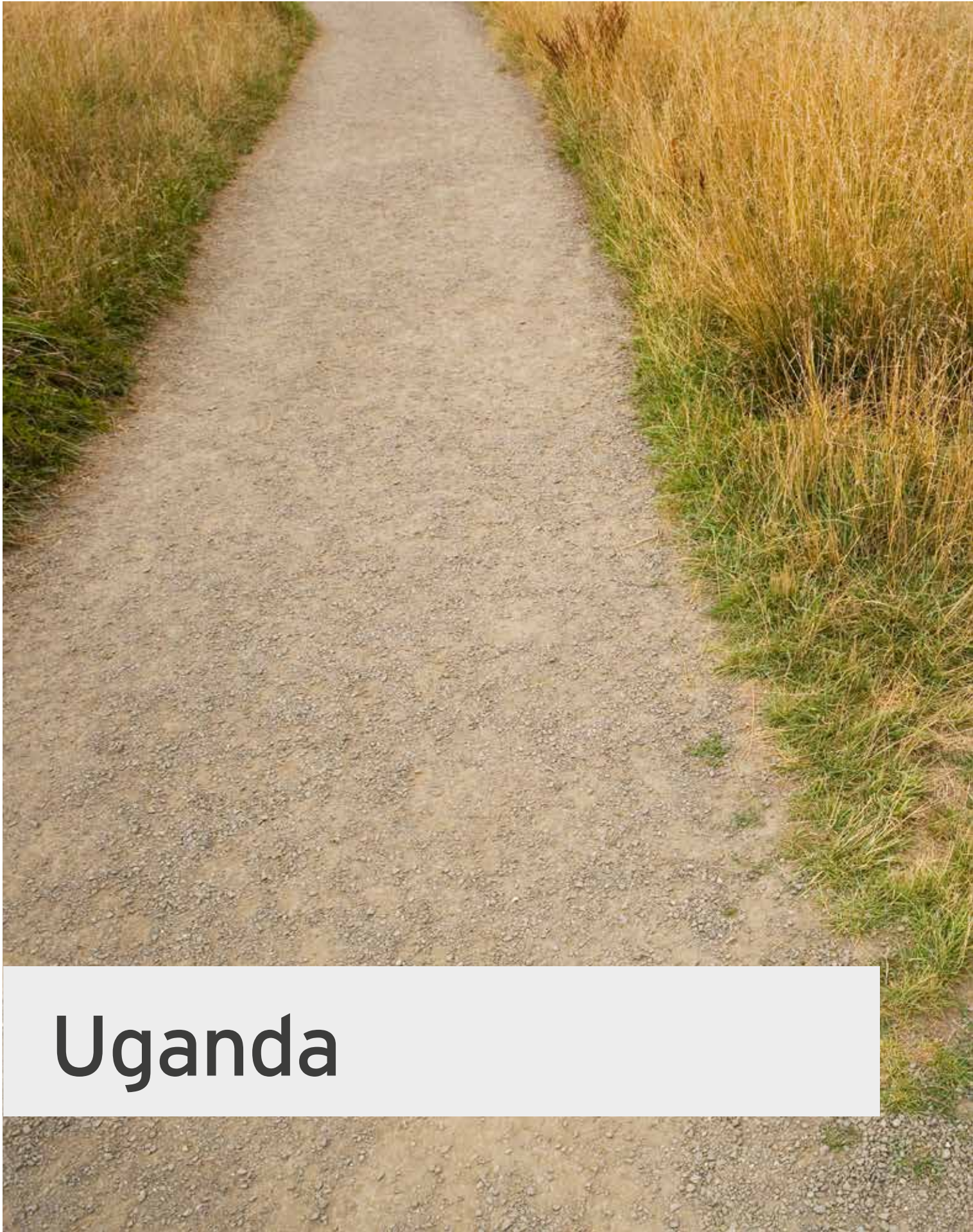
Not applicable.

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Uganda

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Uganda Revenue Authority (URA)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

Uganda's transfer pricing (TP) legislation is contained in the Income Tax Regulations 2011, under sections 90 and 164 of the Income Tax Act, Cap 340, and became effective 1 July 2011.

▶ Section reference from local regulation

Section 3 of the Ugandan Income Tax Act.

2. OECD guidelines treatment/reference

Uganda is not a member of the OECD.

Ugandan regulations adopt the arm's-length standard and recognize the OECD Guidelines. However, where the OECD Guidelines conflict with the Domestic Taxing Acts, the provisions in the Domestic Taxing Acts take precedence.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Yes.

▶ Does transfer pricing documentation have to be prepared annually?

No.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

For in-country transactions between related entities, the threshold is UGX500 million in aggregate for the transaction during the year.

▶ Economic analysis

Not applicable.

▶ BEPS master and local files

Not applicable.

▶ CbCR

Not applicable.

c) Specific requirement(s)

▶ Treatment of domestic transactions

There is a documentation obligation for domestic transactions. Transactions between the two domestic entities should be included in the transfer pricing documentation.

▶ Local language documentation requirement

The TP documentation need not be submitted in the local language, and English documentation is acceptable.

▶ Safe harbor availability

Not applicable.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Since the tax authority follows the OECD Guidelines, Action 13 with respect to having a local TP file is applied. However, the other aspects of requiring the taxpayer to have a master file and CbC report may not apply.

▶ Coverage in terms of master and/or local files

Only the local file is required.

▶ Effective/expected commencement date

None specified.

▶ Material differences from OECD report template/format

There is no difference; the local TP rules are a replica of the OECD Guidelines.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

Yes, and only the local file is required.

Uganda

► CbCR notification and CbC report submission requirement

There is no CbCR notification or CbC report submission requirement in Uganda.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

The following transfer pricing information needs to be disclosed:

- The group organization structure of the entity
- The details of the transaction under consideration
- The transfer pricing method, including the reasons for its selection
- The assumptions, strategies and policies applied in selecting the method
- The application of the method, the calculations made and the price adjustment factors considered
- The transfer pricing policy agreement
- Such other background information as may be necessary

b) Transfer pricing-specific returns

There are no specific transfer pricing returns required to be filed with the tax authority. However, most recently, the tax authorities have come up with a related party disclosure form that has been circulated to most multinational entities as part of the initial TP audit procedure.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► Corporate income tax return

For entities with a year-end of 30 June, the corporate income tax return (CITR) becomes due within six months of the year-end – i.e., by 31 December. For entities with a year-end of 31 December, the CITR becomes due by 30 June of the following year.

► Other transfer pricing disclosures/return

Not applicable.

► CbCR notification

Not applicable.

► CbC report preparation/submission

Not applicable.

b) Documentation preparation deadline

Transfer pricing documentation typically must be finalized by the time of submitting the income tax self-assessment return or upon request by the tax authority within 30 days.

c) Documentation submission deadline

► Is there a statutory deadline for submission of transfer pricing documentation?

No.

► Time period/deadline for submission on tax authority request

The taxpayer has to submit TP documentation within 30 days of the tax authority's request.

6. Transfer pricing methods

a) Applicability

► International transactions

Yes.

► Domestic transactions

Yes.

b) Priority/preference of methods

Uganda accepts the five methods specified in the OECD Guidelines:

- CUP
- Resale price
- Cost-plus
- TNMM
- Transactional profit split

The most appropriate method is selected based on the circumstances and data available.

7. Benchmarking requirements

a) Local vs. regional comparables

There is no legal requirement for local country comparables, and a search conducted in regions with economic indicators that are similar to the local country is accepted.

b) Single-year vs. multi-year analysis

Multiple-year (three years) analysis, as per common practice.

c) Use of interquartile range

Interquartile range calculation using Excel Quartile formulae is acceptable.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

There is no need to conduct a fresh benchmarking search every year unless the legal and economic circumstances of transactions being analyzed have changed.

e) Simple vs. weighted average

There is no reference prescribed in the local TP regulations, but in practice, the weighted average is used.

f) Other specific benchmarking criteria, if any

A well-laid-out search process, as provided for in the OECD Guidelines, has to be followed. It includes:

- i. Determination of the years to be covered
- ii. Broad-based analysis
- iii. Understanding of the controlled transactions
- iv. Selection of the most appropriate method
- v. Existing internal comparable data
- vi. Sources of external comparables
- vii. Identification of potential comparables
- viii. Comparability adjustments
- ix. Interpretation and use of the data collected

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures

Specific transfer pricing penalties apply for failure to comply with TP documentation requirements. Where one fails to put in place documentation under the TP regulations, the person is liable, upon conviction, to imprisonment for a term not exceeding six months or a fine not exceeding 25 currency points (currently, UGX500,000) or both.

The penalty for late payment is 2% per month of the shortfall and 2% of the gross tax liability for the year for which the return is filed late. Other civil and criminal penalties may apply under specific circumstances.

Furthermore, the domestic tax laws introduced penalties in which a person who, upon request by the Commissioner, fails to provide records on transfer pricing within 30 days after the request is liable to a penal tax equivalent to UGX50 million, effective 1 July 2017.

▶ If an adjustment is sustained, can penalties be assessed?

In the event that the URA raises an upward transfer pricing adjustment, a 20% penalty on the shortfall will be imposed if the provisional tax paid is less than 90% of the actual tax liability.

▶ Is interest charged on penalties/payable on refund?

Interest on outstanding tax payable is 2% per month (simple interest) but capped to a maximum of the aggregate of principal tax and penalty tax (i.e., interest should not exceed the sum of principal tax and penalty tax).

b) Penalty relief

There is no specific penalty relief. However, penalties may be reversed in case of successful objection to a tax assessment before the tax authority or appeals of tax decisions made before the Tax Appeals Tribunal or the courts of law.

9. Statute of limitations on transfer pricing assessments

Three years, but it may be open if new information is obtained by the tax authority. Considering that TP regulations came into force in July 2011, the period before this date would be outside TP review. However, other income tax provisions regarding recharacterizing of the transaction may apply.

10. Likelihood of transfer pricing scrutiny/ related audit by local authority

► Likelihood of transfer pricing-related audits (*high/medium/low*)

Medium. The rationale of the selected scale is such that transfer pricing audits take a long time to close. Therefore, the tax authority may not conduct many reviews in the transfer pricing space.

► Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

Medium, though the focus by the tax authority is mainly on the analysis of the relevant costs upon which the transfer pricing method has been premised.

► Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

If disputes on a particular methodology arise, there is a high likelihood of adverse transfer pricing adjustments.

► Specific transactions/industries/situations, if any, more likely to undergo audit

Management fees and royalties. The general focus by the tax authority is on MNEs, irrespective of the sector, with significant related party transactions.

11. APA opportunity

► Availability (unilateral/bilateral/multilateral)

There is an APA program available in Uganda. Applications for multilateral APAs are allowed. The tax authority may enter into an APA with the person either alone or together with the competent authorities of the country or countries of the person's associate or associates.

► Tenure

The APAs must specify the years of income to which the agreement applies. Although the regulations provide that the APA is for a fixed period of time, the exact number of years covered by APAs is not mentioned.

► Rollback provisions

None specified.

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United Kingdom

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Her Majesty's Revenue and Customs (HMRC)

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

The United Kingdom's domestic transfer pricing legislation is now consolidated and set out in Part 4 of the Taxation (International and Other Provisions) Act 2010 (TIOPA 2010). This covers cross-border and UK-to-UK transactions.

► Section reference from local regulation

Related parties are defined by the "participation condition" in Section 148 of the TIOPA 2010 and the related interpretative sections.

2. OECD guidelines treatment/reference

The UK is a member of the OECD.

The OECD Guidelines are effectively imported into the UK transfer pricing rules because the OECD Guidelines are required to be used in interpreting the rules. Finance Act 2011 included provisions confirming that for accounting periods ending on or after 1 April 2011, the 2010 version of the OECD Guidelines is to be used in reinterpreting the UK Transfer Pricing Statutory Code. In this regard, Section 164 of the TIOPA 2010 confirms that the UK's transfer pricing provisions are to be construed in alignment with Article 9 of the OECD Model Tax Convention and its associated transfer pricing guidelines. For these purposes, "transfer pricing guidelines" means all of the documents published by the OECD at any time before 1 May 1998 "as part of their Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations," according to the TIOPA 2010, and any other documents designated as such by Treasury order. Currently, as noted above, the 2010 version is to be used for accounting periods ending on or after 1 April 2011, while the 1998 version applies to earlier periods. The Finance Bill for 2016, which became law in October 2016, confirms further changes in interpretation. This requires that for accounting periods beginning on or after 1 April 2016, the revisions in the OECD report "Aligning Transfer Pricing Outcomes with Value Creation, Actions 8-10-2015 Final Reports" version be used in conjunction with the 2010 version.

For accounting periods beginning after 1 April 2018 the 2017 version of the OECD Guidelines is now explicitly incorporated into UK law.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

Yes. See below for context.

