



EY Worldwide Transfer Pricing Reference Guide

2018-19

Preface

EY Worldwide Transfer Pricing Reference Guide 2018-19

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 2018-19* is a publication designed to help international tax executives 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 2018-19* covers 124 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 2018-19* is updated as of **February 2019**. 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**.

¹Visit 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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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

General Directorate of Taxes (GDT)

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations or rulings and the effective date of applicability

Law No. 8438 on Income Taxes, as amended (Income Tax Law), dated 28 December 1998, has the following references:

- Effective 4 June 2014, Articles 36-36/7 were introduced, providing a more comprehensive regulatory framework on international transfer pricing, 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, has the following references:

- 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 and reference

Albania is not a member of the OECD.

Albanian transfer pricing legislation refers to the OECD TPG 2010.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines or 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 or thresholds

► Transfer pricing documentation

There is no materiality limit.

► Economic analysis

There is no materiality limit.

► BEPS master and local files

This is not applicable.

► CbCR

This is not applicable.

c) Specific requirements

► 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**

There is none specified.

d) BEPS Action 13 implementation overview

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

No.

► **Coverage in terms of master and local files**

This is not applicable.

► **Effective or expected commencement date**

This is not applicable.

► **Material differences from OECD report template or format**

This is not applicable.

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

The local transfer pricing regulations are generally in line with the BEPS Action 13 format. However, in order to ensure that it is considered complete and to achieve penalty protection, it should also contain the local industry and market analysis, an overview of the local entity, including any local strategies, and the organizational structure of the local entity.

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

No.

► **CbCR notification included in the statutory tax return**

This is not applicable.

► **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

No.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 and return**

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

► **CbCR notification**

This is not applicable.

► **CbC report preparation and submission**

This is 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 transfer pricing 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 or deadline for submission on tax authority request**

It should be submitted within 30 days from the time of the tax authorities' request.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

With regard to international transactions, under the current transfer pricing 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.

b) Priority and preference of methods

Under the current transfer pricing 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. multiyear 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 the comparability criteria is met. It is an EY country practice to use a multiyear analysis for testing arm's length.

c) Use of interquartile range

The transfer pricing 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 transfer pricing method for a number of uncontrolled transactions in which each is almost equally comparable with the controlled transaction based on a comparability analysis. The transfer pricing 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 forwards and update of the financials

The transfer pricing 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 transfer pricing 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 transfer pricing 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

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

► Consequences of failure to submit, late submission or incorrect disclosures

The failure to file the annual Controlled Transaction Notice (explained in the "Transfer pricing returns and 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% (an equivalent of 365 days).

► **Is interest charged on penalties or payable on a 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 and related audit by the local authority

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

The likelihood of a transfer pricing audit in Albania is high. In light of the transfer pricing rules that became effective on 4 June 2014, and especially because of the introduced documentation requirements, transfer pricing issues are expected to continue to attract significant attention and it is anticipated that transfer pricing 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 the transfer pricing methodology is challenge (high/medium/low)**

The likelihood is medium; refer to the section above.

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

There are no differences among transactions, industries and situations.

11. APA and MAP opportunities

► **Availability (unilateral, bilateral and multilateral)**

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

► **MAP opportunities**

MAPs are generally available under the double tax treaties which Albania has with its treaty partners"

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Directorate General of Taxes (Direction générale des Impôts) (DGI)

Department of Large Enterprises (Direction des Grandes Entreprises) (DGE)

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

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations or rulings and the 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 parent 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 or 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 and 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 or rules?

Yes, 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 (including the financial information of the documented fiscal year).

Following provisions of the 2019 Finance Act, Algeria introduced a complementary documentation obligation. The guidelines and rules will be communicated soon.

► Does transfer pricing documentation have to be prepared annually?

Under current regulations, the transfer pricing documentation must be prepared and submitted annually by taxpayers registered at the level of the DGE. Entities satisfying either of the below conditions must be registered at the level of the DGE and should consequently prepare and submit their transfer pricing documentation annually:

- Algerian legal entities realizing a turnover higher than DZD2 billion
- Permanent establishments realizing a contract amounting to a minimum of DZD1 billion

Firms subject to a tax audit (including firms not eligible for the DGE) have the obligation to provide the transfer pricing documentation, at the request of the tax inspectors, within 30 days.

b) Materiality limit or thresholds

► Transfer pricing documentation

There is no materiality limit.

► Economic analysis

There is no materiality limit.

► BEPS master and local files

This is not applicable.

► CbCR

This is not applicable.

c) Specific requirements**▶ Treatment of domestic transactions**

Domestic transactions occurring within a group of companies must be covered by the transfer pricing 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.

▶ Safe harbor availability

There are no specific safe harbor rules set in Algerian transfer pricing regulations. However, a ruling can be submitted at the level of the competent tax authority to approve the taxpayer's transfer pricing practices. The tax ruling can be obtained prior or following the filling of the transfer pricing documentation.

d) BEPS Action 13 implementation overview**▶ Has your country adopted or implemented BEPS Action 13 for transfer pricing documentation in your local regulations?**

No, as a non-member of the OECD, Algerian transfer pricing regulations are mainly inspired from BEPS Action 13, but not set as such.

▶ Coverage in terms of master and local files

This is not applicable.

▶ Effective or expected commencement date

This is not applicable.

▶ Material differences from OECD report template or format

This is not applicable.

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

This is not applicable.

▶ CbCR notification and CbC report submission requirement

There is no CbCR notification and submission requirement in Algeria.

▶ CbCR notification included in the statutory tax return

This is not applicable.

▶ Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

No

4. Transfer pricing return and related-party disclosures**a) Related-party disclosures and 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).

Furthermore, according to provisions of the 2019 Finance Act, entities subject to the obligation of submitting a transfer pricing documentation may be requested in the context of a tax audit to provide a complementary documentation if the primary documentation submitted is considered to be insufficient by the tax inspectors. The complementary documentation includes tax rulings and Advance Pricing Agreements (APA) obtained by the group in other jurisdictions.

b) Transfer pricing-specific returns

This is not applicable.

5. Transfer pricing documentation and disclosure timelines**a) Filing deadline****▶ Corporate income tax return**

30 April N+1

▶ Other transfer pricing disclosures and return

30 April N+1

▶ CbCR notification

Not applicable

▶ CbC report preparation and 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 the submission of transfer pricing documentation is the same as that of the corporate income tax return, which is 30 April. This is now required for all firms holding intra-group transactions locally and internationally with affiliated companies.

► Time period or 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 (for both international and domestic transactions)

International transactions – yes

Domestic transactions – yes, in case of a group

b) Priority and 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. multiyear analysis

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

c) Use of interquartile range

The use of the interquartile range is not specified by the Algeria legislation; however, it is accepted by the Algerian tax authorities.

d) Fresh benchmarking search every year vs. roll forwards and update of the financials

Under the current legislation, there are no specific guidelines or 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

It is not specified by the current transfer pricing regulations.

f) Other specific benchmarking criteria, if any

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure**► Consequences of failure to submit, late submission or incorrect disclosures**

For companies with a filing obligation, the penalty for failure to submit the transfer pricing documentation along with the annual tax return is DZD2 million.

For taxpayers subject to a tax audit, the tax administration is entitled to send a formal notice asking for the transfer pricing documentation or the complementary transfer pricing documentation to be provided within 30 days. In case of failure, the penalty is DZD2 million.

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

An add-back of the reassessed amount plus an additional penalty of 25% of the amounts can be assessed.

► Is interest charged on penalties or payable on a refund?

Interest can be charged on penalties if the latter aren't paid on schedule; these interests are capped at 25%.

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.

A relief can also be granted for late penalties under the graceful remittance (remise gracieuse) procedure.

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).

In case the fraud is considered harmful to the Algerian economy by the Bank of Algeria, the prescription period can be extended to 10 years (penal code).

10. Likelihood of transfer pricing scrutiny and related audit by the 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.

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

The likelihood of transfer pricing methodology being challenged is medium, depending on the quality and solidity of the method used and the transfer pricing documentation.

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

The likelihood of an adjustment if the transfer pricing methodology is challenged is high, given the transfer pricing environment in Algeria.

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

The oil and gas, pharmaceutical, and information and communication technology sectors as well as free services are more likely to undergo an audit.

11. APA and MAP opportunities**► Availability (unilateral, bilateral and 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.

Following the 2019 Finance Act provisions, APA obtained by the group in other jurisdictions can be requested by the tax authorities in the context of a tax audit.

► Tenure

This is not applicable.

► Rollback provisions

This is not applicable.

► MAP opportunities

This is not applicable.

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

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

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations or rulings and the 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

Special relations concept is set out in Article 11 of Chapter IV of Presidential Decree 147/13 of 1 October 2013

2. OECD Guidelines treatment and 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 or rules?

Yes

► Does transfer pricing documentation have to be prepared annually?

Yes, companies are required to prepare and deliver a new report with all the required sections.

b) Materiality limit or thresholds

► Transfer pricing documentation

The documentation is applicable to companies on the Large Taxpayers' List, large government-owned companies, financial banking institutions, insurance and reinsurance companies, pension fund management companies and pension funds, payment system operators and providers companies, microcredit companies, oil and gas companies, diamond companies, telecommunications companies and companies operating in a monopoly regime reporting annual revenue of more than AOA7 billion.

► Economic analysis

There is no materiality limit.

► BEPS master and local files

This is not applicable.

► CbCR

This is not applicable.

c) Specific requirements

► 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 local language (Portuguese).

► Safe harbor availability

There is none specified.

d) BEPS Action 13 implementation overview

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

No.

► Coverage in terms of master and local files

This is not applicable.

► Effective or 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 2019.

► **Material differences from OECD report template or format**

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

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

Angola has not adopted the master file and local file approach, and full local TP documentation is expected from each eligible taxpayer. Consequently, only full local TP documentation can be considered to protect against potential penalties.

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

This is not applicable.

► **CbCR notification included in the statutory tax return**

This is not applicable.

► **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

No

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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

This is not applicable.

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

► **Corporate income tax return**

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

► **Other transfer pricing disclosures and return**

This is not applicable.

► **CbCR notification**

This is not applicable.

► **CbC report preparation and submission**

This is not applicable.

b) Documentation preparation deadline

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 until 30 June.

c) Documentation submission deadline

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

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 until 30 June.

► **Time period or 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 (for both international and domestic transactions)

Yes

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.

b) Priority and preference of methods

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

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. multiyear analysis

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

Although not specified in the legislation, there is a preference for the use of weighted average for arm's-length analysis.

f) Other specific benchmarking criteria, if any

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

8. Transfer pricing penalties and relief

a) Penalty exposure

► Consequences of failure to submit, late submission 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 late interest at the non-compounded rate of 1% per month (or 12% per year).

► Is interest charged on penalties or payable on a refund?

This is not applicable.

b) Penalty relief

This is not applicable.

9. Statute of limitations on transfer pricing assessments

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

10. Likelihood of transfer pricing scrutiny and related audit by the 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 soon.

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

Refer to the section above.

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

Refer to the section above.

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

Refer to the section above.

11. APA and MAP opportunities

- ▶ **Availability (unilateral, bilateral and multilateral)**

There is no APA program available in Angola.

- ▶ **Tenure**

This is not applicable.

- ▶ **Rollback provisions**

This is not applicable.

- ▶ **MAP opportunities**

This is not applicable.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Internal Revenue Service (Administración Federal de Ingresos Públicos) (AFIP)

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations or rulings and the effective date of applicability

Transfer pricing regulations and rulings include:

- Income Tax Law as amended by Law 27,430 published on 29 December 2017
- Administrative Order as amended by Decree 1170/2018 published on 27 December 2018
- AFIP (Dirección General Impositiva) Regulation No. 1,122 (published on 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. 4,130-E/2017, No. 4,332/2018, No. 4,338/2018, and external notes No. 6/05 and No. 1/08

► Section reference from local regulation

Section 11 of the Administrative Order as amended by Decree 1170/2018

2. OECD Guidelines treatment and reference

Argentina is not a member of the OECD; it has started the process required to become one. The OECD Guidelines are not referenced in Argentina's ITL and regulations. However, the tax authority usually recognizes the OECD Guidelines in practice as long as they do not contradict the Income Tax Law (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 or rules?

Yes.

► Does transfer pricing documentation have to be prepared annually?

Yes.

b) Materiality limit or thresholds

► Transfer pricing documentation

Taxpayers will not be required to file the transfer pricing documentation if their transactions carried out with foreign related parties, invoiced as a whole in the fiscal year, do not exceed the total amount equivalent to ARS3 million or individually equivalent to ARS300,000, without prejudice to the duty to preserve the documents, information and evidence supporting the aforementioned transactions.

► Economic analysis

There is no materiality limit.

► BEPS master and local files

The Master File has been recently introduced within the Argentine transfer pricing regulations through the enactment of Decree 1170/2018. As of February 2019, further implementation rules are yet to be published by AFIP.

► CbCR

CbCR was introduced in Argentina in 2017. The group's income for the previous fiscal year must exceed EUR750 million. The CbCR has to be filed by entities controlling Argentine MNEs. In addition, the local filing of the CbCR will only be required in Argentina when there is an underlying international agreement in effect, but when there is no Competent Authority Agreement.

c) Specific requirements

► Treatment of domestic transactions

There is a documentation requirement for domestic transactions.

► Local language documentation requirement

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

▶ **Safe harbor availability**

There is none specified.

d) BEPS Action 13 implementation overview

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

Yes, but it only for the CbC report.

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

The Master File has been recently introduced within the Argentine transfer pricing regulations through the enactment of Decree 1170/2018. As of February 2019, further implementation rules are yet to be published by AFIP.

▶ **Effective or expected commencement date**

The Master File is effective for fiscal years beginning 1 January 2018. As of February 2019, further implementation rules are yet to be published by AFIP.

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

This is not applicable.

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

This is not applicable.

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

Yes. Starting 2018 for the financial year 2017 onwards, there will be CbCR notification and CbC report submission requirements. There are two notifications:

▶ **Up to the last business day of the third month counting from the end of the financial year 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 financial year 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.**

▶ **CbCR notification included in the statutory tax return**

There is none specified.

▶ **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

Yes. It is so as of 30 June 2016.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

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

- ▶ **An annual transfer pricing study**
- ▶ **Audited financial statements for the fiscal year (if they have not already been filed)**
- ▶ **Certification of certain contents of the transfer pricing study by an independent certified public accountant**
- ▶ **Transfer pricing-specific returns**

b) Transfer pricing-specific returns

Starting in 2018, taxpayers are required to file the following transfer pricing-specific returns with the AFIP:

- ▶ **Annual Form 743**
- ▶ **Annual Form 969**
- ▶ **Annual Form 741 (for commodities exports and imports with independent parties not located in countries or jurisdictions considered noncooperative for fiscal transparency purposes, or in low or nil tax jurisdictions)**
- ▶ **Annual Form 867 (for other exports and imports with independent parties not located in countries or jurisdictions considered noncooperative for fiscal transparency purposes, or in low or nil tax jurisdictions)**
- ▶ **Annual Form 4501 (for the digital filing of the transfer pricing study and certified public accountant's certification)**
- ▶ **Monthly Form 968 (transaction with local related parties)**

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

Argentina

► Corporate income tax return

For fiscal years ending in December, the filing deadline is mid-May. There are specific due dates that depend on the taxpayer's fiscal ID and the fiscal year's end.

► Other transfer pricing disclosures and return

For fiscal years ending in December, the deadline starts in late May and ends in August of the following financial year. There are specific due dates that depend on the taxpayer's fiscal ID and the fiscal year's end.

► CbCR notification

The deadline is the third month after the financial year-end and the second month after the CbC report filing.

► CbC report preparation and submission

The deadline is 12 months after the financial year-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 the fiscal year's end.

c) Documentation submission deadline

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

Yes. The statutory deadlines for Argentine transfer pricing filings are:

- Financial year-end plus five months – The income tax return is due the fifth month after the financial year-end. Within such filing, the local taxpayer must disclose any transfer pricing adjustments (if any). In that filing, the company must disclose whether a transfer pricing 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 and in low or nil tax jurisdictions. Thus, the transfer pricing analysis should be performed by that time even though the documentation is not due until later (financial year-end plus eight months). Companies trading commodities are required to file an annual transfer pricing return (Form 741) that includes the imports and exports of commodities with unrelated entities not located in countries and jurisdictions considered noncooperative for fiscal transparency purposes, or in low or nil tax jurisdictions, accrued during the financial year.

- Income tax return due date plus 15 days – The company must file the transfer pricing 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 and jurisdictions considered noncooperative for fiscal transparency purposes, or in low or nil tax jurisdictions).

- Financial year-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 and jurisdictions considered noncooperative for fiscal transparency purposes, or in low or nil tax jurisdictions for an overall amount higher than ARS10 million, an additional transfer pricing return is required (Form 867).

- Financial year-end plus eight months – The company must file the transfer pricing 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 and jurisdictions considered noncooperative for fiscal transparency purposes, or in low or nil tax jurisdictions). Transfer Pricing Report (in AFIP's General Resolution 1122/01) needs 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 is also needed. The company also has to file 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 or 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 inquiry.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- 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 and preference of methods

The ITL does not prioritize methods; however, there exists a strong preference in what concerns to internal comparables and Section 21.5 of the Administrative Order as amended by Decree 1170/2018 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 entities located in countries and jurisdictions considered noncooperative for fiscal transparency purposes, or in low or nil tax jurisdictions 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.

The CUP method shall be considered the most appropriate to value the transactions of goods with well-known prices in transparent markets, either by reference to uncontrolled comparable transactions or by reference to the indices, coefficients or quotation values.

For import and export transactions involving an international intermediary in between the Argentine taxpayer and foreign related parties, the local entity will have to prove that the remuneration obtained by the international intermediary is in accordance with the risks assumed, the functions performed and the assets involved in the transactions. If the remuneration of the foreign intermediary is higher than that agreed upon between independent parties, the excess in the amount of such remuneration shall be considered a higher profit from an Argentine source attributable to the local taxpayer.

The AFIP has the power to reclassify the transaction, including determining the nonexistence of remuneration attributable to the foreign intermediary, establishing the functions performed, assets used and risks assumed (with the respective remuneration and attribution to the party or parties) under the following conditions:

- ▶ **If, from the evaluation of the transaction, AFIP determines that there is a clear discrepancy between the actual transactions and the functional analysis or signed agreements with the foreign intermediary**
- ▶ **If the purpose of the transaction is explained solely**

for fiscal reasons or if its conditions differ from those to which independent companies have subscribed in accordance with commercial practices

Export and import transactions with independent parties not located in countries and jurisdictions considered noncooperative for fiscal transparency purposes, or in low or nil tax jurisdictions are subject to information requirements if the annual amount of the transaction exceeds ARS10 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 or 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 or rejected comparable companies along with the search process.

b) Single-year vs. multiyear analysis

A single-year analysis is required for the local taxpayer (tested party).

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 as amended by Decree 1170/2018, 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 forwards and update of the financials

A fresh benchmarking search every year is required.

Argentina

e) Simple vs. weighted average

There is none specified; as of February 2019, further implementation rules are yet to be published by AFIP.

f) Other specific benchmarking criteria, if any

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

► Consequences of failure to submit, late submission 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 200% of the unpaid tax, which could be augmented to 300% upon recidivism. Penalties for fraud are two to six times the unpaid taxes.

Criminal tax law stipulates imprisonment for two to six years if the unpaid tax exceeds ARS1.5 million for each tax and fiscal year. If the unpaid tax exceeds ARS15 million, the prison term will increase, ranging from three-and-a-half years to nine years.

Failing to comply with the obligations related to CbC reporting and CbCR notifications will be considered by AFIP as a relevant indicator for starting an audit and verification of the risks associated with their transfer prices, potential tax base erosion and profit shifting from the entities domiciled in Argentina to other member companies of the MNE group.

Moreover, the liable parties may be subject to any of the following measures:

- Being classified as a company subject to greater risk of undergoing an audit

- Suspension or removal from the special tax registries of the Argentinean tax jurisdiction
- Suspension of the process of obtaining an exemption or non-withholding certificates

The following penalties are applicable to the noncompliance with the obligations related to CbC reporting and CbCR notifications:

- i) The penalty will be between ARS80,000 and ARS200,000 when the local taxpayer is a member of an MNE group that reaches the minimum limit of total consolidated revenues for mandatory CbC reporting, and fails to comply with the respective notifications and information about the MNE group and the UPE, requested by the AFIP, within the deadlines established for this purpose. If the local entity fails to comply with the notification mentioned above but its MNE group does not reach the limit established for mandatory CbC reporting, the penalty will be set between ARS15,000 and ARS70,000.
- ii) The penalty will be between ARS80,000 and ARS200,000 when the local taxpayer fails to inform, within the deadlines established for that purpose, the identifying data of the reporting entity (the entity designated for the submission of the CbCr).
- iii) The penalty will be between ARS80,000 and ARS200,000 when the local taxpayer fails to inform, within the deadlines established for that purpose, the submission of the CbC report by the reporting entity in its tax jurisdiction.
- There will be an adjustable penalty between ARS600,000 and ARS900,000 when the local taxpayer must file the CbC report to AFIP and does not submit it or the report submitted is partial, incomplete, or has serious errors or inconsistencies.
- There will be an adjustable penalty between ARS180,000 and ARS300,000, the total or partial noncompliance with the requirements made by AFIP, of complementary information requested in addition to the CbC report.
- There will be a penalty of ARS200,000 when the local taxpayer does not comply with the formal duties related to the requirements of subparagraphs "a" and "b". This penalty is cumulative with that of subsections "a" and "b" (above).
- 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 of 200% (which could be augmented to

300% upon recidivism) 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.

► **Is interest charged on penalties and payable on a 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 an intervention notice from the AFIP, then no penalty shall be applied. If the tax returns are amended in the term between receiving the intervention notice and before receiving a special notice (or vista) from the AFIP, the penalty is reduced to one-quarter of the minimum fine. If the tax returns are amended before receiving a special notice, the penalty is reduced to half of the minimum fine. If the non-recidivist taxpayer accepts the adjustments assessed by the AFIP and pays the amounts due within 15 days of receiving the notice, the penalty is reduced to three-quarters of the minimum fine.

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 the calendar year 2009 and the voluntary declaration of the foreign exchange holding regime in place during the 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 and related audit by the 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 the transfer pricing methodology is challenged** (*high/medium/low*)

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

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

Pharmacy, automotive and export of commodities are targeted industries. Financial transactions and foreign intermediaries are more likely to undergo an audit.

11. APA and MAP opportunities

► **Availability (unilateral, bilateral and multilateral)**

Yes, there is unilateral availability; further regulations are expected to make these changes operative.

► **Tenure**

This is not applicable yet; further regulations are expected to make these changes operative.

► **Rollback provisions**

This is not applicable yet; further regulations are expected to make these changes operative.

► **MAP opportunities**

Yes.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

State Revenue Committee

b) Relevant transfer pricing section reference

- ▶ Name of transfer pricing regulations or rulings and the effective date of applicability

Tax Code of the Republic of Armenia, Chapter 73, effective from 1 January 2020

- ▶ Section reference from local regulation

Tax Code of the Republic of Armenia, Chapter 73, Article 362

2. OECD Guidelines treatment and reference

Armenia is not a member of the OECD. There is no reference to the OECD Guidelines in the Tax Code of the Republic of Armenia. As the transfer pricing rules enter into force from 1 January 2020, 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 or rules?

Yes.

- ▶ Does transfer pricing documentation have to be prepared annually?

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

- ▶ A detailed description of the taxpayer's business functions
- ▶ A detailed description of the taxpayer's organizational structure
- ▶ Description of controlled transactions
- ▶ Description of applied transfer pricing methods
- ▶ The list of parties to controlled transactions
- ▶ Description of sources of information on comparable uncontrolled transactions

- ▶ Calculation of arm's-length range
- ▶ Financial and any other relevant information on the tested party subject to analysis
- ▶ Detailed information on the adjustments made by the taxpayer independently

b) Materiality limit or thresholds

- ▶ Transfer pricing documentation

The threshold for transfer pricing documentation is AMD200 million.

- ▶ Economic analysis

There is no materiality limit.

- ▶ BEPS master and local files

This is not applicable.

- ▶ CbCR

This is not applicable.

c) Specific requirements

- ▶ Treatment of domestic transactions

There is a documentation obligation for domestic transactions. Such transactions between related parties are considered controlled in cases in which:

- ▶ Either of the parties to the transaction is a mineral royalty payer
- ▶ Either of the parties to the transaction enjoys tax privileges
- ▶ 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 or Armenian, provided that, upon the request of the tax authorities, such documents made in English or Russian are 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

There is none specified.

d) BEPS Action 13 implementation overview

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

No.

- ▶ Coverage in terms of master or local files

This is not applicable.

- ▶ Effective or expected commencement date

This is not applicable.

- ▶ Material differences from OECD report template or format

This is not applicable.

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

This is not applicable.

- ▶ CbCR notification and CbC report submission requirement

No.

- ▶ CbCR notification included in the statutory tax return

This is not applicable.

- ▶ Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

No.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

The taxpayer shall complete the notification form on controlled transactions and file it with the tax authority on or before 20 April of the year following the tax year in which controlled transactions were concluded.

b) Transfer pricing-specific returns

This is not applicable.

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- ▶ Corporate income tax return

The deadline is 20 April.

- ▶ Other transfer pricing disclosures and return

The deadline is 20 April.

- ▶ CbCR notification

This is not applicable.

- ▶ CbC report preparation and submission

This is not applicable.

b) Documentation preparation deadline

This is not applicable.

c) Documentation submission deadline

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

No.

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

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

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

Yes.

b) Priority and preference of methods

The comparable uncontrolled price (CUP), resale price, cost-plus, TNMM and profit-split methods are accepted, and there is no priority and 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. multiyear analysis

A multiyear 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 forwards and update of the financials

Under the current legislation, there are no specific guidelines and 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 the calculation of the arm's-length range was being implemented at the time of this publication.

f) Other specific benchmarking criteria, if any

There is none specified.

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

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

No penalty is defined yet for noncompliance.

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

There is none specified.

- ▶ Is interest charged on penalties and payable on a refund?

There is none specified.

b) Penalty relief

This is 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 and related audit by the local authority

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

The applicability of transfer pricing rules will be effective from 1 January 2020. Hence, there is no practice available in terms of the severity of a conducted transfer pricing audit. Accordingly, the effect and likelihood of tax audits cannot still be assessed.

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

Refer to the section above.

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

Refer to the section above.

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

Refer to the section above.

11. APA and MAP opportunities

- ▶ Availability (unilateral, bilateral and multilateral)

There are no provisions for APA opportunities in Armenia.

- ▶ Tenure

This is not applicable.

- ▶ Rollback provisions

This is not applicable.

- ▶ MAP opportunities

This is not applicable.

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

Australian Taxation Office (ATO)

b) Relevant transfer pricing section reference

- ▶ Name of transfer pricing regulations or rulings and the 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)
 - ▶ Subdivision 177G to 177R of the ITAA 1936
 - ▶ 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.

All Australian transfer pricing legislation only applies in one direction. Broadly speaking, it can only be used to increase profits, decrease losses and offsets and increase withholding tax liabilities.

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.
- ▶ The preparation of transfer pricing documentation is not compulsory. However, a failure to prepare documentation contemporaneously in accordance with the legislation prevents the taxpayer from establishing a reasonably arguable position (RAP). This prevents 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.
- ▶ 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. Please note that the Australian source rules do not align with the OECD authorised approach and require an allocation of actual revenue and expenses. Where this leaves

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

Australia

too much profit in Australia, this is not remedied through Subdivision 815-C through the one-sided application of the transfer pricing provisions.

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

Diverted profits tax

In addition to the specific transfer pricing legislation, Australia also has a diverted profit tax that broadly speaking looks at transactions that are taxed overseas at a low rate (generally less than 24% effective tax) and where obtaining a tax benefit was a principal purpose of the arrangement. Diverted Profits Tax is levied at 40%, i.e. higher than the normal tax rate, and is not subject to relief from double taxation under Australian tax treaties. The diverted profit tax applies to significant global entities (SGEs). Broadly speaking, SGEs are Australian taxpayers that form part of a multinational enterprise (MNE) that has global turnover exceeding A\$1 billion.

▶ 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 – ATO compliance approach to taxation issues associated with cross-border related-party financing arrangements and related transactions
- ▶ PCG 2019/1 – ATO compliance approach to inbound distribution entities.
- ▶ 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
- ▶ Reportable Tax Position Schedule Guidance
- ▶ International Dealings Schedule Guidance
- ▶ Country-by-Country Reporting Guidance

Case law

There have been a number of transfer pricing cases before the courts in Australia, of which the following three are the most influential:

- ▶ 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

Broadly speaking, the Roche and SNF cases apply to Division 13, and highlighted the fact that Division 13 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, new transfer pricing provisions were created; Subdivision 815-A was released in 2012, and subdivisions 815-B, C and D were released in 2013.

The Chevron case looked at both Division 13 and Sub-Division 815-A and addressed the appropriate pricing for intercompany loan arrangements. Of particular relevance is that it rejected the "orphan concept" in determining the arm's-length consideration for loans. As a result, loans cannot be priced as if the borrowing entity is an "orphan" but rather should be seen as part of the global group's family of companies.

2. OECD Guidelines treatment and reference

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

In response to key transfer pricing cases that questioned the relevance of the OECD Guidelines in interpreting Division 13 and the ATO's reliance on such interpretation, revised transfer pricing provisions were released. These provisions refer directly to the 2010 OECD Guidelines (or the 1999 Guidelines for earlier years) as relevant guidance for the interpretation of the provisions. For years starting on or after 1 July 2017, the relevant guidance also incorporates the changes per the final report on BEPS actions 8-10.

3. Transfer pricing documentation requirements

a) Applicability

- ▶ **Does your country have transfer pricing documentation guidelines or rules?**

The preparation of transfer pricing documentation is not compulsory. However, taxpayers that do not prepare 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 means that higher penalties apply 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., it must be kept by or accessible to the local entity 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 including the OECD Guidelines**
- ▶ **Allow actual conditions, arm's-length conditions, comparable circumstances and the result of the application of the subdivision to be readily ascertained**

In addition to these legal requirements to be able to have a RAP, the ATO expects that taxpayers answer the following questions in their documentation to demonstrate a RAP:

- ▶ **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 the transfer pricing treatment appropriate?**
- ▶ **Have any material changes and updates been identified and documented?**
- ▶ **Does transfer pricing documentation have to be prepared annually?**

In order to be able to have a reasonably arguable position, documentation must be prepared annually. However, if no significant changes have occurred, an addendum to the documentation may be sufficient.

Particular care has to also be given to the benchmarking analysis used. In particular, it is unlikely that regional Asian sets would meet the requirements due to perceived significant differences between the regional economies.

▶ Reportable tax position and transfer pricing documentation

Where taxpayers have to prepare a reportable tax position (RTP) schedule as part of the Income Tax Return, any related party dealing will need to be disclosed as a RTP unless it is:

- ▶ **Immaterial**
- Or
- ▶ **Supported by Section 284-E compliant documentation, and**

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- ▶ The documentation includes an assurance from a sufficiently qualified (Australian) transfer pricing professional that the position is reasonably arguable; and
- ▶ The result or price does not fall outside the interquartile range of arm's-length results.

b) Materiality limit or thresholds

▶ Transfer pricing documentation

There is no materiality limit for the preparation of TP documentation.

▶ Economic analysis

There is no materiality limit for the preparation of an economic analysis.

▶ BEPS action 13

CbCR requirements apply to SGEs, i.e., Australian taxpayers that form part of a MNE with an annual global income of AUD1 billion or more.

While the definition of global group generally follows accounting consolidation rules, there are several exceptions that require careful consideration including ignoring the consolidation exception for immaterial subsidiaries.

Further detail on the implementation of Action 13 is set out under d) below.

▶ Reportable tax positions

The ATO will send a notification to taxpayers that are required to lodge the reportable tax position schedule. Generally speaking, notifications get sent to taxpayers with an annual revenue exceeding A\$250 million.

c) Specific requirements

▶ Treatment of domestic transactions

There is no documentation obligation for domestic transactions.

▶ Local language documentation requirement

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

▶ Safe harbor availability

There are no formal safe harbours in the Australian transfer pricing legislation. However, through Practical Compliance Guidelines (PCGs), the ATO provides guidance on its

compliance approach, areas of focus, and which kind of arrangements would typically not warrant compliance activity.

PCG 2017/2 provides simplified record-keeping options applicable to the following transactions:

- ▶ Distributors with a turnover of less than A\$50 million and profit before tax that exceeds 3% of Sales
- ▶ Low value adding intra-group services with a mark-up of no less than 5% for services provided and no more than 5% for services received.
- ▶ Technical services with a mark-up of no less than 10% for services provided and no more than 10% for services received.
- ▶ Outbound loans with related parties where the loan is denominated in A\$, the amount lent does not exceed A\$ 50 million and the interest rate is at least 3.76% for the 2019 tax year
- ▶ Inbound loans with related parties where the loan is denominated in A\$, the amount lent does not exceed A\$ 50 million and interest does not exceed 3.76% for the 2019 tax year.

Where a taxpayer applies the simplified transfer pricing record keeping requirements and discloses this in their international dealings schedule or local file, the ATO will typically not allocate compliance resources to that arrangement.

Please note: In addition to the thresholds mentioned above, further eligibility requirements must be met to allow application of these rules. In addition, taxpayers must self-assess the appropriateness of the transfer pricing and must document this self-assessment as well as how they meet the criteria for the specific transaction.

PCG 2018/d8 provides the ATO's compliance approach in relation to inbound distributors and sets out which margins would typically not warrant compliance resources. Low risk EBIT margins per this PCG are:

- ▶ Information and Communication technology (ICT) category I – 4.1%
- ▶ ICT category II – 5.4%
- ▶ Life Sciences category I – 5.1%
- ▶ Life Sciences category II – 8.9%
- ▶ Life Sciences category III -10.0%
- ▶ Motor Vehicles – 4.3%

- ▶ General Distributors – 5.3%

d) BEPS Action 13 implementation overview

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

Australia has adopted the OECD's three-tiered documentation approach set out in BEPS Action 13. The requirements are met through lodgement of 2 files; the LCMSF (as defined below) and the CbC Report.

▶ The LCMSF

As part of the Australian implementation of Action 13, SGEs need to provide the LCMSF file. LCMSF stands for each of the components provided through the file, being:

- ▶ Local file
- ▶ CbC report notification
- ▶ Master file
- ▶ Short form local file
- ▶ Financials

The LCMSF must be lodged electronically in XML format and specific software is required to prepare the XML file.

▶ CbC report

In addition, to the LCMSF, Australian taxpayers must lodge the CbC Report in Australia through use of a separate XML schema. Where the CbC Report is lodged by another entity and is automatically exchanged with Australia, it is sufficient to notify the ATO of this lodgement through the LCMSF file.

▶ Effective or expected commencement date

The effective commencement date is 1 January 2016.

▶ Material differences from OECD report template or format

While Australia subscribes to the general concepts of Action 13 including a three-tiered documentation structure, there are some notable differences in Australia's implementation. In summary:

- ▶ The CbC report is consistent with the OECD format.
- ▶ The master file is consistent with the OECD format.
- ▶ The Australian interpretation of the local file deviates significantly from the interpretation in the rest of the world. In Australia, the local file is not a transfer pricing

documentation report, but a collection of transactional data and other information structured in three parts:

- ▶ the short form local file
- ▶ Part A of the local file
- ▶ Part B of the local file

The data provided through the Local File includes reporting entity information, transactional data, the level of compliant Australian transfer pricing documentation, foreign exchange result related information, legal agreements, information on the transfer pricing method applied in Australia and overseas, overseas APAs and Ruling, etc. The Local File can only be lodged electronically in the prescribed format through the LCMSF XML file.

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

In straightforward cases, e.g., a vanilla distributor or service provider, the BEPS Action 13 format local file may only require minor adaptations to meet the legislative documentation requirements and allow it to achieve penalty mitigation.

In more complex cases, e.g., those involving restructures, intangibles, intragroup financing or commercially unrealistic results, substantive additional analysis will typically be required to address the Australian transfer pricing legislation.

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.

▶ CbC report notification and CbC report submission requirement

Where the CbC Report is lodged in a jurisdiction that automatically exchanges it with the ATO, a notification is required. The CbC report lodgement notification is provided through lodgement of the LCMSF, due 12 months after the end of the financial year.

A local lodgement is required if the CbC Report is not lodged in a jurisdiction that automatically exchanges it with the ATO. This lodgement will need to be made through a separate XML and a conversion process is typically required to align the CbC Report with the Australian requirements.

▶ CbCR notification included in the statutory tax return

Taxpayers disclose that they are significant global entities, i.e. are part of a group with a global turnover in excess of A\$1 billion, in the tax return.

Australia

- ▶ Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

Yes, as of 27 January 2016. In addition, Australia has signed a bi-lateral agreement with the US.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 has since 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 ATO guidance mentioned above (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)

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

We refer to the above for the IDS and Action 13 lodgements. No other transfer pricing specific returns apply.

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

▶ Corporate income tax return

In most cases, the income tax return is due for lodgement 7 months and 15 days after the end of the income tax year, however it varies depending upon the entity. Payment of any final tax liability is normally due on the first day of the 6th month following the end of the income tax year.

▶ Transfer pricing documentation

To achieve penalty protection, documentation must be on hand by the date of lodging the corporate tax return. The documentation does not need to be provided to the ATO.

▶ Other transfer pricing disclosures and return

If international related party dealings exceed A\$2m (including average loan balances), an International Dealings Schedule must be lodged as part of the corporate tax return.

▶ Local file

If required, an Australian Local File must be filed 12 months after the end of the financial year of the taxpayer. If the taxpayer prepares and lodges at least Part A of the Australian Local File by the due date of the corporate tax return, Questions 2 to 17 of the abovementioned International Dealings Schedule do not need to be completed (this is an 'administrative concession' provided by the ATO).

▶ Master file

If required, must be filed 12 months after the end of the financial year of the taxpayer unless the taxpayer has received a Replacement Reporting Period, in which case the deadline is 12 months after the end of the RRP.

► **CbC report submission or notification**

If required, the CbC report is due 12 months after the end of the financial year of the taxpayer unless the taxpayer has received a replacement reporting period, in which case the deadline is 12 months after the end of the RRP. If the CbC report is lodged with another revenue authority with whom the ATO has a formal information exchange, the Australian taxpayer is able to notify on its Australian Local File, and the ATO then obtains a copy of the CbC report directly from the other revenue authority.

b) Documentation preparation deadline

Transfer pricing documentation must be prepared and 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 filing deadline for the submission of transfer pricing documentation, however transfer pricing documentation must be provided upon request by the ATO.

► **Time period or 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.

The ATO will routinely check the date stamp on the files to confirm whether they were contemporaneous.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions – Yes
- Domestic transactions – Typically not applicable

b) Priority and 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 has a strong preference for local comparables. The ATO will generally accept foreign comparables if it can be demonstrated that reliable local comparables are not available. Regional Asian comparables are typically not accepted due to market differences.

b) Single-year vs. multiyear 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 combined with higher-profit years to achieve an overall average result within the range.

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).

For taxpayers that are required to file a reportable tax position (RTP) Schedule, results that sit outside the interquartile range, must be disclosed as a reportable tax position if they meet the materiality threshold.

d) Fresh benchmarking search every year vs. roll forwards and update of the financials

There is no specific requirement to update the comparable benchmarking search annually. Generally, such benchmarking may be rolled forward with a refresh of the financial information of the comparables for an additional one or two years where there have 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

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

- ▶ Penalties apply to underpaid tax ('shortfall penalties'), failure to submit or late submission ('failure to lodge penalties'), or incorrect disclosures ('false and misleading disclosure penalties')
- ▶ Penalties depend on the entity as well as various other factors such as the level of culpability.
- ▶ Penalties for significant Global Entities, i.e. any entity that is part of a group with a global turnover of A\$1 billion or more, are particularly high. Failure to lodge penalties for these entities start at A\$105,000 for filings that are one date late and gradually increase to A\$525,000 for lodgements that are 112 days late or more

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 may be reduced in certain circumstances 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 and PS LA 2008/18, sets out guidance on the remission of penalties. 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.

Some of Australia's double tax agreements, including those with New Zealand and Japan, specify time limits for adjustments.

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

- ▶ Likelihood of transfer pricing-related audits is medium to high

All top 1,100 companies in Australia, are subject to review over a four-year period, with the top 100 companies being subject to annual reviews.

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.

Outside these groups, the likelihood of an annual tax audit in Australia is typically medium. However, if taxpayers exhibit risk factors, the likelihood of a review or audit increases significantly.

Where the taxpayer enters into a material level of international related-party transactions, transfer pricing is almost always reviewed if any general tax review or audit is started.

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

It is generally the application of the transfer pricing method that is challenged, e.g., the comparables selected and selection of point in the range.

However, there have been recent cases where the method has been challenged, e.g. the use of the cost-plus method to remunerate a marketing service function has been rejected in favour of a sales-based measure to determine the remuneration for this function.

There have also been recent experiences in which the ATO has sought 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 the transfer pricing methodology is challenged**

The chance of some adjustment is medium to high, given the ATO risk selection guidelines for an audit, i.e. the ATO will prioritise resources for those cases where the ATO believes there is a relatively high probability of an adjustment.

▶ **Specific transactions, industries and 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 or are paid to a low-tax jurisdiction**

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

11. APA and MAP opportunities

▶ **Availability (unilateral, bilateral and 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 typically has a three to five-year term.

▶ **Rollback provisions**

Historically roll backs were available subject to the ATO's agreement and the taxpayer's facts.

While rollbacks are still included in the PSLA, more recently, the ATO is moving away from retrospective application of APAs, instead favouring other mechanisms such as a "letter of comfort" or a "settlement deed".

▶ **MAP opportunities**

Australia has an active and usually effective MAP program.

Contact

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

Ministry of Finance

b) Relevant transfer pricing section reference

- ▶ Name of transfer pricing regulations or rulings and the 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
 - ▶ Transfer Pricing Guidelines (BMF-010221/2522-IV/4/2010, 28 October 2010)
 - ▶ Section 6 (6), Income Tax Act
 - ▶ Sections 8 and 12 (1) 10, Corporate Income Tax Act
 - ▶ Income Tax Guidelines 6.13.3, 2511-2513
 - ▶ Corporate Income Tax Guidelines 14.8.2, 1147
 - ▶ Sections 115, 119, 124, 131 and 138, Federal Tax Code (FTC)
 - ▶ Section 118, FTC regarding unilateral APAs
 - ▶ Section 49b, Criminal Tax Law (CTL)
 - ▶ Several opinions (public rulings called Express Answering Service, or EAS) published by the Ministry of Finance regarding selected transfer pricing issues
 - ▶ Information of the Austrian Ministry of Finance regarding transfer pricing documentation (BMF-010221/0295-IV/8/2018, 23 November 2018)
- ▶ Section reference from local regulation

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

2. OECD Guidelines treatment and reference

Austria is a member of the OECD and recognizes the OECD Guidelines – which provides 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 TPD).

3. Transfer pricing documentation requirements

a) Applicability

- ▶ Does your country have transfer pricing documentation guidelines or rules?

Yes, the TPD was published in 2016. It is applicable for fiscal years beginning on or after 1 January 2016. The content requirements for the master and local files are stipulated in the regulation for implementation of the TPD, basically in line with OECD TP Guidelines.

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 refers to the OECD Guidelines.

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 provides 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 TPD 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.

b) Materiality limit or thresholds

- ▶ Transfer pricing documentation

The Austrian transfer pricing regulations (TPDL as well as 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 OECD Guidelines 2017. 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 must 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.

► **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 must be in line with the tables provided in the OECD Guidelines.

c) Specific requirements

► **Treatment of domestic transactions**

Domestic intra-group transactions have to be documented, if transactions affect directly or indirectly the determination and cross-border analysis of appropriate, intra-group transfer prices applied within the group.

Purely, domestic intra-group transactions with no cross-border implications do not need to be documented in the local file.

► **Local language documentation requirement**

The TPDL stipulates that the entire documentation must 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**

There is none specified.

d) BEPS Action 13 implementation overview

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

Yes.

► **Coverage in terms of master and local files**

Both master and local files are covered.

► **Effective or expected commencement date**

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

► **Material differences from OECD report template or format**

There is none specified.

► **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 regarding the master file and local file. See the "Transfer pricing penalties and relief" section below.

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

There is a CbCR notification and CbC report submission requirement in 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.

► **CbCR notification included in the statutory tax return**

No, the CbCR notification is not included.

► **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

Yes, as of 27 January 2016.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 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 and disclosure timelines

a) Filing deadline

► **Corporate income tax return**

The corporate income tax (CIT) returns has 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 must 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 and 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.

► **CbCR preparation and 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) 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 has 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. Such transfer pricing documentation is usually requested by the competent tax auditor during the course of a tax audit. The submission deadlines can vary from case to case.

► **Time period or 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 during a tax audit. The submission deadline 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.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

Yes.

b) Priority and preference of methods

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

The Ministry of Finance 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 or EU 28 along with Iceland, Norway, Switzerland) are accepted. When preparing a benchmark study, the five comparability factors must be considered in identifying or determining the set of comparables.

b) Single-year vs. multiyear analysis

Multiyear 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 forwards and update of the financials

Following the OECD approach, as long as the operating conditions remain unchanged, the searches in databases for comparables supporting part of the local file shall be updated at least every three years. Financial data for the comparables should nonetheless be updated every year in order to apply the arm's-length principle reliably.

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 commonly applied.

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 and relief

a) Penalty exposure

- ▶ **Consequences of failure to submit, late submission 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 or 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, transfer prices will be considered not in line with the arm's-length principle and will be 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 or payable on a 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 two 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 or 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 or 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 the 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.

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

Intercompany services transactions, intercompany 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 and MAP opportunities

► **Availability (unilateral, bilateral and 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 EUR 20,000.

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**

A rollback is only available for bilateral and multilateral APAs in line with Chapter IV of the OECD Transfer Pricing Guidelines and the BEPS Action 14 Minimum Standard.

► **MAP opportunities**

Austria had a total of 255 active MAP applications as of 31 December 2017. The following tables show the average time needed to close MAP cases.

► **Average time needed to close MAP cases (in months)**

Cases started before 1 January 2016	Average time
Transfer pricing cases	41.50
Other cases	42.80

Note: the average time taken to close MAP cases that started before 1 January 2016 was computed by applying the following rules: (i) start date: the date on which the competent authority that received the MAP request decided that the objection raised in the request was justified and initiated the bilateral phase of the MAP, and in cases where Austria's competent authority did not receive the MAP request, the date of the official notification of the initiation of the bilateral phase of the MAP by the other competent authority; and (ii) end date: the date on which a MAP agreement was reached. The date of notification of the taxpayer was not taken into account. If the treaty partner required acceptance of the MAP result by the taxpayer, then the "end" date was counted as the date when the taxpayer responded, either accepting or rejecting the agreement.

Cases started as from 1 January 2016	Average time
Transfer pricing cases	10.89
Other cases	8.74

Note: the average times to close MAP cases that started as from 1 January 2016 were computed according to the MAP statistics reporting framework available at <http://www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics-reporting-framework.pdf>

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1. Tax authority and relevant transfer pricing regulation or 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 or rulings and the 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. 1356-VQD, dated 30 November 2018, "Amendments to the Tax Code of the Republic of Azerbaijan," effective 1 January 2019 (the Tax Code).
- Decision of the Ministry of Taxes of the Republic of Azerbaijan No. 1717050000006200, dated 27 January 2017, "Determination and Application of Transfer Pricing," effective 8 February 2017 (the Transfer Pricing Rules or the Rules).

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

Jurisdictions with preferential tax regime 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

The regulations define the controlled transactions as:

- Transactions between resident of Azerbaijan and a non-resident, both qualifying as related parties under Article 18
- Transactions between a permanent establishment of a non-resident in Azerbaijan and such non-resident itself, as well as its representative or branch offices or other divisions located in other countries
- Effective for 2019 reporting period: transactions between a permanent establishment of a non-resident in Azerbaijan, and any person associated (under Article 18) with such non-resident located in other country
- Transactions between resident of Azerbaijan and any person incorporated (registered) in jurisdictions with preferential tax regime (offshore jurisdictions)

2. OECD Guidelines treatment and reference

Azerbaijan is not a member of the OECD.

The local transfer pricing regulations include fundamental principles stipulated by the OECD Guidelines. Transfer Pricing rules were only implemented in 2017, there is no established practice of application of fundamental transfer pricing principles in Azerbaijan. Initially issued regulations are general and have not yet been elaborated for specific approaches.

3. Transfer pricing documentation requirements

a) Applicability

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

There are no specific guidelines or rules on preparation and submission of transfer pricing documentation. However, the rules provide the right for the tax office to review pricing applied in controlled transactions. Accordingly, the taxpayers have the right to review and document pricing analysis individually. The documented transfer pricing analysis should be provided to the tax office during the tax audit to justify applied prices in controlled transactions.

There is also requirement on submission of notification on controlled transactions (the notification).

► Does transfer pricing documentation have to be prepared annually?

There is a requirement to review the controlled transactions for compliance with arm's-length principle for each respective period when transaction occurs.

The notification should be submitted annually.

b) Materiality limit or thresholds

► Transfer pricing documentation

Effective for 2018 reporting period: The transfer pricing control applies in respect of controlled transaction exceeding contractual annual turnover of AZN500,000 (approximately USD295,945).

The transfer pricing control includes the right of the tax authorities to review the pricing in such transactions during the tax audit. Accordingly, it also includes the right of the taxpayer to document such transactions to support contract prices during the tax audits, as well as, the requirement to submit the notification.

The notification is submitted in respect of the controlled transactions the contractual turnover of which exceeds the threshold of AZN500,000 (approximately USD295,945).

Effective for 2019 reporting period: There is no threshold for transfer pricing control.

The transfer pricing control includes the right of the tax authorities to review the pricing in such transactions during the tax audit. Accordingly, it also includes the right of the taxpayer to document such transactions to support contract prices during the tax audits, as well as, the requirement to submit the notification.

The notification is submitted in respect of the controlled transactions the turnover of which exceeds the threshold of AZN500,000 (approximately USD295,945) after review of the transfer prices and respective corrections to contractual price if any.

► Economic analysis

Economic analysis is the basis of pricing review under the transfer pricing control. See above comments on materiality for transfer pricing control.

► BEPS master and local files

This is not applicable.

► CbCR

This is not applicable.

c) Specific requirements

► Treatment of domestic transactions

Domestic transactions are not subject to the transfer pricing regulations.

► Local language documentation requirement

Local tax authorities require documents in 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

Effective for 2018 reporting period: Financial transaction on loans from related parties are covered with limitation of interest deductions for profit tax purposes.

Effective for 2019 reporting period: Financial transaction on loans from related parties are subject to general transfer pricing control.

d) BEPS Action 13 implementation overview

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

No.

► Coverage in terms of master and local files

This is not applicable.

► Effective or expected commencement date

This is not applicable.

► Material differences from OECD report template or format

This is not applicable.

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

This is not applicable.

► CbCR notification and CbC report submission requirement

This is not applicable.

► CbCR Notification included in the statutory tax return

This is not applicable.

► Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports.

This is not applicable.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

All transfer pricing related disclosures are filed in the notification.

b) Transfer pricing-specific returns

The returns are filed in the notification on controlled transactions.

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

▶ Corporate income tax return

31 March of the year following the reporting year, with possibility for extension up to three months.

▶ Other transfer pricing disclosures and return

Effective for 2018 reporting period: 31 March of the year following the reporting year

Effective for 2019 reporting period: within terms prescribed for profit tax return

▶ CbCR notification

This is not applicable.

▶ CbC report preparation and submission

This is not applicable.

b) Documentation preparation deadline

Effective for 2018 reporting period: There is no specific deadline.

Effective for 2019 reporting period: There is no specific deadline. For the purposes of notification, filing is made in respect of the controlled transactions with annual turnovers exceeding the threshold applied on turnovers after transfer pricing review (corrected if any).

c) Documentation submission deadline

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

No

▶ Time period or deadline for submission on tax authority request

A desk audit procedure could be initiated within 30 business days from submission of notification. The documents requested for the purpose of desk audit procedure should be submitted within five business days from the request¹.

¹Section 37.2 of the Tax Code of Azerbaijan.

Documents requested as part of field audit procedure should be submitted within 15 days from the request.²

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

International transactions – Yes

Domestic transactions – No

b) Priority and preference of methods

The Transfer Pricing Rules prescribe five methods:³

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

CUP method is the most preferred method.⁴ If the CUP is not available, 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. Therefore, determination of a region highly depends on the facts and circumstances of the transaction.⁵

b) Single-year vs. multiyear analysis

Single year analysis is required.⁶

²Section 42.1 of the Tax Code of Azerbaijan.

³Section 5 of the Transfer Pricing Rules.

⁴Section 5.2 of the Transfer Pricing Rules.

⁵Section 4.3 of the Transfer Pricing Rules.

⁶Section 4.3 of the Transfer Pricing Rules.

c) Use of interquartile range

The regulations envisage full range of comparable as acceptable market range.⁷

d) Fresh benchmarking search every year vs. roll forwards and update of the financials

Single year search is required for every year where a controlled transaction occurs.

e) Simple vs. weighted average

Simple average is applied to calculate transfer price where several comparable transactions are identified.⁸

f) Other specific benchmarking criteria, if any

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

8. Transfer pricing penalties and relief

a) Penalty exposure

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

Effective for 2018 reporting period: A penalty of AZN500 (USD200) could apply for failure to submit the notification.

Effective for 2019 reporting period: In addition to non-submission related penalty, a penalty of AZN500 (USD200) applies for inaccurate presentation of information in Notification.

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

In case the transfer price adjustment is made by the tax authorities, a financial sanction at the rate of 50% of understated tax amount is applied.

- Is interest charged on penalties or payable on a refund?