► Does transfer pricing documentation have to be prepared annually?

Yes. The minimum requirement to achieve this is by maintaining evidence that transactions meet the arm's-length standard.

HMRC does not want businesses to suffer disproportionate compliance costs, so its advice is that taxpayers should prepare and retain such documentation as is reasonable given the nature, size and complexity (or otherwise) of their businesses or of the relevant transaction (or series of transactions) but that adequately demonstrates that their transfer pricing meets the arm's-length standard.

b) Materiality limit/thresholds

► Transfer pricing documentation

There is an exemption from the application of transfer pricing rules for small and medium-sized enterprises (SME). For the calculation of profits arising on or after 1 April 2004, the legislation provides an exemption from transfer pricing rules for the vast majority of transactions carried out by a business that is a small or medium-sized enterprise. The exemption applies only to transactions with territories for which there is a full nondiscrimination article in the relevant treaty. What constitutes an SME for this purpose is a modification of the European recommendation (2003/361/EC). An entity qualifies as either small or medium-sized if it meets the staff headcount ceiling for that class (i.e., 50 or 250, for small or medium-sized, respectively) and one (or both) of either the annual turnover limit or the balance sheet total limit. The annual turnover limit for small enterprises is GBP10 million; for medium-sized entities, it is GBP50 million. The balance sheet limit is GBP10 million for small and GBP43 million for medium-sized enterprises, respectively. Reference to the characteristics of a whole group of associated enterprises, and not the UK entity alone, determines whether the SME exemption applies.

United Kingdom

► Economic analysis

Not applicable.

► BEPS master and local files

Not applicable.

► CbCR

The UK follows the OECD threshold limit.

c) Specific requirement(s)

► Treatment of domestic transactions

Domestic transactions have the same transfer pricing obligations under the law. In practice, taxpayers take a risk-weighted approach to the level of documentation produced.

► Local language documentation requirement

There is no specific language requirement. In practice, it would be highly unusual to not present documentation in English, which would not likely be looked on favorably by HMRC.

► Safe harbor availability

There are no specified safe harbors in UK law except for SME exemptions.

Transactions that are taxed under UK chargeable gains rules are not subject to transfer pricing.

d) BEPS Action 13 implementation overview

► Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

There are no specific documentation requirements in UK law. However, given the UK participation in the OECD BEPS project, following the Action 13 formats would be recommended.

► Coverage in terms of master and/or local files

Not applicable.

► Effective/expected commencement date

Not applicable.

► Material differences from OECD report template/format

Not applicable.

► Sufficiency of BEPS Action 13 format report to achieve penalty protection

Yes, a BEPS Action 13 format report will be sufficient. However, see below for nature of penalties.

► CbCR notification and CbC report submission requirement

There is a CbCR notification requirement in the UK. Notifications must be made by the last day of the accounting period for periods commencing on or after 1 January 2016 (or 30 September 2017 if later).

CbC report submission must be by 12 months after the end of accounting period. UK filing is required where a UK entity is the ultimate parent entity (UPE) or the top UK entity of an MNE when it is not the UPE of the MNE and the UPE is resident in a country that either doesn't require CbCR or doesn't exchange CbC reports with HMRC.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

There are no return disclosure requirements, except those required in statutory accounts and in annual reports filed in compliance with any current APAs. The absence of specific requirements typically will leave prior years open to discovery assessments, as there will not be sufficient disclosure for HMRC to form a view about the compliance with the arm's-length principle.

b) Transfer pricing-specific returns

None specified.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► Corporate income tax return

12 months after the end of the accounting period.

► Other transfer pricing disclosures/return

Not applicable.

► CbCR notification

The last day of the accounting period (or 30 September 2017 if later). For accounting periods ending after 30 September 2017, the last day of the accounting period is the deadline for CbCR notification.

► CbC report preparation/submission

12 months after the end of the accounting period. UK filing is required where a UK entity is the UPE or the top UK entity of an MNE when it is not the UPE of the MNE and the UPE is resident in a country that either doesn't require CbCR or doesn't exchange CbC reports with HMRC.

b) Documentation preparation deadline

There is no statutory deadline for preparation of transfer pricing documentation. Given prescriptive rules in other territories applying the Action 13 guidance on master files and local files, it is understood that HMRC will expect multinational companies to have documentation compliant with those forms available on request.

c) Documentation submission deadline

► Is there a statutory deadline for submission of transfer pricing documentation?

There is no statutory deadline for submission of transfer pricing documentation.

► Time period/deadline for submission on tax authority request

Evidence to demonstrate an arm's-length result would need to be made available to HMRC in response to a legitimate and reasonable request related to a tax return. If such a request is made, it is reasonable to assume 30 days to respond to it or such other time as mutually agreed upon.

6. Transfer pricing methods

a) Applicability

► International transactions

Yes.

► Domestic transactions

Yes.

b) Priority/preference of methods

The OECD Guidelines are followed with regard to pricing

methods. All of HMRC's guidance is based on adherence to the OECD Guidelines.

Following a tax case in 2010, HMRC now more routinely challenges the robustness of external CUP data (particularly in relation to intellectual property licenses), unless there has been an analysis around the relevant parties' bargaining positions in agreeing to the third-party license arrangements. This position has been reinforced by the OECD BEPS Actions 8 to 10.

HMRC has also expressed concern over the use of and reliance on the historical CUP analysis in relation to procurement. HMRC's view is that there is little support for the high level of commissions and fees often seen paid in outbound transactions. HMRC has commissioned a third-party consultancy to analyze procurement contracts, which will be used as a risk assessment tool, and returns outside of the expected range will require persuasive analysis not reliant on historical CUP data.

In addition, HMRC often challenges the use of the cost-plus method for high-value-added services, where it looks to substitute some form of value-based fee using the profit split or a similar method.

7. Benchmarking requirements

There are no specific benchmarking requirements, provided that the approach is consistent with the OECD approach.

a) Local vs. regional comparables

None specified.

b) Single-year vs. multi-year analysis

None specified.

c) Use of interquartile range

None specified.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

A fresh benchmarking search is not needed every year, although it should be considered if there are specific factors that may render prior searches unreliable.

e) Simple vs. weighted average

None specified.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

► Consequences of failure to submit/late submission and/or incorrect disclosures

For accounting periods ending on or after 1 April 2008, the provisions for neglect penalties are set out in Schedule 24 of Finance Act 2007. These provisions are couched in terms of careless or deliberate inaccuracies, rather than neglect. They are tax-geared at up to 100% of the potential lost revenue figure. However, this is now calculated without adjustment for the availability of loss relief and, when the adjustment affects losses only, the lost revenue figure to which the penalty percentage is applied is calculated at 10% of the loss adjustment.

HMRC has also published guidance setting out examples of negligence and carelessness, which carry lower tax-geared penalties (up to 30%), and deliberate inaccuracies, for which the penalties will be higher (up to 70%).

Examples of negligence and carelessness include:

- No attempt to price the transaction
- Shared service center overseas, cost-based, allocation key applied, turnover, modest markup, but no consideration of benefits test for UK entity
- Policy, otherwise arm's-length, not properly applied in practice

Examples of deliberate inaccuracies include:

- A clear internal CUP that has been omitted with no reasonable technical analysis to support why it has been disregarded
 - A cost-plus return to a company that has in reality controlled the development of valuable intangibles (not demonstrable as a subcontractor to group members)
 - Material factual inaccuracies in the functional analysis upon which the pricing analysis has been based
- **If an adjustment is sustained, can penalties be assessed?**

Penalties can be assessed for rates and conditions; refer to the section above.

- **Is interest charged on penalties/payable on refund?**

Current late-payment interest is 3%.

b) Penalty relief

The best protection against neglect penalties is to demonstrate sufficient due diligence with regard to compliance. This is best shown through transfer pricing documentation that fully shows that the application of the arm's-length principle was considered properly in preparing the relevant tax return.

Normally, adjustments are mutually agreed upon in the course of an inquiry. Transfer pricing settlements are usually reviewed by HMRC's Transfer Pricing Board to achieve consistency across HMRC.

Taxpayers may appeal to the First-tier Tribunal and subsequent appeals courts, and the process would be as for any other tax appeal. It is very rare for transfer pricing cases to be taken to court.

In the case of cross-border transactions, the taxpayer may request relief from double taxation under the MAP between the UK and the other country.

9. Statute of limitations on transfer pricing assessments

Effective 1 April 2010, assessments may be made four years following the end of the relevant accounting period for instances of carelessness, and this is extended to 20 years if there have been deliberate understatements. This is on the basis that the error was not fully disclosed in the body of the tax return or other documents submitted.

The legislation applicable before 1999 operated in a different manner, and, as a result, an investigation started now would not lead to transfer pricing adjustments for periods before 1999.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► Likelihood of transfer pricing-related audits (high/medium/low)

In general, across the taxpayer population, the likelihood of an annual tax audit is characterized as low. There is no system for annual tax audits, as HMRC takes a risk assessment approach to audits and inquiries. The likelihood that transfer pricing will be reviewed as part of an audit is characterized as medium. Most multinational companies will have transfer pricing considered as part of their overall risk assessment, but only those seen as high-risk in this area will then be subject to an audit.

▶ **Likelihood of transfer pricing methodology being challenged** (*high/medium/low*)

The likelihood of a challenge to the transfer pricing methodology is characterized as high. Most risk assessments have, at their core, a challenge regarding the methods and the appropriateness of their application.

▶ **Likelihood of an adjustment if transfer pricing methodology is challenged** (*high/medium/low*)

High; not all inquiries will result in an adjustment equally, but, given the resources that HMRC needs to commit to an inquiry, their expectation is that they will achieve adjustments in the majority of cases.

▶ **Specific transactions/industries/situations, if any, more likely to undergo audit**

There are no industries that are specifically identified by HMRC as being higher-risk. In practice, situations in which there is material activity in the UK but low returns and where intellectual property is kept offshore with material base-eroding payments are likely to face greater scrutiny.

It should be noted that the UK has an additional tax potentially chargeable, the diverted profits tax, which is closely related to transfer pricing. The diverted profits tax is increasingly being leveraged by HMRC to achieve resolution in transfer pricing audits. A full discussion of the tax is beyond the scope of this guide, but it is highly recommended that its application be carefully considered in any transfer pricing case.

11. APA opportunity

▶ **Availability (unilateral/bilateral/multilateral)**

APA opportunities are available, and admissions to the program are not expected to increase beyond current levels, given resource constraints. There are complexity thresholds to satisfy to gain admission to the program. HMRC has indicated a strong preference for bilateral and multilateral APAs, although unilateral APAs technically remain potentially available in certain limited circumstances.

▶ **Tenure**

APAs typically do not exceed five years.

▶ **Rollback provisions**

Rollbacks should be available subject to appropriate fact patterns.

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Ukraine

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

State Fiscal Service of Ukraine

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

Article 39, Subparagraph 14.1.159, Paragraph 120.3, 201.4 of the Ukrainian Tax Code (the Law or Article 39) regulate transfer pricing (TP) in Ukraine. Generally, the provisions of the Law are in line with the OECD Guidelines.

A number of rules and provisions related to transfer pricing are also established by other laws and decrees, as follows:

- ▶ Law of Ukraine No. 609-VIII (15 July 2015) features amendments to the Ukrainian Tax Code regarding transfer pricing.
- ▶ Law of Ukraine No. 1636-VII (12 August 2014) governs the creation of the free economic zone of Crimea and special conditions of economic activity on the temporarily occupied territory of Ukraine (entities in Crimea are considered nonresidents for the purposes of transfer pricing).
- ▶ Decree of the Cabinet of Ministers of Ukraine No. 381 (4 June 2015) defines the new algorithm for the interquartile range calculation.
- ▶ Order of the Cabinet of Ministers of Ukraine No. 977-p (16 September 2015) provides the list of countries (territories) that match the criteria specified by Subparagraph 39.2.1.2 of Article 39 of the Tax Code of Ukraine.
- ▶ Decree of the Cabinet of Ministers of Ukraine No. 616 (8 September 2016) provides the list of goods traded on the commodity exchanges and the list of world commodity exchanges for the purpose of CUP method application in order to improve tax control over transfer pricing.
- ▶ Law of Ukraine No. 1797-VIII (21 December 2016), on amendments to the Ukrainian Tax Code regarding transfer pricing.
- ▶ Law of Ukraine No. 2245-19 (7 December 2017), on amendments to the Ukrainian Tax Code and other legislative acts of Ukraine regarding the balance of budget revenues in 2018.

The tax authorities provide administrative interpretation and guidance on the application of the transfer pricing rules, the release of consultation letters, orders and opinions expressed in the press and at public events.

Local accounting standards: Ukrainian GAAP or International Financial Reporting Standards (IFRS).

At the time of this publication, no regulations and rulings had been issued on BEPS actions 1 to 15; relevant legislation acts are in development.

▶ Section reference from local regulation

Refer to the section above.

2. OECD guidelines treatment/reference

Ukraine is not a member of the OECD.

The Ukrainian tax authorities refer to the OECD Guidelines as well as other reference guides in their consultations and public opinions.

Ukrainian law incorporates the main standards of the OECD Guidelines. A taxpayer taking part in a controlled transaction shall determine the amount of its taxable income pursuant to the arm's-length principle. The array of methods and documentation requirements closely follows the OECD Guidelines.

The Ukrainian tax authorities are not obligated to follow the OECD Guidelines. However, in many cases, the Ukrainian tax authorities refer to them in their consultations and public opinions.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Yes.

▶ Does transfer pricing documentation have to be prepared annually?

Yes.

Ukraine

b) Materiality limit/thresholds

▶ Transfer pricing documentation

Transactions are recognized as controlled if both of the following conditions are met:

- ▶ The annual taxpayer's revenue exceeds UAH150 million (excluding indirect taxes) for the corresponding tax year.
- ▶ The volume of such transactions with each counterparty exceeds UAH10 million (excluding indirect taxes) for the corresponding tax year

▶ Economic analysis

The respective economic analysis must be prepared for each controlled transaction, and presented in the TP documentation.

▶ BEPS master and local files

Not applicable.

▶ CbCR

Not applicable.

c) Specific requirement(s)

▶ Treatment of domestic transactions

There is no documentation obligation for domestic transactions.

▶ Local language documentation requirement

According to Paragraph 39.4.9 of the Tax Code of Ukraine, the TP documentation must be submitted in Ukrainian.

▶ Safe harbor availability

Not applicable.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

▶ Coverage in terms of master and/or local files

Not applicable.

▶ Effective/expected commencement date

Not applicable.

▶ Material differences from OECD report template/format

Not applicable.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

Not applicable.

▶ CbCR notification and CbC report submission requirement

Not applicable.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Taxpayers shall report all self-adjustments of tax liabilities arising due to the application of transfer pricing rules in a special transfer pricing annex to the corporate profit tax (CPT) return.

b) Transfer pricing-specific returns

Ukrainian transfer pricing rules require the submission of a transfer pricing report disclosing all the controlled transactions of a taxpayer for the reporting period, provided that the controlled transactions with the same counterparty exceed UAH10 million (approximately USD370,000).

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ Corporate income tax return

60 calendar days after the end of the year; filing of CIT return for 2017 year is due 1 Mar 2018 (for companies using calendar quarter as a reporting period, the reporting for fourth quarter is due 9 Feb 2018).

▶ Other transfer pricing disclosures/return

1 October for the Report on Controlled Transactions; 30 calendar days upon the tax authorities' request for the TP documentation.

▶ CbCR notification

Not applicable.

▶ CbC report preparation/submission

Not applicable.

b) Documentation preparation deadline

There is no statutory deadline for preparation/submission of transfer pricing documentation; however, it needs to be submitted within 30 calendar days upon the tax authorities' request.

c) Documentation submission deadline

► **Is there a statutory deadline for submission of transfer pricing documentation?**

No.

► **Time period/deadline for submission on tax authority request**

The taxpayer has 30 calendar days to submit the transfer pricing documentation once requested by the tax authorities in an audit or inquiry.

6. Transfer pricing methods

a) Applicability

► International transactions

Yes.

► Domestic transactions

Not applicable.

b) Priority/preference of methods

The Ukrainian transfer pricing rules provide for the five methods similar to those specified by the OECD Guidelines.

The CUP method is given priority. In cases when the resale price method, cost-plus method, net margin or profit split methods may be applied by the taxpayer with the same reliability, the resale price or cost-plus method shall be used. Profit-based transfer pricing methods may be used without specific restrictions.

For controlled transactions involving the export and import of goods from the list approved by Decree of the Cabinet of Ministers of Ukraine No. 616 (8 September 2016), the CUP method based on information from commodity exchanges shall apply. To apply other methods in such situations, a taxpayer shall submit to the tax authorities a written report that includes data about PLIs of all related parties of the taxpayer that took part in the purchase and sale of the goods in the supply chain (up to the first not-related counteragent). Such report shall be provided by 1 May of the year following the reporting period.

7. Benchmarking requirements

a) Local vs. regional comparables

A local benchmarking study must be used for the local tested party.

b) Single-year vs. multi-year analysis

Multi-year analysis, as per common practice.

c) Use of interquartile range

The interquartile range must be used.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

A fresh benchmarking search is required every year. According to paragraphs 39.3.3.3, 39.2.2.1 and 39.3.2.8 of the Tax Code of Ukraine, new benchmarking studies have to be prepared. This position is supported by the local tax authorities, as well.

e) Simple vs. weighted average

The weighted average must be used.

f) Other specific benchmarking criteria, if any

Twenty percent independence criteria must be used.

8. Transfer pricing penalties/relief

a) Penalty exposure

► **Consequences of failure to submit/late submission and/or incorrect disclosures**

The Report on Controlled Transactions is mandatory and due 1 October.

The penalty for not filing the Report on Controlled Transactions is 300 times the subsistence minimum (for FY 2017, UAH480,000 or approximately USD18,000).

The penalty for not including all of the controlled transactions in the Report on Controlled Transactions is 1% of the total amount of transactions not included, but no more than 300 times the subsistence minimum. If controlled transactions have not been included in the report, the penalty is 1% of the amount of such non-declared transactions, but no more than 300 times the subsistence minimum. The penalty for late submission of the report is 1 times the subsistence minimum (for violations in FY 2017, UAH1,600 or USD60) for each calendar day

of late submission (no more than 300 times the subsistence minimum). Non-submission of the adjusted report after 30 calendar days upon expiration of the term for penalty payment for non-submission is punishable by 5 times the subsistence minimum (for violations in FY 2017, UAH8,000 or USD300) for each calendar day of non-submission of the adjusted report. The penalty for late declaration of the controlled transactions in the submitted Report on Controlled Transactions (in case of the adjusted report submission) is 1 times the subsistence minimum for each calendar day of lateness in declaring the transactions in the submitted report, but no more than 300 times the subsistence minimum.

Tax authorities may request transfer pricing documentation for the previous fiscal year starting 1 May of the next year, and the taxpayer has 30 calendar days to comply. The penalty for not submitting the TP documentation is 3% of the sum of the controlled transactions for which the TP documentation was not submitted, but not exceeding 200 times the subsistence minimum (for FY 2017, UAH320,000 or approximately USD12,000). Non-submission of the documentation after 30 calendar days upon expiration of the term for penalty payment for non-submission entails penalties of 5 times the subsistence minimum for each calendar day of non-submission of the documentation. Late submission of the documentation is penalized by 2 times the subsistence minimum (for violations in FY 2017, UAH3,200 or USD120) for each calendar day of late submission, but no more than 200 times the subsistence minimum.

The penalty for understatement of tax liabilities as a result of transfer pricing rules is from 25% to 50% of the understated tax (no penalty is applicable for the 2013, 2014 and 2015 reporting years). In addition, an understated tax is subject to late-payment interest at a rate of 100%/120% of the discount rate established by the National Bank of Ukraine (NBU) – which is 13.5% per year as of 1 December 2017.

► **If an adjustment is sustained, can penalties be assessed?**

Refer to the section above.

► **Is interest charged on penalties/payable on refund?**

Late-payment interest is charged. According to Paragraph 129.9 of the Tax Code of Ukraine, CPT late-payment interest (100%/120% of the annual NBU interest rate for each calendar day of delay) does not apply in cases of self-adjustments and calculation of the tax liabilities within 90 calendar days following the last day of the deadline for payment of CPT liabilities.

b) Penalty relief

Penalty relief is provided for the transition period starting 1 September 2013 until the end of 2014, during which the penalty for the understatement of tax liabilities will be UAH1. Additionally, there is penalty relief for all understatements of corporate tax liabilities in 2015. No penalty relief is provided for periods after 1 January 2016.

No special penalty relief is provided for failing to submit the TP documentation and the Report on Controlled Transactions.

The tax authorities might reach a decision on the tax underpayment and the necessity of tax adjustments after the tax audit. It is possible to discuss the conclusions administratively or in court.

9. Statute of limitations on transfer pricing assessments

The statute of limitations for TP assessments is seven years (2,555 days, as specified by the Tax Code) from the last date for filing the CPT, or from the actual day the CPT return was filed, if it was later than the due date.

10. Likelihood of transfer pricing scrutiny/ related audit by local authority

► **Likelihood of transfer pricing-related audits**
(*high/medium/low*)

High; according to the Law, transfer pricing audits should be performed independently from other tax audits. The tax authorities shall not have the right to conduct more than one audit of a controlled transaction of the taxpayer during a calendar year. In general, the likelihood of an annual tax audit may be assessed as high, and so is the likelihood of a transfer pricing review.

► **Likelihood of transfer pricing methodology being challenged**
(*high/medium/low*)

The likelihood that the transfer pricing methodology will be challenged during the course of an audit is currently unknown because of the novelty of the legislation and absence of practical experience in Ukraine.

► **Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)**

Self-adjustments are possible. Self-adjustments are the upward adjustments of tax liabilities performed by taxpayers resulting from applying the transfer pricing rules and have to be recorded in the CPT return. Deadlines for filing the Report on Controlled Transactions are not aligned with the deadlines for filing the CPT return.

► **Specific transactions/industries/situations, if any, more likely to undergo audit**

None; all transactions are equal.

11. APA opportunity

► **Availability (unilateral/bilateral/multilateral)**

Decree of the Cabinet of Ministers of Ukraine No. 504 (17 July 2015) defines the procedures and requirements for APAs between the tax authorities and the taxpayer (unilateral, bilateral and multilateral APAs are permissible). At the time of this publication, there were no APAs signed by the tax authorities.

► **Tenure**

Up to five years.

► **Rollback provisions**

Yes.

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United States



1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Internal Revenue Service (IRS)

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

- Treasury Regulations (Treas. Regs.) include sections 1.482, 1.6662, 1.6038A and 1.6038C.
- Revenue Procedures (Rev. Procs.) include Rev. Procs. 99-32, 2015 40, 2015-41, 2007-13 and 2005-46.
- In August 2015, the IRS published Notice 2015-54, announcing that it and the Treasury Department intended to issue new regulations that would deal with the transfer of intellectual property (IP) through partnerships among related parties and apply principles under Section 1.482-7 to determine the value of transferred IP.
- In September 2015, the Treasury Department and the IRS released proposed regulations under Section 367 (the Proposed Regulations) modifying the application of Section 367(a) and (d) to certain outbound transfers of property. The Proposed Regulations would eliminate the exception in the current Section 367(d) temporary regulations for the transfer of foreign goodwill and going concern value (FGGCV).
- Final regulations under Section 367(a) and (d) (Final Regulations) were published by the Treasury on 16 December 2016. The Final Regulations eliminate the exception under Treas. Reg. Section 1.367(d)-1T(b) for outbound transfers of FGGCV and limit application of the active foreign trade or business (ATB) exception under Section 367(a)(3) to certain specified property (not including FGGCV). For FGGCV, the Final Regulations require the US transferor to either recognize gain currently under Section 367(a) or elect in to the deemed royalty regime of Section 367(d), thus subjecting to US taxation transfers that have not generally been subject to income or gain recognition under Section 367. The Final Regulations apply retroactively to transfers occurring on or after 14 September 2015, and to transfers occurring before that date resulting from entity classification elections filed on or after 14 September 2015.
- Also in September 2015, the Treasury Department and the IRS issued Treasury Decision 9738, which

contained temporary regulations under Section 482 clarifying the application of the arm's-length standard when multiple code sections (e.g., 482 and 367) apply. The temporary regulations apply to tax years ending on or after 14 September 2015.

► Section reference from local regulation

Refer to the section above.

2. OECD guidelines treatment/reference

The US is an OECD member country.

The IRS considers its transfer pricing laws and regulations to be wholly consistent with the OECD Guidelines. For domestic purposes, the OECD Guidelines do not provide support and would not be directly relevant to the application of any pricing methods. However, if taxpayers pursue competent authority relief from double taxation or a bilateral APA, the OECD Guidelines are relevant and may be used to demonstrate compliance with international principles.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

Yes, but transfer pricing documentation is not required by law. However, in practice, it is recommended that taxpayers maintain contemporaneous documentation to avoid penalties. The existence of documentation need not be either disclosed on, or provided with, the return.

For penalty avoidance purposes, a taxpayer is considered to have satisfied the documentation requirement if it maintained certain documentation (further described below) that substantiates the taxpayer's assertion that it reasonably concluded that, given the available data and the applicable pricing methods, the method (and its application) provided the most reliable measure of an arm's-length result under the principles of the best-method rule.