Late payment interest could apply at the rate of 0.1% in case transfer price adjustment made by a taxpayer results in understatement of taxes for respective period.

⁷Section 2.0.9 of the Transfer Pricing Rules.

⁸Section 6.3 of the Transfer Pricing Rules.

In case transfer price adjustment is made by the tax authorities, a financial sanction at the rate of 50% of understated tax amount is applied.

b) Penalty relief

No specific penalty relive is envisaged.

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.⁹

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

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

High: A transfer pricing-related audit is conducted as part of profit tax audits.

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

High: Considering priority order of transfer pricing methodology and certain specifics of local regulations and practice, the risk of methodology challenges is high.

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

High: The tax office has the right to revise the methodology applied by the taxpayer. The results of the revision is likely to be an adjustment.

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

No observation yet.

11. APA and MAP opportunities

- Availability (unilateral, bilateral and multilateral)

⁹Article 56.1 of the Tax Code.

Azerbaijan

The Transfer Pricing Rules support unilateral APAs.¹⁰ However, the mechanism is not yet elaborated.

► **Tenure**

There is none specified.

► **Rollback provisions**

This is not applicable.

► **MAP opportunities**

There is none specified.

¹⁰Section 4.3 of the Transfer Pricing Rules

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

Ministry of Finance

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the 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 and 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 or rules?

No.

▶ Does transfer pricing documentation have to be prepared annually?

This is not applicable.

b) Materiality limit or thresholds

▶ Transfer pricing documentation

This is not applicable.

▶ Economic analysis

This is not applicable.

▶ BEPS master and local files

There is none specified.

▶ CbCR

There is none specified.

c) Specific requirements

▶ Treatment of domestic transactions

There is no documentation obligation for domestic transactions.

▶ Local language documentation requirement

This is not applicable.

▶ Safe harbor availability

This is not applicable.

d) BEPS Action 13 implementation overview

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

No, however on 11 May and 16 May 2018, the OECD announced that Bahrain and the United Arab Emirates (UAE), respectively, have joined the BEPS Inclusive Framework (BEPS IF). This brings the total number of countries and jurisdictions participating in the BEPS plan to 116.

BEPS Action 13 requires, as a minimum standard, compliance with CbCR. While Bahrain and the UAE currently do not have transfer pricing rules in place, it is likely that these jurisdictions will issue, at the least, stand-alone legislations to govern CbCR.

On 3 May 2018, Bahrain deposited its instrument of ratification for the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (the convention). The convention has entered into force for Bahrain on 1 September 2018, i.e., on the first day of the month following the expiration of a period of three months after the deposit of the instrument of ratification. The convention is an important platform that will enable Bahrain to implement initiatives on international tax cooperation, including the automatic exchange of information (on request, spontaneous or automatic), including CbC reports under BEPS Action 13.

▶ Coverage in terms of master and local files

This is not applicable.

▶ Effective or expected commencement date

There is none specified.

▶ Material differences from OECD report template or format

This is not applicable.

Bahrain

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

There is none specified.

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

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

- ▶ **CbCR notification included in the statutory tax return**

There is none specified.

- ▶ **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

No, there is none specified.

4. Transfer pricing return and related-party disclosures

- a) Related-party disclosures and transfer pricing-related appendices**

This is not applicable.

- b) Transfer pricing-specific returns**

This is not applicable.

5. Transfer pricing documentation and 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 and return**

This is not applicable.

- ▶ **CbCR notification**

This is not applicable.

- ▶ **CbC report preparation and submission**

This is 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?**

This is not applicable.

- ▶ **Time period or deadline for submission on tax authority request**

This is not applicable.

6. Transfer pricing methods

- a) Applicability (for both international and domestic transactions)**

This is not applicable.

- b) Priority and preference of methods**

This is not applicable.

7. Benchmarking requirements

- a) Local vs. regional comparables**

This is not applicable.

- b) Single-year vs. multiyear analysis**

This is not applicable.

- c) Use of interquartile range**

This is not applicable.

- d) Fresh benchmarking search every year vs. roll forwards and update of the financials**

This is not applicable.

- e) Simple vs. weighted average**

This is not applicable.

- f) Other specific benchmarking criteria, if any**

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

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

This is not applicable.

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

This is not applicable.

- ▶ Is interest charged on penalties or payable on a refund?

This is not applicable.

b) Penalty relief

This is not applicable.

9. Statute of limitations on transfer pricing assessments

This is not applicable.

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

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

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

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

This is not applicable.

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

This is not applicable.

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

This is not applicable.

11. APA and MAP opportunities

- ▶ Availability (unilateral, bilateral and multilateral)

This is not applicable.

- ▶ Tenure

This is not applicable.

- ▶ Rollback provisions

This is not applicable.

- ▶ MAP opportunities

As BEPS associates, Bahrain and the UAE will have to work closely with other jurisdictions to monitor the implementation of the minimum standard on dispute resolution under the BEPS plan. This will complement the other BEPS minimum standards and facilitate taxpayers' access to effective and expedient dispute resolution mechanisms under bilateral tax treaties.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

National Board of Revenue (NBR)

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations or rulings and the 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, refers to transfer pricing.

► Section reference from local regulation

Section 107A (2) of the Ordinance refers to transfer pricing.

This is not applicable.

► BEPS master and local files

This is not applicable.

► CbCR

This is not applicable.

c) Specific requirements

► 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.

► Safe harbor availability

There is none specified.

d) BEPS Action 13 implementation overview

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

No.

► Coverage in terms of master and local files

This is not applicable.

► Effective or expected commencement date

This is not applicable.

► Material differences from OECD report template or format

This is not applicable.

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

This is not applicable.

► CbCR notification and CbC report submission requirement

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

► CbCR notification included in the statutory tax return

This is not applicable.

2. OECD Guidelines treatment and 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 or 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 or thresholds

► Transfer pricing documentation

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

► Economic analysis

- ▶ Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

No.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 transfer pricing regulations, provided the taxpayer is entering into an international transaction in which the aggregate value of the international transactions entered into by the taxpayer exceeds BDT30 million.

5. Transfer pricing documentation and 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 and return

It should be filed along with the corporate tax return.

- ▶ CbCR notification

This is not applicable.

- ▶ CbC report preparation and submission

This is 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 or 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 (for both international and domestic transactions)

Yes for international transactions (not applicable for domestic transactions)

b) Priority and 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. multiyear analysis

Bangladesh

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

c) Use of interquartile range

Bangladesh transfer pricing regulations are silent on the use of the mean-median-range method 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 forwards and 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

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

► Consequences of failure to submit, late submission or incorrect disclosures

The details of the penalty provisions are provided below:

- 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.
- 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.
- 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.

- 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?

This is not applicable.

► Is interest charged on penalties or payable on a 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 and related audit by the local authority

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

This is 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.

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

Refer to the section above.

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

Refer to the section above.

11. APA and MAP opportunities

- ▶ **Availability (unilateral, bilateral and multilateral)**

Bangladesh does not have a formal APA program.

- ▶ **Tenure**

This is not applicable.

- ▶ **Rollback provisions**

This is not applicable.

- ▶ **MAP opportunities**

This is not applicable.

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Belarus

1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Tax and Duties Ministry of the Republic of Belarus (TDM)

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations or rulings and the effective date of applicability

Prior to 1 January 2019, transfer pricing rules in Belarus were regulated by Article 30-1 of the Tax Code of the Republic of Belarus (the Tax Code).

Starting 1 January 2019, Article 30-1 was abolished and the new transfer pricing rules were introduced with the Law of the Republic of Belarus On amendments and additions to some laws of the Republic of Belarus №159-3 of 30 December 2018. With these amendments, transfer pricing rules in Belarus are regulated by Chapter 11 of the Tax Code, titled "Principles for determining the price for goods (works, services), property rights for taxation purposes".

► Section reference from local regulation

Chapter 11 of the Tax Code, together with Article 20, which defines related parties and associated enterprises in Belarus is the reference for local regulation.

2. OECD Guidelines treatment and reference

Belarus is not a member of the OECD although the country's law is generally in line with them. However, Belarusian transfer pricing rules do not refer to the OECD Guidelines because of which the practical application of the rules may, therefore, be different from the OECD Guidelines.

3. Transfer pricing documentation requirements

a) Applicability

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

Yes.

► Does transfer pricing documentation have to be prepared annually?

Yes. Starting 1 January 2019, transfer pricing documentation has to be prepared annually. Previously, the Belarusian legislation did not envisage a direct requirement on the frequency of updating transfer pricing documentation. Moreover, technically, a transfer pricing documentation could be requested by the tax authorities on a quarterly basis.

b) Materiality limit or thresholds

► Transfer pricing documentation

Type of transaction	Thresholds, the total value of all purchase or sale transactions with one party per year (BYN)			
	2018		2019	
	Large taxpayers	All other categories of taxpayers	Large taxpayers	All other categories of taxpayers
Foreign transactions				
With related parties		100,000	2,000,000	400,000 ²
With independent parties	1,000,000 ¹	Not a subject for transfer pricing control	Not a subject for transfer pricing control	
With residents of offshore zones	100,000		400,000	
With strategic goods	1,000,000		2,000,000	
Domestic transactions				
With related parties entitled not to pay profits tax or exempted from the said tax	100,000		2,000,000	400,000
Transactions with immovable property and housing bonds				
With related parties	No threshold		No threshold	
With parties applying special tax regimes			Not a subject for transfer pricing control	
With other parties, including independent parties ³				

In addition, from 1 January 2019, banking operations are subject to transfer pricing control along with all other transactions (there was a special exemption for such transactions in 2018).

¹In 2018, all foreign transactions of large taxpayers were subject to control if their total annual value exceeded BYN1 million.

²Here and further on, BYN100,000 is approximately USD47,000, BYN400,000 is approximately USD186,000, BYN1 million is approximately USD465,000, and BYN2 million is approximately USD930,000 (at the exchange rate set by the National Bank of the Republic of Belarus as of 1 February 2019).

³Before 2019, all transactions with immovable property and housing bonds were controlled (the dependence of parties or tax regime applied by them was not taken into account).

► **Economic analysis**

Thresholds are the same as for transfer pricing documentation.

► **BEPS master and local files**

This is not applicable.

► **CbCR**

This is not applicable.

c) Specific requirements

► **Treatment of domestic transactions**

There is a documentation obligation for the following domestic transactions:

- **Transactions with immovable property and housing bonds carried out between related parties or with unrelated parties applying special tax regimes (without any threshold):**
 - In 2018, all transactions with immovable property and housing bonds were subject to transfer pricing control.
 - Starting 1 January 2019, only the transactions that are carried out between related parties or with unrelated parties applying special tax regimes are subject to transfer pricing control.
- **Transactions with related parties (including the involvement of independent intermediaries with no substantial functions) that are exempt from taxation due to the application of special tax regimes:**
 - Starting 1 January 2019, the threshold for such transactions has been raised to up to BYN400,000 for all taxpayers (except for large taxpayers) and to BYN2 million for large taxpayers.
 - Previously, the threshold was BYN100,000 for all taxpayers.

► **Local language documentation requirement**

The transfer pricing documentation needs to be submitted in the local language. According to 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**

In 2018, a 20% variance from the arm's-length range was acceptable. If the variance went beyond 20%, tax liabilities were to be adjusted to the lowest or highest range value.

Starting 1 January 2019, the acceptable 20% deviation from the arm's-length range has been abolished.

In addition, intra-group financing is not subject to transfer pricing rules in Belarus.

d) BEPS Action 13 implementation overview

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

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

► **Coverage in terms of master or local files**

This is not applicable.

► **Effective or expected commencement date**

This is not applicable.

► **Material differences from OECD report template or format**

This is 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**

No.

► **CbCR notification included in the statutory tax return**

This is not applicable.

► **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

No.

4. Transfer pricing return and related-party disclosures

Belarus

a) Related-party disclosures and 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; 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 TDM.

Details of related parties and 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 transfer pricing rules require the 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 and disclosure timelines

a) Filing deadline

► Corporate income tax return

The deadline is on a quarterly basis (i.e., 20 April, 20 July, 20 October and, for the fourth quarter, 20 March of the year following the tax period).

► Other transfer pricing disclosures and return

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

► CbCR notification

This is not applicable.

► CbC report preparation and submission

This is not applicable.

b) Documentation preparation deadline

Transfer pricing documentation should be finalized by the time of submission 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 an annual basis (before 2019, it was on a quarterly basis).

► Time period or deadline for submission on tax authority request

In 2018, transfer pricing documentation had to be submitted within 10 working days from the request for a desk tax audit and 5 working days from the request for a field tax audit.

Effective 1 January 2019, companies are required to file the documentation within 10 working days from the request for a desk tax audit. For a field tax audit, the deadline is not established and should be specified in the request of the tax authority, but must be at least 2 working days.

Moreover, the tax authorities are entitled to request transfer pricing documentation in the course of tax audits, but it should not be earlier than 1 June of the year following the calendar year during which the transaction was conducted.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

Yes.

b) Priority and preference of methods

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

- CUP
- Resale price
- Cost-plus
- TNMM
- Profit-split

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

In addition, starting 1 January 2019, there is a best-method rule in respect of the Cost-plus and TNMM, i.e., taxpayer should apply a method that enables the company to make the most reliable conclusion regarding the arm's-length level of prices.

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. In addition, starting 1 January 2019, the Tax Code allows using foreign comparable data if the local data is not available. At the same time, the law allows tax authorities to use secret comparables (customs information, peer analysis, etc.).

b) Single-year vs. multiyear analysis

In 2018, single-year testing (the same year as the year of the controlled transactions) were required. If the data for the same year was not available, in practice, the data for three years preceding the analyzed year was accepted, although there was no direct reference in Belarusian transfer pricing regulations in terms of the number of analyzed years in such a case.

Starting 1 January 2019, the Tax Code stipulates that, in calculating an arm's-length range, one should use the financial information available at the date of the controlled transaction (but no later than 31 December of the year during which the controlled transaction was performed) or the data for three calendar years preceding the analyzed year or the year in which the prices of the controlled transaction were established.

c) Use of interquartile range

In 2018, a full range was accepted instead of the interquartile range, with an allowable 20% deviation of actual results from the full range.

Starting 1 January 2019, the allowable 20% deviation was abolished; however, the full range is still to be used instead of the interquartile range.

d) Fresh benchmarking search every year vs. roll forwards and 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

Starting 1 January 2019, the Tax Code stipulates calculation of a weighted average range. Previously, the weighted average was also used in practice; however, no preference was specified as such.

f) Other specific benchmarking criteria, if any

Starting 1 January 2019, the benchmarking criteria for comparable companies were amended.

Local search criteria for comparables	2018	2019
Independence	The level of participation is 20%.	The level of participation is 20%. In addition, the independence threshold may be increased up to 50% if less than four comparable companies are identified based on the combination of all search criteria.
Losses	Comparable companies should not report losses in each year of the analyzed period.	Comparable companies should not report losses in more than one year during the analyzed period.
Net assets	The net assets of potentially comparable companies should be positive in each year of the analyzed period.	The net assets of potentially comparable companies should not have a negative value as of 31 December of the last year in the analyzed period.

8. Transfer pricing penalties and relief

a) Penalty exposure

► Consequences of failure to submit, late submission or incorrect disclosures

Belarusian law does not set out any special penalties for the 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 transfer pricing 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 BYN735 in 2018 and up to BYN765 starting 1 January 2019).

Belarus

Starting 17 July 2018, the penalty of 40% on the additional tax payable is also applied; before this date, the penalty was 20%. In addition, late payment of tax is subject to a daily late payment penalty of 1/360 of the refinancing rate set by the National Bank of the Republic of Belarus.

► **Is interest charged on penalties or payable on a refund?**

Interest is payable by the tax authorities on a tax refund starting the date following the expiration date for making a decision on a tax refund and by the date when such decision is made. The interest rate shall be applied at 1/360 of the rate of the National Bank of the Republic of Belarus, which was effective on the day of making a decision on a tax refund.

b) Penalty relief

In general, penalty exemption is available if a taxpayer adjusted its tax return and paid the outstanding tax liability before a tax audit (i.e., for self-initiated adjustments). The penalty does not apply if prices are established in accordance with an APA.

For 2019 to 2022, the late payment penalty on tax adjustment is not applied if the outstanding tax liability is settled by a taxpayer within five days from the date of submission of the adjusted tax return. This relief is applicable for both self-initiated transfer pricing adjustments and for adjustments made by tax authorities during tax audits. Interest relief is not applicable if the income tax base is adjusted during a tax audit conducted on behalf of the criminal prosecution bodies. For other periods, late payment of tax is subject to a daily late payment penalty of 1/360 of the national bank's refinancing rate.

9. Statute of limitations on transfer pricing assessments

From 1 January 2018, the tax authority can perform the tax audit for the five-year period.

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

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

There are no specific transfer pricing related audits, transfer pricing matters are audited by the tax authorities during general tax audits. The average frequency of tax audits is five calendar years, and the likelihood of transfer pricing matters to be covered by such audits is generally high.

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

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

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

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

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

The TDM has published the list of taxpayers that are a top priority for transfer pricing audits:

- **Loss-making companies (i.e., companies that report losses for two or more years in a row)**
- **Affiliates of multinational companies (i.e., companies that have foreign related parties)**
- **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)**
- **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**
- **Companies that sell real estate to related parties**
- **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**

11. APA and MAP opportunities

▶ **Availability (unilateral, bilateral and multilateral)**

Starting 1 January 2019, the APA program is available for large taxpayers and taxpayers, which conducted controlled transactions in the amount exceeding BYN2m per year. The Tax Code does not envisage a possibility to conclude bilateral or multilateral APAs.

▶ **Tenure**

APAs can be concluded up to the three calendar years term and may be extended for two more calendar years.

▶ **Rollback provisions**

The effective period of the APAs may only cover the first day of the calendar year in which a taxpayer applied to the TDM to conclude such APAs. The Tax Code does not provide any other rollback provisions.

▶ **MAP opportunities**

MAP opportunities are available for jurisdictions that the Republic of Belarus has effective Double Tax Treaty with.

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

Belgian General Administration of Taxes, part of the Federal Public Service Finance

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations or rulings and the effective date of applicability

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

Transfer pricing documentation rules are embedded in the Belgian ITC (Articles 321/1-321/7 and 445, Section 3) through a law passed on 1 July 2016 and the Royal Decree of 2 December 2016. Additional information regarding the application of sanctions and fines, in case of noncompliance with the Belgian transfer pricing documentation requirements, is set in a Belgian administrative guidelines published in February 2019.

Articles 26; 49; 53; 54; 55; 79; 207; 307, Section 1, s. 3; and 344 of the Belgian ITC also relate to transfer pricing.

In November 2018, Belgium issued draft administrative guidelines, containing detailed guidance on transfer pricing. The draft was subject to public consultation and a final revision is expected in the near future.

► 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 the parties. The Royal Decree of 10 August 2009 refers to International Accounting Standard 24 for further definitions of related parties.

2. OECD Guidelines treatment and 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 legislation does not contain any

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 laws – as with many other countries – the Belgian interpretation of certain transfer pricing elements differs from other countries'. Belgium has implemented additional compliance requirements (transfer pricing forms) in addition to the arm's length principle.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines or 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 annually file the mandatory local file transfer pricing form (275.LF) due with the tax return; the master file form (275.MF), the CbC report and CbCR notifications. In addition, transaction values in the local file transfer pricing report are also required to be updated (because these local file transfer pricing forms ask to confirm the existence of transfer pricing documentation reports, which also should be updated yearly).

b) Materiality limit or 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 transfer pricing audit, the Belgian companies and permanent establishments must provide transfer pricing 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 should include, at least the following:

- Activities of the group, including competitive position, level of the 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**

▶ **Economic analysis**

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

▶ **BEPS master and local files**

Belgian tax resident companies or permanent establishments that exceed at least one of the following criteria in their (statutory) financial accounts of the prior year have to submit master file transfer pricing form (275.MF) and local file transfer pricing 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**
- ▶ **The average annual number of employees of 100 in FTE positions (in total)**

In addition, a detailed local file transfer pricing 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 transfer pricing form will be required for every business unit of the Belgian entity for every intercompany cross-border transaction exceeding EUR25,000.

On 7 December 2018, the Belgian tax authorities announced that they will grant an extension for the filing of some BEPS 13-related documentation, which was due between 31 December 2018 and 28 February 2019. Specifically, an extension is granted for the filing of the master file form (275MF), the local file form (275LF) and the CbCR notification form (275CBCNOT). For those transfer pricing documentations, the reporting deadline has been extended to 28 February 2019. The extension applies neither to the CbC report form (275CBC) nor to the corporate income tax return.

▶ **CbCR**

CbC reporting applies to multinational groups with a consolidated group revenue equal to or exceeding EUR750 million. Belgian entities, which are the ultimate parent companies or the surrogate parent companies of such multinational groups, should annually file the CbC reporting form (275.CBC) with the Belgian tax authorities within 12 months after the end of the group's financial year. The Belgian entity may also be required to file this form in a number of other cases, for instance, if there is no agreement for the exchange of information in tax matters between Belgium and the reporting entity's country.

Each Belgian entity of a qualifying multinational group should annually file a CbC reporting notification form (275.CBC NOT) with the Belgian tax authorities indicating whether the Belgian entity is the ultimate parent company or the surrogate parent company. If it is not, the Belgian entity should identify the group entity that will comply with the CbC reporting. The notification should be filed with the Belgian tax authorities by the end of the financial year of the group.

On 8 February 2019, the Council of Ministers approved a new draft law with various technical direct and indirect tax measures. The draft law, i.a., abolishes the annual obligation to file CBC notification form in Belgium. For reporting periods ending on 31 December 2019 or later, it will no longer be required to file the CbC notification form if there are no changes to the information previously reported. If there are changes, the filing of the CbCR notification form will be required.

c) Specific requirements

▶ **Treatment of domestic transactions**

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

▶ **Local language documentation requirement**

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

Belgium

▶ Safe harbor availability

There is none specified.

d) BEPS Action 13 implementation overview

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

Yes.

▶ Coverage in terms of master and local files

It covers both the master and local files.

▶ Effective or expected commencement date

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

▶ Material differences from OECD report template or format

There are no material differences between the OECD report template or 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 transfer pricing local country report and master file are typically sufficient.

▶ CbCR notification and CbC report submission requirement

Yes.

▶ CbCR notification included in the statutory tax return

There is none specified.

▶ Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

Yes. It was signed on 27 January 2016.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 the 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 arrangement(s); whether 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. Evidently, 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 by 12 months after the last day of the group's financial year to which they relate. The local file transfer pricing forms (275.LF) 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 notification (275.CBC.NOT) before the end of the group's financial year.

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

► Corporate income tax return

Generally, the deadline is six months after year-end, with a three-month general extension available and usually applicable. For a company with a calendar financial year, the deadline is typically the end of September (the exact date is specified by the Belgian tax authorities each year).

► Other transfer pricing disclosures and return

Local file transfer pricing forms (275.LF), with the corporate tax return – for a company with a calendar financial year – are required typically by the end of September (the exact date is specified by the Belgian tax authorities each year).

Master file transfer pricing form (275.MF) needs to be submitted within 12 months after the last day of the group's financial year to which it relates.

► CbCR notification

The filing deadline is by the end of the financial year of the group.

► CbC report preparation and submission

It should be filed within 12 months after the last day of the group's financial year to which it relates. For a group with a calendar financial year, the deadline would be 31 December.

b) Documentation preparation deadline

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

In addition, when completing the local file form, which is due together with the corporate income tax return, the taxpayer shall notify the tax authorities if transfer pricing documentation is available. 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 transfer pricing report. However, as mentioned above, the local file transfer pricing 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 transfer pricing forms – as the latter asks to confirm the existence of the aforesaid local file transfer pricing documentation reports – the existence of such reports also needs to be mentioned as the filling of the tax return.

On 7 December 2018, the Belgian tax authorities announced that they will grant an extension for the filing of some BEPS 13-related documentation, which was due between 31 December 2018 and 28 February 2019. Specifically, an extension is granted for the filing of the master file form (275MF), the local file form (275LF) and the CbCR notification form (275CBCNOT). For those transfer pricing documentations, the reporting deadline has been extended to 28 February 2019. The extension does not apply for the CbC report form (275CBC) or for the corporate income tax return.

► Time period or deadline for submission on tax authority request

The taxpayer has to submit the transfer pricing documentation report within 30 days upon request. This can be extended for justified reasons.

6. Transfer pricing methods

a) Applicability (for both international and domestic 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.

b) Priority and 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; pan-European comparables are accepted.

b) Single-year vs. multiyear analysis

Single-year testing is required.

c) Use of interquartile range

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

d) Fresh benchmarking search every year vs. roll forwards and 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 recommended as a minimum 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 weighted average for arm's-length analysis. No legal regulations exist in this regard.

f) Other specific benchmarking criteria, if any

This is not applicable. However, based on experiences, there is a well-established expectation of certain specific benchmarking criteria of the Belgian tax authorities, some of which include:

- ▶ **The selection of companies with unconsolidated accounts only**
- ▶ **The selection of independent companies (owning no subsidiaries and not owned by any shareholders)**
- ▶ **The rejection of start-up companies (i.e., those active for less than three years)**

In addition, recently, the Belgian tax authorities issued detailed draft of transfer pricing administrative guidelines containing, i.a., suggested criteria for the benchmarking search. The

circular is in draft form and is subject to public consultation, final administrative guidelines is expected to follow.

8. Transfer pricing penalties and relief

a) Penalty exposure

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

In accordance with the new transfer pricing legislation, failure to submit the CbC report, CbCR notification, master file forms (275.MF) or local file transfer pricing 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 or payable on a refund?

There is 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, since 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 is 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 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 or related audit by the 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 transfer pricing audit questionnaires sent by the Belgian tax authorities to Belgian companies and permanent establishments (i.e., about 200 to 300 transfer pricing 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 and target Belgian companies and permanent establishments for transfer pricing audits, they also use information available in the filed TP forms.

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

Depending on the robustness of the transfer pricing methodology and support available, as well as on the type of the intercompany transactions under review, the likelihood that the 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. In case of uncertain position or doubts, there is a room for interpretation.

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

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

▶ Specific transactions, industries and 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 in profitability
- ▶ Business reorganizations
- ▶ Migration of businesses
- ▶ The use of tax havens or low-tax-rate countries
- ▶ Back-to-back operations
- ▶ Circular structures
- ▶ Invoices for services sent at the end of the year (i.e., management services)
- ▶ Changes in the number of employees
- ▶ Business restructurings
- ▶ Intangibles-related and financial transactions
- ▶ Financial transactions
- ▶ Failure to file transfer pricing forms in Belgium

11. APA and MAP opportunities

▶ Availability (unilateral, bilateral and 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 Competent

Belgium

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.

Rollbacks are not available for unilateral APAs. Rollback is available for bilateral and multilateral APAs when the relevant facts and circumstances of prior years are identical to those in the proposed APA and filing deadlines have not expired when the bilateral or multilateral APA is concluded with the relevant foreign tax authority. The foreign tax authority must also approve of the rollback.

► **MAP opportunities**

MAPs are generally available under the Double Tax Treaties that Belgium has with its treaty partners. Belgium had a total of 772 active MAP applications as of 31 December 2017 with 502 cases started in 2017 (also on non-TP aspects).

Contact

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

Internal Taxes Service (Servicio de Impuestos Nacionales)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the effective date of applicability

- ▶ Act No. 843, 516 and 549
- ▶ Supreme Decree No. 2227 and No. 2993
- ▶ Normative Resolution No. 10-0008-15, No. 101700000001 and 101800000006

▶ Section reference from local regulation

Refer to the section above.

2. OECD Guidelines treatment and 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 or 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 or thresholds

▶ Transfer pricing documentation

There is no materiality limit.

▶ Economic analysis

There is no materiality limit.

▶ BEPS master and local files

This is not applicable.

▶ CbCR

This is not applicable.

c) Specific requirements

▶ 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 or implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

This is not applicable.

▶ Coverage in terms of master and local files

This is not applicable.

▶ Effective or expected commencement date

This is not applicable.

▶ Material differences from OECD report template or format

This is not applicable.

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

This is not applicable.

▶ CbCR notification and CbC report submission requirement

There is no CbCR notification and CbC report submission requirement for Bolivia.

▶ CbCR notification included in the statutory tax return

This is not applicable.

▶ Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

Bolivia

This is not applicable.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

There is none specified. Normative Resolution No. 10-0008-15 of April 2015 does not describe them.

b) Transfer pricing-specific returns

Transfer pricing-specific returns have to be submitted through Form 601.

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- ▶ Corporate income tax return

In Bolivia there are different dates of presentation according to the business line:

- ▶ April 30th for Commercial and service companies
- ▶ July 29th for Industrial companies
- ▶ October 30th Agroindustrial companies
- ▶ January 30th Mining and oil companies
- ▶ Other transfer pricing disclosures and return

In Bolivia there are different dates of presentation according to the business line:

- ▶ April 30th for Commercial and service companies.
- ▶ July 29th for Industrial companies
- ▶ October 30th Agroindustrial companies
- ▶ January 30th Mining and oil companies
- ▶ CbCR notification

This is not applicable.

- ▶ CbC report preparation and submission

This is 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 million. 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 or 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 (for both international and domestic transactions)

Yes, it is applicable but only for international transactions.

b) Priority and 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 interquartile; there is an arithmetical formula.

b) Single-year vs. multiyear analysis

There is no rule specified. But, in practice, multiyear testing is preferred in testing the arm's-length analysis.

c) Use of interquartile range

Use of interquartile range is not applicable; an arithmetical formula has to be used in its place.

d) Fresh benchmarking search every year vs. roll forwards and 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

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

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

USD1,645 for not filing transfer pricing information or tax returns and USD822 for an uncompleted filing.

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

This is not applicable.

- ▶ Is interest charged on penalties or payable on a refund?

There is no interest charged.

b) Penalty relief

This is not applicable.

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 and 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 the transfer pricing methodology is challenged (*high/medium/low*)

Refer to the section above.

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

There is none specified.

11. APA and MAP opportunities

- ▶ Availability (unilateral, bilateral and multilateral)

This is not defined in the current law.

- ▶ Tenure

This is not applicable.

- ▶ Rollback provisions

This is not applicable.

- ▶ MAP opportunities

This is not applicable.

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Bosnia and Herzegovina

1. Tax authority and relevant transfer pricing regulation or 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 or rulings and the 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 or 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 58 through 60 of the CIT Law defines the obligation to prepare and file transfer pricing documentation (latest update effective from 1 January 2017), 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 and 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 are generally based on the OECD Guidelines.

3. Transfer pricing documentation requirements

a) Applicability

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

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

► 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 or thresholds

► Transfer pricing documentation

There is no materiality limit.

► Economic analysis

There is no materiality limit.

► BEPS master and local files

This is not applicable.

► CbCR

Groups with consolidated revenue above approximately EUR750 million.

c) Specific requirements

► **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

There are 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 (e.g., accounting, IT services, etc.).

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 or 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 local files**

Federation of Bosnia and Herzegovina

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

Republic of Srpska

This is not applicable.

► **Effective or 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

There is none specified.

► **Material differences from OECD report template or 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 or format.

Republic of Srpska

This is 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 or format would be required.

Republic of Srpska

This is 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.

► **CbCR notification included in the statutory tax return**

None specified.

► **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

No.

Bosnia and Herzegovina

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 on 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 and disclosure timelines

a) Filing deadline

► Corporate income tax return

30 days from the deadline for submission of financial reports (e.g., for 2018, the deadline for the CIT return would be 30 March 2019) 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 and 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 for the previous fiscal year for annual report of controlled transactions in Republic of Srpska

► CbCR notification

This is not applicable.

► CbC report preparation and submission

The report needs to be prepared and submitted by 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 or 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

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 influence 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.

b) Priority and 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. multiyear analysis

There is a preference for multiple-year analysis in the Federation of Bosnia and Herzegovina; use of multiyear 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 forwards and 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

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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 and relief

a) Penalty exposure

- Consequences of failure to submit, late submission 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 (i.e., for 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 or payable on refund?

Federation of Bosnia and Herzegovina

Legislation in the Federation of Bosnia and Herzegovina prescribes that the interest is charged on penalties or 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 or payable on refund at a daily rate of 0.03%.

b) Penalty relief

This is 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 and related audit by the 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.

- 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 the transfer pricing methodology is challenged (*high/medium/low*)

Medium – refer to the section above.

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

This is not applicable.

11. APA and MAP opportunities

▶ **Availability (unilateral, bilateral and multilateral)**

Advance rulings and APAs are not available in the Federation of Bosnia and Herzegovina or the Republic of Srpska.

▶ **Tenure**

This is not applicable.

▶ **Rollback provisions**

This is not applicable.

▶ **MAP opportunities**

This is applicable through double tax treaties. There is no elaborate practice in Federation of Bosnia and Herzegovina or Republic of Srpska regarding MAP.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Botswana Unified Revenue Service (BURS)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the effective date of applicability

Regulations are yet to be gazetted.

▶ Section reference from local regulation

Section 36A of the Income Tax (Amendment) Act, 2018, comes into effect on 1 July 2019.

2. OECD Guidelines treatment and reference

There is no guideline provided yet.

3. Transfer pricing documentation requirements

a) Applicability

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

There is no guideline provided yet.

▶ Does transfer pricing documentation have to be prepared annually?

There is no guideline provided yet.

b) Materiality limit or thresholds

▶ Transfer pricing documentation

There is no guideline provided yet.

▶ Economic analysis

There is no guideline provided yet.

▶ BEPS master and local files

There is no guideline provided yet.

▶ CbCR

There is no guideline provided yet.

c) Specific requirements

▶ Treatment of domestic transactions

Specific requirements apply to meet the arms'-length conditions that are yet to be provided by the Commissioner General of BURS.

▶ Local language documentation requirement

There is no guideline provided yet.

▶ Safe harbor availability

There is no guideline provided yet.

d) BEPS Action 13 implementation overview

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

Yes*

▶ Coverage in terms of master and local files

There is no guideline provided yet.

▶ Effective or expected commencement date

There is no guideline provided yet.

▶ Material differences from OECD report template or format

There is no guideline provided yet.

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

There is no guideline provided yet.

▶ CbCR notification and CbC report submission requirement

There is no guideline provided yet.

▶ CbCR notification included in the statutory tax return

There is no guideline provided yet.

▶ Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

There is no guideline provided yet.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

There is no guideline provided yet.

b) Transfer pricing-specific returns

There is no guideline provided yet.

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

▶ Corporate income tax return

There is no guideline provided yet.

▶ Other transfer pricing disclosures and return

There is no guideline provided yet.

▶ CbCR notification

There is no guideline provided yet.

▶ CbC report preparation and submission

There is no guideline provided yet.

b) Documentation preparation deadline

There is no guideline provided yet.

c) Documentation submission deadline

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

There is no guideline provided yet.

▶ Time period or deadline for submission on tax authority request

There is no guideline provided yet.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

There is no guideline provided yet.

b) Priority and preference of methods

There is no guideline provided yet.

7. Benchmarking requirements

a) Local vs. regional comparables

There is no guideline provided yet.

b) Single-year vs. multiyear analysis

There is no guideline provided yet.

c) Use of interquartile range

There is no guideline provided yet.

d) Fresh benchmarking search every year vs. roll forwards and update of the financials

There is no guideline provided yet.

e) Simple vs. weighted average

There is no guideline provided yet.

f) Other specific benchmarking criteria, if any

There is no guideline provided yet.

8. Transfer pricing penalties and relief

a) Penalty exposure

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

A penalty not exceeding P500 000.

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

A penalty equal to the greater of 200% of the amount of tax that would have been payable had the transaction been conducted at arm's length or a fine of P10 000.

▶ Is interest charged on penalties or payable on a refund?

There is no guideline provided yet.

b) Penalty relief

Up to 50% penalty relief for failing to furnish BURS with transfer pricing documentation is applicable.

9. Statute of limitations on transfer pricing assessments

There is no guideline provided yet. However, the general statute limitation is eight years.

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

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

The likelihood is high.

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

The likelihood is low based on the current general anti-avoidance audits.

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

The likelihood is low based on the current general anti-avoidance audits.

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

Related-party transactions are more likely to undergo audits.

11. APA and MAP opportunities

▶ Availability (unilateral, bilateral and multilateral)

Taxpayers may apply to the CG to enter into an APA, and the terms and conditions of entering into an APA will be prescribed by the minister through regulations.

▶ Tenure

There is no guideline provided yet.

▶ Rollback provisions

There is no guideline provided yet.

▶ MAP opportunities

There is no guideline provided yet.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Federal Revenue Department (Receita Federal do Brasil)

b) Relevant transfer pricing section reference

- ▶ Name of transfer pricing regulations or rulings and the effective date of applicability
 - ▶ Law 9.430/1996 was amended by Law 12.715/2012
 - ▶ Law 12.766/2012 introduced further changes to the Brazilian transfer pricing rules for financial transactions with related parties.
 - ▶ Normative Instruction (IN RFB 1.312/12) gives detailed regulations about the local transfer pricing rules. It was amended recently by Normative Instruction RFB 1.870/19.

▶ Section reference from local regulation

The terms “related party” and “associate enterprise” are defined in Article 2 of IN RFB 1.312/12.

2. OECD Guidelines treatment and 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 in the local TP rules.

3. Transfer pricing documentation requirements

a) Applicability

- ▶ Does your country have transfer pricing documentation guidelines or rules?

The preparation of transfer pricing calculations (local transfer pricing study) is the local requirement. In Brazil, it is not necessary to prepare the transfer pricing reports as in OECD countries.

- ▶ Does transfer pricing documentation have to be prepared annually?

Transfer pricing calculations (local transfer pricing study) must be prepared annually under local country regulations. In Brazil, the transfer pricing analysis must be prepared for all transactions qualified under the provisions of Law 9430/96 and IN RFB 1312/12 (goods, services, rights and finance).

b) Materiality limit or thresholds

▶ Transfer pricing documentation

This is not applicable.

▶ Economic analysis

This is not applicable.

▶ BEPS master and local files

This is not applicable.

▶ CbCR

The threshold is BRL2.26 billion.

c) Specific requirements

▶ Treatment of domestic transactions

There is no documentation obligation for domestic transactions.

▶ Local language documentation requirement

Local transfer pricing study must be prepared in Portuguese with monetary figures in Brazilian reals.

▶ Safe harbor availability

Safe harbor limits are applicable only for export transactions. Exports are exempt from the application of transactional transfer pricing rules if they meet one of the following three safe harbor conditions:

- ▶ Export net revenue does not exceed 5% of total net revenue in a calendar year.
- ▶ Profit in export transactions to related companies, on a three-year average, is at least 10% and the inter-company export transactions do not exceed 20% of total net export transactions.
- ▶ 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 or implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Brazil

Brazil has implemented BEPS Action 13 only regarding to the CbC requirements ruled by Normative Instruction 1.681/16.

► **Coverage in terms of master and local files**

It does not cover the master file or local file.

► **Effective or expected commencement date**

For the CbC, the first covered year was the fiscal year 2016 to be filled as part of the local tax return on 31 July 2017.

► **Material differences from OECD report template or format**

The local CbC requirements are similar to those of BEPS Action 13 format for CbC purposes.

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

As mentioned above, in Brazil, the CbC requirements are similar to those of BEPS Action 13 format. There are no local requirements for master file and local file.

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

There is CbCR notification requirement in Brazil to be submitted by 31 July of each year as part of local tax return ("ECF").

► **CbCR notification included in the statutory tax return**

Yes.

► **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

Yes. Brazil has signed MCAs with different countries to exchange CbC information.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 transactions and the details of the local transfer pricing calculations (Brazilian TP study).

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 return ("ECF").

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

► **Corporate income tax return**

The deadline is 31 July.

► **Other transfer pricing disclosures and return**

The deadline 31 July.

► **CbCR notification**

The deadline 31 July.

► **CbC report preparation and submission**

The deadline 31 July.

b) Documentation preparation deadline

Ideally, the transfer pricing documentation must be finalized before the income tax and social contribution payments are due (by the end of January of the immediately following year to the calculation period). Add-backs must be considered timely in the taxable basis and paid within the regular deadline. Fines and interests are charged in case of late payment. Details of the transfer pricing calculations should be informed in the TP forms of the local tax return.

c) Documentation submission deadline

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

Yes. The deadline is 31 July as part of local corporate tax return.

► **Time period or 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 (for both international and domestic transactions)

▶ International transactions

Brazilian rules provide for the following methods for imports and exports of assets, goods and services.

Imports:

- ▶ **Comparable independent price method (PIC)**, defined as the weighted-average price, for identical or similar products, services or rights, charged in purchases or sales carried out between unrelated parties under equivalent payment conditions
- ▶ **Resale price minus gross profit method (PRL)**, defined as the weighted-average sales price in Brazil discounted by unconditional discounts granted; taxes and contribution levied on sales; commissions and brokerage paid; and statutory profit margin, established according to the economic sector of the legal entity subject to the transfer pricing calculation
- ▶ **Production cost-plus profit method (CPL)**, defined as the weighted-average cost of production of identical or similar goods, services or rights in the country where they are originally produced, plus taxes and charges on exports in said country, and a 20% profit margin calculated over the cost
- ▶ **Quotation price on import method (PCI)**, exclusively mandatory for import transactions of commodities that have public prices quoted on stock exchanges or published by any of the institutions listed in IN RFB 1312/12

Exports:

- ▶ **Export sales price method (PVEx)**, defined as the weighted average of export sales prices charged either by the company itself or any other Brazilian exporter for identical or similar goods, services or rights, during the same period and on similar payment conditions
- ▶ **Resale price method**, defined as the weighted-average price of identical or similar goods in the country of destination, on similar payment conditions, fewer taxes included in the price therein and a 15% profit margin on the gross wholesale price or a 30% profit margin on the gross retail sales price
- ▶ **Purchase or production cost method (CAP)**, defined as the weighted-average acquisition or production costs, plus taxes and contributions charged in Brazil on exports

and a 15% profit margin on the sum of costs, taxes and contributions

- ▶ **Quotation price on export method (PCEX)**, exclusively mandatory for export transactions of commodities that public prices quoted on stock exchanges or published by any of the institutions listed in IN RFB 1312/12

b) Priority and preference of methods

There is no best or most appropriate method rule in Brazil. Therefore, there is no priority or preference of methods. An exception is made when it comes to goods considered as commodities. For such cases, the mandatory commodities methods (based on public quotations) must be used.

7. Benchmarking requirements

a) Local vs. regional comparables

The local transfer pricing rules do not require the preparation of economic analysis using a set of comparables for the determination of arm's length range. Therefore, the discussion on local vs. regional comparables for the application of TNMM or CPM methods is not applicable for local transfer pricing study. In Brazil, these transfer pricing methods cannot be applied to test inter-company transactions.

b) Single-year vs. multiyear analysis

Transfer pricing documentation in Brazil should be prepared on the basis of annual data. As an exception, the Brazilian PIC method allows the taxpayer to consider comparable information for the immediately preceding calendar year for cases in which the taxpayer does not identify the minimum amount (threshold) of third party transactions in the same calendar year that the intercompany transactions were carried out.

c) Use of interquartile range

This is not applicable.

d) Fresh benchmarking search every year vs. roll forwards and update of the financials

As Brazilian rules deviate significantly from the international transfer pricing framework, the study is required to occur every calendar year and should be based on information available for the calendar year under analysis.

e) Simple vs. weighted average

There is a preference for weighted average for determining benchmark prices.

f) Other specific benchmarking criteria, if any

This is not applicable.

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

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. Further, BRL500 to BRL1,500 of penalty, per month, will be imposed for failing to file or for not answering tax authority's request and clarification.

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

As 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 or payable on a 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 the 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 or 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)

The likelihood is 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 the transfer pricing methodology is challenged (high/medium/low)

The likelihood is high. Considering that the Brazilian methodology is different from the OECD's, it is very common to have transfer pricing adjustments in Brazil, which have to be added in the corporate income tax base.

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

For certain industries – such as automotive, pharmaceutical, chemical, and oil and gas, and intra-group services into Brazil (services and 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 and MAP opportunities**► Availability (unilateral, bilateral and multilateral)**

The Brazilian Revenue Authority (RFB) has issued the Normative Instruction 1,846/18 that regulates the MAP in Brazil in accordance with the minimum standards of BEPS Action 14.

Following are the phases of the procedure:

- ▶ **Unilateral MAP:** The RFB receives and analyzes the request presented by the taxpayer related to the MAP. If RFB accepts the proposal and ends the double taxation, the MAP process is concluded. If RFB disagrees with the proposal, the bilateral MAP is activated.
- ▶ **Bilateral MAP:** RFB will proceed with discussions with the other tax authority, with a view to investigate and end the alleged double taxation.

APA is not available in the Brazilian legislation.

▶ **Tenure**

This is not applicable.

▶ **Rollback provisions**

This is not applicable.

▶ **MAP opportunities**

The process is available under a tax treaty entered into by Brazil and another country so that the treaty partners are able to resolve cases involving their taxpayers where there have been disputes concerning cross-border transactions in their countries.

Who can apply for a MAP?

Any Brazilian taxpayer that considers that a case of double taxation occurred or is imminent, derived from transfer pricing adjustments, royalty limitations or WHT can apply.

What taxes are covered?

The following Brazilian corporate income taxes are covered:

- ▶ **Income tax – Imposto de Renda da Pessoa Jurídica (IRPJ)**
- ▶ **Social contribution on net revenue – Contribuição Social sobre o Lucro Líquido (CSLL)**

Any other income tax or taxes of the same nature in the other jurisdiction are also covered.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

National Revenue Agency (NRA)

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations or rulings and the effective date of applicability

Following are the transfer pricing regulation or rulings in the country:

- 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 those 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 forms. 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

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 and 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 or rules?

Current guidelines

Yes. There are transfer pricing documentation guidelines. These are not binding but are generally followed by both the transfer pricing auditors and the taxpayers.

Proposed amendments

Yes. There are mandatory transfer pricing documentation requirements in line with OECD's BEPS Action 13.

On 5 November 2018, obligatory transfer pricing documentation preparation was proposed by the Bulgarian Ministry of Finance. Under the proposed Bulgarian transfer

pricing legislation (the Proposed Amendments), taxpayers will be obliged to prepare transfer pricing documentation on a yearly basis if their annual net sales exceed BGN16 million (or approximately EUR8 million) and their assets net book value exceeds BGN8 million (or approximately EUR4 million) as on 31 December of the prior year.

- ▶ **Does transfer pricing documentation have to be prepared annually?**

Current guidelines

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 transfer pricing 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 on the basis of the most recent financial data available. In addition, it is necessary to confirm that the main characteristics of the related-party arrangements remain unchanged.

Proposed amendments

Under the Proposed Amendments, taxpayers will be obliged to prepare transfer pricing documentation on a yearly basis.

b) Materiality limit or thresholds

- ▶ **Transfer pricing documentation**

Current guidelines

On the basis of the Manual, microenterprises (enterprises employing fewer than 10 people on average, and having an annual turnover of less than BGN3.9 million (i.e., approximately EUR1.994 million) and 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:

- ▶ **BGN200,000 (approximately EUR102,000) applicable to supplies of goods**

- ▶ **BGN200,000 applicable to supplies of services**
- ▶ **BGN400,000 (approximately EUR205,000) applicable to transactions related to intangibles**
- ▶ **BGN400,000 applicable to interest income or 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.

Proposed amendments

Under the Proposed Amendments, the local file should be prepared if the following thresholds are exceeded:

- ▶ **BGN400,000 (or approximately EUR205,000) applicable to supply goods**
- ▶ **BGN200,000 (or approximately EUR102,000) applicable to supply of services**
- ▶ **BGN200,000 applicable to transactions related to intangibles**
- ▶ **BGN200,000 related to financial assets transactions**
- ▶ **BGN2 million (or approximately EUR1 million) applicable to the value of the loan principal**
- ▶ **BGN100,000 (or approximately EUR51,000) applicable to interest rate accrued**

- ▶ **Economic analysis**

This is not applicable.

- ▶ **BEPS master and local files**

Current guidelines

Currently, the Bulgarian transfer pricing legislation does not prescribe mandatory preparation of documentation. However, the Manual recommends that the transfer pricing documentation be updated annually, but does not provide any references to the minimum requirements to achieve this.

Proposed amendments

In the Proposed Amendments, obligatory transfer pricing documentation preparation was proposed by the Bulgarian Ministry of Finance. Under the proposed Bulgarian transfer pricing legislation, taxpayers will be obliged to prepare transfer pricing documentation on a yearly basis if their annual net sales exceed BGN16 million (or approximately EUR8 million) and their assets net book value exceeds BGN8 million (or

Bulgaria

approximately EUR4 million) as on 31 December of the prior year. Under the proposed transfer pricing legislation, the local transfer pricing file should be prepared by 31 March of the following year, while the master file should be available by 31 March of the year after. However, no requirement for the submission of the transfer pricing documentation is proposed, i.e., the previous requirement would remain and should be submitted upon request by the NRA. Failure to submit the local file may trigger penalties ranging from 0.5% to 1% of the volume of the related-party transactions that should have been documented. Failure to submit the master file may trigger penalties ranging from BGN5,000 (or approximately EUR2,500) to BGN10,000 (or approximately EUR5,000).

► CbCR

This is applicable to Bulgarian ultimate parent entities with consolidated revenue above BGN100 million (approximately EUR51 million) or Bulgarian constituent entities with consolidated revenue exceeding BGN1,467 million (EUR750 million).

c) Specific requirements

► 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

There is none specified.

d) BEPS Action 13 implementation overview

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

Bulgaria has adopted BEPS Action 13 for transfer pricing documentation in the local regulations only in terms of CbCR.

► Coverage in terms of master and local files

Current guidelines

The master and local files are not covered.

Proposed amendments

Under the Proposed Amendments, obligation to prepare the local transfer pricing file arises in the following conditions:

- When the taxpayer has annual net revenue exceeding BGN16 million (or approximately EUR8 million) and assets with a balance sheet value exceeding BGN8 million (or approximately EUR4 million), the obligation arises.
- When the taxpayer is engaged in related-party transactions, exceeding certain annual thresholds (e.g., BGN400,000 for goods and BGN200,000 for intra-group services, intangibles or financial assets transactions), this is applicable. For loans, the obligation arises when the loan principal granted or received exceeds BGN2 million, or a total interest income or expense above BGN100,000 has been accrued.

The master and local files need to be prepared and updated each year.

► Effective or expected commencement date

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

► Material differences from OECD report template or 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 under the current legislation are insignificant. Generally, master files and local files prepared in the BEPS Action 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 the financial year 2016. The CbC report should be submitted within 12 months from the end of the fiscal year of the multinational group of entities.

► **CbCR notification included in the statutory tax return**

There is none specified.

► **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

Yes. It was signed on 17 November 2017.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 and disclosure timelines

a) Filing deadline

► **Corporate income tax return**

The filing deadline is 31 March of the following year. Therefore, the CIT return for the financial year 2017 should be filed by 31 March 2018.

► **Other transfer pricing disclosures and return**

The filing deadline is 31 March of the following year. Therefore, the CIT return and the relevant disclosures related to transfer pricing for the financial year 2017 should be filed by 31 March 2018.

► **CbCR notification**

The filing deadline is 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 and 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

Current guidelines

There is no statutory deadline or recommendation for the preparation of transfer pricing 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.

Proposed amendments

Under the proposed transfer pricing legislation, the local transfer pricing file should be prepared by 31 March of the following year, while the master file should be available by 31 March of the year after.

c) Documentation submission deadline

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

There is no statutory deadline for the submission of transfer pricing documentation. It 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 or deadline for submission on tax authority request**

Transfer pricing documentation should usually be submitted within 7 to 14 days upon request. However, the taxpayer can request an extension of up to three months.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

Bulgaria

► Yes.

b) Priority and preference of methods

Current guidelines

Under Bulgarian transfer pricing legislation, one of the following methods should be applied to determine the market price:

- CUP
- Resale price
- Cost-plus
- Profit split
- 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.

Proposed amendments

Under the Proposed Amendments, the hierarchy of methods is foreseen and discussed.

7. Benchmarking requirements

a) Local vs. regional comparables

In terms of the procedural search approach to conduct comparable searches, the 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 on the basis

of local business intelligence databases. In this respect, it is highly recommended that the benchmark analysis contained in the transfer pricing documentation of the taxpayer reviews Bulgarian comparables and considers them with priority.

b) Single-year vs. multiyear 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 forwards and update of the financials

Current guidelines

A fresh benchmarking search is to be conducted every year. According to the Manual, the transfer pricing documentation should be prepared for the fiscal period when the analyzed intercompany transactions were concluded. Any transfer pricing documentation prepared for preceding fiscal years may be used for the following years provided 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. The actualization of the transfer pricing documentation should be made in relation to these changes for the respective year.

Proposed amendments

Under the Proposed Amendments, TPD and benchmarks should be updated annually. However, benchmarks may be updated once every three years in case 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.

e) Simple vs. weighted average

There is none specified.

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; 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 criterion between 25% and 100% might not always be relevant.

8. Transfer pricing penalties and relief

a) Penalty exposure

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

Current guidelines

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 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:
 - ▶ The loan principal exceeds the equity of the borrower as of 31 December of the preceding year
 - ▶ The repayment of the principal or the interest on the loan is not limited by a fixed time period
 - ▶ The loan repayment or interest payment depends on whether the borrower ended on a profit position
 - ▶ The repayment of the loan depends on the satisfaction of other creditors' claims or on payment of dividends

Proposed amendments

In addition to the discussed above penalties, under the Proposed Amendments, failure to submit the local file may trigger penalties ranging from 0.5% to 1% of the volume of the related-party transactions that should have been documented. Failure to submit the master file may trigger penalties ranging from BGN5,000 (or approximately EUR2,500) to BGN10,000 (or approximately EUR5,000).

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

Refer to the section above.