The principal documents required by the regulations are:

- An overview of the taxpayer's business and an analysis of the legal and economic factors affecting pricing

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- ▶ A description of the organizational structure
 - ▶ Any documents explicitly required by regulations (e.g., cost sharing arrangement documents)
 - ▶ A description of the pricing method and reasons the method was selected (a best-method analysis)
 - ▶ A description of alternative methods and why they were not selected
 - ▶ A description of controlled transactions and any internal data used to analyze them
 - ▶ A description of comparables used, how comparability was evaluated and any adjustments that were made
 - ▶ An explanation of any economic analysis and any projections used to develop the pricing method
 - ▶ Any material data discovered after the close of the tax year but before the filing of the tax return
 - ▶ A general index of the principal and background documents and a description of the record-keeping system
- ▶ **Does transfer pricing documentation have to be prepared annually?**

Yes. For penalty avoidance purposes, a taxpayer is considered to have satisfied the documentation requirement if it maintained certain documentation. To the extent that there are changes from the previous year, the changes need to be reflected.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

No materiality limit

▶ Economic analysis

No materiality limit

▶ BEPS master and local files

Not applicable.

▶ CbCR

USD850 million (approximately EUR700 million)

c) Specific requirement(s)

▶ Treatment of domestic transactions

There is no US federal documentation obligation for domestic transactions between related parties that are part of the same consolidated US federal tax return.

▶ Local language documentation requirement

English is the accepted language for all documentation requirements.

▶ Safe harbor availability

There are no safe harbors per se. However, Section 1.482 provides taxpayers the opportunity to use applicable federal rates (AFRs) for intercompany loans and advances; further, under certain conditions, a charge of fully loaded cost only may be used for intercompany services transactions.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

The US has adopted BEPS Action 13 (limited to CbCR) in the local regulations.

▶ Coverage in terms of master and/or local files

The master and local files are not covered.

▶ Effective/expected commencement date

The law is applicable for taxable years beginning on or after 30 June 2016.

▶ Material differences from OECD report template/format

The CbC template is consistent with the BEPS Action 13 template. The local file documentation template for the US should be consistent with Treas. Reg. sections 1.482 and 1.6662.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

The local file documentation template for the US should be consistent with Treas. Reg. sections 1.482 and 1.6662. The specific requirements for penalty protection are listed in the "Applicability" section above.

▶ CbCR notification and CbC report submission requirement

There is no CbCR notification requirement in the US. The CbC report must be prepared/submitted for tax years beginning on or after 30 June 2016. It is voluntary for tax years beginning on or after 1 January 2016.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Under regulations issued in 2010, certain taxpayers must also disclose their uncertain tax positions (UTPs) on Schedule UTP and provide information such as the ranking of the positions by the size of their reserves and concise descriptions of the tax positions. There is a phase-in period so that as of 2014, the UTP disclosures are required by corporations with assets of USD10 million or more.

b) Transfer pricing-specific returns

Taxpayers are required to file forms 5471, 5472 and 8865 regarding transactions with related parties.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ Corporate income tax return

15 March; extension available until 15 October.

▶ Other transfer pricing disclosures/return

15 March.

▶ CbCR notification

Not applicable.

▶ CbC report preparation/submission

Filing due with the tax return for the respective year.

b) Documentation preparation deadline

If documentation is prepared to help protect against penalties, then it must be in place by the filing date of a US tax return that has been filed in a timely manner.

c) Documentation submission deadline

▶ Is there a statutory deadline for submission of transfer pricing documentation?

Submission is on the basis of the request of tax authorities.

▶ Time period/deadline for submission on tax authority request

Taxpayers must provide documentation to the IRS within 30 days of an examiner's request.

6. Transfer pricing methods

a) Applicability

▶ International transactions

Yes.

▶ Domestic transactions

Not applicable.

b) Priority/preference of methods

For tangible goods, the IRS accepts the CUP, resale price, cost-plus, CPM, profit split and unspecified methods. For intangible goods, the IRS accepts the comparable uncontrolled transaction (CUT), CPM, profit split and unspecified methods. For services, the IRS accepts the services cost, comparable uncontrolled services price, gross services margin, cost of services plus, CPM, profit split and unspecified methods. For CSA buy-ins, the IRS accepts the CUT, income, acquisition price, market capitalization, residual profit split and unspecified methods.

The regulations provide a best-method rule for determining the appropriate method to be applied by the taxpayer for each intercompany transaction.

7. Benchmarking requirements

a) Local vs. regional comparables

There is no such legal requirement around local comparables; foreign/regional comparables are generally acceptable to local tax authorities, provided that comparability requirements are met.

b) Single-year vs. multi-year analysis

The results of a controlled transaction ordinarily will be compared with the results of uncontrolled comparables occurring in the taxable year under review. It may be appropriate, however, to consider data relating to the uncontrolled comparables or the controlled taxpayer for one or more years before or after the year under review. If data

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relating to uncontrolled comparables from multiple years is used, data relating to the controlled taxpayer for the same years ordinarily must be considered.

The extent to which it is appropriate to consider multiple years' data depends on the method being applied and the issue being addressed. Circumstances that may warrant consideration of data from multiple years include the extent to which complete and accurate data is available for the taxable year under review, the effect of business cycles in the controlled taxpayer's industry, or the effects of life cycles of the product or intangible property being examined.

c) Use of interquartile range

Yes, interquartile range is acceptable.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

There is no legal requirement for a fresh benchmarking search every year, as rollforward/financial updates are acceptable for up to two to three years (if the fact pattern has remained the same).

e) Simple vs. weighted average

The weighted average is preferred.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

► Consequences of failure to submit/late submission and/or incorrect disclosures

Pursuant to Internal Revenue Code Section 6662, taxpayers may be liable for either a 20% or 40% penalty for an underpayment of tax attributable to a substantial or gross valuation misstatement, respectively. The penalties are calculated 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 a penalty.

► If an adjustment is sustained, can penalties be assessed?

Yes, see the previous section.

► Is interest charged on penalties/payable on refund?

Yes, interest is charged using AFRs.

b) Penalty relief

- Penalties may be avoided by establishing reasonable cause and good faith via the preparation of documentation of the taxpayer's application of Internal Revenue Code Section 482.

9. Statute of limitations on transfer pricing assessments

A general statute of limitations applies in the US: three years from the later of either the tax return due date or the date the return was actually filed. The statute is extended to six years for substantial understatements of income. There is no statute of limitations for fraud-related adjustments.

Most treaties with trading partners provide the IRS access to closed years in order to provide relief from double taxation pursuant to a MAP

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► Likelihood of transfer pricing-related audits (high/medium/low)

The likelihood of an annual tax audit depends on the facts and circumstances. The introduction of what the OECD refers to in its Action Plan on BEPS as high-risk transactions increases the likelihood of a tax audit.

In general, the likelihood of transfer pricing scrutiny during a tax audit is high. Transfer pricing is extensively regulated in the US, and the IRS has recently taken a number of administrative steps to increase its ability to focus on international transactions, with a particular emphasis on transfer pricing. New positions have been created within the IRS' Large Business and International Division for a deputy commissioner (international) and a director of transfer pricing operations, and a significant number of transfer pricing professionals have been hired. As a result of this emphasis, documentation frequently is requested at the outset of any examination of taxpayers transacting with foreign related parties.

► **Likelihood of transfer pricing methodology being challenged**
(*high/medium/low*)

The overall likelihood that the transfer pricing methodology will be challenged during the initial stages of any audit, where there are international transactions, is high. However, experience has shown that well-reasoned documentation reduces the likelihood of further scrutiny.

► **Likelihood of an adjustment if transfer pricing methodology is challenged** (*high/medium/low*)

High. Once the IRS commits significant resources to the audit, a Notice of Proposed Adjustment should be expected.

► **Specific transactions/industries/situations, if any, more likely to undergo audit**

Cost sharing and other IP migration transactions generally are challenged. Other high-risk transactions, such as those described in the OECD BEPS Action Plan, also draw scrutiny.

11. APA opportunity

► **Availability (unilateral/bilateral/multilateral)**

Taxpayers may request unilateral, bilateral or multilateral APAs. The APA process is administered by the IRS' Advanced Pricing and Mutual Agreement Program. Guidance regarding APAs can be found in Rev. Proc. 2015-41. The revenue procedure has strict case management procedures, disclosure requirements and detailed guidance regarding the submission and processing of APA requests. Additional competent authority guidance is provided in Rev. Proc. 2015-40.

► **Tenure**

Not applicable.

► **Rollback provisions**

Rollbacks are available.

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Uruguay

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

General Tax Direction (Dirección General Impositiva, or DGI)

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

Transfer pricing (TP) documentation requirements have been in effect in Uruguay since 1 July 2007 (following Law No. 18.803), but they were not regulated until 26 January 2009, with the publication of Decree No. 56/009. No. 392/009 made additional modifications.

The DGI issued Resolution No. 2.084/009 on 1 December 2009 (with the modifications introduced by Resolutions No. 819/010 and No. 2.098/009), which defined concepts and established requirements for the transfer pricing report.

- Chapter VII, Title 4, Corporate Income Tax Law 1996, as amended, as per Law No. 18,083 (Title 4)
- Presidential Decree No. 56/009, dated 26 January 2009
- Presidential Decree No. 392/009, dated 24 August 2009
- DGI Resolution No. 2.084/009, dated 1 December 2009
- DGI Resolution No. 2.269/009, dated 30 December 2009
- DGI Resolution No. 818/010, dated 6 May 2010
- DGI Resolution No. 745/011, dated 6 May 2011

► Section reference from local regulation

DGI Resolution No. 2.084/009, dated 1 December 2009

2. OECD guidelines treatment/reference

Uruguay is not a member of the OECD.

The OECD Guidelines are not mentioned in Uruguay's Income Tax Law and Regulations. As transfer pricing practice is relatively new in Uruguay, there is no related background with regard to the OECD Guidelines. However, the local regulation is aligned with the OECD Guidelines.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines/rules?

Yes

► Does transfer pricing documentation have to be prepared annually?

Yes, transfer pricing documentation has to be prepared annually under local country regulations. The minimum requirement is that all the information of the economic analysis and the transfer pricing documentation must be updated.

b) Materiality limit/thresholds

► Transfer pricing documentation

Not applicable.

► Economic analysis

Not applicable.

► BEPS master and local files

Regarding the master file, the threshold is not defined yet; further regulation must be published to do so. For the local file, there is no threshold; if a transaction with a related entity exists, a local file must be prepared.

► CbCR

The threshold is not defined yet; further regulation must be published to do so.

c) Specific requirement(s)

► Treatment of domestic transactions

There are subject of TP regime those entities engaging in transactions with other entities which were created, domiciled, based, residing or located in countries with low- or no-taxation or which are benefitted by a special low or no-taxation system including local free zones. This means that transactions performed by taxpayers with nonresidents domiciled, created or located in low- or no-taxation countries or benefiting from a special low- or no-taxation system that specifically sets forth regulations shall not be considered

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to comply with practices or normal market values between independent parties, including the transactions carried out in customs exclaves and benefiting from a low- or no- taxation system. Moreover, transactions with nonresident entities located in Uruguay, such as permanent establishments, or branches from nonresidents, are also subject to TP rules.

► Local language documentation requirement

The documentation needs to be submitted in the local language. However, this is not mandated by the law.

► Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

► Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

A new law in January 2017 introduced CbCR and the master file.

However, further regulation is required to effectively implement these requirements.

► Coverage in terms of master and/or local files

The master file and CbCR are covered. For the local file, it has been applicable since 2009.

► Effective/expected commencement date

The law has applied to the local file since 2009. A new law was published on 5 January 2017 in which CbCR and the master file were added to the regime requirements, but it is not being applied yet because further regulation must be published.

► Material differences from OECD report template/format

There are no material differences between the OECD report template/format and Uruguay's regulations.

► Sufficiency of BEPS Action 13 format report to achieve penalty protection

The requirements to fulfill the reports are yet to be regulated by the Government.

► CbCR notification and CbC report submission requirement

More details regarding this subject, such as deadlines and notification requirements, are yet to be published and defined.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Taxpayers are required to file:

- The transfer pricing study, including key elements such as the functions and activities of the company, risks and assets used, the methods used, the interquartile range and details of the comparables
- If the company was not entitled to submit its audited financial statements to the tax authorities by any other applying law
- Annual transfer pricing return Form 3001 if it corresponds; a new TP return has been approved that requires significant additional information about the multinational group and the related entities of the company

b) Transfer pricing-specific returns

Only those taxpayers that are obligated to file the transfer pricing study must file the transfer pricing annual return (Form 3001) with the tax authorities.

- In that annual return, the company must provide information about the related party transactions. In the new version of the 3001 form, within the additional information required to be included in the new return form are the financial information of the local entity, list of all the related entities, and details of the functions and activities the related entities develop, their address, country, number of employees and identification number. Moreover, the type of relations the company has with each of them should be detailed. Regarding the controlled transactions, a requirement is to inform all of them and the type of activity developed by the related entities in these transactions, such as manufacture and intermediation. A description of in-force agreements that the company has with its related entities should be detailed, as well as the description of all the intangible property of the local entity and the ones that are used by the company though they are not the property of the company. An extensive questionnaire of the company's operating activities with abroad entities must be completed; questions about the company and the group for example it is asked if there has been any transfer of personnel between Group's entities or if there has been any business restructures in the Group in the last five years among questions.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ Corporate income tax return

19 April.

▶ Other transfer pricing disclosures/return

20 September (nine months after the fiscal year-end).

▶ CbCR notification

There are no specifications yet regarding the notification form/process.

▶ CbC report preparation/submission

Further regulation is required for details such as how to submit it.

b) Documentation preparation deadline

Transfer pricing documentation should be finalized by the time of lodging the tax return to achieve penalty protection (e.g., where there is a contemporaneous requirement).

The TP documentation must be prepared nine months after the fiscal year-end, but the TP preliminary analysis is due four months after the fiscal year-end for the presentation of the income tax return.

c) Documentation submission deadline

▶ Is there a statutory deadline for submission of transfer pricing documentation?

Yes. The report must be submitted to the tax authority if the total amount of intercompany transactions exceeds USD6 million with the correspondent TP return. It must be submitted nine months after the fiscal year-end. If the amount is below that limit, the company must prepare the documentation and have it in case of a request by the tax authority in an audit.

▶ Time period/deadline for submission on tax authority request

The time the taxpayer has to submit the transfer pricing documentation once requested by the tax authorities in an audit or inquiry is not regulated but usually is approximately 10 days.

6. Transfer pricing methods

a) Applicability

▶ International transactions

For transactions involving imports or exports of goods with well-known prices in transparent markets, those prices must be used. If the transactions are performed through international intermediaries that are not the final consignees of the goods, the applicable price is the price in the respective market. The price to be used is the one in the respective market on the day of the shipment or, if it was registered in the Mercantile Office, the price on the day of the contract.

Regarding the financial transactions, the most common method used, although not stated in the regulation, is the CUP method.

Moreover, for transactions that involve royalties, the tax authorities have expressed preference for a specific analysis, through the CUP method analysis with internal comparables, avoiding a global analysis through an TNMM (Transactional Net Margin Method).

In the same sense, the services provided by the tested party are preferred to be analyzed through a specific analysis instead of a global analysis through an TNMM.

▶ Domestic transactions

Yes.

b) Priority/preference of methods

There are no differences between an analysis of international and domestic transactions; the same preferences apply for both types of transactions.

7. Benchmarking requirements

a) Local vs. regional comparables

There is a preference for local comparables for arm's-length analysis.

b) Single-year vs. multi-year analysis

There is a preference for single-year testing.

c) Use of interquartile range

When the first quartile is above the median value decreased by 5%, this latter value shall replace that of the first quartile, and when the third quartile is below the median value increased by 5%, the resulting value shall thus replace that of the third quartile.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

A fresh benchmarking search is required every year. This is not specified in the regulation but is commonly accepted by the tax authority.

e) Simple vs. weighted average

There is a preference for a simple average for arm's-length analysis.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief**a) Penalty exposure****► Consequences of failure to submit/late submission and/or incorrect disclosures**

The penalty for those that breach the formal requirements established in the transfer pricing framework (i.e., failure to timely file a transfer pricing report and tax return) will be applied on a graduated scale, in accordance with the severity of the breach. The maximum fine is UYU6.09 million.

When there is an underpayment due to transfer pricing, the taxpayer is penalized with a tax omission fine that is 5% of the amount of the underpayment if it is paid before 5 days after the deadline, 10% if it is paid between 5 and 90 days after the deadline, and 20% if it is paid more than 90 days past the deadline. In each case, corresponding surcharges are added.

If the DGI requires the transfer pricing study and a company does not file it, the DGI can suspend the certificate that shows that the taxpayer fulfilled its tax obligations. The immediate consequence is that it bars the taxpayer from being able to import goods or obtain a bank loan.

► If an adjustment is sustained, can penalties be assessed?

There is nothing mentioned in the local regulation regarding the exemption of penalties because of significant TP adjustments.

► Is interest charged on penalties/payable on refund?

According to the law, the interest for non-paid penalty is 5% for delays no longer than 5 days; 10% for delays between 6 and 90 days; and 20% for delays of more than 90 days.

b) Penalty relief

There are currently no provisions for reductions in penalties.

The taxpayer can appeal in trial against the tax authorities; however, at the moment there are no experience in Uruguay in which a taxpayer has disputed any resolution of the authorities that the general public is aware of.

9. Statute of limitations on transfer pricing assessments

There is no specific statute of limitations for transfer pricing adjustments; rather, the general regime applies. Assessments can be raised 5 years after the company's accounting period ends, but this is extended to 10 years when the difference is due to fraudulent or negligent conduct by the taxpayer.

10. Likelihood of transfer pricing scrutiny/related audit by local authority**► Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood of an annual tax audit, in general, is medium, while the likelihood that transfer pricing will be reviewed as part of that audit is high. Specifically, if a taxpayer is classified according to the tax authorities as a "Great Taxpayer," the experience has shown that it will be audited at least every five years.

► Likelihood of transfer pricing methodology being challenged (high/medium/low)

If transfer pricing is reviewed as part of the audit, the likelihood that the transfer pricing methodology will be challenged is high. Transfer pricing practice is new in Uruguay; therefore, there is not a lot of background for such audit practices. However, in the cases known, the taxing authority has challenged the methodology and the companies' sets of comparables.

► Likelihood of an adjustment if transfer pricing methodology is challenged (high/medium/low)

Once a TP analysis methodology is challenged or questioned by the tax authorities in a TP audit, the likelihood of an adjustment is high based on what we have experienced over the years. In almost every case in which the tax authority suggests a new methodology and it is applied, a TP adjustment (significant or not) is applied.

► **Specific transactions/industries/situations, if any, more likely to undergo audit**

The tax authority relies on a special team of professionals who have focused on performing tax audits for the biggest companies, known as Great Taxpayers. However, they have not focused on specific industries.

The focus is mainly on:

- Functional analysis
- Segmentation criteria revision
- Comparison between the financial information of the company considered for the transfer pricing analysis and the financial statements, identifying internal and external comparables

General observations pointed out in inspections are:

- Comparability adjustments made to the stated party
- Rejection of the selected comparable companies
- Observations of companies that have continuous losses for many years

11. APA opportunity

► **Availability (unilateral/bilateral/multilateral)**

Currently, no APA regime is published in Uruguay, but the tax authority recently signed the first one.

Uruguayan transfer pricing rules have an APA regime. However, there are no specific procedures defined yet. Therefore, in case an APA process is initiated and no agreement is finally reached, there are no rules about how the local tax authorities should proceed with the already provided information.

As of the time of this publication, only one APA case has been announced publicly, and it was related to a chemical company that was going to start conducting business in Uruguay

► **Tenure**

There is no specific term set in the local regulation.

► **Rollback provisions**

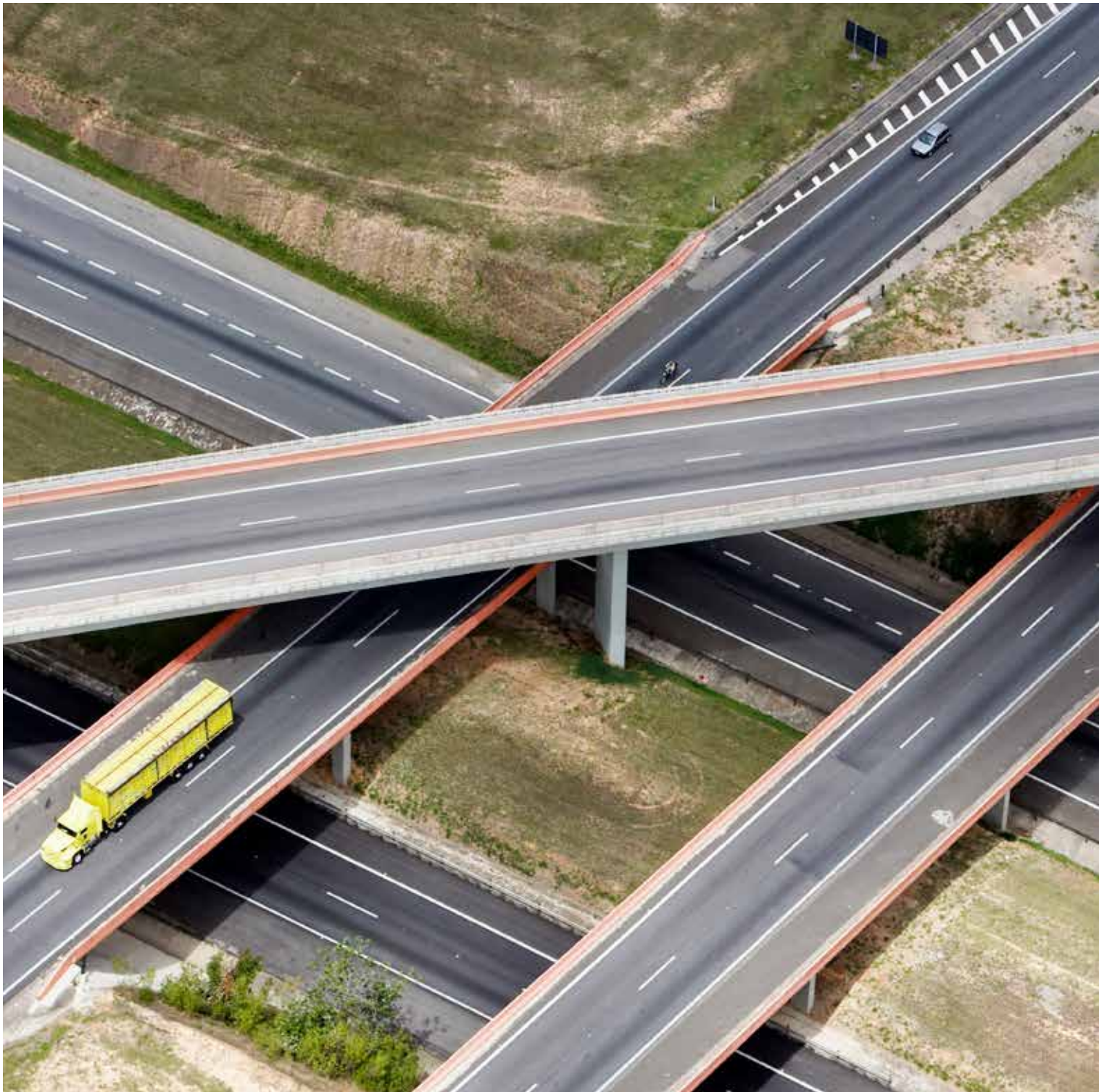
None specified.

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Venezuela



1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Venezuelan Tax Administration (National Integrated Service of the Customs and Tax Administration, or SENIAT)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

Administrative Order No. SNAT/2010/0090, issued by the SENIAT, was published in the *Official Gazette* No. 39,557 of 20 December 2010. It establishes the procedure for the calculation and use of the arm's-length range for transfer pricing purposes. The main considerations are as follows:

- ▶ The use of the interquartile range as the arm's-length range.
- ▶ In case the price or amount or profit margin is within the interquartile range (arm's-length range), the tax administration will deem it as agreed-to by independent parties. If, however, it is not within the interquartile range, the taxpayer must take the median of the range as the arm's-length price.

In February 2007, a partial reform of the Income Tax Law and rules on thin capitalization were published in the *Official Gazette* No. 38.628. The thin capitalization rules apply, as of FY 2008, to Venezuelan taxpayers or Venezuelan permanent establishments holding debt (controlled debt) of companies or individuals who are considered related according to Title VII, Chapter III of the Income Tax Law (ITL). The main inclusions are as follows:

- ▶ Taxpayers will have the limited possibility of deducting interest expenses resulting from related parties' loans when the average amount of debt (with related and unrelated parties) exceeds the average amount of equity for the respective fiscal year.
- ▶ The amount by which the debt exceeds the taxpayer's equity will be treated as equity for income tax purposes.

▶ Section reference from local regulation

Venezuelan Income Tax Law, articles 109 to 168.

2. OECD guidelines treatment/reference

Venezuela is not a member of the OECD.

Article 113 of the ITL states that for everything not foreseen in it, the 1995 OECD Guidelines or their later versions will apply, to the extent that they are consistent with the provisions of the law.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Yes.

▶ Does transfer pricing documentation have to be prepared annually?

Yes, transfer pricing documentation has to be prepared annually under the local country regulations.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

Not applicable.

▶ Economic analysis

Not applicable.

▶ BEPS master and local files

Not applicable.