- ▶ Is interest charged on penalties or payable on a 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

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, the financial year 2012 is open for tax audits until the end of the financial year 2018 because the

Bulgaria

corporate income tax return for the financial year 2012 should have been filed by 31 March 2013.

10. Likelihood of transfer pricing scrutiny or 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 the 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 and situations, if any, more likely to undergo audit

Currently, the NRA is not challenging the transfer pricing methodologies of particular industries as riskier 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 and MAP opportunities

► Availability (unilateral, bilateral and 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

This is not applicable.

► Rollback provisions

This is not applicable.

► MAP opportunities

Yes.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

General Department of Taxation

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the 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 and 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 or 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 or thresholds

▶ Transfer pricing documentation

There is none specified.

▶ Economic analysis

There is none specified.

▶ BEPS master and local files

There is none specified.

▶ CbCR

There is none specified.

c) Specific requirements

▶ Treatment of domestic transactions

There is none specified.

▶ Local language documentation requirement

Yes, the documentation has to be in Khmer language.

▶ Safe harbor availability

There is none specified.

d) BEPS Action 13 implementation overview

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

Cambodia prefers the transfer pricing documentation to conform to the guidance in the OECD Base Erosion and Profit Shifting Action 13 report on country-by-country reporting.

▶ Coverage in terms of master and local files

This is not applicable.

▶ Effective or expected commencement date

This is not applicable.

▶ Material differences from OECD report template or format

This is not applicable.

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

Yes

▶ CbCR notification and CbC report submission requirement

Yes

▶ CbCR notification included in the statutory tax return

This is not applicable.

▶ Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

No

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

Yes, there is a requirement.

b) Transfer pricing-specific returns

There is none specified.

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

► Corporate income tax return

The documentation should be filed 90 days after the end of the financial year-end.

► Other transfer pricing disclosures and return

The documentation should be filed 90 days after the end of the financial year-end.

► CbCR notification

There is none specified.

► CbC report preparation and submission

This is 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?

This is not applicable.

► Time period or deadline for submission upon tax authority request

The documentation should be filed within seven working days.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

► International transactions – Yes

► Domestic transactions – No

b) Priority and preference of methods

All five recognized OECD methodologies are accepted in Cambodia, and there is no priority and 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. multiyear analysis

Multiyear 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 forwards and update of the financials

Roll forward study is acceptable.

e) Simple vs. weighted average

Simple average is acceptable.

f) Other specific benchmarking criteria, if any

There is one specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

► Consequences of failure to submit, late submission or incorrect disclosures

This will result in the 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 or payable on a 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 and related audit by the 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 the transfer pricing methodology is challenged** (*high/medium/low*)

Medium (same reason as above)

► **Specific transactions, industries and 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 and MAP opportunities

► **Availability (unilateral, bilateral and multilateral)**

There is none specified.

► **Tenure**

This is not applicable.

► **Rollback provisions**

This is not applicable.

► **MAP opportunities**

No

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Cameroon

1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

General Director of Taxation

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the 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) specifies the documentation requirements.

2. OECD Guidelines treatment and 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 or 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 relevant year, and they are subject to transfer pricing rules.

b) Materiality limit or thresholds

▶ Transfer pricing documentation

There is no materiality limit.

▶ Economic analysis

There is no materiality limit.

▶ BEPS master and local files

This is not applicable.

▶ CbCR

This is not applicable.

c) Specific requirements

▶ 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

There is none specified.

d) BEPS Action 13 implementation overview

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

No.

▶ Coverage in terms of master and local files

This is not applicable.

▶ Effective or expected commencement date

This is not applicable.

▶ Material differences from OECD report template or format

Not applicable.

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

There is none specified.

▶ CbCR notification and CbC report submission requirement

No.

▶ CbCR notification included in the statutory tax return

This is not applicable.

▶ Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

No.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 and disclosure timelines

a) Filing deadline

► Corporate income tax return

The filing deadline is 15 March.

► Other transfer pricing disclosures and return

The filing deadline is 15 March.

► CbCR notification

This is not applicable.

► CbC report preparation and submission

This is 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 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 or deadline for submission on tax authority request

Refer to the previous section.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

This is not applicable.

b) Priority and preference of methods

This is not applicable

7. Benchmarking requirements

a) Local vs. regional comparables

There is none specified.

b) Single-year vs. multiyear analysis

There is none specified.

c) Use of interquartile range

There is none specified.

d) Fresh benchmarking search every year vs. roll forwards and 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

There is none specified.

f) Other specific benchmarking criteria, if any

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

- ▶ **Consequences of failure to submit, late submission 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 of 30%, 100% and 150% in the cases of good faith, bad faith and fraud, respectively, are applicable.

- ▶ **Is interest charged on penalties or payable on a refund?**

Yes. The interest charged is 1.5% in arrears per month, which could go 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, a 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.

10. Likelihood of transfer pricing scrutiny and related audit by the 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 the transfer pricing methodology is challenged (high/medium/low)**

See the above section.

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

There is none specified.

11. APA and MAP opportunities

- ▶ **Availability (unilateral, bilateral and 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**

This is not applicable.

- ▶ **Rollback provisions**

This is not applicable.

- ▶ **MAP opportunities**

No

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Canada Revenue Agency (CRA)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the 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 247(15) were added to the transfer pricing 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:

- ▶ IC87-2R, International Transfer Pricing, 27 September 1999 (currently under revision)
- ▶ IC94-4R, International Transfer Pricing: Advance Pricing Arrangements (APAs), 16 March 2001
- ▶ IC94-4R (special release), Advance Pricing Arrangements for Small Businesses, 18 March 2005
- ▶ IC71-17R5, Guidance on Competent Authority Assistance Under Canada's Tax Conventions, 1 January 2005 (currently under revision)
- ▶ Fourteen different TPMs
- ▶ Section reference from local regulation

Refer to the section above.

2. OECD Guidelines treatment and 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 or rules?

Yes.

▶ Does transfer pricing documentation have to be prepared annually?

Yes. Prepared annually under local country regulations, transfer pricing documentation should completely and accurately describe material changes in the year (if the documentation was previously prepared).

b) Materiality limit and thresholds

▶ Transfer pricing documentation

This is not applicable; however, reporting of transactions on Form T106 required only if total reportable transactions exceed CAD1 million.

▶ Economic analysis

This is not applicable.

▶ BEPS master and local files

This is not applicable.

▶ CbCR

The limit is EUR750 million.

c) Specific requirements**▶ Treatment of domestic transactions**

There is no documentation obligation for domestic transactions.

▶ Local language documentation requirement

The transfer pricing documentation is acceptable in English or French; however, there is no specific mandate by tax law.

▶ Safe harbor availability

This is not applicable.

d) BEPS Action 13 implementation overview**▶ Has your country adopted or implemented BEPS Action 13 for transfer pricing documentation in your local regulations?**

Canada has not adopted or implemented BEPS Action 13 for transfer pricing documentation in its local regulations, but the country relies on the transfer pricing documentation framework outlined in Section 247(4)(a)(i) to (vi) of the ITA.

▶ Coverage in terms of master or local files

This is not applicable.

▶ Effective or expected commencement date

This is not applicable.

▶ Material differences from OECD report template or format

This is not applicable.

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

This is not applicable.

▶ CbCR notification and CbC report submission requirement

There is no CbCR notification requirement in Canada. However, there is a requirement to file CbC report for multinational enterprise groups with consolidated revenues of EUR750 million.

▶ CbCR notification included in the statutory tax return

This is not applicable.

▶ Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

Yes. It is so as of 11 May 2016.

4. Transfer pricing return and related-party disclosures**a) Related-party disclosures and 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. This requirement applies where the aggregated value of transactions with non-arm's-length non-residents in the aggregate exceeds CAD1 million in 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 T106 details in the section above.

5. Transfer pricing documentation and disclosure timelines**a) Filing deadline****▶ Corporate income tax return**

Corporate income tax return should be filed within six months after year-end for corporations and five months after year-end for partnerships.

▶ Other transfer pricing disclosures and return

T106 information returns should be filed within six months after year-end for corporations and five months after year-end for partnerships.

▶ CbCR notification

This is not applicable.

▶ CbC report preparation and submission

The report should be submitted 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, which is six months after year-end for corporations and five months after year-end for partnerships.

c) Documentation submission deadline

This is 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 or 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 (for both International and domestic transactions)

For 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 may conceptually be subject to transfer pricing approaches, but they are not addressed by the transfer pricing rules in Section 247 of the ITA. Other provisions that apply domestically to transactions between non-arm's-length persons for inadequate consideration, and to whether an expense is reasonable, may invite reference to transfer pricing approaches.

b) Priority and 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. multiyear 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 forwards and update of the financials

It is not necessary for a fresh benchmarking search to be conducted every year; roll forward and update of the financials of a prior study is acceptable if the facts and circumstances have not materially changed for the transaction from those applicable to the year of the study.

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

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

- Consequences of failure to submit, late submission 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 the "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?**

Yes. 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 or payable on a refund?**

Yes, interest on penalties is payable from the date of assessment, at 6% currently; if the assessed penalty were 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.

An assessed transfer pricing penalty may also be vacated by CRA Appeals Branch upon review.

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 non-residents, 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 and related audit by the 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 CRA does challenge methodology depending on the facts.

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

If the methodology is challenged, then the likelihood of an adjustment is high.

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

Corporate restructuring, royalties, hybrid debt transactions, financial products and corporate services charges are more likely to undergo an audit.

11. APA and MAP opportunities

► **Availability (unilateral, bilateral and multilateral)**

The CRA launched its APA program in July 1993. As set out in IC94-4R, it allows taxpayers to pursue unilateral, bilateral and 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, the tenure is five years, but terms can vary; often, additional years are added at the end of an APA negotiation.

► **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.

► **MAP opportunities**

Yes. The taxpayer may request MAP consideration under an applicable treaty.

- **A time limit specified under either the “associated enterprises” or the “mutual agreement procedure” provision of a Double Taxation Treaty may be relevant in the case of transfer pricing, and may not necessarily be the same.**

Contact

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1. Tax authority and relevant transfer pricing regulation or 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 or rulings and the 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 was 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 and 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 or 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 or thresholds

► Transfer pricing documentation

The entities classified as "large taxpayers" are 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

They are 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

This is not applicable.

► CbCR

This is not applicable.

c) Specific requirements

► Treatment of domestic transactions

They have to be reported and should be in line with 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

This is not explicitly addressed in the legislation.

d) BEPS Action 13 implementation overview

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

Cape Verde has not yet adopted BEPS measures in its TP legislation, but has already joined the Inclusive Framework for the global implementation of the BEPS Project.

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

This is not applicable.

▶ **Effective or expected commencement date**

This is not applicable.

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

There are differences as Cape Verde has not adopted the master file and 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**

This is not applicable.

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

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

▶ **CbCR notification included in the statutory tax return**

This is not applicable.

▶ **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

No.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 and 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 and return

The end of the seventh month after the corresponding tax year-end

▶ CbCR notification

Not applicable

▶ CbC report preparation and 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 or 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 (for both international and domestic transactions)

► Yes

b) Priority and 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

There is 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. multiyear analysis

Refer to the section above.

c) Use of interquartile range

Refer to the section above.

d) Fresh benchmarking search every year vs. rollforwards and 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 and relief

a) Penalty exposure

► Consequences of failure to submit, late submission 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 or payable on refund?

There is none specified.

b) Penalty relief

There is 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 and related audit by local authority

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

The likelihood is 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 the 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 and situations, if any, more likely to undergo audit**

There is no experience on this issue because no tax audit has ever happened.

- ▶ **Availability (unilateral, bilateral and multilateral)**

There is no APA program in Cape Verde.

- ▶ **Tenure**

This is not applicable.

- ▶ **Rollback provisions**

This is not applicable.

- ▶ **MAP opportunities**

There is none specified.

11. APA and MAP opportunities

Contact

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1. Tax authority and relevant transfer pricing regulations or 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 or rulings and the 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, or 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, if 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 as related parties, if they are spouses or have a kinship by consanguinity or affinity up to the fourth degree, inclusive.

2. OECD Guidelines treatment and 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 or 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 or thresholds

► Transfer pricing documentation

This is 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. The Chilean IRS may require these analyses for any transaction carried out with a foreign related party.

► BEPS master and local files

So far, Chile has not implemented master file 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).

Additionally, since commercial year 2018, the annual TP form 1907 includes some specific fields to notify which entity of the group is submitting the CbCR and in which country.

c) Specific requirements

► Treatment of domestic transactions

Although Chilean transfer pricing rules do not include a formal obligation to inform 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 the 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 the royalty rate cannot exceed 4% of a 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 or implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No.

▶ Coverage in terms of master and local files

This is not applicable.

▶ Effective or expected commencement date

This is not applicable.

▶ Material differences from OECD report template or format

This is not applicable.

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

This is 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.

▶ CbCR notification included in the statutory tax return

Since commercial year 2018, the CbCR notification is included in the annual TP Form 1907. The SII has included some specific fields in this form to inform which entity of the group is submitting the CbCR and in which country.

▶ Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

Yes, it was signed on 27 January 2016.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 must be reported, but only transactions greater than CLP200 million in annual basis (approximately USD300,000) need to include details about TP methodology for analysis. This threshold is not applicable to financial operations that must be fully reported regardless of the amount. The mentioned financial operations (including for example date, maturity, interest rate, principal, kind of interest rate, etc.).

Taxpayers that meet any of the following conditions must file the TP return (Affidavit No. 1907):

- ▶ Companies considered medium or large size as of 31 December of the commercial year to be disclosed
- ▶ Companies that entered into transactions with parties domiciled in a country or territory which is considered a preferential tax regime (according to Article 41H of the ITL)
- ▶ 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 the type of transaction and by related entity. The SII also requires technical aspects to be filed, such as:

- ▶ Transfer pricing method used
- ▶ PLI applied
- ▶ Global or segmented analysis
- ▶ Tested party and its result in the transaction analyzed
- ▶ Whole operating margin of the Chilean entity regardless the method selected for the economic analysis.

b) Transfer pricing-specific returns

Taxpayers listed in the large business division (grandes contribuyentes) must file another affidavit No. 1913, "global taxpayer's characterization," which must be submitted before the annual income tax return in any case before 30 April. This affidavit has several questions related with TP matters.

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

► Corporate income tax return

Corporate income tax return must be filed by 30 April or after depending on the result of the taxes to be paid (payment or refund).

► Other transfer pricing disclosures and return

Transfer pricing return (Affidavit No. 1907) should be filed by the last business day of June, or 90 days after, if an extension is obtained (one time only).

► CbCR notification

If Chilean entity designated as surrogate entity, from 1 June to 30 June, the constituent entities should notify CbCR through the Affidavit No. 907 at the end of June (or September).

► CbC report preparation and submission

The CbC report (Affidavit No. 1937) must be prepared and submitted by last business day of June, or 90 days after, if an extension is obtained (one time only).

b) Documentation preparation deadline

The TP documentation must be prepared contemporaneously and provided upon request. It is highly recommended that the TP documentation 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 or deadline for submission on SII request

The SII allows 10 to 30 days for delivery from the time of the request.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

Yes.

b) Priority and 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 none of the other methodologies is applicable.

TP rules in Chile consider the "best method rule," 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 and transactions are accepted in the absence of local comparable entities and transactions as long as they are similar in functions, assets and risks of the tested party or tested transaction.

b) Single-year vs. multiyear analysis

Single-year testing is recommended for tested parties. However, for the comparable information, it is usual to apply multiple-year analysis to perform the range of values.

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 forwards and update of the financials

The Chilean TP rules do not specify if a fresh benchmarking is necessary every year; 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

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

- ▶ **Consequences of failure to submit, late submission 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 rendered the information and documentation required during the audit process by the SII, as determined by the former in a notification.

- ▶ **Is interest charged on penalties or payable on a 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 SII 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 find that the returns are false.

In Chile, the TP rules are considered to be "substance over form." In this sense, the SII 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 and related audit by the local authority

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

Currently, there is a high probability that the SII will audit TP (most likely if the company has expenses related to services received, royalties paid, or interest paid or is operating in loss).

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

The likelihood is medium, because the TP audit generally is focused on the comparable entities and transactions rather than methodologies.

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

The likelihood is 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 and situations, if any, more likely to undergo audit**

In Chile, there are specific programs that assess transfer pricing transactions in the mining industry. The transactions that the SII assesses in a TP audit are intragroup services (management, technical and routine services), payment of royalties, interest accrued, payments for reimbursement of expenses, commodity transactions, etc., from different industries.

11. APA and MAP opportunities

► Availability (unilateral, bilateral and 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

There is none specified.

► MAP opportunities

MAP process is recognized by the tax treaties signed by Chile, however it is not currently being applied.

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

State Administration of Taxation (SAT)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the 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 (MAPs)
- ▶ 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 their 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 the 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 or family maintenance relationships co-own the shares of one enterprise, the percentage of owned shares shall be jointly calculated.
- ▶ 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), 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).
- ▶ 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.
- ▶ 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.

- ▶ 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.
- ▶ Two individuals who are spouses, lineal relatives by blood, or under other custodianship or family maintenance relationship have one of the relationships stated under (1)-(5) with one enterprise and the other enterprise respectively.
- ▶ The two parties have other common interests in substance.

Except for conditions under (2), when the related-party relationships change over the fiscal year, they should be recognized on the basis of the actual duration of such relationships.

Two parties that have one of the relationships stated under (1)-(5) 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 and 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 there are 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 the 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 (i.e., DEMPE). Bulletin 6 adds a sixth function: promotion (i.e., DEMPEP). 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 only 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 or 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 or thresholds

▶ Transfer pricing documentation

Refer to the master file and local file thresholds below.

▶ Economic analysis

There is none specified.

▶ BEPS master and local files

The master file thresholds are as follows:

- ▶ 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

- ▶ The annual related-party transactions exceed RMB1 billion.

The local file thresholds are as follows:

- ▶ Tangible asset transfers exceed RMB200 million (in case of toll manufacturing, value should be based on annual import and export values for customs purposes).
- ▶ Financial asset transfers exceed RMB100 million.
- ▶ Intangible asset transfers exceed RMB100 million.

Or

- ▶ 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 states that Chinese tax authorities may request a Chinese taxpayer to provide its group's CbC report in the course of an investigation. This can take place 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 requirements

▶ Treatment of domestic transactions

There is a documentation requirement 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

This is not applicable.

d) BEPS Action 13 implementation overview

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

Yes, China adopted BEPS Action 13 for transfer pricing documentation effective 1 January 2016.

▶ Coverage in terms of master and local files

It covers both master and local files.

▶ Effective or expected commencement date

BEPS Action 13 came to effect in China on 1 January 2016.

▶ Material differences from OECD report template or 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)).

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, in the master file, taxpayers should state 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.

- ▶ **CbCR notification included in the statutory tax return**

There is none specified.

- ▶ **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

Yes, the deadline for signatory of the MCAA on the exchange of CbC reports is 12 May 2016.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 (RPT) annual reporting 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; there will be three additional forms that are English translations of these three. The other 16 RPT forms are:

- ▶ **Enterprise Information Return**
- ▶ **Summary of Annual Related-Party Transactions Form**

- ▶ **Related-Party Relationships Form**
- ▶ **Ownership Transfer of Tangible Asset Transactions Form**
- ▶ **Ownership Transfer of Intangible Asset Transactions Form**
- ▶ **Use Right Transfer of Tangible Asset Transactions Form**
- ▶ **Use Right Transfer of Intangible Asset Transactions Form**
- ▶ **Financial Asset Transactions Form**
- ▶ **Financing Transactions Form**
- ▶ **Related-Party Service Transactions Form**
- ▶ **Equity Investment Form**
- ▶ **Cost-Sharing Agreement Form**
- ▶ **Outbound Payment Form**
- ▶ **Overseas Related-Party Information Form**
- ▶ **Financial Analysis of Related-Party Transactions Form (unconsolidated)**
- ▶ **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 and disclosure timelines

a) Filing deadline

- ▶ **Corporate income tax return**
31 May
- ▶ **Other transfer pricing disclosures and return**
31 May
- ▶ **CbCR notification**
Not applicable
- ▶ **CbC report preparation or 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 or deadline for submission on tax authority request

The documentation should be submitted within 30 days upon request.

6. Transfer pricing methods**a) Applicability (for both international and domestic transactions)**

Yes.

b) Priority and 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: comparable uncontrolled price (CUP), resale price, cost-plus, transactional net margin method (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 it 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 that has the same business model cannot be found, 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, they 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 it clear that publicly available data is preferred. In addition, Bulletin 6 explicitly authorizes tax authorities to use nonpublicly available information, i.e., secret comparables. Such nonpublic information is used in practice, especially in a risk assessment context.

b) Single-year vs. multiyear analysis

Multiyear testing (up to 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 forwards and 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

This is not applicable.

8. Transfer pricing penalties and relief

a) Penalty exposure

► Consequences of failure to submit, late submission or incorrect disclosures

General penalties that are 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 fulfil 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 under-reported 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 or payable on a 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

The duration could be as long as 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 and related audit by the local authority

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

The likelihood is high, because Chinese tax authorities would screen and select the transfer pricing audit targets every year on the basis of 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 – as high, medium and low – to identify audit targets.

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

The likelihood is high, because Chinese tax authorities take more aggressive views on local contributions and locally developed intangibles and often challenge the TNMM, which is commonly used to compensate the local subsidiaries.

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

The likelihood is 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 and 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” from “high-risk” taxpayers, on the basis of 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 finds that both industries 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 is 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 and MAP opportunities

► Availability (unilateral, bilateral and multilateral)

Unilateral, bilateral and multilateral APAs are available in China. 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

Rollback provisions are available. The retrospective period can extend to a maximum of 10 prior years, if the related-party transactions are the same or similar to those covered by the APA.

► MAP opportunities

Yes, the taxpayer may request a MAP.

- **Application for a MAP must be made within a reasonable period of time from the first notification of the action resulting in taxation not in accordance with the provisions of the DTT.**
- **If the application is submitted in person, the application date is deemed to be the submission date; if the application is submitted by email, the application date is the date that the SAT receives the application.**

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

National Tax and Customs Authority (Dirección de Impuestos y Aduanas Nacionales, or DIAN)

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations or rulings and the effective date of applicability

The transfer pricing regime is included in Articles 260-1 through 260-11 of the Colombian Tax Code and is regulated by Regulatory Decree 2120 of 2017. The regime has been in force since 2004; however, the aforementioned decree came into effect from 1 January 2017.

► Section reference from local regulation

The following sections have references to transfer pricing:

- Articles 260-1 through 260-11 of the Colombian Tax Code
- Regulatory Decree 2120, from December 2017

2. OECD Guidelines treatment and reference

Colombia is currently in the process of becoming a member of the OECD. Meanwhile, the OECD Guidelines are locally used as reference criteria for transfer pricing matters.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines or 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 regulatory requirements mentioned in Articles 260-1 through 260-11 of the Colombian Tax Code and Regulatory Decree 2120. They should demonstrate that inter-company

transactions were carried out at arm's length. The group's master file must be submitted as well.

The documentation has to be updated annually, with updates to transactions and amounts, the financial information of the comparable set, economic analysis, and functional analysis.

b) Materiality limit or thresholds

► Transfer pricing return

The materiality limit or threshold is applicable for transfer pricing return. The gross equity must be equal to or greater than 100,000 tax value units (UVT) (COP3.3 billion for the financial year 2018), or the gross revenues must be equal to or greater than 61,000 UVT (COP2.02 billion for the financial year 2018). Inter-company transactions or transactions with tax havens should have been carried out.

► BEPS master and local files

They must be filed for local entities that meet the transfer pricing return threshold and have performed inter-company transactions with foreign related parties or local related parties located in a free trade zone greater than 45,000 UVT (COP1.4 billion for the financial year 2018).

In addition, local taxpayers that have carried out transactions with entities located, resident or domiciled in tax havens are subject to transfer pricing obligations regardless of their revenues or equity. In such a case, the transactions threshold to prepare and submit the local and master files is 10,000 UVT (COP331 million).

► Economic analysis

It must be included in the local file.

► CbCR

It is applicable for Colombian multinational groups with revenues greater than COP2.3 billion. CbCR must be presented in Colombia when local constituent entities jointly have 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.

On 30 July 2018, Resolution 40 of 26 July 2018 regarding transfer pricing was published in the official gazette of Colombia. Among others, Resolution 40 clarifies the process to submit the country-by-country reporting (CbCR) notification. Accordingly, if a constituent entity is required to file a specific transfer pricing

form (Form 120), the CbCR notification will be submitted within that form. Otherwise, a constituent entity will need to download a specific form from the tax authority's website and send it via email to preciostransferencia@dian.gov.co with the subject as "Notification – country-by-country report".

Transfer pricing return, local file, master file and CbCR notification must be filed electronically using the specific forms required by the tax authority.

c) Specific requirements

► Treatment of domestic transactions

There is a documentation obligation for domestic transactions. Transactions performed by a local taxpayer with a local related party located in a free trade zone in Colombia are subject to transfer pricing obligations.

► Local language documentation requirement

The local file needs to be submitted in the local language, which is 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 above must comply with formal obligations and demonstrate that inter-company transactions were carried out in compliance with the arm's-length principle.

d) BEPS Action 13 implementation overview

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

Yes.

► Coverage in terms of master and local files

Yes. It covers both the master file and the local file.

► Effective or expected commencement date

It is effective from the financial year 2017.

► Material differences from OECD report template or format

The master file and CbC reports follow the OECD approach. The local file was the equivalent of the previous transfer pricing study presented by taxpayers until the financial year 2016.

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

This is not applicable as there is no penalty protection in Colombia.

► CbCR notification and CbCR submission requirement

Regulatory Decree 2120, published in December 2017, introduced the obligation to submit the CbCR notification (effective from the financial year 2016).

When the taxpayer has the obligation to submit a transfer pricing return, the CbCR notification will be part of it. Otherwise, the local entity must submit it via email using the form published by the tax authority.

► CbCR notification included in the statutory tax return

No. It might be included in the transfer pricing return. Refer to the section above.

► Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

Yes. It was signed on 21 June 2017.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

There are no specific transfer pricing disclosures to be included in the corporate income tax return. All transfer pricing 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 inter-company transaction, the amount of the transaction, the transfer pricing methodology applied, the tested party, 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 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 and disclosure timelines

a) Filing deadline

► Corporate income tax return

For the financial year 2018, it will be in April 2019.

► Other transfer pricing disclosures and return

For the financial year 2018, these will be due between 9 and 22 July 2019 (local file, master file transfer pricing return and CbCR notification). The specific date for a taxpayer will depend on the last digit of its TAX ID number.

► CbCR notification

Please see the above section.

► CbC report preparation and submission

For the financial year 2018, the submission must be in December 2019.

b) Documentation preparation deadline

Please see the above section.

c) Documentation submission deadline

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

Please see the above section.

► Time period or 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., July 2019 for the financial year 2018).

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

Yes.

b) Priority and preference of methods

For the analysis of both international and domestic transactions (the latter refers 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 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.

The use of internal comparable, if existing, is prioritized.

Special considerations for the analysis of services and financing transactions, purchase and sale of shares, or transactions involving the purchase and sale of commodities or fixed assets are required.

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. If a geographic criterion is applied, it must be supported in the search strategy process.

b) Single-year vs. multiyear analysis

The regulation provides that single-year testing (1x1) should be generally used. A multiple-year analysis could be used in special circumstances, but its use must be strongly supported in the report from technical and economic standpoints.

c) Use of interquartile range

Yes. Interquartile range calculation using Excel Quartile formulas is acceptable. However, the regulations allow the use of other statistical measures (including the total range).

d) Fresh benchmarking search every year vs. roll forwards and 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. Regulations require the disclosure of the date in which the search was run and any update on the financial information.

e) Simple vs. weighted average

There is none specified.

f) Other specific benchmarking criteria, if any

There are no specific benchmark criteria required in the local regulation. However, the common practice is to use the information of companies with public financial information available and not affected by controlled transactions.

8. Transfer pricing penalties and relief

a) Penalty exposure

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

Transfer pricing documentation

Penalty regarding transfer pricing documentation is given below:

- ▶ Late filing – Within the five days following the deadline, 0.05% of the total amount of the transactions subject to analysis will be the penalty. After the five days, it will be 0.2% of the same base, with a limit of 20,000 UVT (COP663 million for the financial year 2018).
- ▶ Information inconsistencies – The penalty will be 1% of the value of the transactions reported with inconsistencies that were carried out with related parties, limited to 5,000 UVT (COP165 million for the financial year 2018).
- ▶ No submission – The penalty will be 4% of the total amount of the transactions subject to analysis, with a limit of 25,000 UVT (COP828 million for the financial year 2018).
- ▶ Omitted information (transactions) – The penalty will be 2% of the value of the omitted transactions carried out with related parties, limited to 5,000 UVT; additionally, the rejection of cost and expense related to omitted operations may apply.
- ▶ Omitted information (related parties located in tax havens) – The penalty will be 4% of the total value of the transactions carried out with related parties, limited to 10,000 UVT (COP331 million for the financial year 2018); additionally, the rejection of cost and expense related to omitted operations may apply.

- ▶ Amendment of transfer pricing documentation – The penalty will be 1% of the amount of the amended transactions, with a limit of 5,000 UVT.

Transfer pricing return

Penalty regarding transfer pricing return is given below:

- ▶ Late filing – Within the five days following the deadline, the penalty will be 0.02% of the total amount of the transactions subject to analysis. After the five days, it will be 0.1% of the same base, with a limit of 15,000 UVT (COP497 million for the financial year 2017).
- ▶ Information inconsistencies – The penalty will be 0.6% of the total amount of the transactions reported with inconsistencies that were carried out with related parties, limited to 2,280 UVT (COP75 million for the financial year 2018).
- ▶ Omitted information (transactions) – The penalty will be 1.3% of the value of the omitted transactions carried out with related parties, limited to 3,000 UVT (COP99 million for the financial year 2018); additionally, the rejection of cost and expense related to omitted operations may apply.
- ▶ Omitted information (related parties located in tax havens) – The penalty will be 2.6% of the total value of the transactions carried out with related parties, limited to 6,000 UVT (COP198 million); additionally, the rejection of cost and expense related to omitted operations may apply.
- ▶ Non-filing of transfer pricing return – The penalty will be 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 or payable on a refund?

The 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

Colombia

tax authority issues its penalty order, the penalty might 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 might 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 filing.

For a self-assessment or acceptance of the challenges made by the tax authorities, the applied penalty could be decreased up to 10% of its original value.

9. Statute of limitations on transfer pricing assessments

Since the financial year 2017, the statute of limitations for transfer pricing assessments is six years.

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

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

The likelihood is medium; however, tax authorities launch regular audit programs, which may increase the likelihood to be audited.

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

This is the same as in the above section.

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

This is the same as in the above section.

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

Since 2004, the tax authorities have improved their audit processes, focusing the oil and gas, mining, and pharmaceutical industries. In addition, tax authorities challenge the benefits and actual rendering of general and specialized services (such as accounting, administrative, marketing or technical assistance). During an audit, the tax authorities have required companies to prove the real provision, usefulness, non-duplication and business' benefits of the services charged as well as its compliance with Article 107 of the Colombian Tax Code. It might be also required a demonstration of how the charges for services were calculated by the provider.

Local tax authorities are currently challenging special transactions (such as services and inter-company loans), economic and extraordinary adjustments, unusual approaches for analysis – irrespective of the industry – or the use of gross margin methods.

11. APA and MAP opportunities

- ▶ Availability (unilateral, bilateral and 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.

- ▶ MAP opportunities

There is none specified.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Congolese tax authorities (formerly Direction Générale des Impôts et des Domaines (DGID))

b) Relevant transfer pricing section reference

- ▶ Name of transfer pricing regulations or rulings and the effective date of applicability

There is the General tax code, articles 120 to 120 H, Volume 1. The law was introduced in 2012. As of date, there are no rulings or other particular texts regarding transfer pricing.

- ▶ Section reference from local regulation

Article 120 D of General tax code

2. OECD Guidelines treatment and reference

Congo is not a member of OECD.

However, Congo is a member of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) and also Congolese transfer pricing regulations are consistent with the OECD Guidelines.

3. Transfer pricing documentation requirements

a) Applicability

- ▶ Does your country have transfer pricing documentation guidelines or rules?

No

- ▶ Does transfer pricing documentation have to be prepared annually?

Transfer pricing documentation (local file) needs to be prepared annually under local country regulations and submitted to the tax authorities. At a very minimum, transaction values must be updated, and a memo that confirms changes to prior-year content should be prepared, if any.

b) Materiality limit or thresholds

- ▶ Transfer pricing documentation

Entities that generate more than XAF500 million of turnover and have at least XAF400 million of gross assets on the balance sheet at the end of the year

- ▶ Economic analysis

Not applicable

- ▶ BEPS master and local files

Not applicable

- ▶ CbCR

Not applicable

c) Specific requirements

- ▶ Treatment of domestic transactions

Not applicable

- ▶ Local language documentation requirement

French

- ▶ Safe harbor availability

None specified

d) BEPS Action 13 implementation overview

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

Not applicable

- ▶ Coverage in terms of master and local files

Not applicable

- ▶ Effective or expected commencement date

Not applicable

- ▶ Material differences from OECD report template or 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 included in the statutory tax return

Not applicable

- ▶ Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

Not applicable

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

The Transfer Pricing Statement needs to be submitted annually. This form needs to be submitted at the latest within six months after the legal deadline for submitting the Financial Statement return. Filing has to be done by courier and in the French language. Only cross-border intragroup transactions exceeding a threshold of XAF50,000,000 per type of transaction need to be disclosed on this tax return form.

b) Transfer pricing-specific returns

See the above section about the Transfer Pricing Statement.

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- ▶ Corporate income tax return

20 May

- ▶ Other transfer pricing disclosures and return

The Transfer Pricing Statement to be submitted within six months of the legal deadline for submitting the CIT return

- ▶ CbCR notification

Not applicable

- ▶ CbC report preparation and submission

Not applicable

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 or deadline for submission on tax authority request

Taxpayers are obligated to submit the documentation within 30 days of the tax authority's request.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

It is applicable only for international transactions.

b) Priority and preference of methods

The tax authorities accept the following methods: CUP, resale price, cost-plus, profit split and TNMM.

7. Benchmarking requirements

a) Local vs. regional comparables

None specified

b) Single-year vs. multiyear analysis

None specified

c) Use of interquartile range

None specified

d) Fresh benchmarking search every year vs. rollforwards and update of the financials

None specified

e) Simple vs. weighted average

None specified

f) Other specific benchmarking criteria, if any

None specified

8. Transfer pricing penalties and relief

a) Penalty exposure

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

Penalties specific to a failure to comply with the transfer pricing documentation requirements apply.

Failure to submit local transfer pricing return may result in penalties equal to XAF5,000,000.

Failure to submit the documentation within the tax authority's request may result in penalties equal to XAF10,000,000 for each fiscal year audited.

Partial submission of the documentation may result in penalties equal to XAF5,000,000 for each fiscal year audited.

In addition to the fiscal penalties generally applied as a consequence of a transfer pricing reassessment, transfer pricing reassessments from the tax authorities (deemed non-reflecting arm's-length principle) trigger an adjustment of the taxable profit for corporate income tax purposes (at one-third their amounts).

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

Penalties are generally applied as a result of a transfer pricing reassessment, regardless of compliance with transfer pricing documentation requirements.

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 consequences as additional corporate income tax (30% of profit) and a deemed transfer of a dividend (20%). Furthermore, penalties of 50% for CIT and 100% for deemed transfer of dividend may apply.

► **Is interest charged on penalties or payable on a refund?**

This is not applicable.

b) Penalty relief

This is not applicable.

9. Statute of limitations on transfer pricing assessments

The statute of limitations for transfer pricing adjustments is the same as for all Congolese corporate tax assessments (4 years following the year for which the tax is due).

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

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

The likelihood is high, as taxpayers that have been audited once usually enter a recurring four-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*)**

The likelihood is low to medium, as the application of the law is recent and tax authorities are improving their skills regarding this regulation.

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

The likelihood is low to medium, as the application of the law is recent and tax authorities are improving their skills regarding this regulation.

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

All types of intragroup transactions (e.g., management fees and royalties and licenses) are subject to scrutiny.

11. APA and MAP opportunities

► **Availability (unilateral, bilateral and multilateral)**

Bilateral and unilateral APAs are available.

► **Tenure**

APAs have a fixed term of three years. This can be renewed. Administrative fees are required to be paid to the Congolese authorities for entering into an APA.

► **Rollback provisions**

This is not applicable.

► **MAP opportunities**

This is not applicable.

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1. Tax authority and relevant transfer pricing regulation or 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 or rulings and the 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 following publication in the Official Gazette on the same day.

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 is supplemented, but not replaced, by Resolution DGT-R-16-2017, and continues to be in effect.

On 3 May 2018, the Resolution DGT-R-25-2018 (Resolution), regulating a project within Costa Rica's Tax Administration for the implementation of the OECD/G20 BEPS Actions and international tax transparency standards, was published in the Official Gazette. The Resolution's main purpose is to establish a full-time work team with functions related to monitoring and discussing publications, questionnaires and guidelines issued by the OECD, and other international organizations in relation to international tax transparency standards, BEPS and related topics. The Resolution also sets out other objectives, functions

and an initial period of two years for the validity of the project. The Resolution will be effective from 1 May 2018.

► Section reference from local regulation

Refer to the section above.

2. OECD Guidelines treatment and 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 residing 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 or rules?

Yes. Executive Decree No. 37898-H, Resolution DGT-R-44-2016 and Resolution DGT-R-16-2017 provide the guidelines or rules for transfer pricing documentation.

► Does transfer pricing documentation have to be prepared annually?

Transfer pricing documentation has to be prepared annually under local country regulations. The transfer pricing report and return must be prepared annually with updates to all the information that allows a correct transfer pricing analysis. The local tax authorities require the most recent available financial information for comparables and the tested parties.

b) Materiality limit or thresholds

► Transfer pricing documentation

There is no materiality limit.

► Economic analysis

There is no materiality limit.

► BEPS master and local files

There is no materiality limit.

► CbCR

Entities whose global and accumulated gross revenues are equal to or higher than EUR750 million or its equivalent in the local currency during the reporting tax year must submit the information corresponding to the country-by-country report.

c) Specific requirements

► 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 Spanish. Executive Decree 37898-H, Article 9, mandates the use of local language in transfer pricing documentation.

► Safe harbor availability

There is none specified.

d) BEPS Action 13 implementation overview

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

Yes.

► Coverage in terms of master and local files

Yes. Both are covered.

► Effective or expected commencement date

It is effective from 2017.

► Material differences from OECD report template or format

There are no material differences between the OECD report template or 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 2 February 2018, the Resolution DGT-R-001-2018, which implements country-by-country (CbC) reporting, was published in the Official Gazette. According to the Resolution, 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 Resolution does 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.

According to the Resolution, notifications should be submitted by the last working day of March each year at the latest, beginning in March 2018, through a digital document signed by the entity's legal representative and addressed to the head of the tax administration. The notification should be sent in the form of a letter signed by the legal representative of the entity to tributacioninter@hacienda.go.cr.

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.

► CbCR notification included in the statutory tax return

There is none specified.

► Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

Yes. It was signed on 27 January 2016.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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:

- The taxpayer conducts cross-border and local related-party transactions
- 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 in the Official Gazette, which suspends the term for the submission of transfer pricing information until further notice.

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

► Corporate income tax return

The filing deadline is two months and 15 days after the end of the fiscal year.

► Other transfer pricing disclosures and return

The tax authorities suspended the term for the submission of transfer pricing information until further notice.

► CbCR notification

Notifications should be submitted by the last working day of March each year at the latest.

► CbC report preparation and submission

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, which is the last day of the reporting fiscal year.

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 or deadline for submission on tax authority request

The time period is 10 working days.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

► Yes.

b) Priority and 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. multiyear analysis

There is multiple-year testing for comparables. In practice, the number of years is three.

c) Use of interquartile range

This is not specified. However, the Excel Quartile calculation is preferred and common in practice.

d) Fresh benchmarking search every year vs. roll forwards and update of the financials

A fresh benchmarking search every year over the update of the financials of a prior study is required. A transfer pricing report must be prepared annually, updating all the information that allows a correct transfer pricing analysis. In practice, local tax authorities expect to see the most recent comparable information, and use the most recently available financial information for the comparables and the tested party.

e) Simple vs. weighted average

The weighted average is the common practice.

f) Other specific benchmarking criteria, if any

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

► **Consequences of failure to submit, late submission 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 or payable on a 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 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 and related audit by the 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 the transfer pricing methodology is challenged (high/medium/low)**

The likelihood is high; in practice, the resolution in most cases results in an adjustment.

► **Specific transactions, industries and 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 and MAP opportunities

► **Availability (unilateral, bilateral and 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**

There is none specified.

► **MAP opportunities**

There is none specified.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Direction Générale des Impôts

b) Relevant transfer pricing section reference

- ▶ Name of transfer pricing regulations or rulings and the effective date of applicability
 - ▶ Articles 36, 36 Bis and 38 of the General Tax Code, Article 50 Bis of the Tax Procedure Book, Article 15 of the 2017 Finance Law, Article 14 of the 2018 Finance Law.
 - ▶ Article 15 of the 2017 Finance Law requires companies to file a transfer pricing (TP) return. This provision of the law is applicable since January 1, 2017.
 - ▶ Article 14 of the 2018 Finance Law requires companies to file a CbC return and introduces thin capitalization rules. These provisions of the law are applicable since January 1, 2018.
- ▶ Section reference from local regulation

Articles 36, 36 Bis and 38 of the General Tax Code, Article 50 Bis of the Tax Procedure Book

2. OECD Guidelines treatment and 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 or rules?

Yes, there are transfer pricing documentation rules and requirements to file a TP return and the CbC return.

- ▶ Does transfer pricing documentation have to be prepared annually?

There is no specific requirement to prepare the master file and local files to the tax authorities. However, in case of tax audit, only at the request of the tax authorities, the company could

have to justify transactions with affiliates companies, methods of determination of prices etc.

Therefore, this documentation and information will have to be up-to-dated.

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 or thresholds

▶ Transfer pricing documentation

There's no materiality limit.

▶ Economic analysis

There's no materiality limit.

▶ BEPS master and local files

There's no materiality limit.

▶ CbCR

This is applicable for companies with aggregated value of sales of EUR750 million or more.

c) Specific requirements

▶ Treatment of domestic transactions

There's no specific requirement.

▶ Local language documentation requirement

The TP documentation needs to be in French.

▶ Safe harbor availability

There is none specified.

d) BEPS Action 13 implementation overview

- ▶ Has your country adopted or 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 TP return and CbCR.

▶ Coverage in terms of master and local files

This is not applicable.

▶ Effective or expected commencement date

For tax year ending 31 December 2016 and later for TP return

For tax year ending 31 December 2017 and later for CBCR

▶ **Material differences from OECD report template or 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 CbC report submission requirement in Cote d'Ivoire. There is no CBCR notification obligation.

▶ **CbCR notification included in the statutory tax return**

There is none specified.

▶ **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

No

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

Refer to the section below.

b) Transfer pricing-specific returns

The TP return included intercompany transactions with related parties.

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

▶ **Corporate income tax return**

30 June, if required to file a certified financial statement and 30 May for all other companies.

▶ **Other transfer pricing disclosures and return**

TP return will have to be submitted by 30 June, if required to file a certified financial statement, 30 May for all other companies.

▶ **CbCR notification**

This is not applicable.

▶ **CbC report preparation and submission**

The documentation should be submitted no later than 12 months after the end of the Fiscal Year (December 31).

b) Documentation preparation deadline

This is not applicable.

c) Documentation submission deadline

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

TP return:

30 June for companies required to provide a certified financial statement; 30 May for all the other companies.

CBCR:

The documentation should be submitted no later than 12 months after the end of the Fiscal Year (December 31).

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

Taxpayers have to submit TP documentation within a maximum period of two months. This period may be extended by one month.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

▶ **International transactions – Yes**

b) Priority and preference of methods

There is none specified.

7. Benchmarking requirements

a) Local vs. regional comparables

There is no specific guidance. However, tax authorities could accept local country comparables or west African comparables.

b) Single-year vs. multiyear analysis

There is no specific guidance. Three-year testing could be acceptable.

c) Use of interquartile range

Cote d'Ivoire

There is no specific guidance on the use of the interquartile range.

d) Fresh benchmarking search every year vs. roll forwards and update of the financials

There is no specific guidance. There is no need to conduct a fresh benchmarking search every year; updates could be acceptable.

e) Simple vs. weighted average

There is no specific guidance. The simple average for arm's-length analysis could be preferred.

f) Other specific benchmarking criteria, if any

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

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

CBCR:

- ▶ A fine of XOF 5 million (approx. EUR7,500)
- ▶ A CbC report that contains wrong information is punishable by a fine of XOF 2 million (approx. €3,049) by mistake or omission.
 - ▶ TP return: Denial of deductibility of expenses
- ▶ If an adjustment is sustained, can penalties be assessed?

Please refer to our point a) Penalty exposure

- ▶ Is interest charged on penalties or payable on a refund?

This is not applicable.

b) Penalty relief

Company can address a request for penalty relief to the Director General of Tax Administration.

9. Statute of limitations on transfer pricing assessments

The limitation period is set to three years.

10. Likelihood of transfer pricing scrutiny and related audit by the 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 the transfer pricing methodology is challenged (*high/medium/low*)

Same as the above section.

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

There is none specified.

11. APA and MAP opportunities

- ▶ Availability (unilateral, bilateral and multilateral)

There is no APA program available in Cote d'Ivoire.

- ▶ Tenure

This is not applicable.

- ▶ Rollback provisions

This is not applicable.

- ▶ MAP opportunities

No

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

Ministry of Finance

b) Relevant transfer pricing section reference

- ▶ Name of transfer pricing regulations or rulings and the effective date of applicability
 - ▶ Article 13 of the Corporate Income Tax (CIT) Act (in force as of 2005, latest update of respective Article as of 1 March 2012)
 - ▶ Article 14 of the CIT Act (in force as of 2005, latest update of respective Article as of 1 January 2017)
 - ▶ Article 14a of the CIT Act (respective Article in force as of 1 January 2017)
 - ▶ Article 37 of the CIT Bylaw (in force as of 2005, latest update of respective Article as of 3 January 2017)
 - ▶ Article 40 of the CIT Bylaw (in force as of 2005, latest update of respective Article 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 and 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 or 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 or thresholds

▶ Transfer pricing documentation

There is no materiality limit.

▶ Economic analysis

There is no materiality limit.

▶ BEPS master and local files

This is not applicable

▶ CbCR

Annual consolidated group gross revenue equaling to or exceeding EUR750 million.

c) Specific requirement

▶ Treatment of domestic transactions

There is a documentation requirement for domestic transactions in case one party is in a favorable tax position (i.e., if the concerned party 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

There is none specified.

d) BEPS Action 13 implementation overview

- ▶ Has your country adopted or 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 and local file rules have been adopted as of the time of this publication.

- ▶ Coverage in terms of master and local files

Croatia

The master and local files are not covered.

► **Effective or expected commencement date**

This is not applicable.

► **Material differences from OECD report template or format**

This is not applicable.

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

This is not applicable.

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

There is a CbCR notification and CbC report submission requirement in Croatia.

► **CbCR notification included in the statutory tax return**

CbCR notification is a separate filing and is not included in the statutory tax return.

► **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

Yes, it was signed on 6 July 2017.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 and disclosure timelines

a) Filing deadline

► **Corporate income tax return**

30 April

► **Other transfer pricing disclosures and return**

30 April

► **CbCR notification**

30 April

► **CbC report preparation and submission**

The report should be filed 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 and 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 filing of the CIT return if specifically requested by the taxpayer's tax officer.

► **Time period or 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 (for both international and domestic transactions)

► Yes.

b) Priority and 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 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. multiyear analysis.

Multiyear analysis (up to three years), as per common practice, is applicable.

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 forwards and 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, update of financials of a prior study is accepted.

e) Simple vs. weighted average

Both the weighted average and simple average are used in practice.

f) Other specific benchmarking criteria, if any

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

► Consequences of failure to submit, late submission 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?

There is none specifically prescribed.

► Is interest charged on penalties or payable on a refund?

There is none 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. For example, a CIT return for FY 2017 should have been submitted by 30 April 2018, and thus the statute-of-limitations period commences on 1 January 2019.

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 and related audit by the 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.

Croatia

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

The likelihood is high; if the taxpayer is not able to support the prices applied in intercompany transactions with the appropriate documentation.

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

The likelihood is high; if the taxpayer is not able to support the prices applied in intercompany transactions with the appropriate documentation.

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

There is none specified.

APAs are concluded for a period of up to five years.

► **Rollback provisions**

There is none specified.

► **MAP opportunities**

Yes.

11. APA and MAP opportunities

► **Availability (unilateral, bilateral and 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 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**

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Cyprus Tax Department, Ministry of Finance

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations or rulings and the 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).

In March 2017, the Cyprus Tax Department issued a tax circular introducing a transfer pricing documentation requirement for taxpayers claiming the benefits of the so-called IP Box regime on embedded IP incomes. The transfer pricing study should be prepared in accordance with the OECD Transfer Pricing Guidelines. On 30 June 2017, the Cyprus Tax Department issued a tax circular (the Circular) revising the transfer pricing framework for companies carrying out intragroup financing activities in Cyprus. More specifically, the scope of the 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 Transfer Pricing Guidelines. The Circular includes additional guidance in terms of substance and transfer pricing requirements in line with the OECD Transfer Pricing Guidelines, as well as guidance as to the required content of a transfer pricing study. Based on the Circular, the transfer pricing analysis of such financing arrangements should be conducted on the basis of documenting the remuneration of the Cypriot financing entity, irrespective of the intercompany interest rates applied on the incoming and outgoing loans.

The provisions of the Circular are effective from 1 July 2017 and cover all existing and future financing arrangements, irrespective of any tax rulings issued prior to 30 June 2017.

For tax years up to 2018, there are no further specific transfer pricing rules or transfer pricing documentation requirements in Cyprus. Nevertheless, Cyprus is expected to introduce broader transfer pricing legislation and documentation requirements in 2019 with effect from 1 January 2019. The

updated transfer pricing documentation rules are expected to cover all intercompany transactions and shall be based on the OECD Transfer Pricing Guidelines.

► Section reference from local regulation

Section 33 of the Cyprus Income Tax Law (L118(I) of 2002, as amended, Section 33) refers to transactions between connected and related parties.

2. OECD Guidelines treatment and reference

Cyprus is not a member of the OECD. However, the local transfer pricing regulations are expected to be in line with the OECD Transfer Pricing Guidelines.

3. Transfer pricing documentation requirements (for tax years up to 2018)

a) Applicability

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

There is none specified apart from the documentation requirements limited to intercompany loans financed by debt and for embedded IP income.

► Does transfer pricing documentation have to be prepared annually?

No; however, the prepared transfer pricing documentation for inter-company financing transactions related to loans funded by debt needs to be updated annually in case that there were changes compared to the previous year (e.g., modification of loans, changes in functional and risk profile).

b) Materiality limit or thresholds

► Transfer pricing documentation

There is no materiality threshold.

► Economic analysis

There is no materiality threshold.

► BEPS master and local files

Not applicable; however, such documentation requirement is expected to be introduced during 2019, effective as of 1 January 2019.

► 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 requirements

► Treatment of domestic transactions

There is documentation obligation for domestic transactions only for intragroup financing transactions related to loans financed out of debt. The broader transfer pricing rules to be introduced in 2019 are not expected to include any exceptions for domestic transactions.

► Local language documentation requirement

The transfer pricing documentation need not be submitted in the local language. It can be submitted in English.

► Safe harbor availability

Safe harbor is available for companies performing pure 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 or 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 have been adopted (refer the above section for details of the upcoming adoption of such rules).

► Coverage in terms of master and local files

This is not applicable.

► Effective or expected commencement date

The legislation is expected in 2019.

► Material differences from OECD report template or format

This is not applicable.

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

This is not applicable.

► CbCR notification and CbC report submission requirement

There is a CbCR notification and CbC report requirement in Cyprus. For the financial year 2018, the notification is to be submitted by 31 December 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 the financial year 2017 until 31 January 2019.

► CbCR notification included in the statutory tax return

There is none specified.

► Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

Yes. It was signed on 1 November 2016.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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

As of 2019, companies entering into intercompany transactions should also submit a Summary Information Table (SIT) providing information with regards to the type and volume of their transactions with related parties. SIT is submitted electronically.

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

► Corporate income tax return

The deadline is within 15 months from the financial year-end (e.g., for the fiscal year ending 31 December 2018, the deadline is 31 March 2020).

► Other transfer pricing disclosures and return

The Summary Information Table should be submitted within nine months from the corresponding year-end (e.g., for the 2019 tax year, the deadline for the submission of the SIT is 30 September 2020).

► **CbCR notification**

The deadline is the last day of the reporting fiscal year.

► **CbC report preparation and submission**

The deadline is within 12 months from the end of the fiscal year (e.g., for groups with year-end 31 December 2019, the reporting deadline is 31 December 2020).

b) Documentation preparation deadline

The transfer pricing documentation file is not submitted electronically to the Tax Department, but is maintained by taxpayers for six years. It is furnished to the tax authorities in the event of a tax audit within 60 days upon request. Effectively, the deadline for preparing the documentation file (e.g., for supporting the embedded IP income or for loans financed by debt) is the same as the filing deadline for company tax returns (which is 15 months from the end of the relevant tax year).

c) Documentation submission deadline

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

No.

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

The deadline is within 60 days from the day of request.

6. Transfer pricing methods

a) Applicability (for both International and domestic transactions)

This is not applicable.

b) Priority and 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 with regards to the preferred transfer pricing methods.

7. Benchmarking requirements

a) Local vs. regional comparables

This is not applicable.

b) Single-year vs. multiyear 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 function is generally accepted.

d) Fresh benchmarking search every year vs. roll forwards and update of the financials

This is not applicable.

e) Simple vs. weighted average

Weighted average is accepted.

f) Other specific benchmarking criteria, if any

This is not applicable.