▶ CbCR

Not applicable.

c) Specific requirement(s)

▶ Treatment of domestic transactions

There is no documentation obligation for domestic transactions.

▶ Local language documentation requirement

The transfer pricing (TP) documentation needs to be submitted in the local language. According to Article 167 of the ITL: "The documentation and information related to the calculation of the transfer prices indicated in the declaration forms authorized by the tax administration must be kept by

Venezuela

the taxpayer during the lapse provided for in the law, duly translated into Spanish if applicable.”

▶ **Safe harbor availability**

None specified.

d) BEPS Action 13 implementation overview

▶ **Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?**

Venezuela has not formally adopted or implemented BEPS Action 13. However, Article 113 of the ITL establishes that for everything not foreseen in the law, the provisions of the OECD Guidelines will apply.

▶ **Coverage in terms of master and/or local files**

The master file does not apply; however, according to Article 167, taxpayers must have the support of the documentation for the calculation of transfer prices.

▶ **Effective/expected commencement date**

Not applicable.

▶ **Material differences from OECD report template/format**

Not applicable (MF and CbCR).

▶ **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

Not applicable. Locally, it is enough to have the TP informative return and the Local File.

▶ **CbCR notification and CbC report submission requirement**

There is no CbCR notification requirement in Venezuela.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Not applicable.

b) Transfer pricing-specific returns

A controlled party's TP Informative Return PT-99 form must be filed during the six months immediately following the close of each tax year of controlled party. The PT-99 form is available on the SENIAT's website.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ **Corporate income tax return**

According to the ITL it should be submitted within three months after the company's fiscal year-end.

▶ **Other transfer pricing disclosures/return**

Six months after the end of the taxpayer's fiscal year.

▶ **CbCR notification**

Not applicable.

▶ **CbC report preparation/submission**

Not applicable.

b) Documentation preparation deadline

Transfer pricing documentation only needs to be finalized by the time of submission upon request. The TP informative return (PT-99) must be submitted within six months after the end of the fiscal year. The TP study must be submitted only if the tax authorities require it.

c) Documentation submission deadline

▶ **Is there a statutory deadline for submission of transfer pricing documentation?**

Yes, usually two to five workdays after the tax authorities require it. The documentation must comply with Article 167 of the local income tax law. The TP informative return must be submitted within six months after the end of the taxpayer's fiscal year.

▶ **Time period/deadline for submission on tax authority request**

The taxpayer usually has two to five working days to submit the transfer pricing documentation once requested by the tax authorities in an audit or inquiry.

6. Transfer pricing methods

a) Applicability

▶ **International transactions**

Yes.

- ▶ Domestic transactions

No.

b) Priority/preference of methods

The acceptable methods are the OECD methods: CUP, resale price, cost-plus, profit split and TNMM. In Venezuela, the CUP method takes priority over others.

7. Benchmarking requirements

a) Local vs. regional comparables

Regional comparable companies are accepted; however, experience tells us that the tax administration prefers comparables located in the United States and Canada.

b) Single-year vs. multi-year analysis

There is a preference for both single-year and multi-year analysis. However, Article 132 of the ITL establishes that data from previous years may be used in determining the transfer prices to mitigate the effects of macroeconomic variables on the results obtained. The tax administration prefers the use of multiple years. It is important to notice that the comparison is between a single year of the company against three of the comparable set.

c) Use of interquartile range

Yes, interquartile range calculation using Excel Quartile formulas is acceptable.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

It can be both, but usually an update of the financial information of previous comparable companies is used.

e) Simple vs. weighted average

There is a preference for a weighted average for arm's-length analysis.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

- ▶ Consequences of failure to submit/late submission and/or incorrect disclosures

A failure to file PT-99 will trigger a penalty of 150 tax units¹ and a company closure for 10 consecutive days. When failing to submit the documentation upon request by the SENIAT, the taxpayer faces a fine of 1,000 tax units and a company closure for 10 consecutive days. Additionally, there is a fine ranging from 100% to 300% of the omitted tax amount. If there is a transfer pricing assessment, late payment interest may also be added to these amounts. The pecuniary sanctions for formal duties will be increased by 200% when they are committed by subjects qualified as special by the Tax Administration.

- ▶ If an adjustment is sustained, can penalties be assessed?

In the case of a transfer pricing adjustment, it must be made to the median of the interquartile range, and in the event that said adjustment modifies the income, it must be paid from 100% to 300% of the omitted tax.

- ▶ Is interest charged on penalties/payable on refund?

No, interest is charged only for late payment.

b) Penalty relief

If a taxpayer applies a legally sanctioned transfer pricing method, this could be considered a mitigating circumstance in the determination of an assessment. This penalty relief is based on previous tax audit procedures and assessments, but there is no legal provision supporting it.

9. Statute of limitations on transfer pricing assessments

According to Article 55 of the Organic Tax Code, the statute of limitations is 6 years from the date of filing the return and 10 years if the taxpayer fails to comply with the filing of any tax return, including returns for income tax. However, the TP Informative Return doesn't imply payments of any type.

¹ 2018 tax unit = VEF.500 per unit

10. Likelihood of transfer pricing scrutiny/ related audit by local authority

► Likelihood of transfer pricing-related audits (*high/medium/low*)

The likelihood of an annual tax audit in general is high, as is the likelihood that transfer pricing will be reviewed as part of the audit.

► Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

The likelihood that the transfer pricing methodology will be challenged if transfer pricing is reviewed as part of the audit is medium.

► Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

High.

► Specific transactions/industries/situations, if any, more likely to undergo audit

The SENIAT continues to be very active and aggressive in transfer pricing audits. It has added transfer pricing as a relevant topic to be reviewed during general tax audits. Thus far, audits have been conducted on taxpayers irrespective of industry.

Tax audits have been focused both on formal duties (i.e., request for contemporaneous transfer pricing documentation, filing PT-99) and on the determination of proper taxable income in intercompany transactions (e.g., challenge methodology, comparables, use of multiple years' data, segmented financial data by transaction and/or activity).

The evaluation criteria to trigger a transfer pricing audit are:

- Inconsistencies among the transfer pricing report, income tax return and transfer pricing information return
- Use of non-updated financial information from comparable companies up to June of the fiscal year subject to the study
- PLIs below the interquartile arm's-length range
- Lower operating margins, compared with operating margins from prior years or with operating losses
- Late filing of transfer pricing information return

Currently, in the transfer pricing review process, the time frame to submit the information requested ranges from two to three business days, and there is a reluctance to give extensions.

11. APA opportunity

► Availability (unilateral/bilateral/multilateral)

Unilateral and bilateral APAs are available to the extent that they are carried out with nations that have concluded double taxation treaties with Venezuela (refer to Income Tax Law articles 141 to 165 and Master Tax Code Chapter III, articles 230 to 239). Nonetheless, there are no APAs in Venezuela.

► Tenure

All specifications and terms for APAs are in articles 141 to 165 of the ITL.

► Rollback provisions

None specified.

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Vietnam

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

General Department of Taxation (GDT)

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations/rulings and effective date of applicability

Article 37 of the Law on Tax Administration articulates the arm's-length principle, which empowers tax authorities to adjust the value of purchases, sales, exchanges and accounting records of goods and services of taxpayers if that value is not in accordance with market prices.

Detailed transfer pricing regulations are included in Decree 20/2017/ND-CP (Decree 20) and Circular 41/2017/TT-BTC (Circular 41). Decree 20 and Circular 41 are effective from 1 May 2017. They are silent on their first cover year. However, in practice, based on the verbal instruction of the tax authority, we understand that Decree 20 and Circular 41 cover the taxpayers' year ending after the effective date of Decree 20 and Circular 41 (1 May 2017).

► Section reference from local regulation

Article 5 of Decree 20 provides the definition of related parties as follows:

1. Related parties are parties having relationships where:
 - a. A party participates directly or indirectly in the management or control of, or contributes capital to or invests in, the other party
 - b. Parties are directly or indirectly managed, controlled or invested in by another party
2. Related parties referred to in Clause 1 of this Article shall be subject to the following specific provisions:
 - a. An enterprise directly or indirectly owns at least 25% of the investment capital of the other enterprise
 - b. Both enterprises are directly or indirectly owned at least 25% of the investment capital by a third party
 - c. An enterprise who is the biggest shareholder of another enterprise directly or indirectly owns at least 10% of the total shares of the other enterprise
 - d. An enterprise guarantees or offers another enterprise a loan under any forms (including third-party loans guaranteed by the financing sources of the related

parties or financial transactions with a similar nature) provided that the loan amount is equal to at least 25% of the investment equity and accounts for more than 50% of the total medium- and long-term debts of the borrowing enterprise

- e. An enterprise appoints members of the executive board who are responsible for the leadership or control of another enterprise provided that the number of members appointed by the former accounts for more than 50% of the total number of members of the executive board of the latter; or a member appointed by the former has the authority to decide financial policies or business activities of the latter
- f. Both enterprises have more than 50% of members of the executive board or one member of the executive board who with the authorization to decide financial policies or business activities, who are appointed by a third party
- g. Both enterprises are managed or controlled in terms of their personnel, financial and business activities by individuals, each of whom has one of the following relationship pairings: wife and husband, natural/foster father and natural/foster child, natural/foster older sibling and natural/foster younger sibling, brother-or sister-in-law, maternal/paternal grandfather/grandmother and maternal/paternal grandchild, and maternal/paternal aunt and uncle and sibling
- h. Both business entities, who are head office and permanent establishments or permanent establishments of the same overseas entity or individual
- i. One or more enterprises is/are under the control of one individual through either his/her investment capital into that/those enterprise(s) or his/her direct involvement in administration of that/those enterprise(s)
- j. Other cases where an enterprise is in reality under the management or control of, or whose business activities are controlled by, the other enterprise

2. OECD guidelines treatment/reference

Vietnam is not a member of the OECD.

The OECD Guidelines can be a reference source but are not officially accepted, while Decree 20 and Circular 41 adopt certain concepts of BEPS actions.

3. Transfer pricing documentation requirements

a) Applicability

- ▶ Does your country have transfer pricing documentation guidelines/rules?

Yes.

- ▶ Does transfer pricing documentation have to be prepared annually?

The three-tiered transfer pricing documentation (local file, master file and CbCR) must be prepared and available by the submission of CIT finalisation return of the respective year (i.e., 90 days after the financial year-end).

b) Materiality limit/thresholds

- ▶ Transfer pricing documentation

Clause 2, Article 11 of Decree 20 provides the exemption cases as follow:

- The taxpayer shall be responsible for the declaring of its related party transactions in Form O1 attached to the Appendix of this Decree but shall be exempted from preparation of the transfer pricing documentation in the following circumstances:
 - Taxpayer who engaged in related party transactions but its total revenue generated within the tax period is less than VND50 billion and the total value of its related party transactions within the tax period is less than VND30 billion
 - Taxpayer who signed an Advance Pricing Agreement (APA) and submitted the annual report in accordance with legislation on Advance Pricing Agreement. For those related party transactions which are not covered by the APA, taxpayers are obliged to comply with the aforesaid transfer pricing documentation requirements referred to in Article 10 hereof
 - Taxpayers performing business activities by exercising routine functions; neither generating any revenue nor incurring any cost from the use of intangible assets; generating sales of less than VND200 billion; achieving the required ratio of net operating profit before loan interest and corporate income tax relative to sales revenue that is provided for the following businesses:
 - ▶ Distribution: At least 5%
 - ▶ Manufacturing: At least 10%

- ▶ Toll manufacturing/processing: At least 15%

In case taxpayers do not apply the profit margins stipulated above, they are required to prepare transfer pricing documentation in accordance with this Decree.

- ▶ Economic analysis

Refer to the section above (Clause 2, Article 11 of Decree 20).

- ▶ BEPS master and local files

Refer to the section above (Clause 2, Article 11 of Decree 20).

- ▶ CbCR

Clause 2, Article 4 of Circular 41 provides that:

If the taxpayer cannot provide the country-by-country report of the ultimate parent company prepared for the tax period relative to the tax finalization period of the taxpayer, it is obliged to provide the country-by-country report of the ultimate parent company prepared in the financial year preceding the tax period of the taxpayer instead, together with a written explanation for the case [legal basis for why it cannot provide the CbCR of the ultimate parent company for the current year].

If the taxpayer cannot provide the country-by-country report of the ultimate parent company, it must provide a written explanation for the case [legal basis for why it cannot provide the CbCR of the ultimate parent company].

c) Specific requirement(s)

- ▶ Treatment of domestic transactions

There is a documentation obligation for domestic transactions. However, Clause 1, Article 11 of Decree 20 provides that "taxpayers are exempted from the transfer pricing declaration in Section III and IV of Form O1 provided in the Appendix attached to this Decree if it only engages in transactions with related parties who is subject to corporate income tax in Vietnam with the same CIT rate, and neither entity enjoys corporate income tax incentives during the tax period. However, such entity must declare basis for such exemption in Section I, II of Form O1 attached to the Appendix of this Decree." In this regard, the regulations are silent on whether companies only engaging in domestic related party transactions with the related parties with the same tax rate and no tax holiday are exempted from preparation of the three-tiered transfer pricing documentation.

► **Local language documentation requirement**

Yes, the transfer pricing documentation needs to be submitted in the local language. It is not clearly regulated in law, but in Vietnam, all tax documentation submitted must be in Vietnamese.

► **Safe harbor availability**

There is no safe harbor available in Vietnam.

d) BEPS Action 13 implementation overview

► **Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?**

Yes.

► **Coverage in terms of master and/or local files**

It covers both the master file and local file.

► **Effective/expected commencement date**

1 May 2017.

► **Material differences from OECD report template/format**

The Vietnamese format is generally in line with the OECD format.

► **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

Not applicable.

► **CbCR notification and CbC report submission requirement**

There is no CbCR notification or CbC report submission requirement in Vietnam.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Form 01 – disclosure on related party relationship and related party transactions

Form 02 – checklist for local file

Form 03 – checklist for master file

Form 04 – CbCR (applicable for companies with ultimate parent company in Vietnam with global consolidated revenue of at least VND18 trillion and having operations in many countries/territories)

b) Transfer pricing-specific returns

The disclosure forms (as mentioned above) must be submitted together with the CIT return, which must be filed within 90 days from the end of the financial year.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► **Corporate income tax return**

90 days from the end of the financial year.

► **Other transfer pricing disclosures/return**

90 days from the end of the financial year.

► **CbCR notification**

Not applicable.

► **CbC report preparation/submission**

Not applicable.

b) Documentation preparation deadline

Transfer pricing documentation typically must be finalized by the time of lodging the final CIT return to achieve penalty protection (e.g., where there is a contemporaneous requirement).

c) Documentation submission deadline

► **Is there a statutory deadline for submission of transfer pricing documentation?**

No.

► **Time period/deadline for submission on tax authority request**

The taxpayer has to submit the transfer pricing documentation within 15 working days.

6. Transfer pricing methods

a) Applicability

- ▶ International transactions

Yes.

- ▶ Domestic transactions

Yes.

b) Priority/preference of methods

Decree 20 and Circular 41 permit the use of the following methods: CUP, resale price, cost-plus, TNMM, or profit split.

Taxpayers are required to select the most appropriate method to determine whether the pricing arrangement is at arm's length under the prevailing regulations.

There is no hierarchy among the methods specified, but recent practices suggest that the Vietnam tax authority has a growing preference for the use of the CUP method if reliable information on CUP is available.

7. Benchmarking requirements

a) Local vs. regional comparables

There is a legal requirement for local country comparables. Where no local comparables are available, comparables in other countries within regions that have comparable conditions of industries and level of economic development are acceptable.

b) Single-year vs. multi-year analysis

Single-year testing is acceptable.

c) Use of interquartile range

Interquartile range calculation using Excel Quartile formulas is acceptable.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

There is no need to conduct a fresh benchmarking search every year.

e) Simple vs. weighted average

There is a preference for weighted average for arm's-length analysis.

f) Other specific benchmarking criteria, if any

All information relating to the benchmarking analysis, including – but not limited to – annual reports of companies, website snapshots and any other evidence of the search process, as it can be requested by the tax authority.

8. Transfer pricing penalties/relief

a) Penalty exposure

▶ Consequences of failure to submit/late submission and/or incorrect disclosures

Administrative penalties ranging from VND700,000 to VND5 million may be imposed for failure to comply with transfer pricing disclosure requirements.

▶ If an adjustment is sustained, can penalties be assessed?

Taxpayers are subject to a penalty of 20% of additional tax in the case of an incorrect declaration. Additional penalties of up to three times the outstanding tax due may be imposed if there is a finding of tax evasion or fraud.

▶ Is interest charged on penalties/payable on refund?

The interest penalty of 0.03% per day over the outstanding tax due may also be imposed if a transfer pricing adjustment is made.

b) Penalty relief

Penalties may be mitigated by timely and adequate disclosure of the related party transactions on forms 01, 02 and 03 attached to Decree 20, and by the preparation and timely production of the three-tiered transfer pricing documentation.

Taxpayers that do not agree with the decision of the tax authority can appeal the decision to a higher level or go to court.

9. Statute of limitations on transfer pricing assessments

Transfer pricing is considered one area of tax and has the same statute of limitations. The statute of limitations applicable for tax collection is 10 years counted from the date on which the tax offenses are found. However, where the taxpayer did not register for tax, there is no statute of limitations for collecting the tax shortfall and late-payment interest.

10. Likelihood of transfer pricing scrutiny/ related audit by local authority

▶ Likelihood of transfer pricing-related audits (*high/medium/low*)

Medium to high, as the tax authority is currently paying more attention to transfer pricing.

▶ Likelihood of transfer pricing methodology being challenged (*high/medium/low*)

Medium. The tax authority strongly prefers the CUP method. In the case of application of CPM, challenges are around the selection of comparables and comparability of the selected comparables.

▶ Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

High, mostly around CUP applicability, and in the case of application of CPM/TNMM, the challenges are around the selection of comparables and comparability of the selected comparables.

▶ Specific transactions/industries/situations, if any, more likely to undergo audit

Vietnamese transfer pricing regulatory enforcement is becoming increasingly sophisticated following the implementation of decisions 1574/QĐ-TCT and 1575/QĐ-TCT, dated 1 September 2015, with the official establishment of the transfer pricing inspection divisions at both the GDT and provincial departments of taxation (PDT) levels, including Hanoi, Ho Chi Minh City, Binh Duong and Dong Nai. Moreover, it is pertinent to note that the transfer pricing inspection divisions at the GDT are able to engage in policymaking procedures, which were previously the authority of the Reform and Modernization Division at the GDT level, and participate in the consideration of APAs and MAPs.

11. APA opportunity

▶ Availability (unilateral/bilateral/multilateral)

There is an APA program available in Vietnam. APA regulations in Vietnam support unilateral, bilateral and multilateral APAs.

▶ Tenure

An APA can be effective for up to five years, with renewal for a maximum of five years.

▶ Rollback provisions

None specified.

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Zambia

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Zambia Revenue Authority (ZRA)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

The Income Tax Act, Section 97A Draft Regulations were published in 2017 and are more detailed than the initial Income tax legislation. The draft regulations and document requirements take effect for FY 2017 and shall be in effect for each subsequent year.

▶ Section reference from local regulation

Section 97A.

2. OECD guidelines treatment/reference

Zambia is not a member of the OECD. The draft transfer pricing (TP) regulations and amendments on TP documentation were released in the third quarter of 2017 and were expected to come into effect in January 2018 with regard to the charge year ending 31 December 2017 and each subsequent charge year. The draft changes are mainly in line with the OECD Guidelines.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Yes, Zambia recently published transfer pricing documentation guidelines/rules.

▶ Does transfer pricing documentation have to be prepared annually?

Yes. The draft regulations state that FY 2017 transfer pricing documentation has to be prepared by the date of submission of the annual income tax return (18 June 2018). The documentation is not to be submitted to the Zambia Revenue Authority but should be kept readily available and submitted to the ZRA should it so request.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

Taxpayers with an annual net turnover equal to or exceeding ZMK20 million are required to prepare documentation.

▶ Economic analysis

Not applicable.

▶ BEPS master and local files

Not applicable.

▶ CbCR

Not applicable.

c) Specific requirement(s)

▶ Treatment of domestic transactions

There is no documentation obligation for domestic transactions.

▶ Local language documentation requirement

The transfer pricing reports are to be prepared in the local language (English). The draft regulations state that if the documents are prepared in a language other than English, the taxpayer will have to translate the documentation and bear the cost of this translation.

▶ Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Zambia is just an invitee and has not signed on to the adoption of Action 13.

▶ Coverage in terms of master and/or local files

Not applicable.

▶ Effective/expected commencement date

Not applicable.

▶ Material differences from OECD report template/format

Not applicable.

▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

Not applicable.

Zambia

► CbCR notification and CbC report submission requirement

Not applicable.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

Effective from 2018 (including FY 2017), taxpayers have to state all related parties in the annual income tax return.

b) Transfer pricing-specific returns

Not applicable.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

► Corporate income tax return

For FY 2017, the due date for the return filing is 18 June 2018; prior to FY 2017, the due date for the corporate income tax return filing was 30 June of the following year.

► Other transfer pricing disclosures/return

Taxpayers have to disclose all related parties in their annual returns, effective FY 2017. The newly published regulations state that TP documentation must be prepared by the date of submission of the annual income tax return, but a TP return does not need to be submitted.

► CbCR notification

Not applicable.

► CbC report preparation/submission

Not applicable.

b) Documentation preparation deadline

Effective from 2018, for FY 2017 and each subsequent year, TP documentation must be prepared by the date of submission of the annual income tax return.

c) Documentation submission deadline

► Is there a statutory deadline for submission of transfer pricing documentation?

No.

► Time period/deadline for submission on tax authority request

Effective from 2018, for FY 2017 and each subsequent charge year, TP documentation should be submitted within 14 days upon request.

6. Transfer pricing methods

a) Applicability

► International transactions

Yes.

► Domestic transactions

Not applicable.

b) Priority/preference of methods

The draft regulations state the following methods as the approved TP methods from which an appropriate method can be chosen:

- CUP
- Resale price
- Cost-plus
- TNMM
- Transactional profit split

7. Benchmarking requirements

a) Local vs. regional comparables

There is no legal requirement; local comparables are rarely used because of the challenge in finding information locally.

b) Single-year vs. multi-year analysis

Multi-year analysis, as per common practice.

c) Use of interquartile range

Yes, interquartile range calculation using Excel Quartile formulas is acceptable.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

A fresh benchmarking search is not required every year.

e) Simple vs. weighted average

A simple average, as per common practice.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief**a) Penalty exposure****► Consequences of failure to submit/late submission and/or incorrect disclosures**

- a. There is a penalty of ZMK500,000 if documentation is not provided to the ZRA within 14 days of request.
- b. Incorrect disclosures are charged penalties according to the general penalty rates and interest rates stated in the Income Tax Act.

► If an adjustment is sustained, can penalties be assessed?

Yes, penalties can be assessed. The rates stated in the income tax return are the applicable rates.

► Is interest charged on penalties/payable on refund?

The interest rates are per the Income Tax Act.

b) Penalty relief

Penalty relief is available through negotiations with the tax authority.

9. Statute of limitations on transfer pricing assessments

There is no specific Statute of limitations on transfer pricing assessments. The income tax statute of limitations of six years is applicable.

10. Likelihood of transfer pricing scrutiny/related audit by local authority**► Likelihood of transfer pricing-related audits (high/medium/low)**

The audit program is risk-based, concentrating on thinly capitalized MNEs.

► Likelihood of transfer pricing methodology being challenged (high/medium/low)

Medium; what is normally challenged is the characterization of the entity and not the method.

► Likelihood of an adjustment if transfer pricing methodology is challenged (high/medium/low)

Medium; if methodology is challenged, then an adjustment will be made. However, there is a possibility to object to the assessment raised.

► Specific transactions/industries/situations, if any, more likely to undergo audit

At the time of this publication, the mining industry seemed to be the revenue authorities' focus.

11. APA opportunity**► Availability (unilateral/bilateral/multilateral)**

Zambia does not have a formal APA program.

► Tenure

Not applicable.