8. Transfer pricing penalties and relief

a) Penalty exposure

► **Consequences of failure to submit, late submission 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 or payable on a refund?**

It is variable on a year-by-year basis.

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 limitation 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 or related audit by local authority

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

The likelihood is medium. 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*)

The likelihood is low. In case transfer pricing is reviewed as part of the audit, the probability that transfer pricing methodology will be challenged is low since there is currently no detailed transfer pricing legislation as long as the methodology is based on OECD Transfer Pricing Guidelines.

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

This is not applicable since there are no guidelines yet with regards to which is the most acceptable transfer pricing methodology.

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

This is not applicable.

11. APA and MAP opportunities

► Availability (unilateral, bilateral and multilateral)

APAs are currently not available.

APA procedures for both unilateral, bilateral and multilateral are expected to be introduced during 2019.

Moreover, as of 1 July 2017, the tax authorities have indicated that they will issue rulings for intragroup financing transactions financed by debt.

► Tenure

This is not applicable.

► Rollback provisions

This is not applicable.

► MAP opportunities

MAP opportunities applicable under the bilateral double tax treaties.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Ministry of Finance (MF)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the effective date of applicability

The Czech Income Tax Act and Directives D-10, D-332, D-32 and D-334 of the Czech Ministry of Finance and General Financial Directorate; transfer pricing obligation applicable since 1993

▶ Section reference from local regulation

Section 23/7 of the Czech Income Tax Act

2. OECD Guidelines treatment and 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 or rules?

Czech Republic tax legislation currently does not have a formalized legal requirement for the existence of transfer pricing 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 or thresholds

▶ Transfer pricing documentation

There is no materiality limit.

▶ Economic analysis

There is no materiality limit.

▶ BEPS master and local files

There is no materiality limit.

▶ CbCR

If the consolidated revenues of the group amounted to at least EUR750 million in the previous fiscal year, they need to submit a CbCR report.

c) Specific requirements

▶ 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, transfer pricing documentation is also accepted in English at times.

▶ Safe harbor availability

There is none specified.

d) BEPS Action 13 implementation overview

▶ Has your country adopted or 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 local files

The master and local files are not covered. However, Directive D-334, containing similar requirements on the scope of transfer pricing documentation and issued by the Czech Ministry of Finance, is followed in the Czech Republic.

▶ Effective or expected commencement date

There is none specified.

▶ Material differences from OECD report template or format

Czech Republic

There is none specified.

- ▶ **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.

- ▶ **CbCR notification included in the statutory tax return**

No

- ▶ **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

Yes

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 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, such as name and registered office, and complete a list of selected transactions entered into with the aforementioned related parties 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 are required to disclose, in the corporate income tax return, whether they were engaged in transactions with related parties.

b) Transfer pricing-specific returns

There is none specified.

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- ▶ **Corporate income tax return**

The corporate income tax return needs to be submitted 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 and return**

A transfer pricing appendix to the corporate income tax return needs to be submitted 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 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 the previous year.

- ▶ **CbC report preparation and submission**

The report needs to be filed 12 months after the year-end.

b) Documentation preparation deadline

Upon the request of the tax authorities.

c) Documentation submission deadline

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

No

- ▶ **Time period or 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 (for both international and domestic transactions)

Yes

b) Priority and 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. multiyear analysis

Multiyear (three years) analysis, as per common practice, is preferred.

c) Use of interquartile range

Excel Quartile is used, as per common practice.

d) Fresh benchmarking search every year vs. roll forwards and 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, is preferred.

f) Other specific benchmarking criteria, if any

There is a 25% independence threshold, based on Czech tax law.

8. Transfer pricing penalties and relief

a) Penalty exposure

► Consequences of failure to submit, late submissions 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 transfer pricing 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 or payable on a 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

The statute of limitations could be 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 and related audit by the 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 the 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 and situations, if any, more likely to undergo audit

Intangibles, royalties, long-term losses and service fees are seen as the most common 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 and MAP opportunities

► Availability (unilateral, bilateral or 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. As of 2018, Czech tax nonresidents may ask an APA for allocation of profits to a permanent establishment. D-32 details the procedure for issuing binding assessments and the particulars for the application.

► Tenure

The tenure period is usually three or four years.

► 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.

► MAP opportunities

MAP procedure is available in line with the EU arbitration convention and respective double tax treaties.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Danish Customs and Tax Administration (Skattestyrelsen)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the effective date of applicability

The following regulations contain references to transfer pricing documentation:

- ▶ Tax Assessment Act Section 2, which states that controlled transactions should be at arm's length
- ▶ Tax Control Act Section 37-42, which defines the documentation requirements that are further detailed in the executive order
- ▶ Executive Order No. 1297 of 31 October 2018
- ▶ Section reference from local regulation

Tax Control Act Section 37 has reference to transfer pricing.

2. OECD Guidelines treatment and 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 rules.

3. Transfer pricing documentation requirements

a) Applicability

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

Yes

▶ Does transfer pricing documentation have to be prepared annually?

Yes, transfer pricing documentation needs to be prepared annually under local country regulations. The transfer pricing documentation must be prepared by the deadline for the tax return. The documentation need not be filed together with the tax return.

Noncompliance with the deadline may mean that:

- ▶ The burden of proof shifts from the tax authorities to the taxpayer.
- ▶ Taxable income may be determined on an estimated basis.
- ▶ Transfer pricing penalties are imposed.

Taxpayers must be able to submit documentation fulfilling all requirements under the Danish regulations upon request.

b) Materiality limit or thresholds

▶ Transfer pricing documentation

Companies belonging to a consolidated group with fewer than 250 employees and either less than DKK125 million in assets or DKK 250 million in revenue are not required to prepare documentation as per the master file and local file format.

▶ Economic analysis

There is 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

See the above section.

▶ CbCR

CbC report filing and CbCR notification requirements apply in line with the OECD Guidelines. The threshold for CbCR is DKK 5.6 billion (EUR 750 million)

c) Specific requirements

▶ Treatment of domestic transactions

There is a documentation obligation for domestic transactions. In reality, the Danish Tax Administration is not interested in transactions between two Danish entities 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 transfer pricing documentation does not need to be submitted in the local language. English, Swedish, Norwegian and Danish are acceptable.

▶ Safe harbor availability

Denmark

There is none specified.

d) BEPS Action 13 implementation overview

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

Denmark has adopted BEPS Action 13 for transfer pricing documentation in terms of master file and local file, and CbCR.

▶ Coverage in terms of master and local files

It does cover the master file and local file.

▶ Effective or expected commencement date

It is applicable for years beginning on or after 1 January 2016.

▶ Material differences from OECD report template or format

There are no material differences between the OECD report template or 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

▶ CbCR notification included in the statutory tax return

There is none specified.

▶ Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

Yes, it was signed on 27 January 2016.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

This is 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 and disclosure timelines

a) Filing deadline

▶ Corporate income tax return

The deadline is 30 June (calendar year).

▶ Other transfer pricing disclosures and return

The deadline is 30 June.

▶ CbCR notification

The deadline is 31 December (by the end of the fiscal year in question).

▶ CbC report preparation and submission

The deadline is 31 December (or 12 months after the fiscal year-end).

b) Documentation preparation deadline

Transfer pricing 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 not include any material not available at the time of filing the tax return for a given year. 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 or 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 (for both international and domestic transactions)

Yes

b) Priority and 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. multiyear 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 or limited risk distributor) to be inside the interquartile range every year.

c) Use of interquartile range

Yes, the interquartile range calculation using Excel Quartile formulas is preferred.

d) Fresh benchmarking search every year vs. roll forwards and 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

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

► Consequences of failure to submit, late submission or incorrect disclosures

The penalty amounts to DKK 250,000 per legal entity per year for which late or insufficient or no transfer pricing documentation is submitted.

In addition, if the taxpayer does not fulfil 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 nondeductible surcharge will be levied on all prior-year adjustments of corporate taxes payable.

► Is interest charged on penalties or payable on a refund?

Nondeductible interest of 0.7 % in 2018 (0.8% in 2017, 0.8% from 1 January 2016, 0.8% for the income years 2014 to 2015, 0.4% until 31 July and 0.7% from 1 August 2013) is applicable.

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 (DKK 125,000). However, the 10% penalty on any income adjustment could still apply. 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 of the sixth year following the income year concerned (e.g., the statute of limitations for the income year 2013 is 1 May 2019).

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

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

The likelihood is high; generally, the Danish Customs and Tax Administration is known for being very aggressive.

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

The likelihood is high; however, in recent years, it has become more common for the Danish Customs and Tax Administration to close cases without any income adjustments.

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

Refer to the section above.

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

The tax authorities are particularly focused on:

- ▶ Valuation of intellectual property (IP), particularly related to the transfer of intangible assets abroad to low-tax countries
- ▶ Loss-making entities
- ▶ Business restructurings
- ▶ Group financing, including long intercompany loans, cash pools and guarantees
- ▶ Management services – both inbound and outbound
- ▶ Licensing (royalty)

11. APA and MAP opportunities

▶ Availability (unilateral, bilateral and multilateral)

Danish legislation provides for unilateral, bilateral and multilateral APAs.

▶ Tenure

The tenure is usually five years, but may be shorter or longer.

▶ Rollback provisions

Rollback is available on request although they will not prevent Danish Customs and Tax Administration from initiating tax audits of previous income periods.

▶ MAP opportunities

The Danish legislation provides for MAPs.

Contact

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1. Tax authority and relevant transfer pricing regulation or 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 or rulings and the effective date of applicability

Article 281 of the Dominican Tax Code and Decree No. 78-14 of the Dominican Republic has reference to transfer pricing.

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 and 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 or 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 report and return must be prepared annually, with updates to all the information that allows a correct transfer pricing analysis. The local tax authorities require the most recent available financial information for the comparables and the tested party.

b) Materiality limit or thresholds

► Transfer pricing documentation

Taxpayers are exempt from preparing a transfer pricing study in certain situations:

► Taxpayers whose total amount of intercompany transactions does not exceed DOP10 million (adjusted every year for inflation) and have no transactions with entities located in tax havens or under preferential tax regimes

► For related-party transactions with entities resident in the Dominican Republic, provided 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 transfer pricing information return.

► Economic analysis

Refer the section above.

► BEPS master and local files

This is not applicable.

► CbCR

This is not applicable.

c) Specific requirements

► 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 deferred taxation in the Dominican Republic. Notwithstanding the above, taxpayers with domestic transactions must file the transfer pricing return.

► Local language documentation requirement

The transfer pricing 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 none specified.

Dominican Republic

d) BEPS Action 13 implementation overview

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

No.

- ▶ Coverage in terms of master and local files

This is not applicable.

- ▶ Effective or expected commencement date

This is not applicable.

- ▶ Material differences from OECD report template or format

This is not applicable.

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

This is not applicable.

- ▶ CbCR notification and CbC report submission requirement

No.

- ▶ CbCR notification included in the statutory tax return

No.

- ▶ Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

No.

4. Transfer pricing return and related party disclosures

a) Related-party disclosures and transfer pricing-related appendices

No.

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 numbers, transaction classifications, amounts, profit level indicator of the tested party of each transaction, interquartile range or results of comparables, and methods applied for analysis, among others. This return shall be filed within 180 days after the closing date of the fiscal year.

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- ▶ Corporate income tax return

The filing should be made within 120 days after the closing date of the fiscal year.

- ▶ Other transfer pricing disclosures and return

The filing should be made within 180 days after the fiscal year-end.

- ▶ CbCR notification

There is no CbCR notification requirement in the Dominican Republic.

- ▶ CbC report preparation and submission

This is not applicable.

b) Documentation preparation deadline

The documentation must be readily available by the time the transfer pricing 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, the 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 the submission of transfer pricing documentation. If requested by the tax authorities, the documentation should be provided within the period the tax authorities stipulate in the notice.

- ▶ Time period or 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 (for both international and domestic transactions)

Yes.

b) Priority and 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. multiyear analysis

Multiple-year testing for the comparables only is applicable. 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 forwards and update of the financials

A fresh benchmarking search every year over updating financials of a prior study is required. A transfer pricing report 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 in practice.

f) Other specific benchmarking criteria, if any

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

▶

▶ Consequences of failure to submit, late submission 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 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 or payable on a 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:

- ▶ A 40% reduction of the surcharges assessed if the company decides to voluntarily amend its tax return without any prior notice from the tax authorities
- ▶ A 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 and related audit by the 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 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.

Dominican Republic

► **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 and royalty transactions, among others.

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

The likelihood is high because, in most audits, the DGII challenges either the methodology or the comparables.

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

The hospitality industry is more likely to undergo audit.

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**

There is none specified.

► **MAP opportunities**

No.

11. APA and MAP opportunities

► **Availability (unilateral, bilateral and 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.

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1. Tax authority and relevant transfer pricing regulation or 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 or rulings and the effective date of applicability

The transfer pricing regime is part of the corporate income tax (CIT) enacted in the Tax Law (Ley Orgánica 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 website.¹

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 adaptations to the content of the documentation and to the methodology to be accepted by local Tax Administration.²

► 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.

In addition, Tax Law include definitions of the Arm's Length Standard, the methods accepted locally, comparability criteria's and penalties for late accomplish of the taxpayer's transfer pricing obligations.

2. OECD Guidelines treatment and 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.

On December 2018 local Government established the creation of a Commission in charge to coordinate and establish the steps to follow for addition process of Ecuador as member of the OECD.

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 2018.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines or 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 must 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 many 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.**

¹ sri.gob.ec

²

Ecuador

- ▶ 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 comparable 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.
- ▶ The Tax Administration may use secret comparable.
- ▶ 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 must be prepared annually under local country regulations. It must cover every transaction, independently of the obligation of filing it when the thresholds are met, which are explained in the section below.

b) Materiality limit or thresholds

▶ Transfer pricing documentation

The Tax Administration has defined “relevant transactions” to exclude domestic (exceptions apply) and certain cross-border transactions 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 CbCR is not required by Ecuadorian Tax Law.

c) Specific requirements

▶ 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 presented for administrative procedure with public institutions in Ecuador

▶ 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 or implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No.

▶ Coverage in terms of master and local files

Not applicable.

▶ Effective or expected commencement date

Not applicable.

▶ **Material differences from OECD report template or 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 Local Tax Administration TP guidelines³, must be closely followed.

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

There is no CbCR notification and CbC report submission requirement in Ecuador.

▶ **CbCR notification included in the statutory tax return**

Not applicable.

▶ **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

No.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

Detail information about 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 several 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 to government institutions:

- ▶ **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 (amount of related party transactions that trigger local transfer pricing obligations) and the recognition of any potential transfer pricing adjustment that affect to the income tax calculation.**
- ▶ **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 and disclosure timelines

a) Filing deadline

▶ **Corporate income tax return**

The exact submission deadline for the specific obligations to be fulfilled by taxpayers regarding the transfer pricing regime is defined according to the ninth digit of their tax identification number.

▶ **Other transfer pricing disclosures and 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.

³ According to the technical guideline updated by the Tax Administration annually denominated "Ficha Técnica para la Estandarización del Análisis de Precios de Transferencia". The applicable version for the Transfer Pricing Documentation 2018 is the version 7.

► **CbC report preparation and submission**

Not applicable.

b) Documentation preparation deadline

Transfer pricing documentation must be prepared annually under local regulations. Documentation requirements will be determined according to the thresholds of related-party transactions (domestic, foreign and tax havens). Local TP documentation must 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 or 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 to ten 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 (for both international and domestic transactions)

► **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.

b) Priority and preference of methods

In 2016, LORTI regulation reform eliminated the compulsory hierarchy application between direct and indirect methods and 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. multiyear 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 forwards and update of the financials

A fresh benchmarking search needs to be conducted every year. For the application of methods that use external comparable companies (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

Simple

f) Other specific benchmarking criteria, if any

- **The PLI should be calculated using just the financial information for the year under analysis (2018).** Tax Authority requires the use of contemporaneous financial information 1x1 with the 2018 information of the comparable companies and Tested Party.
- **In absence of financial data for the contemporaneous fiscal year, the financial information of the prior year (2017) may be used, if it shows that the relevant conditions were similar in both periods.**
- **The use of financial information of more than one year to calculate the PLI (average calculation for the PLI of the comparable companies) should be factually justified based on business cycles or other comparability criteria.**

- ▶ The use of companies with operating losses are not permitted.
- ▶ If the selected method requires a PLI, it must not use a denominator that contains the operations that are being tested, unless it is duly verified that its use does not influence the result of the analysis.
- ▶ More detailed review of the comparable companies to identify other business segments that are not comparable with the tested party. Local Tax Authority prefers a comparison using the segmented financial information excluding the not comparable business segmented financial information.
- ▶ The application of working capital adjustments to the financial information of the comparable companies and the tested party must be explained and supported. Since TP Documentation 2017 do not exist an obligation to apply working capital adjustments and the Company can use the non-adjusted range.
- ▶ The Arm's Length range should be calculated with regular statistics formulas (just in case the results presents an EY interquartile range or Weighted Average)

8. Transfer pricing penalties and relief

a) Penalty exposure

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

Ecuador has a specific transfer pricing penalty regime. Penalties of up to USD15,000 would 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.

Despite 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 or payable on a 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 and related audit by the 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 the 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 and 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 and MAP opportunities

► **Availability (unilateral, bilateral and multilateral)**

There is an APA-like procedure that takes the form of pricing or methodology consultations and information disclosure.

The process and absolution is more like a binding consultation because their application is obligatory by the Local Tax Authority to the taxpayer but not in the other way.

► **Are the MAP opportunities stand-alone or in connection with an APA? If yes, provide brief details**

MAP opportunities are not established in the Local Tax Law.

► **Tenure**

The ruling term includes the year before 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**

In case that the answer to the consultation would result in favorable terms to the taxpayer, the taxpayer will have to carry out amendments to the tax return for the fiscal years previews to the date of favorable answer from the Tax Administration.

► **MAP opportunities**

No.

Contact

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

Egyptian Tax Authority (ETA)

b) Relevant transfer pricing section reference

- ▶ Name of transfer pricing regulations or rulings and the 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 October 2018
- ▶ 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.

Article 30 of the ITL gives ETA the authority to adjust a taxpayer's profits if its transactions with related parties were not made on an arm's-length basis.

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 and reference

Egypt is not a member of the OECD.

Pursuant to the executive regulations of the ITL, in the case that none of the five methods referred to in the law (CUP, resale price, profit split, transactional net margin and cost-plus) are applicable, 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 or rules?

Yes

- ▶ Does transfer pricing documentation have to be prepared annually?

Yes, transfer pricing documentation is required for each financial year.

b) Materiality limit or thresholds

Egypt

▶ Transfer pricing documentation

There is no materiality limit; however, the Egyptian TP guidelines refer to the material transactions needing to be documented.

▶ Economic analysis

There is no materiality limit.

▶ BEPS master and local files

There is none specified.

▶ CbCR

An Egyptian parent company of a multinational group with consolidated group revenue of at least EGP3b (€148m) will have to file a country-by-country (CbC) report (CbCR) in Egypt.

c) Specific requirements

▶ 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

There is none specified.

d) BEPS Action 13 implementation overview

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

Yes

▶ Coverage in terms of master and local files

Both master file and local files are covered.

▶ Effective or expected commencement date

This is applicable for transaction carried out from 2018.

▶ Material differences from OECD report template or format

There is none specified.

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

There is none specified.

▶ CbCR notification and CbC report submission requirement

Yes, there are CbC report submission requirements however no clear CbCR notification requirements in the new guidelines.

▶ CbCR notification included in the statutory tax return

There is none specified.

▶ Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

No

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

The corporate tax return, in its related-party disclosure section, requires taxpayers to provide the following information:

- ▶ Name of the related party or parties, along with the group structure
- ▶ The nature of the relationship
- ▶ Type of the related-party transactions, if any
- ▶ The value of the transactions
- ▶ The method used to determine the fair-market price and the reasons for selecting this method
- ▶ The country of origin for tangible and intangible goods
- ▶ 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 and disclosure timelines

a) Filing deadline**▶ Corporate income tax return**

The documentation should be filed on or before 30 April.

▶ Other transfer pricing disclosures and return

The deadline for local transfer pricing documentation is 30 June 2019.

▶ CbCR notification

There is none specified.

▶ CbC report preparation and submission

The documentation should be filed on or before 31 December 2019.

b) Documentation preparation deadline

A taxpayer engaged in cross-border transactions with related parties is expected to prepare local transfer pricing documentation and submit it to the ETA within two months following the filing of the 2018 corporate tax return (i.e., 30 June 2019 if the return is filed by the statutory deadline).

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

Yes, it is within two months following the filing of the 2018 corporate tax return (i.e., 30 June 2019 if the return is filed by the statutory deadline).

▶ Time period or deadline for submission on tax authority request

There is no official time frame.

6. Transfer pricing methods**a) Applicability (for both international and domestic transactions)**

Yes

b) Priority and preference of methods

In articles 39 and 40 of the ITR, 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.

The amendments under Article 39 added two new methods of determining the arm's-length price: the transactional net margin method and the profit split method.

According to amendments under Article 40, the hierarchical approach in selecting TP methodology was cancelled. The taxpayer has the right to choose one of the methods referred to in Article 39 according to the nature of the transaction and the conditions of dealing and there is no longer a priority in applying a certain method before the other.

The taxpayer has the right to follow any appropriate method, provided that adequate documents to support the application of that method are presented.

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

In Egypt, there is a lack of local comparable data; however, in that case the ETA can accept the Middle East and then global comparables, in that order based on the data availability.

b) Single-year vs. multiyear analysis

Multiple-year testing (three years) is preferred.

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 forwards and 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

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

- ▶ Consequences of failure to submit, late submission 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:

- ▶ Five percent 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
- ▶ Fifteen percent 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
- ▶ Forty percent 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 or payable on a 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

The term could be as long as five years.

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

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

The likelihood is 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.

Considering the new transfer pricing guidelines published on 23 October 2018, if a taxpayer does not submit adequate transfer pricing documentation, the ETA is likely to treat the taxpayer as a high tax risk, increasing the likelihood of audit and a transfer pricing adjustment. As this could also shift the burden of proof to the taxpayer to disprove the ETA's assessment position, taxpayers with cross-border related-party transactions should review the new guidelines and ensure they can produce adequate transfer pricing documentation for the current fiscal year by 30 June 2019.

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

The likelihood is 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 the covered transactions that are complex in nature.

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

The likelihood is 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 and 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 and MAP opportunities

▶ **Availability (unilateral, bilateral and multilateral)**

Yes, unilateral APAs are available in Egypt.

▶ **Tenure**

There is none specified.

▶ **Rollback provisions**

There is none specified.

▶ **MAP opportunities**

No

Contact

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1. Tax authority and relevant transfer pricing regulations or 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 or rulings and the 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. 001/2018, 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 and 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 or 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 or thresholds

► Transfer pricing documentation

There is no materiality limit.

► Economic analysis

There is 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.

c) Specific requirements

► 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 or implemented BEPS Action 13 for transfer pricing documentation in your local regulations?**

No

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

This is not applicable.

▶ **Effective or expected commencement date**

This is not applicable.

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

This is not applicable.

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

This is not applicable.

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

There is no CbCR notification and CbC report submission requirement for El Salvador.

▶ **CbCR notification included in the statutory tax return**

This is not applicable.

▶ **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports.**

No

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 and disclosure timelines

a) Filing deadline

▶ **Corporate income tax return**

The documentation has to be filed on or before 30 April.

▶ **Other transfer pricing disclosures and return**

The documentation has to be filed on or before 31 March.

▶ **CbCR notification**

This is not applicable.

▶ **CbC report preparation and submission**

This is 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 or 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 (for both international and domestic transactions)

Yes

b) Priority and 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. multiyear analysis

Multiyear testing for the comparables only; in practice, the number of years is three.

c) Use of interquartile range

The Excel Quartile calculation is preferred and common in practice.

d) Fresh benchmarking search every year vs. roll forwards and 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

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

► **Consequences of failure to submit, late submission 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.

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.

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 or 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 5 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 and related audit by the 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 the 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 and situations, if any, more likely to undergo audit**

There is none specified.

El Salvador

11. APA and MAP opportunities

▶ **Availability (unilateral, bilateral and multilateral)**

There is none specified.

▶ **Tenure**

This is not applicable.

▶ **Rollback provisions**

This is not applicable.

▶ **MAP opportunities**

No

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Estonian Tax and Customs Board

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the 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 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 – has reference to transfer pricing.

2. OECD Guidelines treatment and 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 or 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 or group, industry (if need be), as well as a functional analysis and economic analysis, if changes have occurred, and benchmark studies.

b) Materiality limit or thresholds

▶ Transfer pricing documentation

There is no materiality limit based on transaction value; however, transfer pricing documentation is applicable to:

- ▶ A resident credit institution, financial 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:
 - ▶ Number of employees (including associated persons) is at least 250
 - ▶ Turnover of the financial year preceding the transaction with associated persons was at least EUR50 million
 - ▶ Consolidated balance sheet total assets were at least EUR43 million

▶ Economic analysis

There is no materiality limit.

▶ BEPS master and local files

This is not applicable.

▶ CbCR

Consolidated revenues of the group in the previous fiscal year amounted to at least EUR750 million.

c) Specific requirements

▶ Treatment of domestic transactions

There is a documentation obligation for all related-party transactions, domestic and cross-border.

▶ Local language documentation requirement

The transfer pricing documentation needs to be submitted in the local language (i.e., Estonian). The transfer pricing documentation may also be prepared in English, but the tax authorities may require translation of certain parts of the documentation.

▶ **Safe harbor availability**

This is not applicable.

d) BEPS Action 13 implementation overview

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

Current transfer pricing regulations, in effect since 2007, have been deemed to be generally compliant with BEPS Action 13.

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

The regulation covers both master file and local file.

▶ **Effective or expected commencement date**

This is not applicable.

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

There are no material differences; however, there are some additional requirements stipulated in local regulation compared to those of BEPS Action 13.

The additional requirements for master files are:

- ▶ **Group legal and ownership structure chart should include parent undertakings, subsidiaries and associated enterprises. An overview of the activities of the members of the consolidated group should be provided.**
- ▶ **Important business restructurings in the previous financial year should include changes in the structure of the consolidated group and in the activities of the members of the consolidated group.**
- ▶ **Description of the MNE's business is not required to be prepared in relation to the five main products. Instead, a general overview of the business activities of the group should be provided (including the changes in the business strategy compared to the previous financial year).**
- ▶ **Brief written functional analysis describing the principal contributions to value creation by individual entities within the group (in the controlled transactions) should also include changes compared to the previous financial year.**
- ▶ **General information about controlled transactions should be provided, including parties to the transaction, their type (tangible or intangible property, or services) and values.**
- ▶ **List of expense distribution agreements should be provided along with preliminary decisions regarding transfer prices.**

▶ **Group's transfer pricing policy should be described.**

The additional requirement for local files is:

▶ **Detailed description of the business and business strategy of the local entity should include the description of changes in the entity's business strategy compared with the previous financial year.**

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

Considering the above should be sufficient.

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

There is CbCR notification and CbC report submission requirement for Estonia.

▶ **CbCR notification included in the statutory tax return**

CbCR notification should be filed electronically on the tax authority website (as a separate form and not as part of the tax return) or by email on an annual basis within six months after the end of the financial year for which the reporting is to be made.

If Estonian tax resident is the reporting entity of the multinational enterprise group meeting the threshold of EUR750 million, it should submit the CbC report to the tax authority by 31 December of the calendar year following the financial year that is a reporting year.

▶ **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports.**

Yes. It was signed on 27 Jan 2016. The intended first information exchange was by September 2017.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 and disclosure timelines

a) Filing deadline

- ▶ Corporate income tax return

It should be filed by the 10th date of each month.

- ▶ Other transfer pricing disclosures and return

This is not applicable.

- ▶ CbCR notification

It should be filed within six months after the end of the financial year for which the reporting is to be made.

- ▶ CbC report preparation and submission

The filing deadline is 31 December (12 months after the end of the financial year for which reporting is to be made).

b) Documentation preparation deadline

Transfer pricing 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 the submission of transfer pricing documentation, but it needs to be prepared annually.

- ▶ Time period or 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 (for both international and domestic transactions)

Yes.

b) Priority and preference of methods

The Tax and Customs Board accepts the CUP, resale price, cost-plus, profit split and TNMM methods or, if necessary, any

other suitable method. There is no hierarchy of methods; all are treated equally. 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. multiyear analysis

Multiyear analysis is acceptable.

c) Use of interquartile range

Estonian legislation determines the full range as an arm's length range. However, inter-quartile range is commonly applied in practice.

EY Quartile is used in common practice.

d) Fresh benchmarking search every year vs. roll forwards and 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

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

- ▶ Consequences of failure to submit, late submission 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. Failure to submit information to the tax authority intentionally or submission of false information if the tax or withholding obligation is decreased thereby or the claim for refund is increased is punishable by a fine of up to EUR32,000. 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?

Estonia

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 or payable on a 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 an exception than a 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 and related audit by the local authority

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

The likelihood is high in the case of intragroup loans; it is high in the case of large multinationals.

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

The likelihood is medium; refer the section above.

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

The likelihood is medium to high; refer the section above.

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

Intragroup financing and management and support services 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.

On 1 January 2018, an amendment to the Income Tax Act came into force, obligating Estonian resident companies and non-resident companies with a permanent establishment in Estonia to prove at the request of the tax authorities that their intra-group loan granted to a shareholder, partner or member of the company (with a term exceeding 48 months) does not constitute hidden profit distribution. If the circumstances of a loan transaction indicate a hidden profit distribution, income tax at the rate of 20% on the loan amount shall apply (tax base is divided by 0.8 before multiplied by the tax rate). Tax authorities are required to allow the company at least 30 days to demonstrate their capacity and intention of collecting the loan.

11. APA and MAP opportunities

► **Availability (unilateral, bilateral and multilateral)**

Currently, Estonian tax laws do not provide any opportunity to conclude APAs.

► **Tenure**

This is not applicable.

► **Rollback provisions**

This is not applicable.

► **MAP opportunities**

Yes. However, no concrete procedure is established in the legislation. MAP has been applied in practice.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Fiji Revenue and Customs Services (FRCS)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the effective date of applicability

Legal Notice 11, Fiji Transfer Pricing Regulations 2012, has reference to transfer pricing.

▶ Section reference from local regulation

Section 3 (Associates), subsection 2 of the Fiji Transfer Pricing Regulations, has reference to transfer pricing.

2. OECD Guidelines treatment and reference

Fiji is not a member of the OECD. The FRCS 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 rules. Consequently, the FRCS 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 or rules?

Yes.

▶ Does transfer pricing documentation have to be prepared annually?

Yes. The minimum requirement to achieve this is a transfer pricing analysis or transfer pricing documentation of the foreign country benchmarking documentation.

b) Materiality limit or thresholds

▶ Transfer pricing documentation

There is no materiality limit.

▶ Economic analysis

There is no materiality limit.

▶ BEPS master and local files

This is not applicable.

▶ CbCR

This is not applicable.

c) Specific requirements

▶ Treatment of domestic transactions

There is no specific requirement for domestic transactions.

▶ Local language documentation requirement

The transfer pricing documentation needs to be submitted in the local language, according to Fiji Transfer Pricing Regulations 2012 Part III.

▶ Safe harbor availability

There is none specified.

d) BEPS Action 13 implementation overview

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

No.

▶ Coverage in terms of master and local files

This is not applicable.

▶ Effective or expected commencement date

This is not applicable.

▶ Material differences from OECD report template or format

This is not applicable.

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

This is not applicable.

▶ CbCR notification and CbC report submission requirement

No.

▶ CbCR notification included in the statutory tax return

This is not applicable.

- ▶ Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

No.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 FRCS 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 FRCS 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 and disclosure timelines

a) Filing deadline

- ▶ Corporate income tax return

The filing deadline is 31 March or three months after the financial year-end.

- ▶ Other transfer pricing disclosures and return

The filing deadline for other transfer pricing disclosures and return is usually the fiscal year-end or the date of the extension.

- ▶ CbCR notification

This is not applicable.

- ▶ CbC report preparation and submission

This is 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 or 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 (for both international and domestic transactions)

It applies to international transactions. However, there is none specified for domestic transactions.

b) Priority and preference of methods

The FRCS 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. multiyear analysis

Multiyear analysis (five years) is a common practice.

c) Use of interquartile range

In recent transfer pricing audits, the interquartile range was used by the tax authorities.

d) Fresh benchmarking search every year vs. roll forwards and 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 is a common practice.

f) Other specific benchmarking criteria, if any

The FRCS, at most times, uses the Australian Taxation Office (ATO) industry benchmarking on profitability.

► 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.

► 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 or payable on a 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 FRCS 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 and relief

a) Penalty exposure**► Consequences of failure to submit, late submission 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.

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 transfer pricing 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 FRCS served the notice of assessment on the taxpayer

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

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

The likelihood is usually low as the FRCS lacks the qualified resources to conduct such related audits repeatedly. Tax audits are undertaken at the discretion of the FRCS. The FRCS 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 transfer

pricing 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 transfer pricing team, which in most cases will conduct an analysis of the methodology – a challenge will be low.

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

The likelihood is high; if the methodology is challenged, the tax office will divert resources to the case if the exposure is substantial.

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

Manufacturing and services, such as banking and insurance (refer to the section above for more details), are more likely to undergo audit.

11. APA and MAP opportunities

- ▶ Availability (unilateral, bilateral and 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 FRCS encourages taxpayers to discuss related-party transactions with the FRCS prior to entering into them, with a view toward eliminating any transfer pricing implications of the same, even though such discussions are not binding on either party.

- ▶ Tenure

This is not applicable.

- ▶ Rollback provisions

This is not applicable.

- ▶ MAP opportunities

No.

Contact

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

Finnish Tax Administration

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations or rulings and the 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 the master and local file under BEPS Action 13, as well as the rules on CbCR, entered into force on 1 January 2017. The rules concerning CbCR apply, however, to financial years that began on or after 1 January 2016.

► Section reference from local regulation

Act on the Tax Assessment Procedure, Section 31.

2. OECD Guidelines treatment and 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 or 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 or 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).

► CbCR

Finnish CbCR requirements apply if the group revenue exceeds EUR750 million in the financial year immediately preceding the reporting financial year.

c) Specific requirements**► 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

There is none specified.

d) BEPS Action 13 implementation overview**► Has your country adopted or 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 local files

The master and local files are covered in accordance with OECD recommendations.

► Effective or expected commencement date

1 January 2017

► Material differences from OECD report template or format

There are no material differences between the OECD report template or 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.

► CbCR notification included in the statutory tax return

No.

► Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports.

Yes, the agreement was signed on 27 January 2016.

4. Transfer pricing return and related-party disclosures**a) Related-party disclosures and transfer pricing-related appendices**

There is 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 and disclosure timelines**a) Filing deadline****► Corporate income tax return**

The documentation has to be filed at the 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 and 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 and 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 and 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 or 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 (for both international and domestic transactions)

- ▶ **International transactions** – Yes, there is a TP documentation obligation.
- ▶ **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 and 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 or Nordic comparables. Pan-European comparables are, however, widely accepted in tax practice.

b) Single-year vs. multiyear analysis

Three-year analysis is followed, as per common practice.

c) Use of interquartile range

Excel Quartiles is used, as per common practice.

d) Fresh benchmarking search every year vs. roll forwards and 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

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

- ▶ **Consequences of failure to submit, late submission 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 or payable on a 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 2018, is calculated until approximately 10 months after the end of the financial year. An interest at a higher rate (7% in 2018) 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 2018.

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:

- ▶ The taxpayer can initiate a MAP procedure in order to remove the double taxation.
- ▶ 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 and related audit by the local authority

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

The likelihood is 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 the transfer pricing methodology is challenged (*high/medium/low*)

The likelihood is 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 and situations, if any, more likely to undergo audit

Transactions involving transfer of intellectual property rights and business restructurings.

11. APA and MAP opportunities

▶ Availability (unilateral, bilateral and 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

There is none specified.

▶ MAP opportunities

Yes, taxpayers may request a MAP if taxation has or is likely to occur that is not in accordance with the provisions of a double taxation treaty to which Finland is signatory. Most of Finland's DTTs permits taxpayers to present their case to the Tax authority of the Ministry of Finance within three years from the first notification to the taxpayer of the actions giving rise to taxation not in accordance with the DTT. However, time limits may vary, and the relevant DTT should be consulted for the applicable time limit. Taxpayers have three years to present a case to the Tax authority under the EU Arbitration Convention (90/436/EEC).

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1. Tax authority and relevant transfer pricing regulation or 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 or rulings and the effective date of applicability

The regulations or rulings related to transfer pricing in the French Tax Code (FTC) are found in the following articles:

- ▶ Article 57 – arm's-length principle
- ▶ Article 223 quinquies B – annual declaration of related-party transactions
- ▶ Article 223 quinquies C – CbCR
- ▶ Article 238A – the reversal of the burden of proof in the case of tax haven
- ▶ Article 209B – CFC regulation
- ▶ Articles 212-I and 39-1 3 – thin capitalization legislation (applied only in the context of certain intra-group financing arrangements such as intra-group interest payments on intra-group debt)
- ▶ Article 1735 ter – transfer pricing documentation penalty regime
- ▶ Article 1729F – CbCR penalties

The regulations or rulings related to transfer pricing in the French Procedural Tax Code (FPTC) are found in the following articles:

- ▶ Article L 13 AA – transfer pricing documentation requirements
- ▶ Article R 13 AA-1 – additional guidance on how to apply Article L 13 AA
- ▶ Article L 10 – general information requests during a tax audit
- ▶ Article L 13 B – transfer pricing-related questions during a tax audit (this 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 has reference to transfer pricing documentation.

2. OECD Guidelines treatment and 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 closely (certain BEPS initiatives have been introduced into law).

3. Transfer pricing documentation requirements

a) Applicability

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

Yes

▶ Does transfer pricing documentation have to be prepared annually?

Transfer pricing documentation needs to be prepared annually under local country regulations. At a very minimum, transaction values must be updated and a memo that confirms changes to prior-year content must be prepared. For financial years starting on or after 1 January 2018, the OECD's BEPS Action 13 recommendations (master file and local file) apply. However, comparable searches only need updating every three years under the condition that no material changes occurred during that period.

b) Materiality limit or thresholds

▶ Transfer pricing documentation

Taxpayers that fulfill at least one of the 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 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

For the Transfer Pricing Statement (Article 223 quinquies B, refer below for further details), the above-mentioned threshold of EUR400 million is lowered to EUR50 million.

► **Economic analysis**

There is no materiality limit prior to 2018. For financial years starting on or after 1 January 2018, only the “most important intra-group transactions” need to be benchmarked. A separate decree, published in July 2018, specifies that the “most important intra-group transactions” are cross-border intra-group 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.

► **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., the adoption of the master file or local file approach to transfer pricing documentation.

► **CbCR**

The threshold is EUR750 million.

c) Specific requirements

► **Treatment of domestic transactions**

There is no documentation obligation for domestic transactions. However, this does not exclude domestic transactions from potential scrutiny during tax audit.

► **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**

The only safe harbor available in France relates to intra-group lending: a French borrower that pays a rate that is equal to or lower than the “legal rate” will not be questioned or reassessed on that interest rate. The legal rate is published quarterly by the FTA and is a variable rate based on data communicated by French banks to the FTA on interest rates these banks provide to borrowers on loans of at least two-year maturity. This legal rate is, thus, a variable rate.

d) BEPS Action 13 implementation overview

► **Has your country adopted or 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 and local file requirements were adopted for financial years starting on or after 1 January 2018.

► **Coverage in terms of master and local files**

Both master and local files are covered, but only for financial years starting on or after 1 January 2018.

► **Effective or expected commencement date**

The commencement date is 1 January 2018.

► **Material differences from OECD report template or 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 BEPS 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 have 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 overall content required to be included in master file and local files is consistent with the OECD’s BEPS 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 related to the French entity itself (including amounts of intra-group transactions) 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.

► CbCR notification included in the statutory tax return

Yes. This is applicable only if the UPE or the SPE is not located in a country that has adopted CbCR requirements and has not signed the automatic exchange of information protocol.

► Is your country a signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports? If yes, mention the signing date

Yes, it was signed on 27 January 2016.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 (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 within 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 intra-group 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 C.

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 Article 223 quinquies C of the FTC, respectively – for companies that satisfy specific criteria (refer to the criteria mentioned above).

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

► Corporate income tax return

Generally, the deadline is three months after the financial year-end; a minor extension is granted for companies closing on 31 December.

► Other transfer pricing disclosures and 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

The deadline is the same time as submitting the tax return – i.e., generally, it is three months after the financial year-end.

► CbC report preparation and submission

It should be submitted 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 has only 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 the submission of transfer pricing documentation; it only needs to be finalized by the time it is submitted upon request.

► Time period or 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 (for both international and domestic transactions)

► International transactions

Yes

► Domestic transactions

No transfer pricing documentation obligation exists in France for domestic transactions. However, domestic transactions can be scrutinized in case of tax audit.

b) Priority and 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) is preferred.

c) Use of interquartile range

The Excel Quartile range is preferred.

d) Fresh benchmarking search every year vs. roll forwards and 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., the 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

The independence of comparables is required by law. Independence is either a question of law (exceeding 50% of detention) or fact (whether one management's decision can be influenced by the other entity).

8. Transfer pricing penalties and relief

a) Penalty exposure

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

Penalties specific to the 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). The failure to provide complete information in the framework of Article L 13B of the FPTC may result in:

- A reassessment of the company's taxable profit based on information the tax authorities possess
- The application of a penalty of EUR10,000 for each year audited

The 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:

- A minimum of EUR10,000 per entity and per period not documented
- A 0.5% charge of the volume of transactions that were not documented

Or

- A 5% charge of the reassessments based on Article 57 of the FTC (arm's-length principle)

The 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:

- EUR150 if the Transfer Pricing Statement is not submitted

Or

- EUR15 per error with a minimum penalty of EUR60 and a maximum penalty of EUR10,000

The failure to submit a Transfer Pricing Statement will increase the risk of a tax audit as the French tax authorities use this tax return form as a risk assessment tool.

The failure to comply with the legal CbCR requirements (i.e., 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:

- **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).**
- **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.**
- **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 the taxpayer files, before the FTA issues the tax bill, a written request to apply Article L62 A and that 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.**
- **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 the 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 or payable on a 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, which is 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 year 2017 will be statute-barred. However, carry-forward 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 – 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 and 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 taxable activities in France to the FTA.

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

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

The likelihood is 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*)

The likelihood is 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 the transfer pricing methodology is challenged (*high/medium/low*)

The likelihood is 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 and situations, if any, more likely to undergo audit

In recent years, US-headquartered technology companies have been subject to highly publicized (in newspapers, for instance) tax police raids and tax audits. Also, intra-group financial transactions, in particular with Luxembourg, have been heavily scrutinized in the past three to four years. But, as a general comment, all types of intra-group transactions (e.g., management fees and royalties or licenses) are subject to scrutiny.

11. APA and MAP opportunities

► Availability (unilateral, bilateral and 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, i.e., 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 2020 start of the APA, the APA submission would need to be lodged by 30 June 2019 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.

► MAP opportunities

Yes. Taxpayers may request a MAP if taxation has or is likely to occur that is not in accordance with the provisions of a Double Taxation Treaty to which France is a signatory. Most of France's DTTs permit taxpayers to present their cases to the tax authority within three years from the first notification to the taxpayers of the actions giving rise to taxation not in accordance with the DTT. However, time limits may vary; the relevant DTT should be consulted for the applicable time limit. Taxpayers have three years to present a case to the tax authority under the EU Arbitration Convention (90/436/EEC).

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

Revenue Office and Customs Office

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the effective date of applicability

The amendments of the Corporate Income Tax Law are effective from 1 January 2019.

The Corporate Income Tax (CIT) Law stipulates an obligation for mandatory transfer pricing (TP) reporting for legal entities whose total annual turnover exceeds MKD60,000,000 (approx. EUR975k). Local taxpayers shall file the annual TP report with the submission of the Corporate Income Tax (CIT) return. The submission deadline is 15th of March. The TP report shall be provided in an official form prescribed by the Ministry of Finance with a TP Rulebook (the Rulebook).

For facilitating TP reporting obligations, it is envisaged that taxpayers, whose volume of related-party transactions does not exceed the amount of MKD10,000,000 per annum (approx. EUR 162k) or whose related parties are only Macedonian tax residents, to submit a "short" TP report.

▶ 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 and reference

Macedonia is not a member of the OECD.

There are no specific tax regulations on business restructurings in Macedonia.

3. Transfer pricing documentation requirements

a) Applicability

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

The general TP rules are embodied in the CIT Law. Detailed rules on the mandatory TP reporting is expected to be provided with the Rulebook issued by the authorities. At the moment of this report, the relevant Rulebook has not been adopted and published.

▶ Does transfer pricing documentation have to be prepared annually?

Yes

b) Materiality limit or thresholds

▶ Transfer pricing documentation

Materiality limit of annual turnover of MKD60,000,000 (approx. EUR 975k)

▶ Economic analysis

Materiality limit of annual turnover of MKD60,000,000 (approx. EUR 975k)

▶ BEPS master and local files

Macedonia is not an OECD member, and the local legislation has not yet been amended to reflect BEPS standards and recommendations.

▶ CbCR

No CbCR legislation is in force; refer to the section above.

c) Specific requirements

▶ Treatment of domestic transactions

There is a documentation obligation for domestic transactions. Please refer to section b.

▶ Local language documentation requirement

The TP documentation needs to be submitted in the local language.

▶ 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 or debtor. For loans denominated in MKD, the reference rate used for the safe harbor rule is the Macedonian interbank rate.

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d) BEPS Action 13 implementation overview

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

The BEPS standards are expected to be implemented in the local regulation until the end of year 2019.

- ▶ Coverage in terms of master and local files

There is none specified.

- ▶ Effective or expected commencement date

There is none specified.

- ▶ Material differences from OECD report template or format

There is none specified.

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

There is none specified.

- ▶ CbCR notification and CbC report submission requirement

There is no CbCR notification or CbC report submission requirement for Macedonia.

- ▶ CbCR notification included in the statutory tax return

There is none specified.

- ▶ Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports.

No

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

We expect further details to be provided with the Rulebook.

b) Transfer pricing-specific returns

This should be determined by the Rulebook.

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- ▶ Corporate income tax return

The documentation should be filed on or before 15 March

- ▶ Other transfer pricing disclosures and return

The TP report should be submitted together with the annual CIT return until 15 March.

- ▶ CbCR notification

This is not applicable.

- ▶ CbC report preparation and submission

This is not applicable.

b) Documentation preparation deadline

The transfer pricing documentation needs to be finalized by the time of submitting the CIT return.

c) Documentation submission deadline

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

15 March

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

No exact deadline has been specified 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 (for both international and domestic transactions)

Yes

b) Priority and preference of methods

The CIT Law specifies the methods that should be used while determining the price of transactions to be in accordance with the arm's length principle. According to the Law the CUP method, the resale method, the cost-plus method, the transactional net margin method and the profit split method should be used. Additionally, any other method may be used if the previous methods are not appropriate.

7. Benchmarking requirements

a) Local vs. regional comparables

Details should be determined by the Rulebook.

b) Single-year vs. multiyear analysis

Single-year testing is used in an arm's-length analysis.

c) Use of interquartile range

This should be determined by the Rulebook.

d) Fresh benchmarking search every year vs. roll forwards and update of the financials

A fresh benchmarking search needs to be performed every year. Taking into consideration the mandatory annual TP reporting.

e) Simple vs. weighted average

To be determined by the Rulebook.

f) Other specific benchmarking criteria, if any

To be determined by the Rulebook.

8. Transfer pricing penalties and relief

a) Penalty exposure

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

A penalty in the amount of EUR2.000 shall be imposed to the taxpayer, if it fails to submit the report to the tax authorities within the prescribed deadline.

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

Provided that the tax authorities challenge the TP reports submissions by the taxpayer, 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 or payable on a 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.

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 and related audit by the 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

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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.

- ▶ **Likelihood of an adjustment if the 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.

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

There is none specified.

11. APA and MAP opportunities

- ▶ **Availability (unilateral, bilateral and 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**

This is not applicable.

- ▶ **Rollback provisions**

This is not applicable.

- ▶ **MAP opportunities**

There is none specified.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Gabonese Tax Authority

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations or rulings and the 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.

A statement of practice on transfer pricing obligations in Gabon was issued on 22 June 2018.

2. OECD Guidelines treatment and 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 or 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 or thresholds

► Transfer pricing documentation

This is not applicable.

► Economic analysis

This is not applicable.

► BEPS master and local files

This is 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 requirements

► 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

There is none specified.

d) BEPS Action 13 implementation overview

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

Yes

► Coverage in terms of master and local files

Both the master file and local file are covered.

► Effective or expected commencement date

The effective commencement date for the adoption of BEPS Action 13 was 1 January 2017.

► Material differences from OECD report template or format

There are no material differences between the OECD report template or format and Gabon's regulations.

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

Gabon

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

► CbCR notification and CbC report submission requirement

There is a CbCR notification and CbC report submission requirement in Gabon.

► CbCR notification included in the statutory tax return

No

► Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports.

Yes, signed on 26 January but not yet ratified.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 and disclosure timelines

a) Filing deadline

► Corporate income tax return

30 April of each year

► Other transfer pricing disclosures and return

Not applicable

► CbCR notification

At the end of the following year

► CbC report preparation and 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 or 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 (for both international and domestic transactions)

► International transactions – yes

► Domestic transactions – not applicable

b) Priority and 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. multiyear analysis

Single-year testing is required, but multiyear 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 forwards and update of the financials

There is no need to conduct fresh benchmarking search every year; roll forwards and update of the financials are acceptable.

e) Simple vs. weighted average

Both are acceptable.

f) Other specific benchmarking criteria, if any

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

- ▶ **Consequences of failure to submit, late submission 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 or payable on a refund?**

There is 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 and related audit by the local authority

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

The likelihood is 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 the transfer pricing methodology is challenged (high/medium/low)**

Refer to the above section.

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

The situations are recurrent loss position and failure to file TP Documentation.

11. APA and MAP opportunities

- ▶ **Availability (unilateral, bilateral and 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.

- ▶ **MAP opportunities**

There is none specified.

Contact

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

Revenue Service of Georgia (RS)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the effective date of applicability

The transfer pricing general principles are provided in articles 126 to 129 of the Georgian Tax Code (GTC) and the Instruction on Pricing International Controlled Transactions (TP Instruction).

▶ Section reference from local regulation

Article 126 of GTC and Article 127.5

2. OECD Guidelines treatment and 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 or rules?

Yes, the TP Instruction determines information to be included in the transfer pricing (TP) documentation.

▶ Does transfer pricing documentation have to be prepared annually?

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 or special rule.

b) Materiality limit or thresholds

▶ Transfer pricing documentation

There is no materiality limit.

▶ Economic analysis

There is no materiality limit.

▶ BEPS master and local files

This is not applicable.

▶ CbCR

This is not applicable.

c) Specific requirements

▶ 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

There is none specified.

d) BEPS Action 13 implementation overview

▶ Has your country adopted or 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 local files

This is not applicable.

▶ Effective or expected commencement date

This is not applicable.

▶ Material differences from OECD report template or format

This is not applicable.

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

This is not applicable.

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

There is no CbCR notification and CbC report submission requirement in Georgia.

- ▶ **CbCR notification included in the statutory tax return**

No.

- ▶ **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports.**

Yes, it was signed on 30 June 2016.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

This is not applicable.

b) Transfer pricing-specific returns

This is not applicable; however, any TP adjustment by the taxpayer shall be reflected in the monthly corporate income tax return.

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- ▶ **Corporate income tax return**

This is to be filed on a monthly basis

- ▶ **Other transfer pricing disclosures and return**

This is to be filed upon request

- ▶ **CbCR notification**

This is not applicable

- ▶ **CbC report preparation and submission**

This is 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 or 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 (for both international and domestic transactions)

- ▶ **International transactions – Yes**
- ▶ **Domestic transactions – No**

b) Priority and 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 the 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. multiyear 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 forwards and 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 USD 3 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. The applicable independence criterion is 50% or less.

8. Transfer pricing penalties and relief

a) Penalty exposure

► Consequences of failure to submit, late submission 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 or payable on a 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 and related audit by the local authority

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

The likelihood is high; from 1 January 2017, the existing regulation for levying a profit tax in Georgia changed and the so-called tax on 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 transitions 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*)**

The likelihood is high; refer to the section above.

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

The likelihood is high; refer to the section above.

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

This is not applicable.

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**

The tenure could be as long as three years (with a possibility of extension).

► **Rollback provisions**

There is none specified.

► **MAP opportunities**

There is none specified.

11. APA and MAP opportunities

► **Availability (unilateral, bilateral and 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

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1. Tax authority and relevant transfer pricing regulation or 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 or rulings and the effective date of applicability

German transfer pricing rules are not included in one integrated section of the German tax code but in several provisions in different legislative acts, which are:

- Constructive dividend, § 8 (3) Corporate Income Tax Act
- Hidden capital contribution, § 4 (1) Income Tax Act and § 8 (1) Corporate Income Tax Act
- Contribution or 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 (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 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 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 (gesetze-im-internet.de/fverlv/).

As of 1 January 2013, a law amending § 1 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 (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 or 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 – gesetze-im-internet.de/ao_1977/_90.html) as well as in an Executive Order Law to § 90 (3) (gesetze-im-internet.de/gaufzv_2017/). Section 90 (3) General Tax Act was 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 (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 noncompliance with transfer pricing documentation rules (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,” was published.
- ▶ On 12 April 2005, the Administrative Principles, including the tax authorities’ interpretation of the transfer pricing documentation requirements as stipulated in § 90 (3) 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) Foreign Tax Act and the Executive Order Law on Transfer of Business Functions. The Administrative Principles details, 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) 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 related 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 and 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. With respect to cost contribution arrangements, the administrative regulations even directly reference Chapter VIII of the OECD Guidelines.