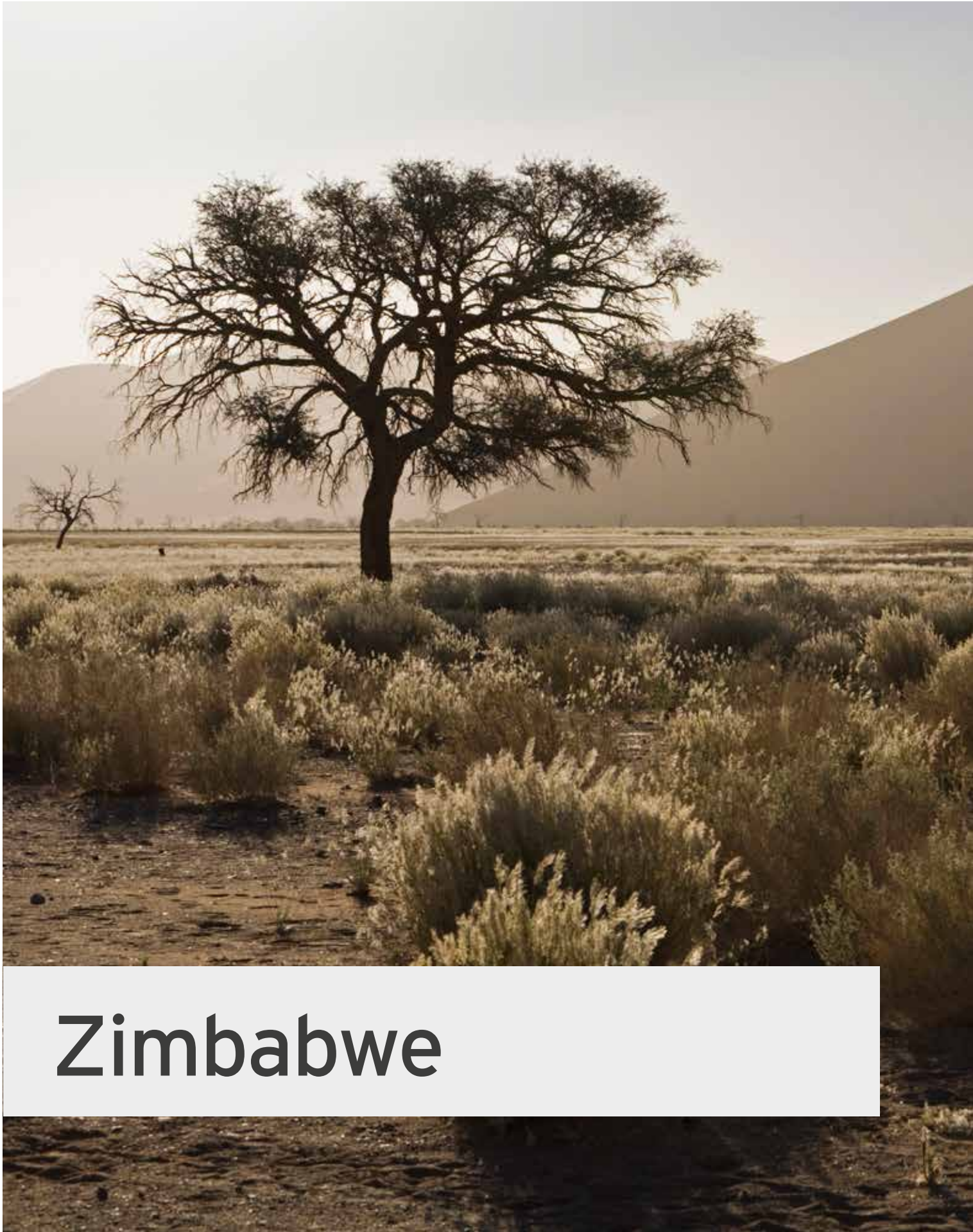
► Rollback provisions

Not applicable.

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Zimbabwe

1. Tax authority and relevant transfer pricing regulation/rulings

a) Name of tax authority

Zimbabwe Revenue Authority (ZIMRA)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations/rulings and effective date of applicability

Effective from 1 January 2016, Section 98B of the Income Tax Act was amended to introduce the arm's-length principle to transactions between related parties. The 35th schedule of the Income Tax Act provides guidelines and methods on how to determine whether a controlled transaction meets the requirements of the arm's-length principle.

▶ Section reference from local regulation

Section 2A of the Income Tax Act defines an associated party as follows:

"Where a person, other than an employee, acts in accordance with the directions, requests, suggestions or wishes of another person, whether or not the persons are in a business relationship and whether or not those directions, requests, suggestions or wishes are communicated to the first-mentioned person, both persons shall be treated as associates of each other" for the purposes of the Income Tax Act, Chapter 23:06.

2. OECD guidelines treatment/reference

Zimbabwe is not member of the OECD.

The OECD Guidelines are a relevant source of interpretation for the Zimbabwe transfer pricing (TP) regulations.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines/rules?

Zimbabwe does not have TP documentation guidelines. It does, however, have specific regulations in the Income Tax Act, Chapter 23:06.

▶ Does transfer pricing documentation have to be prepared annually?

Yes, TP documentation must be prepared annually. This involves updating transaction values and documenting new transactions.

b) Materiality limit/thresholds

▶ Transfer pricing documentation

Not applicable.

▶ Economic analysis

Not applicable.

▶ BEPS master and local files

Not applicable.

▶ CbCR

Not applicable.

c) Specific requirement(s)

▶ Treatment of domestic transactions

The legislation applies to both domestic and cross-border transactions.

▶ Local language documentation requirement

The TP documentation need not be submitted in the local language. The TP document must be in English, as per Section 37B of the Income Tax Act.

▶ Safe harbor availability

None specified.

d) BEPS Action 13 implementation overview

▶ Has your country adopted/implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No.

▶ Coverage in terms of master and/or local files

Not applicable.

▶ Effective/expected commencement date

Not applicable.

Zimbabwe

▶ **Material differences from OECD report template/format**

Not applicable.

▶ **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

Not applicable.

▶ **CbCR notification and CbC report submission requirement**

There is no CbCR notification requirement in Zimbabwe.

4. Transfer pricing return/related party disclosures

a) Related party disclosures/transfer pricing-related appendices

The regulations (the 35th schedule) detail the minimum information that must be documented.

b) Transfer pricing-specific returns

No specific transfer pricing return is required.

5. Transfer pricing documentation/disclosure timelines

a) Filing deadline

▶ **Corporate income tax return**

30 April of the following year.

▶ **Other transfer pricing disclosures/return**

Should be submitted on request.

▶ **CbCR notification**

Not applicable.

▶ **CbC report preparation/submission**

Not applicable.

b) Documentation preparation deadline

There is no statutory deadline for preparation of TP documentation. It only needs to be finalized by the time of submitting upon request.

The TP documentation must be available on request by ZIMRA officers with effect from 1 January 2016, when the TP legislation was introduced.

c) Documentation submission deadline

▶ **Is there a statutory deadline for submission of transfer pricing documentation?**

No.

▶ **Time period/deadline for submission on tax authority request**

It depends on timelines agreed upon by the taxpayer and revenue officers. There is no standard time set.

6. Transfer pricing methods

a) Applicability

▶ **International transactions**

Yes.

▶ **Domestic transactions**

Yes.

b) Priority/preference of methods

The following are the approved transfer pricing methods in Zimbabwe:

- ▶ CUP
- ▶ Resale price
- ▶ Cost-plus
- ▶ TNMM
- ▶ Transactional profit split

When all the abovementioned methods can be applied with equal reliability, the determination of arm's-length conditions shall be made using the CUP method.

In addition, taking the comparability factors into consideration, when the CUP, resale price and cost-plus methods can be applied with equal reliability with TNMM and the transactional profit split method, the determination of arm's-length conditions shall be made using the CUP, resale price or cost-plus methods.

Foreign comparables are accepted in the absence of local comparables. Comparable data used must be available to both the taxpayer and the ZIMRA. Zimbabwe has very limited comparable data because of the current depressed state of the economy.

There is no practice of using secret comparables.

7. Benchmarking requirements

a) Local vs. regional comparables

Local benchmarking is preferred, but the Zimbabwe economy's databases are nonfunctional. Hence, authorities rely on regional benchmarking.

b) Single-year vs. multi-year analysis

There is a preference for single-year testing.

c) Use of interquartile range

None specified.

d) Fresh benchmarking search every year vs. roll-forward/update of the financials

There is no need to conduct a fresh benchmarking search every year.

e) Simple vs. weighted average

There is a preference for the weighted average for arm's-length analysis.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties/relief

a) Penalty exposure

► Consequences of failure to submit/late submission and/or incorrect disclosures

There are no specific transfer pricing penalties. The general corporate tax penalties (for noncompliance, late filing or non-filing) apply. Penalties can be up to 100% of the tax payable.

► If an adjustment is sustained, can penalties be assessed?

None specified.

► Is interest charged on penalties/payable on refund?

None specified.

b) Penalty relief

Penalties can be waived or reduced through negotiation with the tax authority.

9. Statute of limitations on transfer pricing assessments

Six years from the relevant year or date of the assessment.

10. Likelihood of transfer pricing scrutiny/related audit by local authority

► Likelihood of transfer pricing-related audits (*high/medium/low*)

Low, given the current TP environment in Zimbabwe. **Likelihood of transfer pricing methodology being challenged (*high/medium/low*)**

Low, as TP methodology has not been challenged so far.

► Likelihood of an adjustment if transfer pricing methodology is challenged (*high/medium/low*)

See the above section.

Zimbabwe

- ▶ **Specific transactions/industries/situations, if any, more likely to undergo audit**

The audit program is risk-based, concentrating on nonresident controlled and significantly thinly capitalized Zimbabwean companies and branches. There is no audit cycle.

11. APA opportunity

- ▶ **Availability (unilateral/bilateral/multilateral)**

There is currently no APA program in place.

- ▶ **Tenure**

None specified.

- ▶ **Rollback provisions**

None specified.

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Glossary of key terms

APA (advance pricing agreement)

An arrangement that determines, in advance of controlled transactions, an appropriate set of criteria, e.g., transfer pricing method, comparables and adjustments thereto, critical assumptions as to future events for the determination of the transfer pricing for those transactions over a fixed tenure. APA may be unilateral involving one tax administration and a taxpayer or multilateral involving the agreement of two or more tax administrations.

Arm's-length principle

The international standard adopted by the OECD and in many jurisdictions mandating that the result that related parties obtain from an intercompany transaction approximates the result that uncontrolled parties would have obtained had they undertaken the same transaction under the same circumstances. It is set forth in Article 9 of the OECD Model Tax Convention.

Arm's length range

A range of figures that are acceptable for establishing whether the conditions of a controlled transaction are arm's length.

BEPS (base erosion and profit shifting)

On 12 February 2013, the OECD released its report *Addressing Base Erosion and Profit Shifting*, followed by the release of its Action Plan on 5 October 2015. Thus, the OECD aims to develop approaches for addressing government concerns about multinational companies (MNCs) reducing their tax liability through BEPS activity.

CbCR (country-by-country reporting)

Part of the OECD's BEPS Action Plan 13. MNCs are required to provide the country-by-country (CbC) report, which includes information on their global allocation of income, economic activity and taxes paid among countries.

CFC (controlled foreign corporation)

A subsidiary and member of an MNE group.

CPM (comparable profit method)

A method that, under US regulations, is used to determine an arm's-length consideration for transfers of both tangible and intangible property. If the reported operating income of the tested party is not within a certain range, an adjustment will be made. In effect, this method requires a comparison of the operating income that results from the consideration actually charged in a controlled transfer with the operating income of similar taxpayers that are uncontrolled. The CPM in US is similar to the TNMM; see below.

CCA (cost contribution arrangement) or CSA (cost sharing agreement)

A framework agreed upon among enterprises to share the costs and risks of developing, producing or obtaining assets, services or rights and to determine the nature and extent of the interests of each participant in the result of the activity of developing, producing or obtaining those assets, services or rights.

CUP (comparable uncontrolled price) method

A transfer pricing method that compares the price for property or services in a controlled transaction with the price charged for property or services transferred in a comparable uncontrolled transaction in comparable circumstances.

EU (European Union)

The European Union currently consists of 28 Member States.

EUJTPF (EU Joint Transfer Pricing Forum)

The EU Joint Transfer Pricing Forum consists of representatives of governments and the private sector, who advise and consult on transfer pricing issues.

FY

Fiscal year

GAAP (generally accepted accounting principles)

The rules and practices required to be followed in certain jurisdictions for keeping financial records and books of account.

MNE (multinational enterprise)/MNC (multinational corporation)

A member of a related group that carries on business directly or indirectly in two or more countries.

MAP (mutual agreement procedure)

A dispute resolution process found in Article 25 of the OECD Model Tax Convention, as well as in various double tax conventions. MAP is a government-to-government process of negotiation to resolve matters of taxation not in accordance with the particular tax treaty and to attempt to avoid double taxation.

OECD (Organisation for Economic Co-operation and Development)

An intergovernmental organization based in Paris that was formed to foster international trade and economic development. The OECD has 35 member countries. Among its many concerns are the removal of tax barriers to the free flow of goods and services and the avoidance of double taxation of income or profits. The OECD has developed transfer pricing guidelines and a model tax convention; see below.

OECD Guidelines

The Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, the latest edition of which was published by the OECD in 2017. The OECD Guidelines endorse the arm's-length principle and consist of a statement of principles rather than a set of specific rules to be applied.

OECD Model Tax Convention

The *Model Tax Convention on Income and on Capital*, first published by the OECD in September 2010 and subsequent shorter versions released, latest being in 2017. The Model Tax Convention is to be used by member countries in negotiations of bilateral double tax treaties. The OECD also provides commentary on the interpretation of the Model Tax Convention and states that member countries should follow this commentary, subject to their expressed reservations thereon, when applying and interpreting their double tax treaties.

PLI (profit level indicator)

A ratio that measures the relationship between an entity's profits and the resources invested or costs incurred to achieve that profit.

TNMM (transactional net margin method)

A profits-based method that compares the profitability of an MNE member with the profits of comparable entities undertaking similar transactions.

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