3. Transfer pricing documentation requirements

a) Applicability

- ▶ Does your country have transfer pricing documentation

Germany

guidelines or rules?

Yes. There are transfer pricing documentation guidelines or 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 (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 the 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 and 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 or 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 do not exceed EUR5 million. The same goes for transactions involving goods and for a threshold of (cumulatively) EUR 500,000 for other intercompany transactions, e.g., services. As of fiscal year 2017, these

thresholds have been increased to EUR6 million (for goods) and EUR600,000 (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 or 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 EUR100 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 EUR750 million.

c) Specific requirements

► 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 inquiries, and to cooperate with them in order to clarify the facts and circumstances of the case. This may include providing existing information related 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 or implemented BEPS Action 13 for transfer pricing documentation in your local regulations?**

Yes. Germany has adopted BEPS Action 13 for transfer pricing documentation, effective from 1 January 2016. For this purpose, § 90 (3) General Tax Act has been amended.

► **Coverage in terms of master and local files**

Yes. § 90 (3) General Tax Act has been amended to include the obligation to prepare a master file as well as a local file if the specific “de minimis” thresholds were exceeded.

► **Effective or expected commencement date**

German transfer pricing documentation obligations have already been implemented in 2003. As of fiscal years starting after 31 December 2016, German taxpayers are obliged to prepare a master file- or 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 or format**

In principle, there should not be material differences between the OECD report template or 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 or 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) Executive Order Law are in compliance with the OECD local file template, e.g., the documentation requested for cost allocations or 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 the 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 the financial year starting 1 January 2016 will be lodged.

► **CbCR notification included in the statutory tax return**

Yes.

► **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

Yes. It was signed on 27 January 2016.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 related to transfer pricing. However, the relevant tax return forms may include certain questions or information relevant for transfer pricing as well (e.g., inter alia, information on related parties in low tax jurisdictions for German CFC regulations, information on constructive dividends and 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 (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 or 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 and return

Transfer pricing documentation (master file or local file) has to be submitted within 60 days upon request. Such request typically comes within a tax audit that 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 and 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 it has to be submitted within 60 days upon request (30 days for extraordinary business transactions).

► Time period or deadline for submission on tax authority request

Transfer pricing documentation for ordinary intercompany transactions has to be submitted within 60 days upon request. The documentation for extraordinary business transactions has to be submitted within 30 days upon request.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

► International transactions

German tax authorities will analyze the intercompany transactions in line with the extensive rules and regulations as explained above.

► **Domestic transactions**

Although § 1 Foreign Tax Act is not applicable to domestic transactions, in practice, German tax authorities generally analyze 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 and preference of methods

German tax auditors will analyze the arm's-length nature of the transfer prices based on § 1 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. multiyear analysis

Single-year testing is preferred for tested arm's-length analysis, but multiyear 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 forwards and 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 and relief

a) Penalty exposure

► **Consequences of failure to submit, late submission or incorrect disclosures**

If a taxpayer does not comply with the transfer pricing documentation requirements to the extent outlined in § 90(3) 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) 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 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 or 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 non-deductible 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 and payable on a 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 or arbitration at the Federal Central Tax Office.

9. Statute of limitations on transfer pricing assessments

In general, the assessment period for taxes (§ 169 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 10 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 and 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.

In the last years, German tax authorities have been very active with regard to coordinated tax audits with other jurisdictions, mostly within the EU (Section 12 of the EU Administrative Assistance Act).

► 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 the 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 and situations, if any, more likely to undergo audit

The likelihood of a transfer pricing audit is particularly high in the following circumstances:

- Companies facing (long-term) losses
- Companies being involved in a business restructuring
- Companies that have intercompany business transactions with related parties located in low tax jurisdictions

11. APA and MAP opportunities

► Availability (unilateral, bilateral and 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: EUR20,000 for a new APA, EUR15,000 for a renewal and EUR10,000 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 EUR500,000), 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.

Germany

► Rollback provisions

There is no automatic rollback procedure, but German tax authorities usually accept a rollback 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.

► MAP opportunities

Yes. The Taxpayer must be eligible under one of Germany's Double Taxation Treaties, or the EU Arbitration Convention (90/436/EEC) to request a MAP. A formal and timely request to the Federal Central Tax Office, including a description of the facts and a legal assessment, is required. Furthermore, according to some older German DTTs, access is limited to cases of actual double taxation. The request has to be submitted by the taxpayer or an authorised representative. MAP requests are accepted in the case of a taxpayer initiated foreign bona fide adjustment.

Most of Germany's DTTs permit a taxpayer to present their case to the tax authority within three years from the first notification to the taxpayer of the actions giving rise to taxation not in accordance with the DTT. However, time limits may vary, particularly in older treaties, and the relevant DTT should be consulted for the applicable time limit.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Ghana Revenue Authority (GRA)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the effective date of applicability

Transfer Pricing Regulations, 2012 (L.I. 2188), effective 14 September 2012

▶ Section reference from local regulation

Section 128 of the Income Tax Act 2015

Section 31 of the Income Tax Act 2015, Act 896 (as amended)

Paragraph 2 of the Transfer Pricing Regulations, 2012

2. OECD Guidelines treatment and reference

Ghana is not a member of the OECD.

The OECD Guidelines are considered as an interpretive guide by the Commissioner-General ("CG") of the GRA.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines or 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 or thresholds

▶ Transfer pricing documentation

There's no materiality limit.

▶ Economic analysis

There's no materiality limit.

▶ BEPS master and local files

This is not applicable.

▶ CbCR

This is not applicable.

c) Specific requirements

▶ 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

This is not available.

d) BEPS Action 13 implementation overview

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

No

▶ Coverage in terms of master and local files

This is not applicable.

▶ Effective or expected commencement date

This is not applicable.

▶ Material differences from OECD report template or format

This is not applicable.

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

This is not applicable.

▶ CbCR notification and CbC report submission requirement

There is no CbCR notification and CbC report submission requirement in Ghana.

▶ CbCR notification included in the statutory tax return

This is not applicable.

▶ Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports.

No

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

In the financial statements

b) Transfer pricing-specific returns

The filing an annual transfer pricing return is required. The return must be filed no later than four months after the end of the taxpayer's financial year.

5. Transfer pricing documentation and 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 and return

Four months following the end of the taxpayer's year of assessment.

▶ CbCR notification

This is not applicable.

▶ CbC report preparation and submission

This is 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 or 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 fourteen days, as it is the unit's expectation that taxpayers have this documentation already as required by law.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

Yes

b) Priority and 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. multiyear analysis

None are specified, but in practice, multiyear 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 forwards and 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 and relief

a) Penalty exposure

► Consequences of failure to submit, late submission 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?

If an adjustment is sustained, it becomes an adjusted assessment for which payment must be made within 30 days. After these 30 days, interest may be assessed, computed at 125% of the statutory (central bank prime) rate and compounded monthly.

► Is interest charged on penalties or payable on a 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 complies, 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.

Contact

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

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

High. There has been a very 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 the transfer pricing methodology is challenged (*high/medium/low*)

High. Many audit cases have seen adjustments by the GRA.

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

None specified; primarily, the oil & gas, communications, pharmaceutical, FMCG and cement manufacturing industries have been profiled for audits.

11. APA and MAP opportunities

► Availability (unilateral, bilateral and multilateral)

This is not available.

► Tenure

This is not applicable.

► Rollback provisions

This is not applicable.

► MAP opportunities

Where there is an effective DTA, MAPs are available.

1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

Commissioner of Income Tax, Income Tax Office

b) Relevant transfer pricing section reference

- ▶ Name of transfer pricing regulations or rulings and the effective date of applicability
- ▶ The reference is stated under the 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.
- ▶ "Artificial and fictitious" definition effective 25 October 2018.
- ▶ Section reference from local regulation
- ▶ Income Tax Act 2010 Section 40(3)(c) & Income Tax Act 2010 Schedule 4 Paragraph 2. Income Tax Act 2010 Section 74.

2. OECD Guidelines treatment and 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.

From 25 October 2018 onward, "artificial and fictitious" is defined in terms of being "not consistent with the international standard of the arm's-length principle as defined by the Organisation for Economic Co-operation and Development as part of their Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations as amended from time to time"

3. Transfer pricing documentation requirements

a) Applicability

- ▶ Does your country have transfer pricing documentation guidelines or rules?

No

- ▶ Does transfer pricing documentation have to be prepared annually?

This is not applicable.

b) Materiality limit and thresholds

- ▶ Transfer pricing documentation

There is no materiality limit.

- ▶ Economic analysis

There's no materiality limit.

- ▶ BEPS master and local files

This is not applicable.

- ▶ CbCR

The report is applicable to MNE groups with total consolidated revenue of EUR750 million (in accordance with EU Directive 2016/881).

c) Specific requirements

- ▶ 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

There is none specified.

d) BEPS Action 13 implementation overview

- ▶ Has your country adopted or 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 local files**

This is not applicable.

▶ **Effective or expected commencement date**

This is not applicable.

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

This is not applicable.

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

This is not applicable.

▶ **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.

▶ **CbCR notification included in the statutory tax return**

The CbCR notification filing deadline is nine months after the fiscal year-end.

▶ **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

No.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

This is not applicable.

b) Transfer pricing-specific returns

This is not applicable.

5. Transfer pricing documentation and 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 and return**

This is not applicable.

▶ **CbCR notification**

The CbCR notification filing deadline is nine months after the fiscal year-end.

▶ **CbC report preparation and submission**

The filing deadline for CbC preparation and submission is 12 months after the relevant financial year.

b) Documentation preparation deadline

This is not applicable.

c) Documentation submission deadline

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

No

▶ **Time period or 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 (for both International and domestic transactions)

There is no specific requirements.

b) Priority and 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

There is none specified.

b) Single-year vs. multiyear analysis

There is none specified.

c) Use of interquartile range

There is none specified.

d) Fresh benchmarking search every year vs. roll forwards and update of the financials

There is none specified.

e) Simple vs. weighted average

There is none specified.

f) Other specific benchmarking criteria, if any

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

► **Consequences of failure to submit, late submission 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 or payable on a 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 wilful default or negligent conduct has been committed.

10. Likelihood of transfer pricing scrutiny and related audit by the 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 the transfer pricing methodology is challenged (*high/medium/low*)**

The likelihood is medium. Again, if an audit takes place, it is likely that a potential issue was identified.

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

There is none specified.

11. APA and MAP opportunities

► **Availability (unilateral, bilateral and multilateral)**

Taxpayers may request advance tax rulings from the Commissioner of Income Tax, in accordance with the Income Tax (Tax Rulings) Rules 2018, which is effective October 25, 2018. A standard form is provided which should be used to request a ruling.

In determining whether sufficient evidence has been provided, the Commissioner must take into account any relevant OECD or other international benchmarks or standards.

► **Tenure**

A tax ruling will specify a period, not exceeding three years, during which it may be relied upon.

► **Rollback provisions**

There is none specified.

► **MAP opportunities**

No

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Ministry of Finance

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations or rulings and the effective date of applicability

Transfer pricing 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 aims to clarify transfer pricing issues affecting inter-company transactions pertaining to tax years starting 1 January 2014. It provides long-anticipated clarifications on matters including the concept of “associated or affiliate persons,” the calculation of the interquartile range, the use of databases for 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 inter-company transactions referring to fiscal years starting on or after 1 January 2014.
- Decision 1284/2013 of the General Secretary of Public Revenues determines 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 inter-company transactions that take place in financial years starting 1 January 2014.
- 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 €750 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. The term encompasses two persons whereby:

- One of them directly or indirectly holds shares, parts or quotas of at least 33% in the other, which is estimated on the basis of total value or number, or equivalent profit participation rights or voting rights
- A third person, directly or indirectly, participates in them in any of the aforementioned ways
- There is, between them, direct or indirect management dependence or control, the possibility of one person exercising a decisive influence on the other, or the possibility of a third person doing so on both of them

Circular 1142/2015 provides examples of cases in which management dependence or control, or the possibility of one person exercising a decisive influence exists.

Circular 1049/2019 regulates issues related to the Mutual Agreement Procedure in accordance with bilateral Conventions for the Avoidance of Double Taxation.

2. OECD Guidelines treatment and 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 inter-company 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 or rules?

Yes. There are transfer pricing documentation guidelines or rules in Greece.

- Does transfer pricing documentation have to be prepared annually?

Yes. The transfer pricing documentation has to be prepared annually under local country regulations. Furthermore, all sections of the transfer pricing documentation files have to be updated. If profit-based documentation methods are applied through the performance of a comparability search, the comparable data defined on the basis of 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.

The transfer pricing file as per Decision 1097/2014 consists of both a master file and a local file in line with the OECD BEPS Action 13 initiative:

- ▶ **The master file is common for all group companies and contains common, standardized information for the group affiliates as well as for the branches.**
- ▶ **The local file (Greek file) contains additional information regarding the Greek companies.**

b) Materiality limit or thresholds

▶ Transfer pricing documentation

Persons subject to documentation requirements include taxpayers with a total value of inter-company transactions of more than €200,000 or €100,000, depending on whether their turnover is more or less than €5 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

There is none specified.

▶ CbCR

The CbCR requirements are applicable to Greek tax resident entities that are members of an MNE group with a consolidated group turnover exceeding €750 million.

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.

c) Specific requirements

▶ Treatment of domestic transactions

There is no specific requirement for the treatment of domestic transactions in a distinct manner. Domestic transactions are in scope of transfer pricing documentation requirements similar to cross-border transactions.

▶ Local language documentation requirement

On the basis of Decision 1097/2014, the transfer pricing 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

There are no safe harbor rules available.

d) BEPS Action 13 implementation overview

▶ Has your country adopted or 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 BEPS Action 13.

▶ Coverage in terms of 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 files (no threshold applies).

▶ Effective or expected commencement date

The master file and local file are required since the financial year 2008; however, the required minimum content of the files became closer to the suggested content in BEPS Action 13 from the financial year 2014.

▶ Material differences from OECD report template or format

The main differences of the minimum required content of the master file for Greek transfer pricing 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 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 inter-company transactions to be included also in the master file.
- ▶ The main differences of the minimum required content of the local file for Greek transfer pricing 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 transfer pricing 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 such as 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.

A taxpaying member of an MNE group, which is subject to CbCR submission requirements, should release under Table ① of its CIT return:

- ▶ The group it belongs to
- ▶ Whether it has submitted a CbCR
- ▶ The country or tax jurisdiction of the UPE
- ▶ The country or tax jurisdiction to which the CbCR has been submitted
- ▶ Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

Yes. It was signed on 27 January 2016. The Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports was ratified by L. 4490/2017.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

Taxpayers disclose their intra-group transactions by annually filing a summary information table (SIT) of transfer pricing information. For intra-group 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.

b) Transfer pricing-specific returns

Companies must submit a SIT of their inter-company transactions to the tax administration up to the deadline for the submission of companies' CIT returns.

5. Transfer pricing documentation and 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 31 December as year-end, this is, in principle, by 30 June of the next year).

▶ Other transfer pricing disclosures and return

Companies are obligated to electronically submit a SIT of their inter-company transactions to the tax authorities up to the deadline for the submission of companies' CIT return (i.e., in principle, 30 June for companies with a financial year-end on 31 December).

- ▶ CbCR notification

In general, the deadline is on the last day of the reference year; however, for reporting financial year 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 and submission**

The ultimate parent entity (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 or deadline for submission on tax authority request**

The taxpayer should be able to present the transfer pricing file to the audit authorities within 30 days following their request (requests always require the files to be submitted in Greek).

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

Yes. There is no differentiation with regard to the applicability of the transfer pricing methods during the documentation of international or domestic transactions.

b) Priority and 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. multiyear 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; the calculation method coincides with MS Excel's formula "=quartile.exc(array;quart)".

d) Fresh benchmarking search every year vs. roll forwards and update of the financials

On the basis of 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 this respect, the term “associated person” refers to persons that:

- ▶ Are affiliated, due to the participation of one person, to the other, holding, directly or indirectly, shares, partnership units or equity participation of at least 33% based on value or number, or profit rights or voting rights
- ▶ Are affiliated to any other person holding, directly or indirectly, shares, partnership units, voting rights or equity participation of at least 33% based on value or number, or profit rights or voting rights in one of the affiliate persons
- ▶ Are affiliated to any other person with which there is a direct or indirect significant management dependence or control; or the person exercises decisive influence on or may significantly influence the company’s decision-making; or in cases where both persons have an exclusive direct or indirect relationship of material management dependence or control; or may be of significant management influence by a third party

In light of the above, a 33% shareholding screening step, as well as a 33% subsidiary screening step, should be included.

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 (this is a legal requirement) that is identical to Microsoft Excel’s formula “=quartile.exc(array;quart)”.

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 the companies’ CIT return (this is a legal requirement).

The profit margins of the controlled entity should be calculated with reference to the local tax legislation irrespective of the accounting standards used for drafting its financial statements.

8. Transfer pricing penalties and relief

a) Penalty exposure

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

Transfer pricing penalties include:

- ▶ Penalties for the late filing of the SIT are calculated at 0.1% on the value of the transactions subject to documentation requirements (minimum penalty of €500 and maximum penalty of €2,000). 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 €200,000. In the event that the amended amounts exceed €200,000, the penalty is calculated at 0.1% on the value of the transactions subject to documentation requirements (minimum penalty of €500 and maximum penalty of €2,000).
- ▶ 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 €500 and maximum penalty of €2,000). 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 the 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 €2,500 and a maximum penalty of €10,000.
- ▶ In the case of failure to provide the tax authorities with transfer pricing documentation within 30 days from the official request, a penalty of €5,000 applies, which is increased to €10,000 if transfer pricing documentation is provided after 60 days, and to €20,000 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 €20,000, whereas the penalty for late submission or submission of inaccurate information has been set at €10,000.

- ▶ 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, as well as default interest, will apply.

- ▶ Is interest charged on penalties or payable on a 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, which 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 or submission of the administrative appeal.

If the Dispute Resolution Department fails to issue a decision within 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 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 the 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 2019 are, in principle, the financial year 2013 and onward, whereas the statute of limitations is, in principle, six years following year-end.

10. Likelihood of transfer pricing scrutiny and related audit by the 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*)

The likelihood is medium; the Greek tax auditors are focused more on the results of the transfer pricing policy rather than on the policy itself unless they find this as an opportunity to assess differences.

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

The likelihood is high; usually, the authorities challenge the transfer pricing methodology only if it leads to an adjustment.

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

There is none specified.

11. APA and MAP opportunities

► Availability (unilateral, bilateral and multilateral)

The Tax Procedures Code, along with implementing decisions, provides the possibility of an APA from 1 January 2014. An APA will cover any relevant criteria used for the intra-group 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

There is none specified.

► MAP opportunities

Greece has concluded, so far, 57 DTCs, which (except for the DTC with the United Kingdom) contain MAP provisions. In addition, MAP under EU Arbitration Convention (EUAC) is feasible.

The submission of a written request (by Greek tax residents) in Greek language is required for the initiation of a MAP by the Greek competent authority. Depending on its content, a MAP request is submitted to and examined by the following tax authorities of the Independent Authority for Public Revenues:

- All MAP requests except for transfer pricing cases should be addressed to the Independent Authority for Public Revenue's International Economic Relations Directorate – Tax Affairs Section.

- MAP requests for transfer pricing cases should be addressed to the Independent Authority for Public Revenue's General Directorate of Tax Administration Directorate of Audits – Section D.

- A copy of the request, without its accompanying documents, should be also communicated to the Independent Authority for Public Revenue's International Economic Relations Directorate – Section A.

A MAP case must be presented within the time limits laid down by the applicable DTC or EUAC from the first notification of the action resulting in taxation not in accordance with the provisions of the DTC. Most of the DTCs that Greece has concluded set a time limit of two or three years. The EUAC sets a limit of three years unless a year is statutorily barred.

MAP or judicial appeal procedure can be pursued simultaneously provided the hearing of the case has not taken place upon the filing of the MAP request.

There is no suspension of tax collection during the MAP process.

Following BEPS Action 14 minimum standard, Greece has adopted part V of the Multilateral Instrument (MLI) on the MAP. Greece has made notification on a number of matters. Additionally, Greece has chosen to apply Part VI of the MLI on Mandatory Binding Arbitration (MBA). Greece reserved the right to set a three-year period limit for MAP, following which a taxpayer may request initiation of the MBA mechanism, instead of two year period, provided for in Article par. 1 (b) of the MLI. The MLI has not been ratified yet by the Greek Government in order for the Covered Agreements to be modified.

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1. Tax authority and relevant transfer pricing regulations or 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 or rulings and the effective date of applicability

Articles 54 to 67 of LAT or Tax Legislation Update or TLU (Ley de Actualización Tributaria), 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 and 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 or 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 or thresholds

► Transfer pricing documentation

This is not applicable.

► Economic analysis

This is not applicable.

► BEPS master and local files

This is not applicable.

► CbCR

This is not applicable.

c) Specific requirements

► Treatment of domestic transactions

There is no specific requirement for the treatment of 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 is no specific requirement for safe harbor availability.

d) BEPS Action 13 implementation overview

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

It has not been formally implemented in the transfer pricing legislation. However, in October 2016, the tax authorities published transfer pricing (TP) technical guidelines that refer to BEPS initiatives such as the master file requirement as part of the transfer pricing documentation. In such guidelines, the tax authorities indicate that the transfer pricing documentation must contain information related to the MNE group. Such information is very aligned with the information listed in the OECD master file for BEPS purposes.

► Coverage in terms of master and local files

In October 2016, the tax authorities published transfer pricing (TP) technical guidelines that refer to BEPS initiatives such as the master file requirement as part of the transfer pricing documentation. In such guidelines the tax authorities indicate that the transfer pricing documentation must contain information related to the MNE group listing the information to be included. Such information is very aligned with the information listed in the OECD master file for BEPS purposes.

► Effective or expected commencement date

The master file requirement is applicable for transactions from fiscal year 2016 onward.

► Material differences from OECD report template or format

There are no material differences regarding the master file.

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

This is not applicable.

► CbCR notification and CbC report submission requirement

This is not applicable.

► CbCR notification included in the statutory tax return

This is not applicable.

► Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

No

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 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 and disclosure timelines

a) Filing deadline

► Corporate income tax return

The documentation should be submitted on or before 31 March.

¹In 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.

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.

► **Other transfer pricing disclosures and return**

The documentation should be submitted on or before 31 March.

► **CbCR notification**

There is none specified.

► **CbC report preparation or submission**

There is 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

► **Time period or 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 (for both international and domestic transactions)

- International transactions – yes
- Domestic transactions – no

b) Priority and 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 publicly available financial information.

b) Single-year vs. multiyear analysis

Multiyear testing for the comparables only; in practice, the number of years is three.

c) Use of interquartile range

Excel Quartile is preferred, as per common practice.

d) Fresh benchmarking search every year vs. roll forwards and 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

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

► **Consequences of failure to submit, late submission 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. According to Article 94 (13) of the Tax Code, 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.

Additionally, if the taxpayer does not comply with the submission of the requested transfer pricing information, the tax authorities generally apply the fine provided in Article 93 of the Tax Code regarding the tax offense consisting on refusing to cooperate with the requirements performed within a tax audit process. Penalties imposed may consist on fines or eventually closure of the business.

Guatemala

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:

- A fine equivalent to 100% of the tax due
- 13.45% late payment interest
- GTQ100 (approximately USD12.90) as a formal fine for the rectification.

► **Is interest charged on penalties or 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).

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 and related audit by the 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 the 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 and 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 are more likely to undergo audit.

11. APA and MAP opportunities

▶ **Availability (unilateral, bilateral and 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**

The term could be as long as four years.

▶ **Rollback provisions**

This is not applicable.

▶ **MAP opportunities**

No

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Honduras

1. Tax authority and relevant transfer pricing regulations or 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 or rulings and the 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 and 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 and 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 or thresholds

▶ Transfer pricing documentation

This is not applicable.

▶ Economic analysis

This is not applicable.

▶ BEPS master and local files

This is not applicable.

▶ CbCR

This is not applicable.

c) Specific requirements

▶ 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 specific safe harbor available in Honduras.

d) BEPS Action 13 implementation overview

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

No

▶ Coverage in terms of master and local files

This is not applicable.

▶ Effective or expected commencement date

This is not applicable.

▶ Material differences from OECD report template or format

This is not applicable.

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

This is not applicable.

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

This is not applicable.

► **CbCR notification included in the statutory tax return**

This is not applicable.

► **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

No

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 whether 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:

- For fiscal years that end in December, taxpayers must file the transfer pricing return between 1 January and 30 April.
- 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 and disclosure timelines

a) Filing deadline

► **Corporate income tax return**

The corporate income tax return should be filed annually, as follows:

- For fiscal years that end in December, taxpayers must file the return between 1 January and 30 April.
- 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 and return**

There is none specified.

► **CbCR notification**

This is not applicable.

► **CbC report preparation and submission**

This is 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 or 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 and preference of methods

The provisions require the application of the most appropriate transfer pricing method. The specified methods are the CUP (and the “sixth method” that is considered within the CUP method), 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 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. multiyear analysis

Multiple-year testing (three years) is acceptable for the comparables only.

c) Use of interquartile range

Interquartile range calculation using Excel Quartile formulas is requested by regulations.

d) Fresh benchmarking search every year vs. roll forwards and 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 is preferred, as per common practice.

f) Other specific benchmarking criteria, if any

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

- ▶ Consequences of failure to submit, late submission 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 or payable on a 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:

- ▶ Fifty percent reduction, if the taxpayer rectifies before any competent authority proceeding
- ▶ Thirty percent 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
- ▶ Ten percent reduction, if it rectifies before the collection process of the penalty conducted by the judicial authority
- ▶ 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

The term could be five to seven years. It can be extended with the filing of an amended return.

10. Likelihood of transfer pricing scrutiny and related audit by the 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.

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

The likelihood is 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 the transfer pricing methodology is challenged (*high/medium/low*)

High, given the overall aggressive stance of tax authorities.

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

Recently, the SAR has focused its transfer pricing audits in services transactions, questioning whether the services have been rendered, the need of the services, the allocation of the expense, as well as the benefit the services provide.

11. APA and MAP opportunities

► Availability (unilateral, bilateral and 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.

► APA rollback provisions

This is not applicable.

► MAP opportunities

There is none specified.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Inland Revenue Department (IRD)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the effective date of applicability

On 13 July 2018, the Government of Hong Kong Special Administrative Region (the Government) gazetted Inland Revenue (Amendment) (No. 6) Ordinance 2018 (“the Amendment Ordinance”).

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 (BEPS) 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 years of assessment beginning on or after 1 April 2018 (for the Fundamental Transfer Pricing Rule (FTPR) and advance pricing arrangements).

Other relevant sections of the IRO include:

- ▶ Section 16, about deductibility of expenses in arriving at assessable profits
- ▶ Section 17, about prohibited deductions
- ▶ 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**
- ▶ **DIPN 52: Taxation of Corporate Treasury Activity, issued in September 2016**
- ▶ **DIPN 53: Tax Treatment of Regulatory Capital Securities, issued in February 2017**
- ▶ **DIPN 56 (Draft): Transfer Pricing Documentation and Country-BY-Country Reports**
- ▶ **DIPN 58 (Draft): Attribution of Profits to Permanent Establishments in Hong Kong**

Note: The DIPN 56 (Draft) and DIPN 58 (Draft) have not been released in its final form as of the date of preparation of this guide.

- ▶ **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

Section 50AAG of the Amendment Ordinance defines the participation condition that needs to be met, for a person to be taken to be associated with another person. According to this section, the participation condition is met if:

- ▶ One of the affected persons was participating in the management, control or capital of the other affected person; or
- ▶ The same person or persons was or were participating in the management, control or capital of each of the affected persons.

Section 50AAH further defines ‘participation’.

2. OECD Guidelines treatment and reference

Hong Kong 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. The Amendment Ordinance specifically references the 2017 OECD Guidelines within the legislation, and indicates that the arm’s length provision (along with other rules) should be consistently determined in accordance with the OECD Guidelines.

3. Transfer pricing documentation requirements

a) Applicability

- ▶ Does your country have transfer pricing documentation guidelines or rules?

The Amendment Ordinance gazetted on 13 July 2018 introduced mandatory transfer pricing documentation requirements and rules in Hong Kong.

- ▶ Does transfer pricing documentation have to be prepared annually?

The Amendment Ordinance assesses the taxpayers' obligation for preparing transfer pricing documentation on an annual basis. Taxpayers that exceed the documentation threshold in the specific accounting period are required to prepare transfer pricing documentation for that accounting period.

b) Materiality limit or thresholds

- ▶ Transfer pricing documentation

For fiscal years starting on or after 1 April 2018, Hong Kong taxpayers are required to prepare master file and local file documentation. Exemptions based on business size and/or on related-party transaction volume have been adopted. A waiver on the requirement to prepare master file and local file documentation for specified domestic transactions has also been applied.

Specifically, enterprises engaging in transactions with associated enterprises will not be required to prepare master file and local file documentation if they can meet either one of the following exemption criteria:

- ▶ **Exemption based on size of business (Satisfying any two of the three conditions):**
 - ▶ Total revenue not more than HKD400 million;
 - ▶ Total assets not more than HKD300 million; or
 - ▶ Average number of employees not more than 100.
- ▶ Exemption based on related party transactions (if the amount of a category of related party transactions (excluding specified domestic transactions) for the relevant accounting period is below the proposed threshold, an enterprise will not be required to prepare a local file for that particular category of transactions):

- ▶ Transfer of properties (other than financial assets and intangibles): HKD220 million;
- ▶ Transactions in respect of financial assets: HKD110 million;
- ▶ Transfers of intangibles: HKD110 million; and
- ▶ Any other transaction (e.g., service income and royalty income): HKD44 million.
- ▶ **Exemption in respect of domestic transactions: Master and local files need not be prepared for specified domestic transactions between associated persons.**

If an enterprise is fully exempted from preparing a local file (i.e., its related-party transactions of all categories are below the prescribed thresholds), it will not be required to prepare a master file either.

- ▶ **Economic analysis**

Please refer to the requirements on materiality limit/threshold for transfer pricing documentation.

- ▶ **BEPS master and local files**

Please refer to the requirements on materiality limit/threshold for transfer pricing documentation.

- ▶ **CbCR**

The CbCR filing threshold is HKD6.8 billion for Hong Kong ultimate parent entities (which is set in accordance with the OECD recommendation, i.e., EUR750 million).

c) Specific requirements

- ▶ **Treatment of domestic transactions**

Domestic related party transactions are exempted from being adjusted on the basis of the fundamental transfer pricing rule, which requires transactions to meet the arm's length principles, to the extent that it meets certain conditions such as not having a Hong Kong tax advantage or not having a tax avoidance purpose.

The local file of the Hong Kong entity is not required to cover specified domestic transactions.

- ▶ **Local language documentation requirement**

The transfer pricing documentation may be prepared in either English or Chinese.

- ▶ **Safe harbor availability**

Hong Kong

Please refer to the requirements on materiality limit/threshold for transfer pricing documentation.

d) BEPS Action 13 Implementation Overview

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

Yes. The Amendment Ordinance (gazetted on 13 July 2018) adopts the OECD's recommended three-tiered documentation structure, comprising a master file, local file and the CbCR based on BEPS Action 13.

► Coverage in terms of master and local files

The Amendment Ordinance covers both the master file and the local file.

► Effective or expected commencement date

The effective date is the accounting period beginning on or after 1 January 2018 (for CbCR) and 1 April 2018 (for master file/local file).

► Material differences from OECD report template or format

The prescribed information required to be disclosed in master file and local file is consistent with the OECD Action 13 requirements.

► 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 factors such as 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.

► CbCR notification and CbC report submission requirement

There is a CbCR notification and CbC report submission requirement in Hong Kong.

► CbCR notification included in the statutory tax return

A Hong Kong enterprise which is a constituent entity subject to CbCR requirements will be required to file a

notification to the IRD within three months after the end of the ultimate parent entity's accounting period. Separately, Hong Kong taxpayers are required to confirm their CbCR compliance in the revised tax returns which are effective from the year of assessment 2018/19.

► Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

Yes, signed on 26 July 2018

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

IRD announced on 23 January 2019 a revised profits tax return for corporations (i.e., BIR51 and a set of new Supplementary Form S1 to S10). With effect from the year of assessment 2018/19, Hong Kong taxpayers are required to disclose certain related party information (i.e. the location of the non-resident associated persons) and confirm their transfer pricing documentation compliance in the BIR51 and Supplementary Form S2 – Transfer Pricing.

b) Transfer pricing-specific returns

Supplementary Form S2 is an additional form to the profits tax return for transfer pricing purposes.

5. Transfer pricing documentation and 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 codes 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 profits tax return (i.e. Supplementary Form S2), and therefore the same dates apply.

► **CbCR notification**

CbCR notifications are due within three months after the end of the ultimate parent entity's accounting period.

► **CbC report preparation and submission**

A CbC report has to be prepared within 12 months after the end of the ultimate parent entity's accounting period.

b) Documentation preparation deadline

The master file and local file must be prepared within nine months after the end of the Hong Kong entity's accounting 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.

► **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 (for both international and domestic transactions)

► **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 (however, this applies only when the domestic related party transactions are not exempted from transfer pricing rules and documentation).

b) Priority and 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. multiyear analysis

Following OECD principles, multiple year data should be used where they add value to the transfer pricing analysis.

c) Use of interquartile range

Following OECD principles, the use of ranges, such as an interquartile range, would be accepted.

d) Fresh benchmarking search every year vs. roll forwards and update of the financials

Financials should be updated every year, and new searches should be performed every three years.

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 and relief

a) Penalty exposure**► Consequences of failure to submit, late submission or incorrect disclosures**

According to the Amendment Ordinance, penalties in relation to master file and local file will be a fine at level 5 (i.e. HKD50,000), along with a court order due to failure to comply without reasonable excuse. A fine will be escalated to level 6 (i.e. HKD100,000) when there is a failure to comply with the court order.

In addition, a failure to file or notify CbCR without a reasonable excuse will trigger a fine at level 5 (i.e. HKD50,000), with a further fine of HKD500 for every day thereafter under certain conditions, along with a court order. On failure to comply with the court order, the fine will be at level 6 (i.e. HKD100,000). For filing misleading, false or inaccurate information, the fine will be at level 5 (i.e. HKD50,000). If such misleading, false or inaccurate information is filed with wilful intent, penalties will be either on summary conviction (i.e. a fine at HKD10,000 and imprisonment for 6 months) or on conviction on indictment (i.e. a fine at HKD50,000 and imprisonment for 3 years). These penalties related to CbCR apply to directors and key officers as well as service providers engaged by the reporting entity.

In addition to the transfer pricing penalties stated above, the IRD can impose penalties for the broader corporate tax related issues.

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

Taxpayers will be liable for an administrative penalty calculated at level 3 (HKD 10,000), level 5 (HKD 50,000), or level 6 (HKD 100,000) as an additional tax for transfer pricing adjustments, but not exceeding the amount of tax undercharged.

► Is interest charged on penalties or payable on a refund?

Not applicable on penalties. However, there may be interest charges under unconditional holdover of the tax in dispute. Tax reserve certificates can be purchased to address this.

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 factors such as 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.

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. Frequency of transfer pricing scrutiny and related audit by the 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. Specifically, tax adjustments in such cases arise when the taxpayer claims that a percentage of revenue is non-Hong Kong sourced. The IRD expects that a similar percentage of

costs associated with that activity is also non-Hong Kong sourced.

► **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 the 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 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 and 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 is persistently delayed or omitted, business records are not properly maintained, or requested information is not provided.

11. APA and MAP opportunities

► **APA availability (unilateral, bilateral and 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, rollback may be considered, subject to certain conditions.

► **MAP opportunities**

Yes. MAP should be initiated within the time limit from the first notification of the actions giving rise to taxation not in accordance with the provisions of the Double Taxation Treaties (DTT). In general, the time limit is specified in the MAP article of the relevant DTT (e.g. three years). Failure to observe the time limit may result in the rejection of MAP request by the IRD.

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1. Tax authority and relevant transfer pricing regulation and rulings

a) Name of tax authority

National Tax and Customs Administration (NTCA)

b) Relevant transfer pricing section reference

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

Section 18 of the Act on Corporate Income Tax (CIT) (application of the arm's-length principle) has been applicable from 1992.

► Section reference from local regulation

Section 4.23 of the Act on Corporate Income Tax (definition of related parties) has the reference.

2. OECD Guidelines treatment and 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.

A new decree (i.e., the Decree No. 32/2017 (X.18.) of the Minister of Finance on the Documentation Requirements Related to Transfer Pricing) was published in Hungary, which follows the recommendations of OECD BEPS Action 13 and implements the three-tiered approach pertaining to BEPS Action 13 (i.e., master file, local file and country-by-country reporting).

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines or 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. Even if the main terms

and conditions of the transaction did not change significantly compared with the previous year, it is mandatory to prepare new transfer pricing report covering the relevant financial year, for financial years starting on or after 1 January 2018. Updating the benchmarking analysis is required.

b) Materiality limit or thresholds

► Transfer pricing documentation

There is a materiality limit for the preparation of transfer pricing documentation. The materiality limit is HUF50 million (approximately EUR166,000). When determining whether a transaction falls under the documentation obligation, the rules of consolidation also have to be considered (i.e., the transactional value of transactions with similar terms and conditions have to be summed up when tested against the documentation threshold).

► Economic analysis

There is a materiality limit for the 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 requirements

► Treatment of domestic transactions

There is no specific requirement for the 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 transfer pricing documentation to be prepared exclusively in the local language.

In Hungary, the master file and the local file can be prepared in languages other than Hungarian. If the transfer pricing documentation is prepared in other languages (except English, German and French), the Hungarian Tax Authority can request

for an attested Hungarian translation of the documents. However, in line with the current expectation of the Hungarian Tax Authority, the transfer pricing documentation should be prepared in Hungarian, English, German or French.

► **Safe harbor availability**

There is none specified.

d) BEPS Action 13 implementation overview

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

BEPS Action 13 has been implemented for transfer pricing documentation in Hungary.

► **Coverage in terms of master and local files**

This covers both the master file and local file.

► **Effective or expected commencement date**

The documentation requirements under Action 13 are in place in accordance with the new Hungarian transfer pricing decree. It is mandatory to prepare the transfer pricing documentation with the structure regulated by the new decree for financial years starting on or after 1 January 2018.

► **Material differences from OECD report template or format**

There are material differences between the formats of the OECD report template and the local country regulations in the context of the local file, which are:

- **Administrative data of the related parties (i.e., name, registered seat (official location), tax number or company registration number, the name and seat of the registering authority), and the relationship between associated parties**
- **The date of the preparation of the local file**
- **The justification and reasons for consolidation (if such a report was prepared)**
- **The details of court or other official procedures (in progress or finished) related to the arm's-length price (i.e., the local file shall contain in this respect: the name and seat of the court or authority (the name of the state in the case of a foreign country) and the case number; the date of commencing and closing the procedure; and the arm's-length price that has been presented for approval to the authority, or has been challenged or**

determined (approved) by the authority)

Furthermore, the amounts of intra-group payments and receipts should be broken down by at least the associated counterparties involved in the IC transactions under review for the tax year concerned. The local file should contain the copies of all versions of the material IC agreements, which were in effect during the financial year under review. If the relevant IC agreements were not concluded in writing, a detailed description of the agreements should be presented in the local file.

Since 2015, the application of the interquartile range is also mandatory. Based on the legislation implementing Action 13, if separate activities can be identified based on the functional analysis examining the business activity of the taxpayers, separate business segments should be formed in line with these identified business lines. A segmented profit or loss statement has to be prepared with respect to each documented transaction, and the financial data used in applying the relevant transfer pricing method has to be tied to the segmented profit or loss statement (the segmentation must reconcile foreign GAAP segment results with local GAAP segment results, if applicable). The segmented financials should be presented in the currency of accounting records, which is, in most cases, Hungarian GAAP.

It should be considered in the context of the master file that in line with the Hungarian regulations; the date of preparation has to be presented in the Masterfile. Furthermore, as the master file should contain information on the whole group, it should also include information on the relevant Hungarian value chain and the transactions concluded by the Hungarian entities. If the master file does not contain relevant and important information from a Hungarian transfer pricing perspective, the Hungarian entities should supplement the master file by the relevant deadline separately.

► **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 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

Hungary

reporting entity. The entities concerned have to report their status to the Hungarian tax authority by the last day of the reporting fiscal year.

► **CbCR notification included in the statutory tax return**

No. Hungarian constituent entities (CEs) will need to submit a notification to the tax authority by the last day of the reporting fiscal year.

► **Signatory of the Multilateral Competent Authority Agreement (MCAA)**

Yes. It was signed on 1 December 2016.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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. The 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 the 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 upon request.

Companies' financial statements include certain compulsory disclosures about related-party transactions.

b) Transfer pricing-specific returns

There is none specified.

5. Transfer pricing documentation and 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 and return**

This is not applicable.

► **CbCR notification**

The Hungarian subsidiaries of MNEs should notify the Hungarian Tax Authority about the name and tax residence of the reporting entity until the last day of the relevant reporting financial year.

► **CbC report preparation and submission**

Reporting entities have to file the CbCR with the Hungarian Tax Authority within 12 months of the last day of the reporting fiscal year.

b) Documentation preparation deadline

The transfer pricing documentation (i.e., the local file together with the master file) needs to be prepared by the time of lodging the tax return to achieve penalty protection (e.g., where there is a contemporaneous requirement). The deadline for the preparation of the local file is the same as the deadline for the submission of the corporate income tax return.

As an extension from the general rules, the deadline for preparing the master file is the date specified in the legal regulations applicable to the ultimate parent company of the group. However, the master file must be prepared no later than 12 months after the last day of the tax year in question.

c) Documentation submission deadline

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

No.

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

The local file (together with the master file) 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 (for both international and domestic transactions)

It is applicable for international and domestic transactions as well (i.e. there are no specific rules for domestic transactions).

b) Priority and 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, but only after the five major methods have been rejected.

As an important requirement in a relatively wide array of cases, the application of the interquartile range is mandatory since 2015. As a result, the 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.

The Hungarian Tax Authority expects to apply Hungarian comparables as a first step. As a result, the authority challenges accepted comparables other than the local comparables based on the general practice.

Furthermore, if setting the geographic criteria only to Hungary does not result in sufficient comparable companies, the criteria can be extended to V4 countries (Czech Republic, Hungary, Poland and Slovakia). If this still does not provide a sufficient number of companies, then the geographic criteria can be extended to Eastern Europe and EU28 countries.

b) Single-year vs. multiyear analysis

A multiyear analysis is preferred in testing the arm's-length analysis in terms of the PLI of the comparable entities.

c) Use of interquartile range

It is mandatory by law unless a full functional analysis is prepared and documented for each comparable used.

d) Fresh benchmarking search every year vs. roll forwards and 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. These requirements are derived from the practices of the Hungarian Tax Authority- and they are enforced rigorously. Furthermore, according to the new Hungarian transfer pricing decree, the former practice of the Hungarian Tax Authority is supported by legislation in this respect.

e) Simple vs. weighted average

The simple average is preferred, but is not mandated by law; a pooled method is preferred (every data is a separate observation).

f) Other specific benchmarking criteria, if any

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

► Consequences of failure to submit, late submission or incorrect disclosures

A default penalty of up to HUF2 million (approximately EUR6,700) may be levied for not fulfilling the transfer pricing documentation requirements. Repeated infringement of the documentation requirement may trigger a default penalty of up to HUF4 million (approximately EUR13,400). Repeated default on fulfilling the documentation requirement on the same transfer pricing documentation may trigger a default penalty four times higher than the default penalty levied when levying the penalty for the first infringement. As a general rule, the default penalty can be levied for each missing or incomplete set of transfer pricing documentation per fiscal year under a tax audit.

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

If a transfer pricing adjustment is assessed, the Hungarian Tax Authority can levy tax penalty (generally, 50% of the tax shortage) along with late payment interest (the Hungarian National Bank base rate plus five percentage point from 2019).

► Is interest charged on penalties or payable on a refund?

Yes. It is charged at the prime rate of the National Bank of Hungary plus five percentage point. No late payment interest shall be charged on late payment interest.

b) Penalty relief

If taxpayers waive their right to appeal against the resolution issued at the first instance on posterior tax assessment, and pay the tax difference imposed in the resolution by the due date, the taxpayers should be exempt from paying 50% of the tax penalty imposed.

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 and related audit by the 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 transfer pricing 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.

In line with the new tax procedural rules implemented in Hungary effective 1 January 2018, the tax audit processes will take shorter duration, which will result in the taxpayers having limited time available for providing information during tax audit processes compared to the former rules.

► 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 the transfer pricing methodology is challenged (*high/medium/low*)

Such a 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 and situations, if any, more likely to undergo audit

See the "Likelihood of transfer pricing-related audits" section above.

11. APA and MAP opportunities

► Availability (unilateral, bilateral and 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 from the date 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.

► MAP opportunities

Yes. Taxpayers may request a MAP if taxation has or is likely to occur that is not in accordance with the provisions of a Double Taxation Treaty (DTT) to which Hungary is a signatory. Most of Hungary's DTTs permit taxpayers to present a case to the HTA within three years from the first notification to the taxpayer of the actions giving rise to taxation not in accordance with the DTT. However, time limits may vary, and the relevant DTT should be consulted for the applicable time limit. Taxpayers have three years to present a case to the HTA under the EU Arbitration Convention (90/436/EEC).

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Iceland

1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Directorate of Internal Revenue

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the effective date of applicability

Reference to transfer pricing can be found in the following:

- ▶ Article 57(4) of the Icelandic Income Tax Act No. 90/2003 (documentation requirements), effective 1 January 2015
- ▶ Article 57(3) of the Icelandic Income Tax Act No. 90/2003 (definition of related parties), effective 1 January 2015
- ▶ Regulation No. 1180/2014 on the documentation and transfer pricing in transactions between related parties, effective 1 January 2015
- ▶ Regulation No. 1166/2016 on country-by-country reporting, effective 1 January 2017
- ▶ Section reference from local regulation

Article 57 of the Icelandic Income Tax Act No. 90/2003 has reference to transfer pricing.

2. OECD Guidelines treatment and 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 on the basis of the OECD principles.

Given the newness of both Chapter IX of the OECD Guidelines and the domestic transfer pricing 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 or 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 or 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 related 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 the preparation of a CbC report.

c) Specific requirements

▶ Treatment of domestic transactions

There is no documentation obligation for domestic transactions.

▶ Local language documentation requirement

In accordance with Article 15 of Regulation 1180/2014, the transfer pricing documentation should be available in Icelandic or English.

▶ **Safe harbor availability**

There is none specified.

d) BEPS Action 13 implementation overview

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

Yes.

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

The implementation of BEPS covers both master and local files.

▶ **Effective or expected commencement date**

BEPS Action 13 has come into effect from 1 January 2016.

▶ **Material differences from OECD report template or 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., the 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 the financial year 2018, and the CbC report submission should be filed by 31 December 2019. Taxpayers falling within the scope of Regulation No. 1166/2016 should file form RSK 4.30.

▶ **CbCR notification included in the statutory tax return**

No. Multinationals operating in Iceland and falling within the scope of Article 91(a) of the Income Tax Act, i.e., with revenues amounting to ISK100 billion in 2018, should file the notification with the Directorate of Internal Revenue by the last day of the reporting period of the ultimate parent entity.

▶ **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

Yes. It was signed on 12 May 2016.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

There is 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 and 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 and return**

The filing deadline for other transfer pricing disclosures and return is 31 May.

▶ **CbCR notification**

The CbCR notification deadline is by the end of the fiscal year i.e., 31 December.

▶ **CbC report preparation and submission**

Iceland

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 or deadline for submission on tax authority request

The taxpayer will have 45 days to submit the transfer pricing documentation once requested by the tax authorities in an audit or inquiry.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

► International transactions

Yes.

► Domestic transactions

There is none specified.

b) Priority and 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. multiyear 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 multiyear analysis is preferred.

c) Use of interquartile range

It is unclear whether the interquartile range will be applied by the Directorate of Internal Revenue.

d) Fresh benchmarking search every year vs. roll forwards and 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 and relief

a) Penalty exposure

► Consequences of failure to submit, late submission 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 or payable on a refund?

There is 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.

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; it is independent of 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 and related audit by the 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 the transfer pricing methodology is challenged (*high/medium/low*)

See the previous section.

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

See the previous section.

11. APA and MAP opportunities

► Availability (unilateral, bilateral and 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

This is not applicable.

► Rollback provisions

This is not applicable.

► MAP opportunities

There is none specified.

Contact

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1. Tax authority and relevant transfer pricing regulations or 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 or rulings and the 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 and 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 or 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
- ▶ 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 or 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 (FY)¹ exceeds INR10 million (approximately USD140,548)² and/or specified domestic transactions during the relevant FY exceed INR200 million (USD2.125 million).

- ▶ Economic analysis

There is 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 INR5,000 million (approximately USD70.27 million) and either of the following:

- ▶ The aggregate value of international transactions exceeds INR500 million (approximately USD7.03 million) during the reporting year
- Or
- ▶ The aggregate value of international transactions pertaining to the purchase, sale, transfer, lease or use of intangible property exceeds INR100 million

¹Financial year refers to 12-month period starting 1 April to 31 March of next year. For example the FY 2019-12 would refer to 12 month period from 1 April 2019 to 31 March 2020

²USD 1 = INR 71.15

(approximately USD1.41 million) 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 FY exceeds INR10 million (approximately USD140,548) and/or specified domestic transactions during the relevant FY exceed INR200 million (USD2.81 million).

- ▶ CbCR

If the total consolidated group revenue, as reflected in the consolidated financial statement for the preceding accounting year, exceeds INR55 billion (approximately USD773.01 million).

c) Specific requirements

- ▶ 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 it must be submitted 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.

India

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.

The provisions provide a safe harbour to companies obtaining low value-adding services from their overseas affiliates subject to conditions pertaining to nature of services, quantum of fees and requirement of documentation, as detailed in the rules.

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 or 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 local files**

Both the master file and local file are covered.

▶ **Effective or expected commencement date**

1 April 2016

▶ **Material differences from OECD report template or 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 or documentation requirements, which are provided below.

Additional reporting requirements in the master file

The Indian regulations require constituent entities to provide the following additional information or 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 USD773.01 million).

The CbC report filing requirements would arise in the case of the following entities:

- ▶ **Where the parent entity of an MNE³ or the alternate reporting entity (ARE) is resident in India.**

Or

³which has been defined to include two or more enterprises including a permanent establishment that are resident of different countries or territories

- ▶ where the home jurisdiction of the MNE group to which the Indian constituent entity is affiliated neither has an arrangement for exchange of the CbCR with India nor is 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.

In all other cases, every constituent entity resident in India should file a CbC report notification in India given that the CbC reports would be filed in the jurisdiction of tax residence of the ultimate parent entity (UPE) and shared between jurisdictions through the automatic exchange of CbCR information pursuant to government-to-government mechanisms under the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, bilateral tax treaties or Tax Information Exchange Agreements (TIEAs).

Filing procedures and filing due dates

Scenario	Entity responsible	Filing obligation	Accounting period	Due date
UPE or ARE is resident in India	UPC or ARE resident in India	CbCR in Form 3CEAD	April to March	12 months from end of reporting accounting year ⁴ (31 March 2020 for accounting year ending 31 March 2019)
UPE or ARE not resident in India	Constituent entity	A notification in Form 3CEAC	Accounting period followed in the UPE or ARE jurisdiction	2 months prior to the due date for filing of Form 3CEAD

The Act and Rules were amended with respect to the obligation of filing CbC report by an Indian constituent entity in the following cases:

- ▶ The UPE is not obligated to file a CbC report in its home jurisdiction.
- ▶ The UPE is located in a jurisdiction with which India does not have a CbC Reporting information exchange agreement in place.

Or

- ▶ The UPE is located in a jurisdiction where there has been a systemic failure.

According to the amendments, in such cases, the due date for the filing of an Indian CbC report would 12 months from the end of the reporting accounting year followed by the MNE. However, for all reporting accounting years up to 28 February 2018, the due date has been extended to 31 March 2019. In case of systemic failure, the Indian constituent entity is required to file CbC report within six months from the end of the month in which constituent entity is intimated of such systemic failure by the Income Tax Department.

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.

- ▶ **CbCR notification included in the statutory tax return**

No, every constituent entity resident in India, except in cases mentioned above in point 3 (d), should file a CbCR notification in India.

- ▶ **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

Yes, signed on 12 May 2016.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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.

⁴Defined as period from 1 April to 31 March of next year

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 and disclosure timelines

a) Filing deadline

► Corporate income tax return

The documentation should be filed on or before 30 November following the close of the FY, if subject to transfer pricing guidelines.

► Other transfer pricing disclosures and return

The documentation should be filed on or before 30 November following the close of the FY.

► CbCR notification

The documentation should be filed two months prior to the due date for filing of Form 3CEAD (latest by 31 January 2020 if parent's reporting accounting year ends on 31 March 2019).

► CbC report preparation and submission

Based on the amended law, the deadline for furnishing a CbC report by every parent entity or the alternate reporting entity (ARE), resident in India is within 12 months from the end of the reporting accounting year.

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 FY.

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 or deadline for submission on tax authority request

As per Section 92D of the Income Tax Act, 1961, the prescribed documentation or 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 and preference of methods

Indian legislation prescribes the following methods: Comparable Uncontrolled Price (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 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. multiyear analysis

Three-year margin analysis is preferred, 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 the method being followed is CUP, resale price, cost-plus or TNMM and there are six or more entries in the data set. If the above stated methods are not being followed or 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 up to 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 forwards and 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 is preferred.

f) Other specific benchmarking criteria, if any

Specific benchmarking criteria are not provided under the Act or 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 and relief

a) Penalty exposure

► Consequences of failure to submit, late submission 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.

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 or payable on a 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 or 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 or 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 FY. From FY 2017-18 onward, the above time limit is 40 months from close of the FY. 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 FY.

10. Likelihood of transfer pricing scrutiny and related audit by the 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*)

The likelihood is high, given the aggressive nature of tax audits.

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

The likelihood is 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 and 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 or 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 or 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 and MAP opportunities

► Availability (unilateral, bilateral and 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.

► APA 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.

► MAP opportunities

Yes, taxpayers may request a MAP if taxation has or is likely to occur that is not in accordance with the provisions of a Double Taxation Treaty (DTT) to which India is signatory. Most of India's DTTs permit Taxpayers to present a case to the CBDT within three years from the first notification to the Taxpayer of the actions giving rise to taxation not in accordance with the DTT. However, time limits may vary, and the relevant DTT should be consulted for the applicable time limit.

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

Directorate General of Taxes (DGT)

b) Relevant transfer pricing section reference

- ▶ Name of transfer pricing regulations or rulings and the 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 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 and 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 or 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 or 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:

- Has gross revenues of more than IDR50 billion (approximately USD3.7 million) in the prior fiscal year
- Conducts related-party transactions in the prior fiscal year with a value of:
 - More than IDR20 billion (approximately USD1.4 million) for tangible goods transactions

Or

- More than IDR5 billion (approximately USD372,000) for each service, interest payment, utilization of intangible properties or other affiliated transactions
- 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 requirements

► **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 or 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 local files**

This covers both the master file and local file.

► **Effective or expected commencement date**

The commencement date was 30 December 2016.

► **Material differences from OECD report template or 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.

Indonesia

- ▶ 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 or 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 or 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 or 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.

- ▶ **CbCR notification included in the statutory tax return**

Yes

- ▶ **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

Yes, it was signed on 26 January 2017.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 and 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 and return**

Disclosures related to transfer pricing must be attached with the CITR (Form 3A/3B and Summary Form).

- ▶ **CbCR notification**

For fiscal year 2016, the deadline is 16 months after the year-end.

For 2017 and thereafter, the deadline is 12 months after the year-end.

The receipt from the notification filing must be attached to the CITR for the subsequent fiscal year.

- ▶ **CbCR report preparation and submission**

For fiscal year 2016, the deadline is 16 months after the year-end.

For 2017 and thereafter, the deadline is 12 months after the 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. For fiscal year 2016, the CbCR report must be available within 16 months after the year end, and for 2017 and thereafter, within 12 months after the 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.

- ▶ Time period or 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 (for both international and domestic transactions)

- ▶ International transactions – yes
- ▶ Domestic transactions – yes

b) Priority and 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. multiyear 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 forwards and 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

Less than 25% equity ownership independence criteria is required; other criteria based on common practice are also applied.

8. Transfer pricing penalties and relief

a) Penalty exposure

- ▶ Consequences of failure to submit, late submission 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?

Indonesia

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 or payable on a 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 and related audit by the 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 or a 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 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 the transfer pricing methodology is challenged (*high/medium/low*)**

The likelihood is high (on account of the reasons mentioned in prior sections).

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

There are no specific transactions, industries and situations.

11. APA and MAP opportunities

► Availability (unilateral, bilateral and 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

The term could be as long as 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.

► MAP opportunities

Yes, an MAP request must be within the scope of a double taxation treaty of which Indonesia is signatory, and can only cover the following:

► Transfer pricing issues

► PE issues

► Dual residence issues

Or

► Income from a DTT partner country and withholding tax issues

Contact

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

General Commission for Taxes (GCT)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the 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 the section above.

2. OECD Guidelines treatment and 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 or rules?

No.

▶ Does transfer pricing documentation have to be prepared annually?

This is not applicable.

b) Materiality limit or thresholds

▶ Transfer pricing documentation

This is not applicable.

▶ Economic analysis

This is not applicable.

▶ BEPS master and local files

This is not applicable.

▶ CbCR

This is not applicable.

c) Specific requirements

▶ Treatment of domestic transactions

This is not applicable.

▶ Local language documentation requirement

This is not applicable.

▶ Safe harbor availability

This is not applicable.

d) BEPS Action 13 implementation overview

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

No.

▶ Coverage in terms of master and local files

This is not applicable.

▶ Effective or expected commencement date

This is not applicable.

▶ Material differences from OECD report template or format

This is not applicable.

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

This is not applicable.

▶ CbCR notification and CbC report submission requirement

There is no CbCR notification requirement in Iraq.

▶ CbCR notification included in the statutory tax return

This is not applicable.

▶ Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

No.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

This is not applicable.

b) Transfer pricing-specific returns

This is not applicable.

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

▶ Corporate income tax return

The deadline is 31 May.

▶ Other transfer pricing disclosures and return

This is not applicable.

▶ CbCR notification

This is not applicable.

▶ CbC report preparation and submission

This is not applicable.

b) Documentation preparation deadline

This is not applicable.

c) Documentation submission deadline

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

This is not applicable.

▶ Time period or deadline for submission on tax authority request

This is not applicable.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

▶ International transactions: This is not applicable.

▶ Domestic transactions: This is not applicable.

b) Priority and preference of methods

This is not applicable.

7. Benchmarking requirements

a) Local vs. regional comparables

This is not applicable.

b) Single-year vs. multiyear analysis

This is not applicable.

c) Use of interquartile range

This is not applicable.

d) Fresh benchmarking search every year vs. rollforwards and update of the financials

This is not applicable.

e) Simple vs. weighted average

This is not applicable.

f) Other specific benchmarking criteria, if any

This is not applicable.

8. Transfer pricing penalties and relief

a) Penalty exposure

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

This is not applicable.

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

This is not applicable.

▶ Is interest charged on penalties and payable on a refund?

This is not applicable.

b) Penalty relief

This is not applicable.

9. Statute of limitations on transfer pricing assessments

This is not applicable.

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

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

This is not applicable.

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

This is not applicable.

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

This is not applicable.

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

This is not applicable.

11. APA and MAP opportunities

- ▶ Availability (unilateral, bilateral and multilateral)

This is not applicable.

- ▶ Tenure

This is not applicable.

- ▶ Rollback provisions

This is not applicable.

- ▶ MAP opportunities

There is none specified.

Contact

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Irish Revenue Commissioners (IRC)

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations or rulings and the effective date of applicability

Reference to transfer pricing can be found in the following:

- Section 835C of Taxes Consolidation Act (TCA) 1997 (Section 835C), Part 35A, sets out the primary transfer pricing 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.
- Legislation is currently anticipated to be introduced to update Ireland's transfer pricing rules with effect from 1 January 2020. The update is expected to include the adoption of the 2017 OECD Transfer Pricing Guidelines into Irish law.
- Section reference from local regulation

Section 835B of Taxes Consolidation Act (TCA) 1997 has reference to transfer pricing.

2. OECD Guidelines treatment and reference

Ireland is a member of the OECD. Irish regulations follow the arm's-length principle and adopt the OECD 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 or rules?

Yes. In addition to the statutory provisions related 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 (as 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 statutory 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 or 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

There is no materiality limit.

► BEPS master and local files

This is currently not applicable. As per above, it is anticipated that the 2017 Transfer Pricing Guidelines will become effective in Ireland in 2020 and therefore we currently expect that Action 13 type documentation will become the standard from January 2020.

Ireland

► CbCR

This applies if MNE annual consolidated revenues are equal to or exceed EUR750 million in the previous year.

c) Specific requirements

► Treatment of domestic transactions

There is a documentation obligation for domestic transactions. The transfer pricing rules in Ireland apply to both domestic and international transactions.

► Local language documentation requirement

The transfer pricing documentation needs to be submitted in the local language, meaning English or Irish.

Section 835F of TCA 1997 outlines the documentation obligations of Irish taxpayers to whom the transfer pricing 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

The IRC released a Tax and Duty Manual (Revenue eBrief No. 37/18) in March 2018 providing guidance to taxpayers regarding the IRC's simplified approach to low value intra-group services. In particular, the guidance outlines that in situations where a cost-based method is determined to be the most appropriate transfer pricing method for determining an arm's length price for low value intra-group services, the IRC is prepared to accept a mark-up of 5% of the relevant cost base without the need for a benchmarking study.

The guidance also sets out the documentation requirements for the taxpayer in order to avail of this simplified approach for low value intra-group services.

d) BEPS Action 13 implementation overview

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

Not as yet, we expect it in 2020.

► Coverage in terms of master and local files

Local legislation doesn't currently cover BEPS Action 13 master file or local file requirements; it covers only CbCR.

► Effective or expected commencement date

BEPS Action 13 master file or local file requirements are expected to be legislated for in 20 with effect from 1 January 2020.

► Material differences from OECD report template or format

The OECD report template is acceptable in Ireland.

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

There is no formal transfer pricing penalty protection regime in Ireland. IRC will be guided by the quality of transfer pricing documentation in deciding whether or not to levy standard corporate tax regime penalties on foot of a transfer pricing assessment.

► CbCR notification and CbC report submission requirement

In Ireland, the CbCR notification is required only if the annual consolidated group revenue during the immediately preceding tax assessment year exceeds €750 million no later than the last day of the reporting fiscal year to which the CbC Report relates. There are currently no penalties in place for failing to notify.

The CbC report must be filed within 12 months after the last day of the reporting fiscal year. Section 891H (7) TCA 1997 of the Legislation deals with penalties. The penalty for failure to file a CbC Report / Equivalent CbC Report is €19,045 plus €2,535 for each day the failure continues. The penalty for filing an incomplete or incorrect CbC Report / Equivalent CbC Report is €19,045.

► CbCR notification included in the statutory tax return

No. Notification must be provided no later than the last day of the reporting fiscal year to which the CbC Report relates.

► Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

Yes. It was signed on 27 January 2016.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 and disclosure timelines

a) Filing deadline

► Corporate income tax return

It should be filed within nine months of the end of the accounting period, but no later than the 23rd day of the ninth month.

► Other transfer pricing disclosures and return

This is not required in Ireland.

► CbCR notification

The 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 and submission

In accordance with Regulation 8 of the regulations, CbC reports or equivalent CbC reports must be filed no later than 12 months after the last day of the fiscal year to which the CbC report or 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 or deadline for submission on tax authority request

Typically, a taxpayer may have to submit the transfer pricing documentation within 21 days once requested by the tax authorities in an audit or inquiry.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

Yes.

b) Priority and 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 intra-group 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; pan-European comparables are accepted.

b) Single-year vs. multiyear 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 use of the interquartile range is commonly used.

d) Fresh benchmarking search every year vs. roll forwards and update of the financials

There is no need to conduct a fresh benchmarking search every year even though an annual financial refresh of the comparables 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.

Ireland

8. Transfer pricing penalties and relief

a) Penalty exposure

- Consequences of failure to submit, late submission 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-g 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%

- Is interest charged on penalties or payable on a refund?

Under the general corporate tax penalty provisions, interest arises on underpaid tax at a daily rate of 0.0219%, which is 7.994% 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 on the basis of 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:

- 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
- 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 and related audit by the local authority

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

The likelihood is 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*)

The likelihood is 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.

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

The likelihood is medium. This will ultimately depend on the merits and economic circumstances of the transaction.

▶ Specific transactions, industries and 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 and MAP opportunities

▶ Availability (unilateral, bilateral and 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. 60/16. 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 the 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.

▶ MAP opportunities

Yes. Taxpayers may request a MAP if taxation has or is likely to occur that is not in accordance with the provisions of a Double Tax Treaty (DTT) to which Ireland is a signatory. Most of Ireland's DTTs permit taxpayers to present a case to the Revenue within three years from the first notification to the taxpayer of the actions giving rise to taxation not in accordance with the DTT. However, time limits may vary, and the relevant DTT should be consulted for the applicable time limit. Taxpayers have three years to present a case to the Revenue under the EU Arbitration Convention (90/436/EEC).

Contact

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Israeli Tax Authority (ITA)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the 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.

▶ Section reference from local regulation

Section 76d of the ITO and the provisions thereunder include a description of the documentation.

2. OECD Guidelines treatment or reference

Israel is an OECD member country. The ITA considers its transfer pricing 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 or 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 transfer pricing 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 or thresholds

▶ Transfer pricing documentation

There is no materiality limit.

▶ Economic analysis

There is no materiality limit.

▶ BEPS master and local files

There is no threshold limit (no formal requirement under local regulations yet).

▶ CbCR

Sections 85b and 85c include reference to the threshold (but they were in draft form at the time this was published).

c) Specific requirements

▶ Treatment of domestic transactions

There are no specific requirements for the treatment of domestic transactions.

▶ Local language documentation requirement

There are no requirements for transfer pricing documentation to be submitted in the local language.

▶ Safe harbor availability

On 5 September 2018, the ITA published a circular, providing safe harbor provisions for certain intercompany transactions:

- ▶ Low level services (following the OECD Guidelines' definitions) with a markup on total costs of 5%
- ▶ Marketing services with a markup on total costs of between 10% and 12% (assuming it has been clarified that the activity is not classified as sales activity, as discussed under a separate ITA circular)
- ▶ Distribution activity under a low risk profile with an operating margin between 3% and 4%

Taxpayers that exhibit these results are exempt from attaching a benchmarking exercise attesting the arm's-length range into their transfer pricing documentation.

-

d) BEPS Action 13 implementation overview

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

Sections 85b and 85c include local reference to the BEPS Action Plan (but they were in draft form at the time this was published).

► **Coverage in terms of master and local files**

This is not applicable.

► **Effective or expected commencement date**

It has been expected that it would take effect from financial year 2017.

► **Material differences from OECD report template or format**

This is not applicable.

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

This is not applicable.

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

This is not applicable.

► **CbCR notification included in the statutory tax return**

This is not applicable.

► **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

Yes. It was signed on 12 May 2016.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

Commencing from the financial year 2007, taxpayers must attach to the annual tax returns a specific transfer pricing 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 the other party**
- **Signatures on all declarations (forms) that the international transactions were conducted at arm's length**

According to the taxing authority, such declarations must be supported by documentation that meets the requirements.

b) Transfer pricing-specific returns

Refer to the section above.

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

► **Corporate income tax return**

The deadline is 31 May.

► **Other transfer pricing disclosures and return**

The deadline is 31 May as Form 1385 must be attached to the corporate income tax return. Transfer pricing documentation is not required to be filed unless required under tax audit.

► **CbCR notification**

This is not applicable.

► **CbC report preparation and submission**

This is not applicable.

b) Documentation preparation deadline

The transfer pricing documentation only needs to be finalized by the time of submitting upon request. It does not need to be finalized by a specific time, and upon tax audit, it 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 an 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 the submission of transfer pricing documentation.

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

Taxpayers in Israel must provide the 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.

Israel

▶ Domestic transactions

This is not applicable.

b) Priority and 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 transfer pricing 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.

On 5 September 2018, the ITA finalized two draft circulars. One of the circulars focuses on appropriate transfer pricing methods related to distribution, marketing and sales by multinational enterprises in the Israeli market, while the other focuses on specific profitability ranges for certain transactions. The circulars provide the ITA's position regarding the methodology and profitability of various types of transactions, while facilitating documentation and reporting requirements.

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. multiyear analysis

A single-year analysis 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 forwards and 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

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

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

No specific transfer pricing penalties are mentioned; the submission of transfer pricing documentation is upon request only, and should be done within 60 days of the request. Failure to submit in time may cause civil and 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 a penalty when reaching a settlement.

▶ Is interest charged on penalties or payable on a refund?

Penalties are considered an addition to the taxpayer's tax debt. Therefore, they are linked to the index and carry 4% interest.

b) Penalty relief

There is no penalty relief regime applicable in Israel.

The 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 and related audit by the 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 transfer pricing 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 transfer pricing methodology would be challenged in a transfer pricing review had been moderate, if supported by robust transfer pricing documentation. Recently, a growing trend of challenged transfer pricing 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 start-up 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 the transfer pricing methodology is challenged (*high/medium/low*)

The likelihood is high (refer to the section above).

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

There are no specifications; the ITA challenges all transfer pricing transactions, industries and situations.

11. APA and MAP opportunities

► Availability (unilateral, bilateral and 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

There is none specified.

► Rollback provisions

This is not applicable.

► MAP opportunities

Yes. Taxpayers may request a MAP if taxation has or is likely to occur that is not in accordance with the provisions of a Double Taxation Treaty (DTT) to which Israel is a signatory. Most of Israel's DTTs permit taxpayers to present a case to the Israeli Tax Authority within three years from the first notification to the taxpayer of the actions giving rise to taxation not in accordance with the DTT. However, time limits may vary, and the relevant DTT should be consulted for the applicable time limit.

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1. Tax authority and relevant transfer pricing regulations or 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 or rulings and the 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. On 14 May 2018, the Italian Ministry of Economy and Finance (MEF) released the final version of the decree setting out the general guidance for the correct application of the arm's-length principle (the Decree). Indeed, paragraph 7 of article 110 of the Italian Income Tax Code (article 110(7)) was amended by Law Decree of 24 April 2017, No. 50 (the Law Decree) in order to explicitly incorporate into the Law, the arm's-length principle set forth by both the OECD Model Tax Convention (OECD Model) and the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD Guidelines) in their most updated version. While the previous version of article 110(7) established that the prices for intercompany cross-border transactions should be determined on the basis of the so-called "normal value," the new rule now generally refers to the "conditions and prices that would have been agreed between independent parties acting on an arm's-length basis and in comparable circumstances." The Decree addresses only general principles; further operational and procedural guidance will be issued by the Italian Revenue Agency.

With specific reference to documentary requirements on transfer prices, in 2010, TP regulations for penalty protection purposes were issued (i.e., Decision of the Commissioner of the Italian Revenue Agency of 29 September 2010). 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) that defines the concept of "control" as "all instances of potential or effective economic influence." Therefore, it emerges from the above that the notion of "control" should be extended to cover all hypotheses of economic influence.

Following the Decree, the concept of "control" appears to be restricted now to the majority shareholding and the existence

of contractual relationship. However, the interpretation of the new regulation is currently unclear and a Circular of the Revenue Agency is expected to be published to clarify the concepts of associated enterprises and control.

2. OECD Guidelines treatment and reference

Italy is an OECD member. Italian transfer pricing rules are largely consistent with the OECD Guidelines. Indirect reference to the applicability of the 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 or 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 or thresholds

► Transfer pricing documentation

There is no materiality limit or threshold for transfer pricing documentation.

► Economic analysis

There is a materiality limit for performing an economic analysis, however, the latter is not specified under a quantitative perspective. The Italian requirements affirm that "omissions or partial inaccuracies related also to residual transactions, which are unlikely to affect the analysis by the tax auditors and the accuracy of the results of such analysis" are possible and do not jeopardize the recognition of penalty protection. The Decree also clarifies that the presence in the TP documentation of omissions or partial inaccuracies,

which are not apt to jeopardize the analysis of the tax auditors cannot lead to the inappropriateness of the same.

► **BEPS master and local files**

The preparation of master file or 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 or 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 requirements

► **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 local file must be drafted in Italian, as per Paragraph 8.1. of the Decision of the Commissioner of the Italian Revenue Agency of 29 September 2010.

► **Safe harbor availability**

The Decree embodies the recent updates brought by BEPS Actions 8-10 (as reflected in the 2017 version of the OECD TP Guidelines) with reference to low value adding inter-company services. In particular, the Decree provides that taxpayers, subject to the preparation of specific documentation, may evaluate such services by aggregating all the direct and indirect costs related to the provision of the same, adding a profit mark-up equal to 5%. Article 7 defines the "low value adding services" as those that: (i) are of a supportive nature, (ii) are not part of the core business of the multinational group, (iii) do not require the use of unique and valuable intangibles and do not contribute to the creation of the same and (iv) do not involve the assumption or control of any significant risks by the service provider.

d) BEPS Action 13 implementation overview

► **Has your country adopted or 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 local files**

No, the preparation of the master file and the local file according to BEPS Action 13 has not been implemented in Italy so far.

► **Effective or expected commencement date**

This is not applicable.

► **Material differences from OECD report template or 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, for specific requirements, refer to the details 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).

► **CbCR notification included in the statutory tax return**

Yes, the information is provided in Section RS268 of the Corporate Income Tax Return (CIT).

► **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

Yes, signed on 27 January 2016.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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. This disclosure is required in the yearly tax return and applies irrespective of the fact that a taxpayer decides to opt for the TP penalty protection regime or not.

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, Section RS106 CIT) to the Italian Revenue Agency.

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

► Corporate income tax return

The tax return is due by the end of the ninth month after the closing of the FY.

► Other transfer pricing disclosures and return

This is 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 and 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 formal request of the tax inspectors comes.

c) Documentation submission deadline

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

No

► Time period or 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 (for both international and domestic transactions)

► International transactions – Yes

► Domestic transactions – No

b) Priority and preference of methods

Reference is generally made to the TP methods as provided by the OECD Transfer Pricing 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.

Article 4 of the Decree refers to the transfer pricing methods to be used for the evaluation of a controlled transaction on the basis of the arm's-length principle. The five methods identified by Article 4, which correspond to those listed by the OECD Guidelines, are the comparable uncontrolled price (CUP) method, the resale price method (RPM), the cost-plus method (CPM), the transactional net margin method (TNMM) and the transactional profit split method (PSM).

7. Benchmarking requirements

a) Local vs. regional comparables

There are no benchmarking requirements for local and regional comparables.

b) Single-year vs. multiyear analysis

The use of multiple-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 forwards and update of the financials

The Italian TP rules 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

The independence criteria is generally set at 50%.

8. Transfer pricing penalties and relief

a) Penalty exposure

► Consequences of failure to submit, late submission 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 applicable, in principle, 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 or payable on a 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:

► 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.

► 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.

► 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) calling 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:

► **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.

► **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.

► **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:

- **One-third of the higher taxes and interest required by the assessment, after filing of the appeal before the Provincial Tax Court.**
- **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).**
- **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 and related audit by the 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 the transfer pricing methodology is challenged (*high/medium/low*)**

The likelihood is medium to high. For details, refer to the reasons mentioned above.

▶ **Specific transactions, industries and 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 and web companies).

11. APA and MAP opportunities

▶ **Availability (unilateral, bilateral and 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 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**

For details, refer to the section above.

- ▶ **Rollback provisions**

For details, refer to the section above.

- ▶ **MAP opportunities**

Yes, there are no specific provisions for the MAP procedure in domestic law. Taxpayers must rely on the MAP provisions under Double Taxation Treaties or under the EU Arbitration Convention (90/436/EEC). In addition, a new procedure allows Italian taxpayers to obtain within 180 days a unilateral downward adjustment on their taxable income as a result of TP adjustment (made by foreign tax authorities) after a negotiation phase with the Italian Tax Authorities. If the outcome of the procedure denies the corresponding unilateral adjustment, relief from double taxation may be in any case possible under MAP/EAC (in case the timing allows the filing of the request).

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

National Tax Agency (NTA)

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations or rulings and the 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

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)-166-4(1)-1

Commissioner's Directive on the Establishment of Instructions for the Administration of Transfer Pricing Matters (Administrative Guidelines), Commissioner's Directive on the Administration of Transfer Pricing Matters for Consolidated Corporations (Administrative Guidelines for Consolidated Corporations) and Commissioner's Directive on the Mutual Agreement Procedure

2. OECD Guidelines treatment and reference

Japan is an OECD member country, and Japanese transfer pricing rules are generally consistent with the OECD Guidelines.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines or 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 or thresholds

► Transfer pricing documentation

There is none specified.

► Economic analysis

There is none specified.

► BEPS master and local files

Master file: companies with global consolidated sales of less than JPY100 billion in the most recent financial year are exempt from the requirement to submit a 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) in the most recent financial year are exempt from the contemporaneous local file requirement.

Companies exempt from the contemporaneous rule are still required to submit, upon request by an examiner, 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 requirements

► Treatment of domestic transactions

Japan

There is no documentation obligation for domestic transactions.

▶ Local language documentation requirement

The local file 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 or implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

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

▶ Coverage in terms of master and local files

It covers the master file and local file.

▶ Effective or 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 or format

There are some differences between the OECD report template or 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 tested party and the counterparty to the transaction (including the counterparty's profit and loss segmented for its transactions with Japan).

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. Instead, being able to submit the

local file by the requested deadline during an audit will reduce the likelihood of presumptive taxation (see section 8(a) below).

▶ CbCR notification and CbC report submission requirement

There is a CbCR notification and CbC report submission requirement in Japan.

▶ CbCR notification included in the statutory tax return

No. The notification should be submitted electronically via E-tax (the same system as other items such as the master file and tax return).

▶ Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

Yes, it was signed on 27 January 2016.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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

- ▶ Whether an APA exists covering the transactions between the taxpayer and its foreign related party or parties

b) Transfer pricing-specific returns

Refer to the section above.

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- ▶ Corporate income tax return

This should be filed within three months after year-end including an extension if the taxpayer files a stand-alone corporate income tax return. If the taxpayer files a consolidated corporate income tax return, this should be filed within four months after year-end including an extension.

- ▶ Other transfer pricing disclosures and 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 and 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.

b) Documentation preparation deadline

The transfer pricing local 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 (other than the master file, which is required to be submitted within one year of the year-end of the ultimate parent as mentioned above). 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 can be a maximum of 45 days from the date of the request during 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 prices (documents equivalent to the local file) should be submitted to an examiner by the day designated by the tax examiner, which can be a maximum of 60 days from the date of the request in the course of a corporate or transfer pricing examination.

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

The time period or deadline is same as above.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- ▶ International transactions – Yes
- ▶ Domestic transactions – No

b) Priority and 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 when the examiner assesses a transfer pricing adjustment.

b) Single-year vs. multiyear analysis

For a transfer pricing assessment, a single-year analysis is applied. For a local file or APAs, multiple-year analyses are common.

c) Use of interquartile range

Japan

The interquartile range is recognized in practice and is often applied by Japanese transfer pricing examiners in audits and APAs.

d) Fresh benchmarking search every year vs. roll forwards and 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 local file because up-to-date financial data of comparable companies is not available by the time filing a corporate tax return (i.e. the due date to prepare a local file).

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

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

► Consequences of failure to submit, late submission 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. ("Presumptive taxation" occurs when Japanese tax examiners perform their own analysis, possibly based on non-public information such as secret comparables, in order to impose an assessment on the taxpayer.) 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 10% of the additionally assessed tax (or 15% on the amount of additionally

assessed tax that exceeds the larger of the tax originally paid or JPY500,000).

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.

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.

Specifically, these translate to delinquency tax rates as follows.

Term	First part	Second part
1 Jan 2014 thru 31 Dec 2014	2.9%	9.2%
1 Jan 2015 thru 31 Dec 2015	2.8%	9.1%
1 Jan 2016 thru 31 Dec 2016	2.8%	9.1%
1 Jan 2017 thru 31 Dec 2017	2.7%	9.0%
1 Jan 2018 thru 31 Dec 2018	2.6%	8.9%
1 Jan 2019 thru 31 Dec 2019	2.6%	8.9%

► Is interest charged on penalties or payable on a refund?

In general, no interest is accrued on a refund as a result of a correlative adjustment.

b) Penalty relief

As mentioned in (a) above, there are no specific penalties for failure to prepare and submit transfer pricing documentation on time (only the possibility of presumptive taxation if a taxpayer fails to submit the local file by the requested deadline in an audit; see section 8(a)). Transfer pricing assessments by the tax authority are subject to the same penalties as any other corporate tax assessment, and 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 a MAP. 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 about 14 litigation cases as a result of transfer pricing assessments, and the court ruled in favor of the taxpayer in only two 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 and related audit by the local authority

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

The likelihood is 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*)**

The likelihood is high, if the taxpayer appears unprepared to defend its transfer pricing policies and methods and if any of the factors listed below are present.

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

The likelihood is high (same reason as above).

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

The risk is increased for taxpayers that meet any of the following criteria:

- ▶ **The local 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.**

Japan

- ▶ 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 local 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.
- ▶ Inappropriate transfer pricing having caused the local entity's higher profit than arm's length was corrected to reflect the arm's length principle without sufficient transfer pricing analysis.

▶ Tenure

In general, the tenure could be as long as 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.

▶ MAP opportunities

Yes. Taxpayers may request a MAP if taxation has or is likely to occur that is not in accordance with the provisions of a Double Taxation Treaty (DTT) to which Japan is signatory. Most of Japan's DTTs permit Taxpayers to present a case to the Tax Authorities within three years from the first notification to the Taxpayer of the actions giving rise to taxation not in accordance with the DTT. However, time limits may vary, and the relevant DTT should be consulted for the applicable time limit.

11. APA and MAP opportunities

▶ Availability (unilateral, bilateral and multilateral)

There is an APA program available in Japan. Unilateral, bilateral and multilateral APAs are available and very common; however, the NTA prefers bilateral APAs.

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

Income and Sales Tax Department (ISTD)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the 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 with 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 and 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 or rules?

No.

▶ Does transfer pricing documentation have to be prepared annually?

This is not applicable.

b) Materiality limit or thresholds

▶ Transfer pricing documentation

This is not applicable.

▶ Economic analysis

This is not applicable.

▶ BEPS master and local files

This is not applicable.

▶ CbCR

This is not applicable.

c) Specific requirements

▶ Treatment of domestic transactions

This is not applicable.

▶ Local language documentation requirement

This is not applicable.

▶ Safe harbor availability

This is not applicable.

d) BEPS Action 13 implementation overview

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

No.

▶ Coverage in terms of master and local files

This is not applicable.

▶ Effective or expected commencement date

This is not applicable.

▶ Material differences from OECD report template or format

This is not applicable.

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

This is not applicable.

▶ CbCR notification and CbC report submission requirement

There is no CbCR notification requirement in Jordan.

▶ CbCR notification included in the statutory tax return or is filing of a separate notification required

This is not applicable.

▶ Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

No.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

This is not applicable.

b) Transfer pricing-specific returns

This is not applicable.

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- ▶ Corporate income tax return

30 April

- ▶ Other transfer pricing disclosures and return

This is not applicable.

- ▶ CbCR notification

This is not applicable.

- ▶ CbC report preparation and submission

This is not applicable.

b) Documentation preparation deadline

This is not applicable.

c) Documentation submission deadline

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

This is not applicable.

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

This is not applicable.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- ▶ International transactions – Not applicable

- ▶ Domestic transactions – Not applicable

b) Priority and preference of methods

This is not applicable.

7. Benchmarking requirements

a) Local vs. regional comparables

This is not applicable.

b) Single-year vs. multiyear analysis

This is not applicable.

c) Use of interquartile range

This is not applicable.

d) Fresh benchmarking search every year vs. roll forwards and update of the financials

This is not applicable.

e) Simple vs. weighted average

This is not applicable.

f) Other specific benchmarking criteria, if any

This is not applicable.

8. Transfer pricing penalties and relief

a) Penalty exposure

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

This is not applicable.

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

This is not applicable.

- ▶ Is interest charged on penalties or payable on a refund?

This is not applicable.

b) Penalty relief

This is not applicable.

9. Statute of limitations on transfer pricing assessments

This is not applicable.

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

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

This is not applicable.

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

This is not applicable.

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

This is not applicable.

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

This is not applicable.

11. APA and MAP opportunities

- ▶ Availability (unilateral, bilateral and multilateral)

This is not applicable.

- ▶ Tenure

This is not applicable.

- ▶ Rollback provisions

This is not applicable.

- ▶ MAP opportunities

There is none specified.

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Kazakhstan

1. Tax authority and relevant transfer pricing regulations or 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 or rulings and the 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)
- ▶ List of international business transactions involving goods (works, services) subject to transaction monitoring (No. 194 of 19 March 2015)
- ▶ Rules on the procedure of the authorized bodies' interaction in exercising control of transfer pricing matters (No. 129 of 26 March 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 and 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 or rules?

Subject to certain conditions Kazakhstan taxpayers may be obliged to submit the following documents:

- ▶ Master file
- ▶ Local file
- ▶ CbCR
- ▶ Notification on participation in a multinational enterprise group
- ▶ TP monitoring reporting
- ▶ Information and documents supporting applied prices
- ▶ Economic justification supporting price differential and transfer pricing method
- ▶ Does transfer pricing documentation have to be prepared annually?

Yes, TP monitoring reporting (which applies to specific taxpayers and transactions) and local files shall be prepared annually.

b) Materiality limit or thresholds

▶ Transfer pricing documentation

See below paragraphs for master and local files.

For TP monitoring reporting, there's no materiality limit, but it applies to certain taxpayers and specific transactions only.

Materiality limit for both the information and documents supporting applied prices is not applicable.

▶ Economic analysis

Materiality limit for economic justification supporting price differential and transfer pricing method is not applicable in Kazakhstan.

▶ BEPS master and local files

Master file – consolidated group revenue for the year preceding the reporting financial year for which the master file is filled is greater than €750 million (or depending on the

threshold established for master file filing for the jurisdiction of nonresident parent company or authorized participant of multinational group)

Local file – company's revenue for the fiscal year preceding the reporting year is greater than 5 million monthly calculation index (approximately USD 36.6 million)

► CbCR

CbCR – consolidated group revenue for the year preceding the reporting financial year for which CbCR is filled is greater than €750 million (or depending on the threshold established for CbCR filing for the jurisdiction of nonresident parent company or authorized participant of multinational group)

Materiality limit for notification on participation in a multinational enterprise group is not applicable.

c) Specific requirements

► 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 in either the Kazakh or Russian language.

► Safe harbor availability

There are no safe harbors, except for transactions with agricultural goods, where 10% safe harbors may apply.

d) BEPS Action 13 implementation overview

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

The following three-tier reporting is implemented in Kazakhstan:

- CbCR
- Master file
- Local file
- Coverage in terms of master and local files

Both the master file and local file are covered.
- Effective or expected commencement date
- 1 January 2016 for CbCR

► 1 January 2019 for master file and local file (hence, presumably 2019 should be the first reporting period)

► Material differences from OECD report template or format

No significant differences from OECD report template or format.

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

Availability of BEPS format reports does not protect Kazakhstan taxpayer from penalties.

► CbCR notification and CbC report submission requirement

Subject to certain conditions, Kazakhstan taxpayers are obliged to file CbCR for tax years beginning on or after 1 January 2016.

Starting 1 January 2018, participants of a multinational group are obliged to submit to the authorized body the notification on its participation in a multinational group.

► CbCR notification included in the statutory tax return

No

► Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

Yes, signed on 12 June 2018.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

No related-party disclosure or other appendices or forms were required in tax declarations at the time of this publication.

b) Transfer pricing-specific returns

Apart from documents mentioned in applicable TP documentation above, no other transfer pricing returns are required to be filed.

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- Corporate income tax return

Kazakhstan

Corporate income tax return should be filed by 31 March of the year following the reporting period (may be extended to 30 April).

▶ **Other transfer pricing disclosures and return**

Please refer to point 3(a) above.

▶ **CbCR notification**

Notification on participation in a multinational enterprise group – to be submitted annually by 1 September of the year following the reporting period, if applies

▶ **CbC report preparation and submission**

CbC report has to be filed annually within 12 months following the reporting period or within 12 months upon request of the tax authorities (depending on the type of taxpayer), if applies.

b) Documentation preparation deadline

- ▶ Master file has to be filed within 12 months upon request of the tax authorities, if applies.
- ▶ Local file has to be filed annually within 12 months following the reporting period, if applies.
- ▶ TP monitoring reporting has to be annually by 15 May of the year following the reporting period, if applies.
- ▶ Economic justification supporting price differential and transfer pricing method has to be filed upon request of the tax authorities within a tax audit.

c) Documentation submission deadline

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

Yes, for TP monitoring reporting, the deadline is 15 May of the year following the reporting period and local files should be filed within 12 months following the reporting period.

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

Information and documents supporting applied prices has to be filed within 90 calendar days upon request of the tax authorities.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

▶ **International transactions – yes**

▶ **Domestic transactions – yes, on certain transactions**

b) Priority and 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. multiyear 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 forwards and update of the financials

There is none specified.

e) Simple vs. weighted average

There is none specified.

f) Other specific benchmarking criteria, if any

There is a 10% independence threshold.

8. Transfer pricing penalties and relief

a) Penalty exposure

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

Special penalties are in place for failure to comply with the TP monitoring reporting requirements and failure to comply or rejection to provide documents required to perform transfer pricing control. The maximum penalty is set at KZT883,750 (approximately USD2,500).

Noncompliance, non-submission relating to master file, local file and CbCR requirements will attract penalties. The maximum penalty is set at KZT1,262,500 (approximately USD3,600).

► **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 80% 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 KZT125.3 million (approximately USD366,000).

► **Is interest charged on penalties or payable on a 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 9.25%).

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

The general statute of limitations period for tax assessment is five years after the end of the respective tax period (but it may be extended to seven years in certain cases for transfer pricing assessments).

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

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

It depends on the industry (high for export of commodities).

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

The likelihood is high, based on practice.

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

The likelihood is high, based on practice.

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

Export of commodities is under higher scrutiny.

11. APA and MAP opportunities

► **Availability (unilateral, bilateral and 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:

- **List of documents required for concluding the agreement**
- **Procedure for consideration of a request by the authorized bodies (tax and customs authorities)**
- **Duration of the agreement (e.g., no more than three years from the date of signing)**
- **Other**

► **Tenure**

An APA may be agreed upon for a three-year period.

► **Rollback provisions**

This is not applicable.

► **MAP opportunities**

MAP opportunities are available under double tax treaty.

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

Kenya Revenue Authority (KRA)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the 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 and 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 or rules?

Yes

▶ Does transfer pricing documentation have to be prepared annually?

No

b) Materiality limit or thresholds

▶ Transfer pricing documentation

There's no materiality limit.

▶ Economic analysis

There's no materiality limit.

▶ BEPS master and local files

This is not applicable.

▶ CbCR

This is not applicable.

c) Specific requirements

▶ 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

There is none specified.

d) BEPS Action 13 implementation overview

▶ Has your country adopted or 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 local files

This is not applicable.

▶ Effective or expected commencement date

This is not applicable.

▶ Material differences from OECD report template or format

This is not applicable.

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

This is not applicable.

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

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

► **CbCR notification included in the statutory tax return**

This is not applicable.

► **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

No

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 and disclosure timelines

a) Filing deadline

► **Corporate income tax return**

The documentation should be filed at the end of the sixth month following the company's financial year-end date.

► **Other transfer pricing disclosures and return**

This is not applicable.

► **CbCR notification**

This is not applicable.

► **CbC report preparation and submission**

This is 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 or 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 (for both international and domestic transactions)

► **International transactions – Yes**

► **Domestic transactions – Yes**

b) Priority and 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. multiyear analysis

Three-year testing is acceptable.

c) Use of interquartile range

Excel Quartile is acceptable.

d) Fresh benchmarking search every year vs. roll forwards and 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 or payable on a refund?

This is 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:

► Alternative dispute resolution (ADR)**► Tax tribunal hearing**

Or

► The high court – if the ruling from the tribunal is dissatisfactory**8. Transfer pricing penalties and relief****a) Penalty exposure****► Consequences of failure to submit, late submission 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 Section 38 and 84 of the Tax Procedures Act.

- 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.
- 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.
- 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

It could be as long as five years.

10. Likelihood of transfer pricing scrutiny and related audit by the 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*)

The likelihood is high, given the recent trend mentioned above.

► Likelihood of an adjustment if the 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.

- ▶ **Specific transactions, industries and 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 and MAP opportunities

- ▶ **Availability (unilateral, bilateral and multilateral)**

No specific APA rules are applicable.

- ▶ **Tenure**

This is not applicable.

- ▶ **Rollback provisions**

This is not applicable.

- ▶ **MAP opportunities**

There is none specified.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Tax Administration of Kosovo

b) Relevant transfer pricing section reference

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

Law No. 05/L-029, on corporate income tax, dated 18 August 2015:

- ▶ Section VI, Article 27 – transfer pricing
- ▶ 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
 - ▶ Law No. 03/222, dated 12 July 2010, on tax procedures – Article 1, Paragraph 1.27 – definition of related persons
 - ▶ 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
 - ▶ 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 and 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 or rules?

Yes

▶ Does transfer pricing documentation have to be prepared annually?

Transfer pricing documentation has to be prepared annually.

b) Materiality limit or thresholds

▶ Transfer pricing documentation

Not applicable

▶ Economic analysis

Not applicable

▶ BEPS master and local files

Not applicable

▶ CbCR

Not applicable

c) Specific requirements

▶ 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 consultation with the Kosovo Tax Authorities, 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 or implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No

▶ Coverage in terms of master and local files

Not applicable

▶ Effective or expected commencement date

Not applicable

► **Material differences from OECD report template or format**

Not applicable

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

The BEPS Action 13 format report is generally in line with the local transfer pricing documentation requirements. However, in order to ensure that it is considered as complete and to achieve protection from the penalty on incorrect/incomplete disclosure, it should contain also the local industry and market analysis, an overview of the local entity including any local strategies, and the organizational structure of the local entity.

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

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

► **CbCR notification included in the statutory tax return**

Not applicable

► **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

No

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 EUR 300,000. 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 and 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 and return**

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

► **CbCR notification**

Not applicable

► **CbC report preparation and submission**

Not applicable

b) Documentation preparation deadline

There is no statutory 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 should 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.

► **Time period or 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 and preference of methods

The CUP method must be firstly attempted pursuant to Kosovo's legislation, and if CUP cannot be applied, the other traditional methods of resale price and cost plus are favored. In certain circumstances, the taxpayer may apply traditional profit methods as follows: transactional net margin method and profit split method.

The taxpayer has the right to mix or support the implementation of the most appropriate method, by implementing one or more of the other transfer pricing methods.

7. Benchmarking requirements

a) Local vs. regional comparables

Article 15, Paragraph 5 of the Administrative Instruction No. 02/2017 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 geographical and other influencing factors are analysed and appropriate comparable adjustments are carried out if necessary.

In practice local comparables, should be first attempted, and if not available, the search can be extended in the following order: Balkans, Eastern Europe and the European Union.

b) Single-year vs. multiyear 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 multiyear 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 unless the tax authorities or the taxpayer proves that the circumstances of the case ensure adjustment to a different point in the market range. 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 forwards and 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.

Financial updates of the comparable searches should be performed annually.

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 Administrative Instruction No. 02/2017, 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 and relief

a) Penalty exposure

► Consequences of failure to submit, late submission or incorrect disclosures

Failure to prepare and to timely submit TP documentation or to fulfill the requirements provided in the Administrative Instruction No. 02/2017, is subject to a penalty of €125 up to a maximum of €2,500. Failure to file the Annual Controlled Transaction Notice is subject to a penalty of EUR125, up to a maximum of EUR2,500.

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

The legislation does not provide for specific penalties in case of transfer pricing adjustments. Therefore, in case of an adjustment, the general tax penalties would apply as follows:

Understatement of tax is subject to a penalty of 15% of the undeclared tax liability if such understatement is 10% or less of such tax, or to a 25% penalty if the understatement is more than 10% of such tax.

In case the adjustment is made by the taxpayer voluntarily before he receives a tax audit notification, such penalty is capped at 25% of the penalty that would otherwise apply.

In case the adjustment is made by the taxpayer after he receives a tax audit notification but before the tax audit commences, such penalty is capped at 50% of the penalty that would otherwise apply.

► **Is interest charged on penalties or payable on a refund?**

There is no interest charged on penalties for erroneous completion of a tax filing.

b) Penalty relief

Currently, no penalty relief is applicable.

9. Statute of limitations on transfer pricing assessments

The statute of limitations on transfer pricing assessments is six years from the corporate income tax return filing due date (i.e., 31 March of the following year)

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

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

The likelihood of a transfer pricing audit in Kosovo is high.

In light of the transfer pricing rules entered into force on July 2017, the Kosovo Tax Authorities have initiated several transfer pricing audits and transfer pricing is expected to continue to attract significant attention.

► **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 and situations, if any, more likely to undergo audit**

There are no differences among transactions, industries and situations.

11. APA and MAP opportunities

► **Availability (unilateral, bilateral and 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

► **MAP opportunities**

MAPs are generally available under the double tax treaties which Albania has with its treaty partners.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Department of Inspections and Tax Claims (DIT)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the 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.

▶ Transfer pricing documentation

No materiality limit

▶ Economic analysis

No materiality limit

▶ BEPS master and local files

Not applicable

▶ CbCR

Not applicable

c) Specific requirements

▶ 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 or implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No

▶ Coverage in terms of master and local files

Not applicable

▶ Effective or expected commencement date

Not applicable

▶ Material differences from OECD report template or 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

2. OECD Guidelines treatment and 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 or 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 or thresholds

Currently, there is no CbCR notification or CbC report submission requirement in Kuwait.

- ▶ **CbCR notification included in the statutory tax return**

Not applicable

- ▶ **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

No

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 and 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 and return**

Not applicable

- ▶ **CbCR notification**

Not applicable

- ▶ **CbC report preparation and submission**

Not applicable

b) Documentation preparation deadline

There is no statutory deadline or 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 or 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 (for both international and domestic transactions)

Not applicable

b) Priority and 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. multiyear analysis

None specified

c) Use of interquartile range

None specified

d) Fresh benchmarking search every year vs. roll forwards and 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 and relief**a) Penalty exposure****► Consequences of failure to submit, late submission or incorrect disclosures**

None specified

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

None specified

► Is interest charged on penalties or payable on a 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).

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10. Likelihood of transfer pricing scrutiny and related audit by the 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 the transfer pricing methodology is challenged (*high/medium/low*)

See the above section.

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

None specified

11. APA and MAP opportunities**► Availability (unilateral, bilateral and multilateral)**

There are no specific provisions allowing APAs in Kuwaiti domestic regulations.

► Tenure

Not applicable

► Rollback provisions

Not applicable

► MAP opportunities

Not applicable

1. Tax authority and relevant transfer pricing regulations and rulings

a) Name of tax authority

State Revenue Service

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations or rulings and the effective date of applicability

The arm's-length principle is established in the Corporate Income Tax law. Article 4 of the Corporate Income Tax law determines that the taxable income base shall be increased by the income that the taxpayer would have obtained or the expense that the taxpayer would not have incurred whilst engaging in transactions with its related parties, if the related party transactions were performed at arm's length. Transfer pricing documentation requirements are laid down in Article 152 of the Law on Taxes and Duties.

Cabinet Regulation No. 677, promulgated on 14 November 2017, set the transfer pricing methods applicable for determining arm's-length prices in related-party transactions. Additionally, Cabinet Regulation No. 802, promulgated on 18 December 2018, set requirements regarding the content of transfer pricing documentation and 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.

2. OECD Guidelines treatment and 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, as long as it does not contradict the local transfer pricing laws. 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 legislation.

3. Transfer pricing documentation requirements

a) Applicability

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

Yes

► Does transfer pricing documentation have to be prepared annually?

Yes, annual documentation preparation requirement for cross-border related-party transactions exceeding a certain threshold in a financial year (a detailed description of the thresholds is indicated in the Section "Materiality limit or thresholds", sub-section "Transfer pricing documentation") is set in local tax laws.

The minimum requirement for annual update of transfer pricing documentation entails reviewing the fact pattern and relevant conditions of the transactions indicated in the transfer pricing documentation. If the fact pattern of the transactions and other relevant conditions have remained unchanged, updating the relevant financial data of the local company and comparable data used for verifying the arm's-length nature of transfer prices applied, is sufficient.

b) Materiality limit and thresholds

► Transfer pricing documentation

According to Latvian statutory transfer pricing requirements applicable to transactions carried out in 2018 and beyond, the thresholds for master file and local file requirements are applicable. The master file and local file requirements effective for transactions carried out in financial years starting from 1 January 2018 and onward are indicated below:

Master file

Preparation and submission to the tax authority within 12 months after the end of the financial year (without request):

► If the annual controlled transaction amount of the local entity with its related parties exceeds EUR15 million.

Or

► If the annual turnover of the local entity exceeds EUR50 million and the annual controlled transaction amount of the local entity with its related parties exceeds EUR 5 million.

Latvia

Preparation within 12 months after the end of the financial year and submission to the tax authority within one month after request:

- ▶ **If the annual controlled transaction amount of the local entity with its related parties exceeds EUR 5 million but does not exceed EUR 15 million.**

Local file

Preparation and submission to the tax authority within 12 months after the end of the financial year (without request):

- ▶ **If the annual controlled transaction amount of the local entity with its related parties exceeds EUR 5 million.**

Preparation within 12 months after the end of the financial year and submission to the tax authority within one month after request:

- ▶ **If the annual controlled transaction amount of the local entity with its related parties exceeds EUR 250 thousand but does not exceed EUR 5 million.**

▶ 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 related-party transactions exceeding EUR 20 000.

▶ BEPS master and local files

For related-party transactions carried out in 2018 and beyond, local entities meeting thresholds of annual turnover or related-party transaction volume indicated above have to prepare BEPS local file or local file and master file.

▶ CbCR

Notification applies to all resident entities that are part of a qualifying group (the threshold is EUR750 million).

c) Specific requirements

▶ Treatment of domestic transactions

The arm's-length nature of domestic transactions is to be verified, however the master file and local file documentation requirements apply only to domestic transactions closely linked to cross-border transactions in the supply chain.

▶ Local language documentation requirement

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. Local file transfer pricing documentation has to be submitted to the tax authority in Latvian language

▶ Safe harbor availability

Available regarding low value-adding intra-group services.

d) BEPS Action 13 implementation overview

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

Yes

▶ Coverage in terms of master and local files

Both the master file and local file are covered.

▶ Effective or expected commencement date

In force for transactions carried out in financial years starting from 1 January 2018.

▶ Material differences from OECD report template or 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.

► **CbCR notification included in the statutory tax return**

No

► **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

Yes, signed on 21 October 2016.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

The taxpayer must identify all related party cross-border transactions by disclosing the total sum of all related party cross-border transactions in the annual corporate income tax return of the respective reporting year (Row 6.5.1 of CIT declaration).

In case taxpayer has made transfer-pricing adjustments, the taxpayer must disclose income which it would have received or the expenditure which a taxpayer would have not incurred if commercial and financial relationships were created or established under valid conditions between two independent persons, as well as indicate the applied transfer pricing method in the annual corporate income tax return of the respective reporting year (Row 6.5 of CIT declaration).

b) Transfer pricing-specific returns

There are no transfer pricing-specific returns in Latvia; however, information regarding related-party transactions (specified above) must be disclosed in annual corporate income tax return.

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

► **Corporate income tax return**

Corporate income tax return has to be filed within 20 days following the end of the financial year. Corporate income tax return may be adjusted without late interest penalties until filing of the annual accounts for the respective financial year.

Other transfer pricing disclosures and return

This is not applicable.

► **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 and 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 has to be finalized by the time of submitting upon request.

For transactions carried out starting from 1 January 2018, transfer pricing documentation preparation deadlines indicated in the Section "Materiality limit or thresholds", sub-section "Transfer pricing documentation" apply.

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, transfer pricing documentation submission deadlines indicated in the Section "Materiality limit or thresholds", sub-section "Transfer pricing documentation" apply.

► **Time period or 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, transfer pricing documentation submission deadlines on tax authority request indicated in the Section “Materiality limit or thresholds”, sub-section “Transfer pricing documentation” apply.

Additionally, transfer pricing documentation for domestic transactions closely linked to cross-border transactions in the supply chain must be prepared and submitted to the tax authority within 90 days after request, the submission deadline can be extended for additional 30 days, if deadline extension is requested to the tax authority.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

Yes

b) Priority and preference of methods

Five methods are accepted: CUP, resale price, cost-plus, profit split and TNMM.

Domestic legislation indicates that the most-appropriate method should be used.

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. multiyear 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 forwards and update of the financials

If the relevant fact pattern and the conditions of the controlled transactions have remained unchanged, a new benchmarking study has to be prepared once in three years and financials of comparables have to be updated each year for consecutive two years after a new benchmarking study is performed.

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 equal to or greater than 20% and should be excluded from comparables search.

8. Transfer pricing penalties and relief

a) Penalty exposure

► Consequences of failure to submit, late submission 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%). The penalties indicated herein are applicable to taxable income adjustments done by the tax authority both before and after 31 December 2017.

For transactions carried out from 1 January 2018 onward, non-submission of transfer pricing documentation or substantial breaches on preparation of transfer pricing documentation or the content of transfer pricing documentation may result in a fine of up to 1% of the total amount of controlled related-party transactions, capped at EUR100 thousand per year.

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

Refer to the section above.

► Is interest charged on penalties or payable on a 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 and related audit by the local authority

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

Small taxpayers in Latvia have a medium risk that they will be subject to a general tax audit, while medium-sized and large multi-national 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 the 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 and situations, if any, more likely to undergo audit

There is none specified.

11. APA and MAP opportunities

► Availability (unilateral, bilateral and 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

As of 21 December 2018, the regulation states that an APA may be concluded for a term that does not exceed five years from the date of conclusion.

► Rollback provisions

Five-year period rollback is available.

► MAP opportunities

Tax administration must engage in conducting mutual agreement procedure in accordance with international treaties which are binding to the Republic of Latvia, i.e., 90/436/EEC: Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Ministry of Finance

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the effective date of applicability

- ▶ The Lebanese tax regulation regarding transfer pricing is still neither elaborated upon nor clear.
- ▶ 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 and 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 or rules?

No.

▶ Does transfer pricing documentation have to be prepared annually?

No.

b) Materiality limit or thresholds

▶ Transfer pricing documentation

No materiality limit

▶ Economic analysis

No materiality limit

▶ BEPS master and local files

Not applicable

▶ CbCR

Not applicable

c) Specific requirements

▶ 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 or implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No.

▶ Coverage in terms of master and local files

Not applicable.

▶ Effective or expected commencement date

Not applicable.

▶ Material differences from OECD report template or 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 included in the statutory tax return

Not applicable.

▶ Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

No.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

Not applicable.

b) Transfer pricing-specific returns

Not applicable.

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

▶ Corporate income tax return

31 May following the end of the fiscal year.

▶ Other transfer pricing disclosures and return

Not applicable.

▶ CbCR notification

Not applicable.

▶ CbC report preparation and 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 or deadline for submission on tax authority request

None specified.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

None specified

b) Priority and 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. multiyear analysis

None specified.

c) Use of interquartile range

None specified.

d) Fresh benchmarking search every year vs. roll forwards and 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 and relief

a) Penalty exposure

- ▶ Consequences of failure to submit, late submission 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 or payable on a refund?

None specified.

b) Penalty relief

Not applicable.

9. Statute of limitations on transfer pricing assessments

None specified.

10. Likelihood of transfer pricing scrutiny and related audit by the 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 the transfer pricing methodology is challenged (*high/medium/low*)

Refer to the section above.

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

None.

11. APA and MAP opportunities

- ▶ Availability (unilateral, bilateral and multilateral)

None specified

- ▶ Tenure

Not applicable

- ▶ Rollback provisions

Not applicable

- ▶ MAP opportunities

Not applicable

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Tax Department of the Ministry of Finance

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the 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 and 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 or rules?

No.

▶ Does transfer pricing documentation have to be prepared annually?

Not applicable.

b) Materiality limit or thresholds

▶ Transfer pricing documentation

Not applicable.

▶ Economic analysis

Not applicable.

▶ BEPS master and local files

Not applicable.

▶ CbCR

Not applicable.

c) Specific requirements

▶ 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 or implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No.

▶ Coverage in terms of master and local files

Not applicable.

▶ Effective or expected commencement date

Not applicable.

▶ Material differences from OECD report template or 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 included in the statutory tax return

Not applicable.

▶ Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

No.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

Not applicable.

b) Transfer pricing-specific returns

Not applicable.

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

▶ Corporate income tax return

Within four months from the end of the tax fiscal year.

▶ Other transfer pricing disclosures and return

Not applicable.

▶ CbCR notification

Not applicable.

▶ CbC report preparation and 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 or deadline for submission on tax authority request

Not applicable.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

Not applicable

b) Priority and 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. multiyear analysis

None specified.

c) Use of interquartile range

None specified.

d) Fresh benchmarking search every year vs. roll forwards and 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 and relief

a) Penalty exposure

► **Consequences of failure to submit, late submission 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 or payable on a refund?**

Not applicable.

b) Penalty relief

Not applicable.

9. Statute of limitations on transfer pricing assessments

Not applicable.

10. Likelihood of transfer pricing scrutiny and related audit by the 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 the transfer pricing methodology is challenged (*high/medium/low*)**

See the section above.

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

None.

11. APA and MAP opportunities

► **Availability (unilateral, bilateral and multilateral)**

None specified.

► **Tenure**

Not applicable.

► **Rollback provisions**

Not applicable.

► **MAP opportunities**

Not applicable.

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1. Tax authority and relevant transfer pricing regulation or 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 or rulings and the 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-470 as of 31 December 2018 regarding rules for the implementation of Article 40 (2) of the law on CIT and Article 15 (2) of the law on PIT
- ▶ 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 and reference

Lithuania is a member of the OECD.

Lithuanian transfer pricing rules are generally consistent with the OECD Guidelines. In local legislation, there is direct reference to OECD Guidelines. Moreover, Lithuania is closely following BEPS developments.

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 or rules?

Yes

▶ Does transfer pricing documentation have to be prepared annually?

Based on local legislation, the information related to the transaction under review (transaction values and the transfer price actually applied) has to be updated in the transfer pricing documentation for each tax period. In addition, the benchmarking study has to be updated at least every three years.

b) Materiality limit or thresholds

▶ Transfer pricing documentation

There is a materiality limit for transfer pricing documentation.

- ▶ If sales revenues of a certain company exceeded EUR3 million in a previous year, then the company has to prepare transfer pricing documentation local file.
- ▶ If the sales revenue of a company, which belongs to an international group, exceeded EUR15 million in a previous year, then the company has to prepare transfer pricing documentation master file.

However, regardless of sales revenues, the following companies have to prepare transfer pricing documentation local file:

- ▶ 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

If the materiality of a single transaction (or several closely related ones) with the same associated party during the tax period exceeded EUR90,000, then economic analysis should be carried out for this transaction.

▶ BEPS master and local files

On 1 January 2019, Lithuania adopted the BEPS master and local file recommendations. Based on local regulations, the BEPS master and local files will be required to document the transactions in fiscal years starting on or after 1 January 2019. The following materiality thresholds will apply:

- ▶ A company has to prepare a master file for the following year if its turnover exceeded EUR15 million.

- ▶ A company has to prepare a local file for the following year if its turnover exceeded EUR3 million.

▶ CbCR

CbCR is mandatory for the following companies if:

- ▶ The company belongs to an international group of companies
- ▶ Consolidated income of such a group of companies exceeds EUR750,000,000

c) Specific requirements

▶ Treatment of domestic transactions

All domestic transactions (as well as international transactions) need to be documented in the transfer pricing documentation. The domestic transactions and international transactions are documented alike.

▶ Local language documentation requirement

Based on the new edition of the order adopted on 1 January 2019 (Section 90-91), 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

There is none specified.

d) BEPS Action 13 implementation overview

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

Lithuania has adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations.

▶ Coverage in terms of master and local files

Both the master and local files are covered.

▶ Effective or expected commencement date

Based on local regulations, the BEPS master and local files are required to document the transactions in fiscal years starting on or after 1 January 2019.

▶ Material differences from OECD report template or format

There are material differences between the OECD report template and Lithuania's regulations.

Master file:

Companies have to provide additional detailed information about significant transfer pricing circumstances (such as operational forecasts and unit performance analysis)

Local file:

Additionally, in the local file, companies have to provide transfer pricing documentation preparation and update dates.

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

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 CbC report should be filed within 12 months after the end of the reporting fiscal year of the MNE group.
- ▶ CbCR notification should be submitted by the last day of the reporting fiscal year of the MNE group.
- ▶ CbCR notification included in the statutory tax return

No

- ▶ Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

Yes, it is so as of 25 October 2016.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 the Order of the Head of the State Tax Inspectorate No. VA-27 as of 22 March 2005. Form FR0528 must be submitted within 15 days of the six months at the end of each tax period. No other specific transfer pricing returns shall be provided to the Lithuanian tax authorities.

5. Transfer pricing documentation and disclosure timelines**a) Filing deadline****► Corporate income tax return**

Corporate income tax return must be submitted within 15 days of the six months at the end of each tax period.

► Other transfer pricing disclosures and return

Other FR0528 forms (transaction with associated entities) must be submitted within 15 days of the six months at the end of each tax period.

► CbCR notification

CbCR notification should be submitted by the end of the reporting financial year of the MNE group.

► CbC report preparation and submission

The CbC report must be submitted within 12 months from the end of the reporting fiscal year of the MNE group.

b) Documentation preparation deadline

Based on new legislation for transactions carried out on 1 January 2019, the following deadlines to prepare the documentation apply:

Transfer pricing documentation should be prepared by the 15th day of the six months at the end of each tax period. Taxpayers that are engaged only in domestic transactions may abide by the above provided deadline. However, taxpayers have to submit the transfer pricing documentation within 30 days from the corresponding notice by the tax authorities in an audit or an inquiry.

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 or 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 an inquiry.

6. Transfer pricing methods**a) Applicability (for both international and domestic transactions)**

Yes, it is applicable for both international and domestic transactions.

b) Priority and preference of methods

Based on local legislation, preference is given to traditional transfer pricing methods (specifically CUP method). However, the taxpayer must choose the most appropriate transfer pricing method, taking into account transaction characteristics, reliability of available data, etc. 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. multiyear analysis

The preference is given to the multiyear analysis (based on country practice).

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 forwards and update of the financials

The benchmarking results 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

There is none specified.

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

Noncompliance with transfer pricing documentation regulations exposes a taxpayer to a penalty that may vary from EUR1,890 up to EUR5,800.

If the company fails to comply with the transfer pricing documentation regulations repeatedly, a penalty increases and may vary from EUR3,770 to EUR6,000.

► 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 or payable on a refund?

This is not applicable.

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 and related audit by the 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 the 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 and situations, if any, more likely to undergo audit

There is none specified.

11. APA and MAP opportunities**► Availability (unilateral, bilateral and 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 on the basis of existing tax treaties for avoiding double taxation.

► Tenure

There is none specified.

► Rollback provisions

There is none specified.

► MAP opportunities

There is none specified.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Luxembourg Tax Authority (Administration des Contributions Directes)

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations or rulings and the effective date of applicability

The Luxembourg Income Tax Law (ITL) contains three articles related to transfer pricing: 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 or 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:

- **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**
- **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:

- **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**
- **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 and 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 transfer pricing 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 or rules?**

Luxembourgian tax law includes general documentation requirements but does not provide specific transfer pricing 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

Luxembourg

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 or thresholds

► **Transfer pricing documentation**

There is no materiality limit.

► **Economic analysis**

There is no materiality limit.

► **BEPS master and local files**

This is not applicable.

► **CbCR**

The threshold is set at EUR750 million (consolidated annual group turnover).

c) Specific requirements

► **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 is none specified.

d) BEPS Action 13 implementation overview

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

Luxembourg has adopted BEPS Action 13 for transfer pricing documentation in the local regulations only in terms of CbCR.

► **Coverage in terms of master and local files**

This is not applicable.

► **Effective or expected commencement date**

The date is financial year 2016 for CbCR.

► **Material differences from OECD report template or format**

This is not applicable.

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

Since Luxembourg legislation does not include specific documentation requirements, BEPS Action 13 format would be acceptable for local purposes.

► **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:

► **The UPE is not obligated to file a CbC report in its country of residence.**

► **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.**

► **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.

- ▶ CbCR notification included in the statutory tax return

No.

- ▶ Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

Yes. It was signed on 27 January 2016.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 and disclosure timelines

a) Filing deadline

- ▶ Corporate income tax return

The date is 31 May.

- ▶ Other transfer pricing disclosures and return

This is not applicable.

- ▶ CbCR notification

The deadline is by the end of the reporting fiscal year.

- ▶ CbC report preparation and submission

The deadline is 12 months after the last day of the reporting fiscal year of the MNE group.

b) Documentation preparation deadline

There is no statutory deadline or recommendation for the preparation of transfer pricing 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 transfer pricing 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 or deadline for submission on tax authority request

Luxembourg's tax law neither contains specific transfer pricing 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 (for both international and domestic transactions)

Yes.

b) Priority and 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. multiyear analysis

OECD guidance should be followed.

c) Use of interquartile range

OECD guidance should be followed.

d) Fresh benchmarking search every year vs. roll forwards and 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

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

► Consequences of failure to submit, late submission or incorrect disclosures

As a general rule (not specific but also applicable to transfer pricing 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 and payable on a refund?

There is 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 and related audit by the 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*)

The likelihood is medium for the same reason stated above.

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

The likelihood is medium for the same reason stated above.

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

Financing activities transactions and management fees (within asset management structures) are more likely to undergo audit.

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.

The transfer pricing rules provide for three types of APAs: Unilateral, bilateral, and multilateral agreements.

► **Tenure**

The tenure is five years.

► **Rollback provisions**

Rollback to prior years is not available.

► **MAP opportunities**

On 28 August 2017, Luxembourg issued a Circular (no. 60) on procedures for the implementation of the MAP for bilateral tax treaties concluded by Luxembourg. In order to apply the procedure, corresponding documentation requirements and time limits should be respected. Luxembourg had a total of 24 active MAP applications concerning transfer pricing as of 31 December 2017.

11. APA and MAP opportunities

► **Availability (unilateral, bilateral and multilateral)**

The General Tax Law (Abgabenordnung) includes a provision (Paragraph 29a) dedicated to the tax ruling practice (procedure 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).

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1. Tax authority and relevant transfer pricing regulation or 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 or rulings and the 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 and 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 or 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 or 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 requirements

▶ 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 or implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No.

▶ Coverage in terms of master and local files

Not applicable.

▶ Effective or expected commencement date

Not applicable.

▶ Material differences from OECD report template or 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 Madagascar.

► **CbCR notification included in the statutory tax return**

Not applicable.

► **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

No.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 and 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 and return**

Not applicable.

► **CbCR notification**

Not applicable.

► **CbC report preparation and 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 or 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 (for both international and domestic transactions)

Yes

b) Priority and 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. multiyear analysis

Madagascar

Refer to the section above.

c) Use of interquartile range

Refer to the section above.

d) Fresh benchmarking search every year vs. roll forwards and 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 and relief

a) Penalty exposure

- ▶ Consequences of failure to submit, late submission 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 or payable on a 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 and related audit by the 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 the 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 and situations, if any, more likely to undergo audit

None.

11. APA and MAP opportunities

▶ **Availability (unilateral, bilateral and 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.

▶ **MAP opportunities**

Not applicable

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

Malawi Revenue Authority (MRA)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the 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, of the Taxation Act defines related and associated enterprises.

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 or thresholds

▶ Transfer pricing documentation

The limit applies to domestic transactions with a value of more than USD135,000.

▶ Economic analysis

This is not applicable.

▶ BEPS master and local files

This is not applicable.

▶ CbCR

This is not applicable.

c) Specific requirements

▶ Treatment of domestic transactions

Transfer pricing analysis and documentation for transactions between resident related parties are 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

There is none specified.

d) BEPS Action 13 implementation overview

▶ Has your country adopted or 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 local files

This is not applicable.

▶ Effective or expected commencement date

2. OECD Guidelines treatment and 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 or rules?

Yes

▶ Does transfer pricing documentation have to be prepared annually?

Under the new regulations, documentation to support TP transactions in the financial statements have to be maintained contemporaneously. While there is no explicit obligation to

This is not applicable.

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

This is not applicable.

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

This is not applicable.

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

There is no CbCR notification and CbC report submission requirement.

▶ **CbCR notification included in the statutory tax return**

This is not applicable.

▶ **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

No

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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

This is not applicable.

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

▶ **Corporate income tax return**

The documentation should be filed within 180 days after the end of the financial year.

▶ **Other transfer pricing disclosures and return**

There is none specified.

▶ **CbCR notification**

This is not applicable.

▶ **CbC report preparation and submission**

This is 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 of written request from the Commissioner.

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 or 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 (for both international and domestic transactions)

Yes

b) Priority and 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. multiyear analysis

Multiyear 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 forwards and 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 do not explicitly suggest a fresh benchmarking search every year; hence, an update of a prior study might suffice.

e) Simple vs. weighted average

There are no specific stipulations regarding the average.

f) Other specific benchmarking criteria, if any

There is none specified.

8. Transfer pricing penalties and relief**a) Penalty exposure****► Consequences of failure to submit, late submission 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 the taxpayer fails to comply after initial penalty and subsequent penalties, the taxpayer shall be liable to additional penalties in an unlimited amount to be determined by the Commissioner.

► 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 or payable on a 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 and related audit by the local authority**► Likelihood of transfer pricing-related audits (*high/medium/low*)**

The likelihood is high; currently, there are frequent TP audits by the MRA.

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

The likelihood is 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 the transfer pricing methodology is challenged (*high/medium/low*)

The likelihood is high; from experience, when a methodology is challenged, then a tax adjustment is likely.

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

There is none specified.

11. APA and MAP opportunities

▶ **Availability (unilateral, bilateral and multilateral)**

Malawian law does not provide for APAs.

▶ **Tenure**

This is not applicable.

▶ **Rollback provisions**

This is not applicable.

▶ **MAP opportunities**

This is not applicable.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Inland Revenue Board (IRB) of Malaysia (IRBM)

b) Relevant transfer pricing section reference

- ▶ Name of transfer pricing regulations or rulings and the 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 1 January 2009) and updated guidelines were released on 15 July 2017 (applicable where TP Documentation for any financial years prepared after 15 July 2017).

- ▶ 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 (Country-by-Country Reporting) (Amendment) Rules 2017 (P.U. [A] 416)
- ▶ Labuan Business Activity Tax (Country-by-Country Reporting) Regulations 2017 (P.U. [A] 409) [Labuan CbCR Regulations]
- ▶ 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 and 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 under the following conditions:
 - ▶ 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.

Based on the updated IRB Guidelines, 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.

Examples of changes in operational conditions include the following:

- ▶ Changes in shareholding
- ▶ Changes in business model and structure
- ▶ Changes in business activities (e.g., changes in group business activities that give impact to local business activities)
- ▶ Changes in financial or financing structure
- ▶ Changes in TP policy
- ▶ Mergers and acquisitions

Examples of changes in economic conditions include foreign exchange, economic downturn or natural disasters.

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**

a) Applicability

- ▶ **Does your country have transfer pricing documentation guidelines or rules?**

Malaysia has transfer pricing documentation guidelines or 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 documentation accordingly.

As long as the operational conditions remain unchanged, the comparable searches in databases supporting part of the transfer pricing documentation should be updated every three years rather than annually. However, financial data and suitability of the existing comparable should be reviewed and updated every year in order to apply the arm's-length principle

reliably.

b) Materiality limit or thresholds

▶ Transfer pricing documentation

The Malaysian transfer pricing guidelines provide for de minimis rules and exceptions whereby taxpayers with the following threshold may opt for minimal transfer pricing documentation or maintain complete transfer pricing documentation as applicable to other taxpayers:

- ▶ **Gross income (less than MYR25 million)**
- ▶ **Related-party transactions (less than MYR15 million)**

Where a person provides financial assistance, the guidelines on financial assistance are only applicable if that financial assistance exceeds RM50 million. The IRB Guidelines do not apply to transactions involving financial institutions.

The IRB guidelines 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 maintaining the minimum transfer pricing documentation, which consists of the following three components:

- ▶ **Organizational structure**
- ▶ **Controlled transactions**
- ▶ **Pricing policies**

▶ Economic analysis

There is no materiality for economic analysis. The person is allowed to apply any method other than the five methods described in the IRB Guidelines provided it results in, or best approximates, arm's-length outcomes.

▶ 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.**
- ▶ **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.**

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► CbCR

Malaysia introduced the CbCR Rules effective from 1 January 2017. The CbCR applies to multinational corporations for which:

- **The consolidated revenue of the MNC group is at least MYR3 billion in the financial year (FY) preceding the reporting FY.**
- **Any of its constituent entities:**
 - **Is an ultimate holding entity which is incorporated, registered or established, or deemed to be incorporated, registered or established under the Companies Act 2016 [Act 777] or under any written law and resident in Malaysia**
 - **Is incorporated, registered or established, or deemed to be incorporated, registered or established under the Companies Act 2016 or under written law or under the laws of a territory outside Malaysia and resident in Malaysia**
 - **Is a surrogate holding entity which is incorporated, registered or established, or deemed to be incorporated, registered or established under the Companies Act 2016 or under any written law and resident in Malaysia**
 - **Is a permanent establishment in Malaysia**

c) Specific requirements

► Treatment of domestic transactions

The Malaysian contemporaneous TP documentation obligation for domestic transactions.

► Local language documentation requirement

The transfer pricing documentation can be submitted in either English or Bahasa Malaysia.

► Safe harbor availability

There are no safe harbor provisions in Malaysia.

d) BEPS Action 13 implementation overview

► Has your country adopted or 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 local files

It covers the master file.

► Effective or expected commencement date

The effective commencement date is 1 January 2017.

► Material differences from OECD report template or format

There are no material differences between the OECD report template or 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 requirement in Malaysia. CbCR notification should be submitted in writing on or before the last day of the reporting financial year.

► The CbCR notification should be submitted not only by the Malaysian Reporting Entity that is the UPE or SPE, but also by the Malaysian CEs of such Malaysian UPE or SPE, specifying that they are non-reporting entities.

► A CE in Malaysia is allowed to submit one consolidated notification on behalf of all the other Malaysian non-reporting CEs only if the reporting entity is a Malaysian entity.

► A CE in Malaysia is required to submit separate CbCR notification if the reporting entity is a foreign entity (i.e., not a Malaysian entity).

► The reporting of any CbCR data in Malaysia should be in the local currency, i.e., Malaysia Ringgit (MYR).

► For foreign MNE groups where the UPE or SPE has filed the CbC report in a tax jurisdiction outside Malaysia, no local filing of the CbC report is required by the Malaysian CEs and the IRB will obtain the report through available exchange mechanism. CbC report will only be exchanged through Competent Authorities of countries who are parties to the CMAA (Convention on Mutual Administrative Assistance, or other International Agreement) and have a qualifying MCAA (Multilateral Competent Authority Agreement) with Malaysia.

CbCR filed by the reporting entity which is either:

- ▶ **The ultimate holding entity of an MNE Group that is resident in Malaysia; or**
- ▶ **The constituent entity of an MNE Group that is resident in Malaysia and has been appointed by the MNE Group as the surrogate holding entity.**

Under the Labuan CbCR Regulations, the obligation to file CbCR lies with the ultimate holding entity (a Labuan entity carrying on a Labuan business activity) alone as the Labuan Regulations do not provide for the appointment of a surrogate holding entity.

In cases where systemic failure occurs, the Director General of the Inland Revenue (“DGIR”) will inform the CE that is a resident in Malaysia for tax purposes of the incidence and the MNE Group is required to appoint a CE in another tax jurisdiction who is a party to the International Agreement as a surrogate parent.

CbCR must be filed no later than 12 months after the last day of the reporting financial year. The CbCR must be furnished to the DGIR on an electronic medium, or through electronic transmission.

- ▶ **CbCR notification included in the statutory tax return**

No. CbCR notification is not include in the statutory tax return.

There are three separate CbCR notification forms prescribed by the IRB as follows:

- ▶ **for reporting entity (Annex B)**
- ▶ **Non-reporting entities (Annex C1) – Applicable for all Non-Reporting Entities where the Reporting Entity is based within Malaysian tax jurisdiction.**
- ▶ **Non-reporting entities (Annex C2) – Applicable for all Non-Reporting Entities where the Reporting Entity is based outside Malaysian tax jurisdiction.**
- ▶ **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

Yes, it is so as of 27 January 2016.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 selected MNE taxpayers to complete specific form (Form MNE 2012) related to information on cross-border transactions. Taxpayers are required to disclose the following information in the Form MNE 2012 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 whom 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 and full-fledged)**
 - ▶ **Distributor (commissionaire, limited risk and full-fledged)**

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- ▶ **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 and disclosure timelines

a) Filing deadline

- ▶ **Corporate income tax return**

It has to be filed within seven months from the end of the relevant financial year – i.e., 31 December 2017 year-ending companies to file the corporate tax return by 31 July 2018.

- ▶ **Other transfer pricing disclosures and 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**

The deadline is 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 and 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 or 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 (for both international and domestic transactions)

Yes

b) Priority and 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).

If audited financial statements of the foreign-tested party can be provided and other documentation or analysis to support the use of foreign-tested party or comparables is available and verifiable, the foreign tested can be accepted.

If a foreign-tested party is used, it must be of simpler functions compared with the local entity and verifiable documents provided to IRB to include:

- ▶ **Transfer pricing documentation of the foreign-tested party**

- ▶ Financial statements and detailed accounts of the tested party
- ▶ Financial statements of comparables used in the TP documentation or screen shot of the financial and background information extracted from the database used
- ▶ Foreign comparables that can be similarly considered if annual reports, financial statements and background information of the comparables can be provided for verification by the IRB

b) Single-year vs. multiyear 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 provides that the arm's length range refers to a range of figures that are acceptable in establishing the arm's length nature of a controlled transaction. 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 and update of the financials

As long as operational conditions remain unchanged, the comparable searches in databases supporting part of the TP Documentation should be updated every 3 years rather than annually. However, financial data and suitability of the existing comparable should be reviewed and updated every year in order to apply the arm's length principle reliably.

e) Simple vs. weighted average

The Malaysian transfer pricing guidelines do not advocate using 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 and relief

a) Penalty exposure

There are no specific penalties for transfer pricing. However, the existing legislation and penalty structure under Section 113(2) of the ITA (on penalty for incorrect return and 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

Based on the updated guidelines, penalties will not be imposed if the transfer pricing documentation is submitted within 30 days upon request by the IRB provided that the documentation fulfill the requirements as required in the Rules and Guidelines.

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 and related audit by the 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

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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 the transfer pricing methodology is challenged (high/medium/low)**

The likelihood is high (refer to “Likelihood of transfer pricing methodology being challenged” section above for details).

► **Specific transactions, industries and 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, i.e., royalties paid, management fee paid, technical services fee paid and commission paid
- 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

11. APA and MAP opportunities

► **Availability (unilateral, bilateral and multilateral)**

APA – 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.

MAP – As per the Malaysian MAP Guidelines, the purpose of the guidelines is to provide guidance on obtaining assistance from the Malaysian competent authority (CA) to persons that fall within the scope of an effective tax treaty that Malaysia has with its treaty partners. The assistance is provided to taxpayers in order to resolve international tax disputes involving double taxation and inconsistencies in the interpretation and application of a tax treaty.

► **Tenure**

APA – The Malaysian APA rules allow the APA for a minimum of three years and a maximum of five years, with an option 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.

MAP – The Malaysian MAP guidelines states that, the time limit for presenting a case for CA assistance depends upon the specific terms of the particular Tax Treaty under which the MAP is invoked. Therefore, in every case, the relevant Tax Treaty should be consulted. Where the time limit for presenting a case to invoke MAP is not specified in the relevant Tax Treaty, the Malaysian CA will follow the time limit specified under the Article 25 (MAP) of the OECD Model Tax Convention on Income and on Capital (i.e. within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the convention).

► **Rollback provisions**

APA – Refer to “Tenure” section above.

MAP – This is not applicable.

► **Fee**

APA – The fee is RM5,000 (nonrefundable application fee) and any other expenses incurred by the authorities. For renewal fees, the same applies.

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

Maldives Inland Revenue Authority (MIRA)

b) Relevant transfer pricing section reference

- ▶ Name of transfer pricing regulations or rulings and the effective date of applicability

Maldives Law No. 5 of 2011 (Business Profit Tax Act) contains transfer pricing provisions under its "Tax Avoidance" section.

- ▶ Section reference from local regulation

Refer to the above section.

2. OECD Guidelines treatment and reference

The Maldives is not a member of the OECD; however, Maldives adopts the OECD Guidelines in its local transfer pricing regulations.

3. Transfer pricing documentation requirements

a) Applicability

- ▶ Does your country have transfer pricing documentation guidelines or rules?

There is none specified.

- ▶ Does transfer pricing documentation have to be prepared annually?

There is none specified.

b) Materiality limit or thresholds

- ▶ Transfer pricing documentation

This is not applicable.

- ▶ Economic analysis

This is not applicable.

- ▶ BEPS master and local files

This is not applicable.

- ▶ CbCR

This is not applicable.

c) Specific requirements

- ▶ Treatment of domestic transactions

This is not applicable.

- ▶ Local language documentation requirement

This is not applicable.

- ▶ Safe harbor availability

This is not applicable.

d) BEPS Action 13 implementation overview

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

No

- ▶ Coverage in terms of master file and local file

This is not applicable.

- ▶ Effective or expected commencement date

This is not applicable.

- ▶ Material differences from OECD report template or format

This is not applicable.

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

This is not applicable.

- ▶ CbCR notification and CbC report submission requirement

This is not applicable.

- ▶ CbCR notification included in the statutory tax return

This is not applicable.

- ▶ Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

No

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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

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 and disclosure timelines

a) Filing deadline

- ▶ Corporate income tax return

This is not applicable.

- ▶ Other transfer pricing disclosures and return

This is not applicable.

- ▶ CbCR notification

This is not applicable.

- ▶ CbC report preparation and submission

This is not applicable.

b) Documentation preparation deadline

There is none specified.

c) Documentation submission deadline

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

There is none specified.

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

This is not applicable.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

This is applicable only for international transactions.

b) Priority and 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

This is not applicable.

b) Single-year vs. multiyear analysis

This is not applicable.

c) Use of interquartile range

This is not applicable.

d) Fresh benchmarking search every year vs. roll forwards and update of the financials

This is not applicable.

e) Simple vs. weighted average

This is not applicable.

f) Other specific benchmarking criteria, if any

This is not applicable.

8. Transfer pricing penalties and relief

a) Penalty exposure

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

This is not applicable.

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

This is not applicable.

- ▶ Is interest charged on penalties or payable on a refund?

This is not applicable.

b) Penalty relief

This is 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) and 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 is subsequently discovered after an assessment has been issued, the MIRA may revisit a tax period that was previously 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 and related audit by the local authority

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

The likelihood is 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*)

The likelihood is low to medium provided sufficient documentation is available.

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

The likelihood is medium; the MIRA shall tax the relevant transaction based on the OECD Guidelines.

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

There is none specified.

11. APA and MAP opportunities

- ▶ Availability (unilateral, bilateral and multilateral)

There is none specified.

- ▶ Tenure

This is not applicable.

- ▶ Rollback provisions

This is not applicable.

- ▶ MAP opportunities

This is not applicable.

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

Commissioner for Revenue (CfR)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the effective date of applicability

There are no detailed transfer pricing (TP) rules or guidelines in Malta, but 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), put forward a concept analogous to the arm's length principle

▶ Section reference from local regulation

These are not defined separately.

2. OECD Guidelines treatment and 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 (and with the exception of the treaty entered into with Bulgaria) 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 or 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 or thresholds

▶ Transfer pricing documentation

This is not applicable.

▶ Economic analysis

This is not applicable.

▶ BEPS master and local files

This is not applicable.

▶ CbCR

This is applicable for constituent entities forming part of an MNE whose consolidated revenue is at least EUR750 million.

c) Specific requirements

▶ Treatment of domestic transactions

This is not applicable.

▶ Local language documentation requirement

This is not applicable.

▶ Safe harbor availability

This is not applicable.

d) BEPS Action 13 implementation overview

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

Yes, but only with respect to CbCR requirements.

▶ Coverage in terms of master and local files

This is not applicable.

▶ Effective or expected commencement date

This is not applicable.

▶ Material differences from OECD report template or format

This is not applicable.

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

This is not applicable.

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

Malta has introduced the CbCR provisions in full, implying that there are CbCR notification and CbC report submission requirements.

► **CbCR notification included in the statutory tax return**

No

► **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

Yes, signed on 26 January 2017.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 and disclosure timelines

a) Filing deadline

► **Corporate income tax return**

The documentation should be filed 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 and return**

This is 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 and 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 or recommendation for preparation of TP documentation.

c) Documentation submission deadline

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

No

► **Time period or 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 (for both international and domestic transactions)

This is not applicable.

b) Priority and preference of methods

This is not applicable.

7. Benchmarking requirements

a) Local vs. regional comparables

This is not applicable.

b) Single-year vs. multiyear analysis

This is not applicable.

c) Use of interquartile range

This is not applicable.

d) Fresh benchmarking search every year vs. roll forwards and update of the financials

This is not applicable.

e) Simple vs. weighted average

This is not applicable.

f) Other specific benchmarking criteria, if any

This is not applicable

8. Transfer pricing penalties and relief

a) Penalty exposure

► **Consequences of failure to submit, late submission 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:

- **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.**
- **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:

- **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.**
- **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?**

This is not applicable.

► **Is interest charged on penalties or payable on a refund?**

This is not applicable.

b) Penalty relief

This is not applicable.

9. Statute of limitations on transfer pricing assessments

This is 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 and related audit by the 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*)**

The likelihood is low, for the same reason stated above.

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

The likelihood is low, for the same reason stated above.

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

There is none specified; each case is examined on its own merit.

11. APA and MAP opportunities

- ▶ **Availability (unilateral, bilateral and 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 of understanding statutory provisions, in which case it will continue to apply for two years.

- ▶ **Rollback provisions**

There is none specified.

- ▶ **MAP opportunities**

Yes, the Mutual Agreement Procedure is available in Malta. Indeed, Guidelines addressing in detail the manner in which the Mutual Agreement Procedure entered into in terms of a double tax treaty or the Arbitration Contention would apply in Malta have been published by the Competent Authority. The said guidelines provide a number of details pertinent to the whole process, including the additional information required in case of a Transfer Pricing MAP Request.

Contact

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1. Tax authority and relevant transfer pricing regulations or 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 or rulings and the effective date of applicability

A single Central Transfer Pricing Administration (TP Administration), which is part of the Large Taxpayers Administration, within the SAT, is responsible for enforcing the transfer pricing (TP) rules in Mexico, established since 1997. The TP Administration is in charge of TP audits as well as unilateral, bilateral and multilateral TP procedures, such as TP rulings. Nevertheless, other administrations within the Large Taxpayers Administration could review transfer pricing issues with the support of the TP Administration.

Income Tax Law (ITL):

TP regulations for Corporations: Articles 76, first paragraph, Sections IX, X and XII, 76-A, Sections I, II, and III, 179, 180, 181, 182 and 184

TP regulations for individuals: Article 90 and 110, Section X

Federal Fiscal Code (FFC) Articles 34-A:

- ▶ ITL, Article 76 (sections IX, X and XII): contemporaneous transfer pricing documentation (cross-border), TP disclosure (cross-border), taxpayer obligations for arm's-length pricing (all transactions, i.e. local and foreign)
- ▶ Miscellaneous Tax Resolution (MTR): domestic transactions documentation (threshold) obligation
- ▶ ITL, Article 76-A: obligation for certain taxpayers to file annual transfer pricing CbC, master file and local file informative returns. This obligation is in force from fiscal year 2016 going forward.
- ▶ ITL, Article 179: "related party" definition, comparability, business cycles, permanent establishments and transfer pricing, tax havens and OECD Guidelines
- ▶ ITL, Article 180: TP methods, ranges and selection of the most appropriate method
- ▶ ITL, Article 181: permanent establishment and maquiladoras

- ▶ ITL, Article 182: TP 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 34-A: TP 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 76, Section X) and to file TP informative returns (ITL, Article 76-A)
- ▶ FFC, 32-D: negative compliance opinion that disqualifies taxpayers from entering into contracts with the Mexican public sector upon failure to file TP informative returns (ITL, Article 76-A) FFC, Articles 83 (XV) and 84 (XIII): fines for failure to properly reflect intercompany transactions conducted with foreign related parties as part of accounting records
- ▶ 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 TP informative returns (ITL, Article 76-A)
- ▶ Foreign Trade Regulations (Rule 1.3.3): suspension of the official importers/exporters registry upon failure to file TP informative returns (ITL, Article 76-A)
- ▶ ITL, Article 90, last two paragraphs: TP obligations for individuals
- ▶ ITL, Article 110, Section X: TP disclosure (cross-border)

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 examines the 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 and 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 or rules?

Yes, Mexico has transfer pricing documentation rules.

- ▶ Does transfer pricing documentation have to be prepared annually?

Transfer pricing documentation must 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 or thresholds

- ▶ Transfer pricing documentation

Mexican taxpayers with prior-year income exceeding MXN13 million in regular business activities or exceeding 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 with entities that conducted transactions with related parties and surpasses certain threshold in the previous fiscal year or that conducted transactions with related parties and were listed in a public stock market in the previous fiscal year are required to file the Master File and Local File. The threshold for FY 2018’s obligation is MXN755,898,920 (approximately USD40 million) in FY 2017, while FY 2017’s obligation was triggered with MXN708,898,920 (approximately USD38 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 (approximately USD631 million).

c) Specific requirements

- ▶ 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). Temporary Rule 3.9.5 of Resolución Miscelánea Fiscal for 2018 (RMF) allows entities that conduct intercompany transactions with domestic related parties to opt out of preparing contemporaneous TP documentation based on the same threshold amounts considered in Article 76 (Section IX) of ITL, i.e., in those cases where prior-year income did not exceed MXN13 million in regular business activities or MXN3 million for the provision of professional services.

- ▶ Local language documentation requirement

The transfer pricing documentation needs to 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 (Industria Manufacturera, Maquiladora y de Servicios de Exportación) 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 or 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 local files**

Mexican regulations require the filing of both the master file and local file for certain taxpayers.

► **Effective or 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. Taxpayers required to submit the master file and local file informative returns should do it through the technological platform, as well as the digital formats for filling such informative returns, available on the SAT website for consultation and filing.

► **Material differences from OECD report template or 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 or 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; development, enhancement, maintenance, protection and exploitation of intangibles (DEMPE) 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**

There are no specific CbCR notification requirements in Mexico regarding the CbCR filing process of the MNE's ultimate parent entity. However, 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.

► **CbCR notification included in the statutory tax return**

Yes, either in the Tax Situation Information Return (ISIF, due date March 31st of the following fiscal year) or in the Statutory Tax Audit Report (Tax Report, due date July 15th or July 31st of the following fiscal year, provided all contributions are paid by 15th July), taxpayers must disclose whether the Mexican taxpayer is aware of the Ultimate Parent Holding (UPE) to which the taxpayer belongs is obliged to file, directly or through any surrogate entity, the master file as well as the CbCR.

► **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

Yes, it was signed on 27 January 2016.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

Specific transfer pricing informative returns or related-party disclosures of information include the following:

- **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 ISIF**
- **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 and disclosure timelines

a) Filing deadline

► **Corporate income tax return**

31 March of the following year

► **Other transfer pricing disclosures and return**

- **Exhibit 9 of the DIM along with the corporate income tax return, i.e., 31 March of the following year. If the taxpayer file a Tax Report, Exhibit 9 could be file along with the Tax Report, i.e. by 15 July of the following year.**
- **DIEMSE along with the corporate income tax return, i.e., 31 March of the following year. If the taxpayer file a Tax Report, Exhibit 9 could be file along with the Tax Report, i.e., by 15 July of the following year.**
- **Transfer pricing exhibits and questionnaires as part of the ISIF along with the corporate income tax return, i.e., 31 March of the following year.**
- **Transfer pricing exhibits and questionnaires as part of the Tax Report by 15 July of the following year.**
- **Formato 76 within the following three months after the relevant transaction took place.**
- **Master file and local file by 31 December of the following year.**

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 completed by 15 July every year. As of 2014, taxpayers are obligated to file the ISIF or may choose to have a Tax Report (Dictamen Fiscal) conducted by an external auditor if they do not want to file the ISIF 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 ISIF must be submitted together with the annual tax return by 31 March of the following year. 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 ISIF as applicable. It is important to note that the ISIF filing date for fiscal year 2018 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. Taxpayers must disclose either in the ISIF or the Tax Report whether the Mexican taxpayer is aware of the UPE to which the taxpayer belongs is obliged to file, directly or through any surrogate entity, the master file as well as the CbCR.

Mexico

► CbC report preparation and submission

The report has to be filed on 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

TP 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. If the taxpayer opts to file a Tax Report, TP documentation could be prepared by 15 July of the following 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, however, either in the ISIF or in the Tax Report taxpayer must disclose if TP contemporaneous documentation was prepared. In addition, 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 or 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 (for both international and domestic transactions)

Yes

b) Priority and 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. multiyear 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 of comparable companies (i.e., multiyear analysis), based on audits performed by the SAT, further arguments are required in order to support the multiyear analysis. Hence, further support for the multiyear 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 forwards and 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

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

► Consequences of failure to submit, late submission or incorrect disclosures

A penalty of MXN77,230 to MXN154,460 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 MXN154,800 to MXN220,400, 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 of the RMF. In particular, in case of ex-ante and/or ex-post transfer pricing adjustments that result in higher deductions for the taxpayer or in lower accruable income, 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 or payable on a 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 and related audit by the local authority

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

The likelihood is 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*)

The likelihood is high, because there is usually a preliminary analysis already conducted by the SAT before an audit is initiated.

► Likelihood of an adjustment if the 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 and 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.

Industries such as hydrocarbons, life science and automotive, are currently under special attention of TP authorities.

11. APA and MAP opportunities

► **Availability (unilateral, bilateral and 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.

► **MAP opportunities**

There is no specific guidance related to provision. However, Mexico had a total of 25 active MAP applications as of 31 December 2017. The average time needed to close MAP cases is 26 months for transfer pricing cases, and 25 months for other cases.

Contact

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

General Department of National Taxation (GDNT)

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations or rulings and the 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 24 December 2015 provides the main implementation guidelines (hereafter referred to as Benchmarking Guidelines 2015).

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 if it:

► Owns 20% or more of the common stock of the other entity

► Has the right to receive 20% or more of the dividends or distributions from the other entity

Or

► Has the right to appoint 20% or more of the management of the other entity or is otherwise able to determine its policies.

► OECD Guidelines treatment and reference

Mongolia is not a member of the OECD.

Benchmarking Guidelines 2015 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 or rules?

Yes. According to Benchmarking Guidelines 2015, 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.

b) Materiality limit or thresholds

► Transfer pricing documentation

Mongolia

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**

Mongolia currently doesn't require master and local files.

▶ **CbCR**

This is not applicable.

c) Specific requirements

▶ **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 or implemented BEPS Action 13 for transfer pricing documentation in your local regulations?**

No.

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

This is not applicable.

▶ **Effective or expected commencement date**

This is not applicable.

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

This is not applicable.

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

This is not applicable.

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

This is not applicable.

▶ **CbCR notification included in the statutory tax return**

This is not applicable.

▶ **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

No.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 or 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 and 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**

This is not applicable.

▶ **CbC report preparation and submission**

This is not applicable.

b) Documentation preparation deadline

According to Benchmarking Guidelines 2015, 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 or 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 (for both international and domestic transactions)

- ▶ International transactions and domestic 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.

b) Priority and 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. multiyear analysis

Multiyear 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 forwards and update of the financials

There is none specified.

e) Simple vs. weighted average

Weighted average is preferred.

f) Other specific benchmarking criteria, if any

This is not applicable.

8. Transfer pricing penalties and relief

a) Penalty exposure

- ▶ Consequences of failure to submit, late submission 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 and payable on a 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 proceedings.

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 and related audit by the local authority

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

Mongolia

The likelihood is medium because comprehensive tax audits and transfer pricing usually occur every two to three years in Mongolia. Tax authorities are increasingly focusing on transfer pricing investigations.

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

This is the same as above.

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

This is the same as above.

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

It is unclear what has a higher likelihood of undergoing audit.

11. APA and MAP opportunities

- ▶ **Availability (unilateral, bilateral and multilateral)**

An APA regime is not available.

- ▶ **Tenure**

This is not applicable.

- ▶ **Rollback provisions**

This is not applicable.

- ▶ **MAP opportunities**

This is not applicable.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Tax Administration of Montenegro

b) Relevant transfer pricing section reference

- ▶ Name of transfer pricing regulations or rulings and the 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 and 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 or 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 or thresholds

- ▶ Transfer pricing documentation

Not applicable

- ▶ Economic analysis

Not applicable

- ▶ BEPS master and local files

Not applicable

- ▶ CbCR

Not applicable

c) Specific requirements

- ▶ 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 or implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Montenegro has not yet adopted or implemented BEPS Action 13.

- ▶ Coverage in terms of master and local files

Not applicable.

- ▶ Effective or expected commencement date

Not applicable.

- ▶ Material differences from OECD report template or 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.

- ▶ CbCR notification included in the statutory tax return

Not applicable.

- ▶ Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

Montenegro

No.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 and 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 2019 for a fiscal year ending on 31 December 2018).

► Other transfer pricing disclosures and return

Not applicable.

► CbCR notification

Not applicable.

► CbC report preparation and 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 or deadline for submission on tax authority request

Not applicable.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

Yes

b) Priority and 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). TP methods and their preference are applicable for both domestic and international transactions.

7. Benchmarking requirements

a) Local vs. regional comparables

Not applicable; the Montenegrin CIT Law does not prescribe any benchmarking requirements.

b) Single-year vs. multiyear analysis

Refer to the above section.

c) Use of interquartile range

Refer to the above section.

d) Fresh benchmarking search every year vs. roll forwards and 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 and relief**a) Penalty exposure****► Consequences of failure to submit, late submission 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 EUR550 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 or payable on a 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 and related audit by the 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 and situations, if any, more likely to undergo audit

Not applicable.

11. APA and MAP opportunities**► Availability (unilateral, bilateral and multilateral)**

Advance rulings and APAs are not available in Montenegro.

► Tenure

Not applicable.

► Rollback provisions

Not applicable.

► MAP opportunities

Applicable through double tax treaties. No elaborate practice in Montenegro regarding MAP.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Moroccan Tax Administration (Direction Générale des Impôts)

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations or rulings and the effective date of applicability

Transfer pricing aspects are regulated by the Moroccan Tax Code (MTC).

► Section reference from local regulation

Article 213-II of MTC: deals with shifting of profits abroad.

Article 214-III of MTC: transfer pricing documentation requirement.

Articles 234 bis and 234 Ter of the MTC: advance pricing agreement (APA) program.

Administrative guidelines n°717 published in 2011 also detail the application of the transfer pricing regulations.

2. OECD Guidelines treatment and reference

Morocco is not a member of the OECD.

However, 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 or rules?

Yes

► Does transfer pricing documentation have to be prepared annually?

No. Transfer pricing documentation should be prepared upon request of the tax administration.

b) Materiality limit or thresholds

► Transfer pricing documentation

No materiality limit

► Economic analysis

Not applicable

► BEPS master and local files

Not applicable

► CbCR

Not applicable

c) Specific requirements

► Treatment of domestic transactions

Not applicable

► Local language documentation requirement

Not applicable. In practice, the tax administration accepts transfer pricing documentation drafted in French.

► Safe harbor availability

None specified

d) BEPS Action 13 implementation overview

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

Not applicable. Morocco has joined the OECD BEPS inclusive framework and is thus committed to implement the BEPS minimum standards.

► Coverage in terms of master and local files

Not applicable

► Effective or expected commencement date

Not applicable

► Material differences from OECD report template or 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 included in the statutory tax return

Not applicable

- ▶ Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

Not applicable

4. Transfer pricing return and related party disclosures

a) Related-party disclosures and 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 and disclosure timelines

a) Filing deadline

- ▶ Corporate income tax return

Within three months following the closing date

- ▶ Other transfer pricing disclosures and return

Not applicable

- ▶ CbCR notification

Not applicable

- ▶ CbC report preparation and 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 or deadline for submission on tax authority request

According to Article 214-III of the MTC, companies are required to electronically communicate within 30 days to the tax authorities the transfer pricing documentation to support their price policy in case of tax audit.

Such documentation should include:

- ▶ Information relating to their activities with the group entities, global pricing policy practiced as well as the breakdown of the worldwide profit and activities
- ▶ Specific information relating to the transactions performed by the Moroccan entities with group entities

Such provisions apply to tax audit open as from 1 January 2020. Practical modalities of these provisions are to be detailed in a decree still to be published.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

International transactions – yes

Domestic transactions – yes, in case of a different taxation regime

b) Priority and 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 or 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. In addition, Moroccan tax administration favours profit-based methods.

7. Benchmarking requirements

a) Local vs. regional comparables

Local comparables are preferred. In the absence of existence of local comparables, regional comparables can be accepted.

b) Single-year vs. multiyear analysis

Multiyear analysis is acceptable.

c) Use of interquartile range

Morocco

Interquartile range calculation using Excel Quartile formulas is acceptable.

d) Fresh benchmarking search every year vs. roll forwards and update of the financials

Fresh benchmarking searches should be conducted regularly. Update of the financial data should be performed annually.

e) Simple vs. weighted average

Both are acceptable.

f) Other specific benchmarking criteria, if any

There is no other specific benchmarking criteria

8. Transfer pricing penalties and relief

a) Penalty exposure

- ▶ Consequences of failure to submit, late submission 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:
 - ▶ 20% for reassessment of the taxable basis, and a 100% penalty applies in cases where bad faith is demonstrated
 - ▶ 10% for late payment
 - ▶ 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:
 - ▶ 30% penalty for reassessment of the taxable basis, and a 100% penalty applies in cases where bad faith is demonstrated
 - ▶ 20% penalty for late payment
 - ▶ 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?

Yes, as detailed above.

- ▶ Is interest charged on penalties or payable on a refund?

Yes, as detailed above.

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 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 the company has carry forward losses or VAT credit).

10. Likelihood of transfer pricing scrutiny and related audit by the 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*)

It is the same as the above section.

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

It is the same as the above section.

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

There is none specified.

11. APA and MAP opportunities

► **Availability (unilateral, bilateral and multilateral)**

There is an APA program available in Morocco covering unilateral, bilateral, and multilateral agreements, for countries which have double tax treaty with Morocco.

► **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**

The APA cannot be applied retroactively.

► **MAP opportunities**

Morocco is a signatory to tax treaties with many countries, including Italy, the Netherlands and Spain, all of which contain the MAP provision for the purposes of avoiding the double taxation.

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Mozambique

1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Autoridade Tributária de Moçambique

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the effective date of applicability

Regime de Preços de Transferência, effective from 1 January 2018

▶ Section reference from local regulation

Decree no. 70/2017, dated the 6 December

2. OECD Guidelines treatment and reference

Not applicable

3. Transfer pricing documentation requirements

a) Applicability

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

Yes

▶ Does transfer pricing documentation have to be prepared annually?

Yes

b) Materiality limit or thresholds

▶ Transfer pricing documentation

2.5 million meticaís

▶ Economic analysis

No threshold specified

▶ BEPS master and local files

Mozambique is not a member of the OECD, hence has no local file requirement as per 2017 OCED guidance. However, the requirement for local file is as provided by the local transfer pricing regulations.

▶ CbCR

No

c) Specific requirements

▶ Treatment of domestic transactions

Yes, transfer pricing rules apply also to domestic transactions.

▶ Local language documentation requirement

Portuguese

▶ Safe harbor availability

Not applicable

d) BEPS Action 13 implementation overview

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

Mozambique is not a member of the OECD.

▶ Coverage in terms of master and local files

Not applicable

▶ Effective or expected commencement date

Not applicable

▶ Material differences from OECD report template or 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 included in the statutory tax return

Not applicable

▶ Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

Not applicable

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

Yes

b) Transfer pricing-specific returns

Tentative, pending approval

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

▶ Corporate income tax return

Month 5 after year-end

▶ Other transfer pricing disclosures and return

Month 6 after year-end with the return on tax and accounting information

▶ CbCR notification

Not applicable

▶ CbC report preparation and 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 or deadline for submission on tax authority request

Not applicable

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

CUP, RPM, CPM, PSM or TNMM applicable to both international and domestic transactions

b) Priority and preference of methods

Not applicable

7. Benchmarking requirements

a) Local vs. regional comparables

Not applicable

b) Single-year vs. multiyear analysis

Single year

c) Use of interquartile range

Yes

d) Fresh benchmarking search every year vs. roll forwards and update of the financials

Not applicable

e) Simple vs. weighted average

Weighted

f) Other specific benchmarking criteria, if any

Not applicable

8. Transfer pricing penalties and relief

a) Penalty exposure

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

No specific penalties provided in the regulations – general from 6,000MT to 600,000MT (nonexistent) or 13,000MT to 700,000MT (omissions or inaccuracies)

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

Yes, fine and interest

▶ Is interest charged on penalties or payable on a refund?

Charged on penalties and in theory payable on refund

b) Penalty relief

With voluntary disclosure only

Mozambique

9. Statute of limitations on transfer pricing assessments

5 years

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

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

Medium

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

Medium

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

Medium

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

Unknown

11. APA and MAP opportunities

- ▶ Availability (unilateral, bilateral and multilateral)

Not applicable

- ▶ Tenure

Not applicable

- ▶ Rollback provisions

Not applicable

- ▶ MAP opportunities

Not applicable

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Directorate Inland Revenue (Inland Revenue)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the effective date of applicability

Section 95A of the Income Tax Act 24 of 1981 (Income Tax Act) authorizes Inland Revenue to adjust the consideration for goods or services to an arm's-length price for the purpose 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".

2. OECD Guidelines treatment and 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 or rules?

Namibia does not have guidelines or 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 or thresholds

▶ Transfer pricing documentation

This is not applicable.

▶ Economic analysis

This is not applicable.

▶ BEPS master and local files

This is not applicable.

▶ CbCR

This is not applicable.

c) Specific requirements

▶ 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.

▶ Safe harbor availability

There is none specified.

d) BEPS Action 13 implementation overview

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

No.

▶ Coverage in terms of master and local files

This is not applicable.

▶ Effective or expected commencement date

This is not applicable.

Namibia

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

This is not applicable.

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

This is not applicable.

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

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

▶ **CbCR notification included in the statutory tax return**

This is not applicable.

▶ **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

No.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

There were no disclosure requirements at the time of this publication.

b) Transfer pricing-specific returns

This is not applicable.

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

▶ **Corporate income tax return**

The filing deadline is due within seven months from the year-end.

▶ **Other transfer pricing disclosures and return**

This is not applicable.

▶ **CbCR notification**

This is not applicable.

▶ **CbC report preparation and submission**

This is not applicable.

b) Documentation preparation deadline

This is not applicable.

c) Documentation submission deadline

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

No.

▶ **Time period or 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 (for both international and domestic transactions)

Yes.

b) Priority and 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. multiyear analysis

Generally, a three-year testing is applicable.

c) Use of interquartile range

Interquartile range calculation using Excel Quartile formulas is acceptable.

d) Fresh benchmarking search every year vs. roll forwards and 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

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

► Consequences of failure to submit, late submission or incorrect disclosures

No specific transfer pricing penalties are imposed in the Income Tax Act. With this said, taxpayers face the following possible penalties upon a transfer pricing adjustment being made:

- Additional tax of up to 100% of the provisional tax amount underpaid
- Two hundred percent 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 or payable on refund?

An 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 and related audit by the local authority

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

This is 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 the transfer pricing methodology is challenged (*high/medium/low*)

Refer to the above section.

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

There is none specified.

Namibia

11. APA and MAP opportunities

▶ **Availability (unilateral, bilateral and multilateral)**

Namibia did not have an APA program at the time of this publication.

▶ **Tenure**

This is not applicable.

▶ **Rollback provisions**

This is not applicable.

▶ **MAP opportunities**

This is not applicable.

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

Dutch Tax Administration (Belastingdienst)

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations or rulings and the 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 fiscal years starting on or after 1 January 2016.

► Section reference from local regulation

The definitions of related party or associated party are codified in Article 8b (1) and (2) of the Corporate Income Tax Act 1969.

2. OECD Guidelines treatment and 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 April 2018, no. 2018-6865) 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 decree provides specific guidance on transactions involving intangible fixed assets, including hard-to-value intangibles, purchase of shares in a non-related party followed by a business restructuring, intragroup services and shareholder activities, including low value-add services, contract research, cost contribution arrangements, financial transactions, captive insurance companies and centralized purchasing companies. With respect to business restructurings, no specific guidance has been issued to date except for the guidance referred to above. However, the tax authority generally follows the OECD guidance on business restructurings.

3. Transfer pricing documentation requirements

a) Applicability

► Does your country have transfer pricing documentation guidelines or 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 administration 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, and are largely in line with the BEPS Action 13 requirements.

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 or thresholds

► Transfer pricing documentation

This is not applicable.

► Economic analysis

This is 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. Entities that comply with the documentation requirements set out in Article 29g of the Corporate Income Tax Act 1969 in terms of content also comply with the obligation set out in Article 8b (3) in so far as it concerns cross-border transactions.

► CbCR

The requirement to prepare a CbC report is in line with BEPS Action 13. It is applicable to Dutch tax resident entities and permanent establishments, being 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 requirements

► 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 of Article 29g of the Corporate Income Tax Act 1969 only apply to cross-border transactions.

► Local language documentation requirement

The TP documentation needs not be prepared in the local language. In practice a common language such as English will be accepted. The master file, local file and CbC report can be submitted in Dutch or in English.

► Safe harbor availability

There is none specified.

d) BEPS Action 13 implementation overview

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

Yes, the Netherlands has adopted and 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 local files

The BEPS Action 13 transfer pricing documentation regulations that were implemented in the Netherlands cover both the master file and local file.

► Effective or expected commencement date

The law is applicable for fiscal years starting on or after 1 January 2016.

► Material differences from OECD report template or format

There are no material differences between the OECD report template or 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 with adequate content is sufficient to achieve penalty protection. No additional items are needed to achieve protection against penalties protection for having noncompliant TP documentation in place if the BEPS Action 13 or 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.

The requirement to prepare a CbC report is applicable to Dutch tax resident entities and permanent establishments, being 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 (or permanent establishment) 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 or surrogate parent entity is a tax resident has not established CbCR obligations;
 - ▶ The country in which the ultimate or 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 or surrogate parent entity is a tax resident has systematically failed to comply.
 - ▶ CbCR notification included in the statutory tax return
- No
- ▶ Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

Yes, signed on 27 January 2016.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 and disclosure timelines

a) Filing deadline

▶ Corporate income tax return

The documentation should be filed within five months after the end of the fiscal year, but this can be extended.

▶ Other transfer pricing disclosures and return

The master file and local file should be available in the records of the taxpayer by the end of the period within which the corporate income tax return for the fiscal year has to be submitted.

▶ CbCR notification

By the last day of the fiscal year.

▶ CbC report preparation and submission

The documentation should be filed within 12 months after the end of the fiscal year.

b) Documentation preparation deadline

Transfer pricing documentation has to be contemporaneous. There is no specific penalty protection regime. However, a BEPS Action 13 format report with adequate content is sufficient to achieve penalty protection.

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 or 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 available.

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

Netherlands

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 (for both international and domestic transactions)

Yes

b) Priority and 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. multiyear analysis

Multiple-year analysis is preferred, as per common practice.

c) Use of interquartile range

Interquartile range is preferred, as per common practice.

d) Fresh benchmarking search every year vs. roll forwards and 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 is preferred, as per common practice.

f) Other specific benchmarking criteria, if any

- ▶ Independence* (not mandated but best practice)
- ▶ Industry classification
- ▶ Financial data:
 - ▶ Turnover criterion
 - ▶ Availability operating profit or loss
 - ▶ If consolidated data is available, company is rejected
 - ▶ Active or inactive

8. Transfer pricing penalties and relief

a) Penalty exposure

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

The Dutch general penalty regime is also applicable for transfer pricing. Noncompliance is a criminal offence and penalties can go up to detention for a maximum of six months or a fine up to EUR 8,300. More severe penalties are applicable if the offenses are i) intentional and ii) result in the appropriate amount of tax not being levied. In this case the penalties can be 1) imprisonment for a maximum of four years or 2) a fine of maximum EUR 20,750 or 3) if the amount is higher at most the amount of tax that was not levied. In case of a felony (e.g., making documentation available in a false or falsified form) if i) intentional and ii) resulting in appropriate amount of tax not being levied, the sanctions can be a) imprisonment for maximum 6 years or b) a fine of EUR 83,000 or c) maximum one time the amount of additional tax to be paid.

In case of failure to submit the required notification or CbC report as a result of an intentional act or gross negligence, the offense penalty can be maximum EUR 830,000. Alternatively, criminal prosecution may be applied with sanctions (fines or imprisonment as described above).

- ▶ 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.

The same general penalty regime would be applicable on BEPS Action 13 based requirements (master and local files and CbCR). 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 or payable on a refund?**

No interest is charged on penalties. However, late payment interest will be due on the extra tax due resulting from transfer pricing adjustments. The interest rate is 8% In case of a refund in principle no interest is paid, unless the refund by the tax administration is late. The interest in such case is 8%.

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
- MAP with binding arbitration, under EU Arbitration Convention and few bilateral treaties

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 and related audit by the 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.

- **Likelihood of an adjustment if the 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.

Netherlands

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

The tax administration, 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 administration appears to have a particular interest in potential internal CUPs and the economic substance of a transaction.

The tax administration has also focused, as a natural result of the risk analysis, on transactions with entities in countries with low effective tax rates.

11. APA and MAP opportunities

► Availability (unilateral, bilateral and 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.

The APA-practice is currently under review and will change expectedly as per 1 July 2019. It is expected that not APAs will be possible with regard to transactions with certain low tax jurisdictions. Furthermore, anonymized summaries of the APAs will be published.

► 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.

► MAP opportunities

The Netherlands has concluded tax conventions with many countries to protect private individuals and enterprises from double taxation. If double taxation nonetheless occurs, countries can resolve the issue by means of a mutual agreement procedure (MAP).

If the MAP procedure is initiated under the EU Arbitration Convention, this may lead to mandatory binding arbitration. Furthermore, The Netherlands has made the commitment under BEPS ACTION 14 that it will adopt and implement mandatory binding arbitration.

On 17 December 2018, a draft bill was submitted to the Parliament in order to implement the EU Directive on tax dispute resolution mechanisms in the European Union (PbEU 2017, L 265). The draft bill should be enacted by 30 June 2019.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Inland Revenue Department (IRD)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the effective date of applicability

- ▶ Sections YD 5, GB 2 and GC 6 to GC 19 of the Income Tax Act 2007 (ITA)
- ▶ Tax Administration Act 1994 (TAA)
- ▶ New Zealand's double tax agreements

New Zealand introduced a new legislation addressing OECD's BEPS initiative, which is effective for income years commencing on or after 1 July 2018.

▶ Section reference from local regulation

Subpart YB of the ITA

2. OECD Guidelines treatment and reference

New Zealand is a member of the OECD.

New Zealand's transfer pricing rules are to be applied consistently with the OECD's Transfer Pricing Guidelines for multinational enterprises and tax administrations (July 2017), including the guidance on documentation contained in Chapter V.

That said, local transfer pricing legislation includes novel sections assessing the deductibility of expenses connected to inbound loans from associated parties, which can lead to non-arm's-length outcomes. These specific rules are unique to New Zealand.

3. Transfer pricing documentation requirements

a) Applicability

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

While there is no statutory obligation to maintain documentation, New Zealand's tax system operates on a

self-assessment basis, where the taxpayer is expected to keep sufficient contemporaneous records to support its tax position.

Accurate and contemporaneous transfer pricing documentation supporting that the taxpayer's transfer prices are consistent with the arm's-length principle, in light of the relevant facts and circumstances, is a key element for addressing this requirement.

IRD provides guidelines detailing the expectations while producing local transfer pricing documentation.

▶ Does transfer pricing documentation have to be prepared annually?

Local taxpayers should be able to support their tax positions, which are lodged annually in their income tax returns.

b) Materiality limit or 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 in connection to economic analysis. Having said that, cost-risk perspective should also be considered.

▶ 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 (approximately NZD1.3 billion) are required to lodge CbC reports in New Zealand.

c) Specific requirements

▶ Treatment of domestic transactions

There is no local documentation obligation for domestic transactions.

▶ Local language documentation requirement

It is expected that local transfer pricing documentation is prepared in local language (English) – IRD could require that documents in other languages are translated.

New Zealand

▶ Safe harbor availability

According to IRD guidance, New Zealand taxpayers can apply administrative practices in connection to:

- ▶ **Services (de minimis – total value below NZD1 million)**
- ▶ **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 or implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Inland Revenue endorses OECD's recommendations and believes that the master file and 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 taxpayers 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 local files

These are expected to comply with OECD recommendations.

▶ Effective or expected commencement date

It is expected for income years commencing on or after 1 January 2016.

▶ Material differences from OECD report template or format

There is 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.

▶ CbCR notification included in the statutory tax return

Yes. Groups with 31 December balance dates are impacted first, with data to be collected for the 12 months beginning from 1 January 2016. For 31 March balance date and 30 June balance date groups, data needs to be collected for the 12 months beginning from 1 April 2016 and 1 July 2016 respectively.

▶ Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

Yes, it is so as of 12 May 2016.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

A company's income tax return requires disclosure of:

- ▶ **Whether the taxpayer made payments to nonresidents (such as dividends, interest, management fees, "know-how" payments, royalties or contract payments made)**
- ▶ **Whether the taxpayer 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 regularly 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 and disclosure timelines

a) Filing deadline

▶ Corporate income tax return

For balance dates ending on 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 and return**

The lodging of transfer pricing documentation and specific transfer pricing forms is not required in New Zealand.

► **CbCR notification**

There are no notification requirements.

► **CbC report preparation and 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, local taxpayers that prepare and maintain accurate and contemporaneous transfer pricing documentation are less likely to be exposed to penalties. 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 supporting the tax position 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?**

This is not applicable.

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

While each case is different, based on our experience, a taxpayer generally is given 20 working days to submit the documentation upon request.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- Yes, it is applicable only for international transactions.

b) Priority and 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 undertaken 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 transactional net margin method.

7. Benchmarking requirements

a) Local vs. regional comparables

Local benchmarking is preferred (Australian comparables are generally the best option if New Zealand benchmarks are not available); however, reliable benchmarks based on other jurisdictions are also acceptable.

b) Single-year vs. multiyear analysis

Multiyear testing is acceptable and generally preferred.

c) Use of interquartile range

Rather than requiring the use of an arm's-length range and 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 forwards and update of the financials

There is no need to conduct a fresh search every year; however, contemporaneousness of the financial information and comparability of the benchmarks should be assessed periodically.

e) Simple vs. weighted average

Generally, weighted average and Excel quartiles are used for economic 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 and relief

a) Penalty exposure

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

New Zealand

Even though there are no specific submission documents, any 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 or payable on a 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 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

IRD generally has four years from the end of the tax year in which a taxpayer files an income tax return to investigate and amend the tax position taken by the taxpayer. However, the

general four years' time bar has been extended to seven years for the purposes of the transfer pricing rules. This extension applies only in cases where an audit or investigation has commenced within the standard four-year period.

10. Likelihood of transfer pricing scrutiny and related audit by the 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 and 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 the 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 and 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 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

▶ 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.

▶ MAP opportunities

Yes, the taxpayers in New Zealand are allowed to request MAP assistance and at the same time seek to resolve the same dispute via domestically available judicial and administrative remedies. This is applicable only when the dispute involves a treaty partner.

11. APA and MAP opportunities

▶ Availability (unilateral, bilateral and 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.

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1. Tax authority and relevant transfer pricing regulations or 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 or rulings and the 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.

▶ BEPS master and local files

This is not applicable.

▶ CbCR

This is not applicable.

c) Specific requirements

▶ 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 or implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No

▶ Coverage in terms of master and local files

This is not applicable.

▶ Effective or expected commencement date

This is not applicable.

▶ Material differences from OECD report template or format

This is not applicable.

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

This is not applicable.

▶ CbCR notification and CbC report submission requirement

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

▶ CbCR notification included in the statutory tax return

This is not applicable.

2. OECD Guidelines treatment and 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 or 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 or thresholds

▶ Transfer pricing documentation

This is not applicable.

▶ Economic analysis

This is not applicable.

- ▶ Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

No

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 and disclosure timelines

a) Filing deadline

- ▶ Corporate income tax return

The documentation should be filed on or before 31 March for fiscal years that end in December; for special periods, three months after the fiscal year ends.

- ▶ Other transfer pricing disclosures and return

This is not applicable.

- ▶ CbCR notification

This is not applicable.

- ▶ CbC report preparation and submission

This is 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 or deadline for submission on tax authority request

The documentation should be filed within 10 days.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

Yes

b) Priority and 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. multiyear 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 forwards and 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

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

- ▶ Consequences of failure to submit, late submission 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 or payable on a 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 and related audit by the 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 the transfer pricing methodology is challenged (*high/medium/low*)

Refer to the section above.

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

There is none specified.

11. APA and MAP opportunities

- ▶ Availability (unilateral, bilateral and multilateral)

There is an APA program available in Nicaragua; however, the corresponding regulations have not yet been enacted.

- ▶ Tenure

The term of the program is four years.

- ▶ Rollback provisions

There is none specified.

- ▶ MAP opportunities

This is not applicable.

Contact

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

Federal Inland Revenue Service (FIRS)

b) Relevant transfer pricing section reference

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

The Income Tax (Transfer Pricing) Regulations, 2018 (new Regulations), with an effective date of 12 March 2018. The new Regulations repealed the Income Tax (Transfer Pricing) Regulations, 2012 which took effect on 2 August 2012. The new Regulations have a commencement date of 12 March 2018 and will apply to financial years beginning after that date.

▶ Section reference from local regulation

Regulation 12 of the Nigerian Transfer Pricing (TP) Regulations contains the definition of connected persons which is used to determine whether a Nigerian company or permanent establishments can be within the scope of the TP Regulations.

2. OECD Guidelines treatment and reference

Nigeria is not a member of the OECD.

The Nigerian TP 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. Although the Guidelines do not have a force of law, they are persuasive. Based on the TP Regulations, the provisions of the relevant domestic laws prevail if there are any inconsistency with the OECD Guidelines or UN TP Manual.

3. Transfer pricing documentation requirements

a) Applicability

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

Yes

▶ Does transfer pricing documentation have to be prepared annually?

TP documentation must be prepared annually. The documentation should be prepared taking into account the volume and complexity of the transactions.

b) Materiality limit or thresholds

▶ Transfer pricing documentation

Connected persons with total intercompany transactions of less than NGN300 million may choose not to maintain the contemporaneous TP documentation. However, they must prepare and submit the TP documentation within 90 days from the date of receipt of a notice from the FIRS.

▶ Economic analysis

There is no materiality threshold.

▶ BEPS master and local files

Yes, it is currently required. The TP Regulations introduce the obligation for connected persons to prepare a Master File and Local File as part of their annual TP documentation. The Regulations also include a detailed list of information and analyses to be included in TP documentation. This is mostly consistent with the guidance provided in the OECD's 2017 TP guidelines.

▶ CbCR

The Federal Government of Nigeria released the CbCR Regulations with an effective date of 1 January 2018. The Regulations set out several key obligations for Multinationals enterprises (MNE's).

▶ Companies headquartered in Nigeria with consolidated revenues of NGN 160 billion or more in the previous reporting period must:

▶ File a notification of their filing obligation with the FIRS, no later than the last day of the MNE group's accounting year end; and

▶ Prepare and file the annual CbC report based on the prescribed template, within 12 months after the last date of the group's accounting year end.

▶ Subsidiaries of an MNE group resident in Nigeria for tax purposes and permanent establishments with financial statements will be required to notify the FIRS of the identity and tax residence of the entity within the group who has the responsibility to file the CbC report on behalf of the group.

c) Specific requirements

Nigeria

► Treatment of domestic transactions

There is a documentation obligation for domestic transactions. The Nigerian TP Regulations cover both domestic and cross-border transactions.

► Local language documentation requirement

Regulation 24 provides that English is the official language for submission of the TP documentation.

► Safe harbor availability

FIRS may publish specific guidelines on safe harbors from time to time and only prices of controlled transactions in line with such published guidelines will qualify as a safe harbor.

d) BEPS Action 13 implementation overview

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

The new regulations incorporate the master file and local file as recommended under BEPS Action 13 on TP documentation.

► Coverage in terms of master and local files

Yes, this is applicable.

► Effective or expected commencement date

It is effective as of 12 March 2018.

► Material differences from OECD report template or format

There are no material differences. TP documentation template or format adopted is as specified in BEPS Action 13 on TP documentation.

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

A TP report that is compliant with the BEPS Action 13 format should meet the requirement of the FIRS.

► CbCR notification and CbC report submission requirement

The CbC report is required to be filed no later than 12 months after the last day of the MNE group's accounting year end while the notification requirement should be made to the FIRS no later than the last day of the MNE's accounting year end.

► CbCR notification included in the statutory tax return

No.

► Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

Yes. Nigeria became a signatory on 27 January 2016.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 TP disclosure form. The TP 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 TP disclosure form requires the taxpayer to indicate whether it has complied with the TP regulations and prepared TP documentation. The TP 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 TP 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 TP disclosure form, the TP 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 and disclosure timelines

a) Filing deadline

► Corporate income tax return

The return should be filed 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 and return

The return should be filed on or before 30 June for companies with a year-end of 31 December.

► CbCR notification

The notification should be made to the FIRS no later than the last day of the MNE's accounting year end.

► CbC report preparation and submission

The CbC report is required to be filed no later than 12 months after the last day of the MNE group's accounting year end.

b) Exemption from documentation preparation

The new Regulations stipulate that connected persons with total intercompany transactions of less than NGN300 million may choose not to maintain the contemporaneous TP documentation. However, they must prepare and submit the TP documentation within 90 days from the date of receipt of a notice from FIRS.

c) Documentation preparation deadline

The TP documentation is required to be prepared contemporaneously. It is required to be in place at the date of filing of the TP returns.

d) 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 or deadline for submission on tax authority request

The TP documentation is required to be submitted to the FIRS within 21 days upon request. For a company with total intercompany transactions of less than NGN300 million, they must prepare and submit the TP documentation within 90 days from the date of receipt of a notice of request from FIRS.

6. Transfer pricing methods

a) Applicability (for both international and domestic 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.

b) Priority and 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 prefer comparables from comparable economies to Nigeria – i.e., developing countries of Africa, the Middle East, Asia (exclusion of Japan, Hong-Kong, China, Singapore) and Eastern Europe – as Nigeria is faced with a lack of data.

b) Single-year vs. multiyear analysis

There is 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. As provided in the new TP Regulations, the interquartile range will be considered the arm's length range on a going forward basis.

d) Fresh benchmarking search every year vs. roll forwards and update of the financials

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.

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 and relief

a) Penalty exposure

- ▶ Consequences of failure to submit, late submission or incorrect disclosures
 - ▶ The penalty of NGN10 million in the first instance and NGN10,000 for every day.
 - ▶ Failure to update TP document or provide notification about directors is fined for NGN25,000 every day.
 - ▶ Failure to file TP disclosure: The higher of NGN10 million or 1% of the value of related-party transactions not disclosed and NGN10,000 for every day in which the default continues.
 - ▶ Failure to furnish information or documentation upon request: 1% of the value of each related-party transaction for which information or document relates and NGN10,000 for every day.
 - ▶ Failure to file TP documentation upon request: The higher of NGN10 million or 1% of the value of related-party transactions not disclosed and NGN10,000 for every day.
- ▶ If an adjustment is sustained, can penalties be assessed?

Yes. Penalties should arise where taxes charged under the assessments are not paid within the prescribed period. The prescribed period for the assessments should be 2 months (60 days) from receipt of the assessment notices. This 60 days period applies to assessments that have not been a subject of objection. In practice, the FIRS impose penalty from the year the tax is due.

- ▶ Is interest charged on penalties or payable on a refund?

No. The law imposes interest on unpaid taxes based on Central Bank of Nigeria monetary policy rate plus spread as determined by the finance minister.

b) Penalty relief

There is no specific penalty relief in the Nigerian transfer pricing regulations.

9. Statute of limitations on transfer pricing assessments

The statute of limitation is six years; thus, all supporting documentation for the taxpayer's returns must be retained for six years. In cases of criminal tendencies, such as fraud, negligence or wilful default, there is no statute of limitations.

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

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

Medium. The FIRS are now very active on audits especially given their experience and the volume of information at their disposal which enables them to perform risk assessment. They have also increased their team size recently so we expect increased intensity on audit. This notwithstanding, the FIRS maximize 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*)

The likelihood is medium. This is more likely when the FIRS requests certain information or 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 adopt a methodology that supports higher adjustments and guarantees more taxes in such instances.

- ▶ Likelihood of an adjustment if the 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 or 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 and 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 now. Key transactions of interest to the tax authority include:

- Procurement transactions
- Intercompany loans
- Royalty Transactions
- Shared Services/ Cost Contribution Arrangement
- Intra-group services.

11. APA and MAP opportunities

► **Availability (unilateral, bilateral and 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. The new Regulations incorporate a section to clarify that the provision on APA will be effective upon the publication of relevant notices and guidelines by the FIRS. No

► **Tenure**

The term could be as long as three years.

► **Rollback provisions**

This is not applicable.

► **MAP opportunities**

The FIRS pursuant to its powers under Section 8 (1) (t) of the FIRS Establishment Act No. 13 2007, issued a detailed guidance ("guidelines") on the Mutual Agreement Procedure (MAP) in Nigeria and Certificate of Residency Forms for taxpayers who intend to take advantage of the MAP. The Guidelines provide guidance to taxpayers (Nigerian resident companies or individuals) on the procedures for obtaining assistance from the Nigerian Competent Authorities (CA). Accordingly, taxpayers and permanent establishments that fall within the scope of the treaties can now apply for the MAP through the CA in Nigeria. However, due to the limited treaty network of Nigeria, its benefits are accessible to only a limited number of taxpayers.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Norwegian Tax Authority (NTA)

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations or rulings and the effective date of applicability

The arm's-length principle is stated in the Taxation Act (1999) Section 13-1, and the transfer pricing filing and documentation requirements are stated in the 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 have the references.

2. OECD Guidelines treatment and reference

Norway is an OECD member.

The NTA has a long history of following the OECD Guidelines. The Norwegian regulations follow OECD principles, and any 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 or 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 or 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, this has not been implemented through Norwegian regulations.

► CbCR

CbC report filing and CbCR notification requirements apply basically in line with the OECD Guidelines. The threshold for CbCR is NOK6.5 billion.

c) Specific requirements

► Treatment of domestic transactions

The regulations apply to domestic transactions.

► Local language documentation requirement

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

► Safe harbor availability

There is none specified.

d) BEPS Action 13 implementation overview

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

No.

► **Coverage in terms of master and local files**

BEPS Action 13 has not been formally adopted, but a master file or local file format is accepted as long as the information is also in line with current Norwegian regulations.

► **Effective or expected commencement date**

This is not applicable.

► **Material differences from OECD report template or 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 historical 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**

► **Explanation on the receiving entities' expected benefit of the service in the case of centralized services within the group, and explanation on cost base, allocation ratio and any markup in the case of a cost-based allocation**

► **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)**

► **Exemption for local entities for including a comparability analysis for transactions if no comparable transactions exist, or it would be unreasonably difficult or costly to gather such information**

► **A list of immaterial transactions that the local entity engages in**

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

This is 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**

Yes.

► **CbCR notification included in the statutory tax return**

Yes. Norwegian entities have to fill in the required country-by-country-report (notification) information about the fiscal year integrated with the tax return before May 31 of the year after the completion of the accounts.

► **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

Yes. It was signed on 27 January 2016.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

The filing requirement is an attachment to the annual corporate income tax return (RF-1123), which includes a list 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 the tax return – RF-1123.

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

► **Corporate income tax return**

The filing deadline is 31 May.

► **Other transfer pricing disclosures and return**

The filing deadline is 31 May.

► **CbCR notification**

CbCR notification is part of the tax return and is to be submitted by 31 May.

► **CbC report preparation and submission**

Norway

The filing deadline is 12 months after the close of the financial 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 or deadline for submission on tax authority request

The deadline is 45 days from the date of request by the Norwegian tax authority.

The NTA tends to prefer local or 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; however, they are often challenged by the NTA.

There have been incidents in which the NTA has made use of secret comparables, although this is not deemed a common practice.

b) Single-year vs. multiyear analysis

Multiyear testing, as per common practice, is applicable.

c) Use of interquartile range

There is no specific requirement, but practice tends toward the acceptance of the interquartile range.

d) Fresh benchmarking search every year vs. roll forwards and 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, is applicable.

f) Other specific benchmarking criteria, if any

There is none specified.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

Yes.

b) Priority and 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. As a starting point, the NTA is reluctant to accept the use of pan-European searches, and Norwegian comparables are highly preferred.

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

8. Transfer pricing penalties and relief

a) Penalty exposure

► Consequences of failure to submit, late submission 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 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 within 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 or payable on a refund?**

Nondeductible interest is applied in certain circumstances.

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 and related audit by the local authority

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

The likelihood of a transfer pricing tax audit is considered high.

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

The likelihood is medium; the NTA has increased its focus on substance and the reallocation of profits as it applies the BEPS concepts across a taxpayer's value chain.

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

The likelihood is 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 and 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 the transfer of intellectual property (IP) as well as management fees and financial transactions

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 as well as CbCR.

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 and MAP opportunities

► **Availability (unilateral, bilateral and multilateral)**

APAs are available. There are no domestic APA regulations, but APAs are concluded with reference to the relevant tax treaty. Only bilateral APAs are available.

Transactions involving the sale of gas may be covered by APAs in accordance with Petroleum Tax Act Section 6 (5) (1).

► **Tenure**

This is not applicable.

► **Rollback provisions**

In certain cases, an APA can also cover previous income years (rollback).

Norway

► MAP opportunities

Yes. A Norwegian enterprise can submit a transfer pricing MAP application to Norway regardless of whether the enterprise:

- Requests an income adjustment in Norway to be waived or reduced
- Requests a corresponding income adjustment for the associated enterprise in the other state
- Requests an income adjustment in the other state to be waived or reduced
- Requests a corresponding income adjustment in the Norwegian enterprise

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1. Tax authority and relevant transfer pricing regulation or 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 or rulings and the 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 regulations.

▶ Section reference from local regulation

Refer to the section above.

2. OECD Guidelines treatment and reference

Oman is not a member of the OECD, and OECD Guidelines are not binding to 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 or 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 (BEPS Action 13).

The Omani tax authorities expect that appropriate transfer pricing documentation will be made available under a tax audit or investigation. With the increased focus on transfer pricing 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 transfer pricing documentation is prepared annually. However, it is recommended that it be

prepared and maintained on an annual basis.

b) Materiality limit or thresholds

▶ Transfer pricing documentation

This is not applicable.

▶ Economic analysis

This is not applicable.

▶ BEPS master and local files

This is not applicable.

▶ CbCR

This is not applicable.

c) Specific requirements

▶ 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 transfer pricing 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

There is none specified.

d) BEPS Action 13 implementation overview

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

Oman has not yet implemented BEPS Action 13 for transfer pricing documentation.

▶ Coverage in terms of master and local files

This is not applicable.

▶ Effective or expected commencement date

This is not applicable.

▶ Material differences from OECD report template or format

This is not applicable.

Oman

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

This is not applicable.

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

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

▶ **CbCR notification included in the statutory tax return**

This is not applicable.

▶ **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

No.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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, the 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 and disclosure timelines

a) Filing deadline

▶ **Corporate income tax return**

The filing deadline is 30 June.

▶ **Other transfer pricing disclosures and return**

They should be filed along with the corporate income tax return.

▶ **CbCR notification**

This is not applicable,

▶ **CbC report preparation and submission**

This is not applicable as of now; however, it is 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 or deadline for submission on tax authority request**

It should be submitted within 30 days.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

Yes.

b) Priority and 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 that the CUP method may be preferred. The SGT is expected to enact more rules and publish more guidance in the coming years. The 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. multiyear analysis

There is none specified.

c) Use of interquartile range

There is none specified.

d) Fresh benchmarking search every year vs. roll forwards and 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 is conducted once every three years and that financial data be updated for the rest of the years.

e) Simple vs. weighted average

This is not specified; however, the weighted average could be preferred over the simple average for an arm's-length analysis.

f) Other specific benchmarking criteria, if any

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

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

Currently, there are no specific transfer pricing 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 or payable on a refund?

This is not specified.

b) Penalty relief

There are currently no specific transfer pricing penalties. Hence, penalty relief for transfer pricing is not applicable.

9. Statute of limitations on transfer pricing assessments

There are no separate transfer pricing 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 three years from the end of the year for which a tax return is submitted.

10. Likelihood of transfer pricing scrutiny and related audit by the 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 the transfer pricing methodology is challenged (*high/medium/low*)

The absence of transfer pricing 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 and situations, if any, more likely to undergo audit

There is none specified.

Oman

11. APA and MAP opportunities

▶ **Availability (unilateral, bilateral and multilateral)**

There is no APA program available in Oman.

▶ **Tenure**

This is not applicable.

▶ **Rollback provisions**

This is not applicable.

▶ **MAP opportunities**

This is not applicable.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Federal Board of Revenue (FBR)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the 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.

On 9 February 2018, Pakistan's Federal Board of Revenue issued Notification S.R.O. 144(l)/2018 on amendments to Chapter VIA of the Income Tax Rules, 2002, which prescribe Pakistan's Master file, Local file, and Country-by-Country (CbC) reporting requirements.

▶ Section reference from local regulation

Section 108 of the Income Tax Ordinance of 2001.

2. OECD Guidelines treatment and 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 or rules?

Yes.

▶ Does transfer pricing documentation have to be prepared annually?

Yes.

b) Materiality limit or thresholds

▶ Transfer pricing documentation

For local file: PKR 50 million (approximately USD 475,000)

For master file: Every constituent entity having a revenue threshold of PKR 100 million.

▶ Economic analysis

Required

▶ BEPS master and local files

Master file – Local entity turnover of more than PKR 100 million (approximately USD 950,000)

Local file – needs to be maintained if related-party transactions exceed PKR 50 million (approximately USD 475,000)

▶ CbCR

MNE Group's turnover should be EUR 750 million or equivalent in PKR

c) Specific requirements

▶ 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 or implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Yes

▶ Coverage in terms of master and local files

This covers both the master file and local file.

▶ Effective or expected commencement date

For every financial year ending on or after 1 July 2016.

▶ Material differences from OECD report template or format

Pakistan

There are no material differences between the OECD report template or 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, in the previous reporting fiscal year 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.

- ▶ **CbCR notification included in the statutory tax return**

No. CbC reporting requirements do not apply for tax year 2017 if it began before 1 January 2016 (note – under Pakistan's tax rules, tax year 2017 would normally be the year beginning 1 July 2016 and ending 30 June 2017, but any year ending within that normal year is also considered tax year 2017).

- ▶ **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

Yes, 21 June 2017

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

Pakistan follows International Financial Reporting Standards (IFRS), adjusted for local GAAP. Therefore, the FBR expects taxpayers to disclose related-party transactions in their financial statements in accordance with IFRS/local GAAP.

b) Transfer pricing-specific returns

No specific TP returns

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- ▶ **Corporate income tax return**

31 December for companies with a financial year-end between 01 January and 30 June, and 30 September for companies with a financial year-end between 01 July and of 31 December

- ▶ **Other transfer pricing disclosures and return**

The TP documentation 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

- ▶ **CbC report preparation and 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 for preparation of TP documentation.

c) Documentation submission deadline

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

No

- ▶ **Time period or 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 (for both international and domestic transactions)

- ▶ **Yes**

b) Priority and 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. multiyear analysis

Not specified

c) Use of interquartile range

Not specified

d) Fresh benchmarking search every year vs. roll forwards and 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 and relief

a) Penalty exposure

- ▶ **Consequences of failure to submit, late submission 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?**

Yes

- ▶ **Is interest charged on penalties or payable on a refund?**

Yes, on penalties

b) Penalty relief

Penalty relief was not applicable at the time of this publication.

9. Statute of limitations on transfer pricing assessments

The general statute of limitation, that is 5 years, shall apply.

10. Likelihood of transfer pricing scrutiny and related audit by the 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.

Pakistan

► **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.

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

Refer to the section above.

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

None specified

11. APA and MAP opportunities

► **Availability (unilateral, bilateral and multilateral)**

There is no opportunity to conclude an APA. However, an advance ruling is possible.

► **Tenure**

Not applicable

► **Rollback provisions**

Not applicable

► **MAP opportunities**

May be available depending on treaty provisions

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1. Tax authority and relevant transfer pricing regulation or 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 or rulings and the effective date of applicability

They are the articles 762-A to 762-K of the Tax Fiscal Code, and articles 1 to 14 of the Transfer Pricing 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 No. 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).

Law No. 52 of 17 October 2018 establishes that taxpayers with a concession for call center activities are subject to transfer pricing regulations starting with fiscal year 2019.

Law No. 57 of 24 October 2018 amends the multinational headquarters regime (MHQ regime) and contains provisions on applying transfer pricing regulations to transactions conducted by entities with an MHQ license starting from fiscal year 2019.

Law No. 69 of 26 December 2018 includes provisions on applying transfer pricing regulations to entities under preferential tax regimes. This law adds Article 762-L to the Tax Code, which establishes that, starting with fiscal year 2019, the transfer pricing rules will apply to any transaction that an individual or entity conducts with related parties that are established in the Colón Free Zone, and operate: (1) in the Oil Free Zone (Zona Libre de Petróleo) under Cabinet Decree 36 of 2003; (2) in the Special Economic Area of Panama-Pacífico; (3) under the multinational headquarters regime; (5) under the City of Knowledge regime; or (6) in any other current or future free zones or special economic areas. Even though individuals or entities that operate in one of the listed zones, special

economic areas and preferential tax regimes are exempt from or have a reduced rate of income tax, the transfer pricing rules also will apply to transactions conducted by those entities with related parties that are: (1) established in Panama; (2) tax residents of other jurisdictions; (3) established in any other free zones or special economic areas; or (4) operate under a preferential tax regime.

▶ Section reference from local regulation

Refer to the section above.

2. OECD Guidelines treatment and 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 or 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 or thresholds

▶ Transfer pricing documentation

This is not applicable.

▶ Economic analysis

This is not applicable.

▶ BEPS master and local files

This is not applicable.

▶ CbCR

Panama

It has not been introduced in Panama, but the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports has been recently signed by Panama on 24 January 2019.

c) Specific requirements

► Treatment of domestic transactions

There is no documentation obligation for domestic transactions, except for intercompany transactions conducted with, by and between preferential tax regimes in Panama.

► 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 or implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Yes, it has been done so but only regarding the master file.

► Coverage in terms of master and local files

Coverage exists only for the master file.

► Effective or expected commencement date

Taxpayers that file the TP return after 1 January 2017 must comply with the master file provisions.

► Material differences from OECD report template or format

There are no material differences between the OECD report template or 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.

► CbCR notification included in the statutory tax return

This is not applicable.

► Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

Yes, it is so as of 24 January 2019.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 should be filed within six months of the close of the fiscal year.

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

► Corporate income tax return

This 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 and return

The requirement is only for Form 930, mentioned above.

► CbCR notification

This is not applicable.

► CbC report preparation and submission

This is 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?

This is not applicable.

- ▶ **Time period or 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 (for both international and domestic transactions)

- ▶ Yes, it is applicable for both international and domestic transactions.

b) Priority and 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 on the basis of 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. multiyear analysis

Multiple-year testing is accepted for the comparables only; in practice, the number of years is three.

c) Use of interquartile range

Yes, the interquartile range calculation with Excel Quartile formulas is used.

d) Fresh benchmarking search every year vs. roll forwards and update of the financials

There is 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

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

- ▶ **Consequences of failure to submit, late submission 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 or payable on a 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 and related audit by the 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 the transfer pricing methodology is challenged (*high/medium/low*)

It is high, because in most audits the DGI challenges either the methodology or the comparables.

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

There is none specified.

11. APA and MAP opportunities

► Availability (unilateral, bilateral and multilateral)

Currently, no APA program has been established. However, the DGI is working on draft regulations to be published in the near future.

► Tenure

This is not applicable.

► Rollback provisions

This is not applicable.

► MAP opportunities

This is not applicable.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Internal Revenue Commission (IRC)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the effective date of applicability

The following are two references:

- ▶ 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 and 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 or rules?

Yes.

- ▶ Does transfer pricing documentation have to be prepared annually?

The general requirements of the ITA require taxpayers to keep proper records related 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 or 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

There is no materiality limit.

▶ BEPS master and local files

There is no requirement for master or local files.

▶ CbCR

The limit is for a consolidated group revenue of PGK2.3 billion.

c) Specific requirements

▶ Treatment of domestic transactions

This is 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 or 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 local files**

This is not applicable.

▶ **Effective or expected commencement date**

The first CbC reports are due to be lodged by 31 December 2018 for MNEs with a 31 December year-end.

▶ **Material differences from OECD report template or 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 Transfer Pricing Guidelines. The Commissioner General has issued a notice advising that until further notice PNG companies that are not the UPE of a MNE and foreign companies with a permanent establishment in PNG do not need to submit CbC reports for the years commencing on or after 1 January 2017 as required in instances where local filing is triggered.

▶ **CbCR notification included in the statutory tax return**

No.

▶ **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

No.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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:**

- ▶ International related-party transaction types and quantum
- ▶ Countries with which the taxpayer has international related-party transactions
- ▶ Percentage of transactions covered by contemporaneous documentation
- ▶ Transfer pricing methodologies selected and applied for each international related-party type
- ▶ Details of branch operations
- ▶ Transfer pricing-specific returns

Refer the section above.

5. Transfer pricing documentation or disclosure timelines

a) Filing deadline

▶ **Corporate income tax return**

The statutory lodgement 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 non-taxable returns lodged by 31 October.

▶ **Other transfer pricing disclosures and return**

The IDS, if required, is included as part of the company tax return.

▶ **CbCR notification**

It is required by the end of the reporting fiscal year of the MNE.

► **CbC report preparation and submission**

If the UPE is a PNG resident the CbC report is required to be lodged within 12 months following the end of the reporting fiscal year of the MNE.

b) Documentation preparation deadline

The 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 or 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 (for both international and domestic transactions)

There are no methods prescribed in the legislation. As per the Circular, the appropriate method as per the OECD Guidelines should be acceptable.

b) Priority and 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, the use of regional data would be acceptable with appropriate adjustments for local conditions if relevant.

b) Single-year vs. multiyear analysis

As per the Circular, multiple-year data analysis should be used.

c) Use of interquartile range

As per the Circular, the interquartile range may be used to enhance reliability of the analysis.

d) Fresh benchmarking search every year vs. roll forwards and 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

There is none specified; it depends on the reliability of data.

f) Other specific benchmarking criteria, if any

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

► **Consequences of failure to submit, late submission 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

Papua New Guinea

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 (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 and payable on a 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 and related audit by the 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 the 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 and 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 and MAP opportunities

► Availability (unilateral, bilateral and multilateral)

The Commissioner General supports having an APA program operating in PNG, but no current APA program exists.

► Tenure

This is not applicable.

► Rollback provisions

This is not applicable.

► MAP opportunities

MAP opportunities are available under the relevant Double Tax Agreements.

Contact

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

Paraguayan Tax Authority (Subsecretaría de Estado de Tributación)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the effective date of applicability

Paraguay does not have a specific transfer pricing law. However, in October 2013, the National Congress enacted a 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 sub-products. The Paraguayan Tax Authority could include other products.

▶ Section reference from local regulation

Refer to the section above.

2. OECD Guidelines treatment and reference

Paraguay became an associate member of the OECD Development Centre in February 2017.

The local law also doesn't refer to or follow the OECD Guidelines in practice, given that it doesn't have a specific transfer pricing regulation.

3. Transfer pricing documentation requirements

a) Applicability

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

No

▶ Does transfer pricing documentation have to be prepared annually?

This is not applicable.

b) Materiality limit or thresholds

▶ Transfer pricing documentation

There is no materiality limit.

▶ Economic analysis

There is no materiality limit.

▶ BEPS master and local files

This is not applicable.

▶ CbCR

CbCR has not been introduced in Paraguay.

c) Specific requirements

▶ Treatment of domestic transactions

This is not applicable.

▶ Local language documentation requirement

This is not applicable.

▶ Safe harbour availability

This is not applicable.

d) BEPS Action 13 implementation overview

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

No

▶ Coverage in terms of master and local files

This is not applicable.

▶ Effective or expected commencement date

This is not applicable.

▶ Material differences from OECD report template or format

This is not applicable.

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

This is not applicable.

▶ CbCR notification and CbC report submission requirement

Paraguay

There is no CbCR notification and CbC report submission requirement in Paraguay.

- ▶ CbCR notification included in the statutory tax return

This is not applicable.

- ▶ Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

No

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

This is not applicable.

b) Transfer pricing-specific returns

This is not applicable.

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- ▶ Corporate income tax return

The documentation should be filed on or before 31 December.

- ▶ Other transfer pricing disclosures and return

This is not applicable.

- ▶ CbCR notification

This is not applicable.

- ▶ CbC report preparation and submission

This is not applicable.

b) Documentation preparation deadline

This is not applicable.

c) Documentation submission deadline

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

This is not applicable.

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

This is not applicable.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

This is not applicable.

b) Priority and preference of methods

This is not applicable.

7. Benchmarking requirements

a) Local vs. regional comparables

Local comparables prevail over international comparables.

b) Single-year vs. multiyear analysis

Multiple-year analysis is preferred; three years is the common practice.

c) Use of interquartile range

Interquartile range calculation using Excel Quartile formulas is acceptable.

d) Fresh benchmarking search every year vs. roll forwards and update of the financials

A fresh benchmarking search is not required every year; roll forwards and 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

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

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

This is not applicable.

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

This is not applicable.

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

This is not applicable.

b) Penalty relief

This is not applicable.

9. Statute of limitations on transfer pricing assessments

This is not applicable.

10. Likelihood of transfer pricing scrutiny and related audit by the 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*)

This is not applicable.

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

This is not applicable.

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

There is none specified.

11. APA and MAP opportunities

- ▶ Availability (unilateral, bilateral and multilateral)

There is none specified.

- ▶ Tenure

This is not applicable.

- ▶ Rollback provisions

This is not applicable.

- ▶ MAP opportunities

This is not applicable.

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1. Tax authority and relevant transfer pricing regulation or 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 or rulings and the effective date of applicability

There are the 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

On 18 January 2018, the Resolution 014-2018 set forth the rules to submit the local file in Peru. The Resolution establishes the criteria to determine which taxpayers must submit the local file as well as the cases in which there is no obligation to submit it. The Resolution lists the information that must be included in the local file, which mainly refers to intercompany transactions, and whether they meet the arm's-length principle. Also, it contains the requirements for submission, and the cases in which the filing may be rejected.

On 24 August 2018, Peru published Legislative Decree No. 1381 (Legislative Decree) amending the applicability of the Peruvian transfer pricing rules and the treatment of import and export transactions.

► Section reference from local regulation

Refer to the section above.

2. OECD Guidelines treatment and reference

Peru is not an OECD member country. The PITL refers to the OECD Guidelines as a source of interpretation for transfer pricing 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 or rules?

Peru has TP documentation guidelines and 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 or thresholds

► Transfer pricing documentation

As of 2017, Peruvian transfer pricing 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 filing should be done in June of the following year.
- **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. The filing should be done in October of the following year.

► 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 stated that taxpayers that exceed the 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 to 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 it is 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 which 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.

The deadline for the submission of the 2017 CbCR has been postponed to March 2019. The following reports should be filed in October of the following year.

c) Specific requirements

► 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 are safe harbour available.

d) BEPS Action 13 implementation overview

► **Has your country adopted or 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 local files**

Both the master and local files are covered.

► **Effective or expected commencement date**

The law is effective for taxable years beginning on or after 1 January 2017.

► **Material differences from OECD report template or format**

There are no material differences between the OECD report template or 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.

► **CbCR notification included in the statutory tax return**

This is not applicable.

► **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

Yes, it is so as of 9 November 2018.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

The main details to be disclosed in the transfer pricing information return include the amount of the transactions, the transfer pricing method selected and the related party with whom the transactions were made, as well as the results of the tested party, the interquartile range of selected comparables and the amount of the transfer pricing 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:** Taxpayers whose annual revenue for the fiscal year exceeds 2,300 tax units (approximately USD2.9 million) must file a local file informative return.
- **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) must file a master file informative return.
- 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 and disclosure timelines

a) Filing deadline

- Corporate income tax return

It should be submitted by the end of March or beginning of April based on a schedule.

► **Other transfer pricing disclosures and 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 and submission**

The deadline for the submission of the 2017 CbCR has been postponed to March 2019. For remaining years, the deadline is in October of the following year. The exact filing date for each taxpayer depends on an official schedule based on the taxpayer's identification number.

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 or 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 (for both international and domestic transactions)

- Yes, it is applicable for both international and domestic transactions.

b) Priority and 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 transfer pricing methods identified are CUP, resale price, cost-plus, profit split, residual profit split and TNMM.

The Legislative Decree states that the CUP method is the most appropriate transfer pricing method for cross-border transactions involving commodities and derivative financial instruments. These rules establish that the arm's-length price for Peruvian income tax purposes must be determined by reference to the quoted price. For the application of the CUP method, the actual pricing date or period of pricing dates should be used as a reference to determine the price for the transaction, as long as independent parties in comparable circumstances would have relied upon to the same pricing date. The taxpayer needs to notify the SUNAT of the actual pricing date or period of pricing dates used to determine the price for the transaction.

The aforementioned notification to SUNAT is considered as a sworn statement and would have to be done within 15 working days of the shipment date or the date of disembarkation, detailing the main terms and conditions agreed by the parties. In the event the notification is not presented, it is incomplete or contains inconsistent information, the date to be used as a reference to determine the price is either: (i) the shipment date of the commodities exported or (ii) the disembarkation date of the commodities imported.

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. multiyear analysis

Multiyear testing is preferred.

c) Use of interquartile range

Use of interquartile range is mandatory for the application of transfer pricing methods, as set forth by the PITL, whenever there are two or more comparable operations.

d) Fresh benchmarking search every year vs. roll forwards and 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

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

► **Consequences of failure to submit, late submission 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 or payable on a 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 transfer pricing technical study or present the transfer pricing information return are:

- A 100% penalty reduction if the taxpayer files the transfer pricing informative return after the due date but before it is detected and compelled to do so by SUNAT
- An 80% (with a transfer pricing study) or 90% (with a transfer pricing 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 transfer pricing study) or 80% (with a transfer pricing 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 and related audit by the 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 transfer pricing issues being reviewed as part of a general audit. From an estimate of 3,500 taxpayers who are subject to transfer pricing documentation requirements, around 150 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 increasingly conducts transfer pricing audits. Also, it has issued letters requesting that taxpayers amend their tax returns based on the results of the transfer pricing studies previously presented or fill the local reports that have not been filed on time. The likelihood that the transfer pricing methodology will be challenged during a transfer pricing review is characterized as high.

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

The likelihood is high – refer to the section above for details.

► **Specific transactions, industries and 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.

► **Rollback provisions**

There is none specified.

► **MAP opportunities**

No, there are no specific provisions for the MAP procedure in domestic law. Taxpayers must rely on the MAP provisions under DTTs.

11. APA opportunities

► **Availability (unilateral, bilateral and 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.

Contact

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Bureau of Internal Revenue (BIR)

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations or rulings and the 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 and 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 or rules?

Yes.

► 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. However, being largely based on the OECD Transfer Pricing Guidelines, the preparation of transfer pricing documentation on year one, and benchmarking updates on years two and three should be sufficient.

b) Materiality limit or thresholds

► Transfer pricing documentation

There is none specified.

► Economic analysis

There is none specified.

► BEPS master and local files

This is not applicable.

► CbCR

This is not applicable.

c) Specific requirements

► 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 language in the Philippines.

▶ **Safe harbor availability**

There is no specific safe harbor available.

d) BEPS Action 13 implementation overview

▶ **Has your country adopted or 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 local files**

This is not applicable.

▶ **Effective or expected commencement date**

This is not applicable.

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

This is not applicable.

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

This is not applicable.

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

No.

▶ **CbCR notification included in the statutory tax return**

This is not applicable.

▶ **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

No.

4. Transfer pricing return and related party disclosures

a) Related-party disclosures and 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 and disclosure timelines

a) Filing deadline

▶ **Corporate income tax return**

The filing deadline is the 15th day of the fourth month following the close of the taxable year.

▶ **Other transfer pricing disclosures and return**

This is not applicable.

▶ **CbCR notification**

This is not applicable.

▶ **CbC report preparation and submission**

This is 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 or 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 (for both international and domestic transactions)

Yes.

b) Priority and 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. multiyear 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 forwards and update of the financials

RR 2-2013 is silent on the manner of preparation. However, being largely based on the OECD Transfer Pricing Guidelines, the preparation of transfer pricing documentation on year one and the 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 and relief

a) Penalty exposure

► Consequences of failure to submit, late submission 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 12% interest per annum.

► Is interest charged on penalties or payable on refund?

Delinquency interest at the rate of 12% per year may also be imposed.

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 yet.

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 or related audit by local authority

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

The likelihood is high. The BIR has intensified the investigation of taxpayer compliance with the goal of achieving the BIR's collection target.

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

The likelihood is high. If transfer pricing is reviewed, then the transfer pricing methodology may be challenged.

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

The likelihood is high for the same reason as given above.

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

There is none specified.

▶ **Tenure**

This is not applicable. APA guidelines have not been issued.

▶ **Rollback provisions**

This is not applicable. APA guidelines have not been issued.

▶ **MAP opportunities**

This is not applicable. MAP guidelines have not been issued.

11. APA and MAP opportunities

▶ **Availability (unilateral, bilateral and 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 as the BIR is yet to issue separate guidelines for the application of an APA and for MAP relief.

Contact

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1. Tax authority and relevant transfer pricing regulations or 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, created in April 2018, is a department dealing with tax avoidance, APAs and supervision of the uniform application of the tax law.
- ▶ National Revenue Administration which is a specialized authority tasked with realising tax revenue and supporting taxpayers in proper execution of their tax obligations.

b) Relevant transfer pricing section reference

- ▶ Name of transfer pricing regulations or rulings and the 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: article 9a, 11 (Art. 11a since 2019) (Journal of Laws 2018, Item 1036, as amended)
- ▶ Personal Income Tax (PIT) Act, dated 26 July 1991: articles 25, 25a and 30d (Article 23 since 2019) (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 17 May 2017, regarding the countries and territories applying harmful tax competition rules for the purpose of corporate income tax (Journal of Laws 2017, No. 997)
- ▶ Ministry of Finance Decree of 17 May 2017, regarding the countries and territories applying harmful tax competition rules for the purpose of personal income tax (Journal of Laws 2017, No.998)
- ▶ 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
- ▶ TP Decree of the Minister of Finance from 21 December 2018 on the transfer pricing documentation with regards to corporate income tax
- ▶ TP Decree of the Minister of Finance from 21 December 2018 on the manner and procedure for eliminating double taxation in case of adjustment of affiliated entities' profits with regards to corporate income tax
- ▶ TP Decree of the Minister of Finance from 21 December 2018 regarding transfer pricing with regards to corporate income tax
- ▶ TP Decree of the Minister of Finance from 21 December 2018 regarding the information about transfer pricing with regards to corporate income tax.

Article 11 of the CIT Act (Art. 11a since 2019) and Article 25 (Art. 23 since 2019) of the PIT Act introduces 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 (Art. 11a since 2019) of the CIT Act and Article 25 (Art. 23 since 2019) of the PIT Act. Transfer pricing penalties are defined in Articles 19, Clause 4 of the CIT Act and Article 30d of the PIT Act and, since 2019, Articles 58a and 58b of the Tax Ordinance Act.

According to Article 9a of the CIT Act (Art. 11a since 2019) and Article 25 (Art. 23 since 2019) 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 17 May 2017 regarding the countries and territories applying harmful tax competition rules. The decree was issued separately for personal and corporate taxation purposes.

Since 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.

TP regulations introducing BEPS Action 13 guidelines to Polish legislation, came into force in January 2017 (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 and 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 (Art. 11j since 2019) and Article 25a, Clause 6 of the PIT Act (Art. 23 since 2019), 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 or rules?**

Yes, transfer pricing regulations (binding from January 2017, and from January 2016 for CbCR) introduced 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 (see next section for thresholds), 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;**

▶ **Benchmarking analyses mandatory:**

- ▶ **In 2018 – for entities meeting thresholds (see the next section);**

- ▶ **In 2019 – for each entity that is obliged to prepare the documentation.**

- ▶ **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 or thresholds

▶ **Transfer pricing documentation**

Local file and master file (see below sections for thresholds) are applicable.

▶ **Economic analysis**

Benchmarking analyses mandatory for entities with revenues or costs of more than EUR10 million (in the previous year) if they have material transactions in 2018. Since 2019, benchmarking is mandatory for every transaction that meets the local file threshold.

▶ **BEPS master and local files**

Local files

In 2018, obligation to prepare local file documentation applies to related entities with costs or revenue of over EUR 2 million (in the previous year) and that are a party to transactions that “have a material influence on their revenue” (defined in the below paragraphs). Alternatively, the threshold is EUR20, 000 for transactions with tax havens (no revenue threshold is applied).

Poland

For 2019, the obligation to prepare local file documentation applies to related entities that conducted transactions meeting the thresholds presented below.

Apart from the general rules listed above, the materiality threshold for particular transactions to include in the local file are:

- ▶ **For 2018:**
 - ▶ For revenues or costs of the company between EUR2 million and EUR20 million, the threshold per transaction is EUR50,000, increased by EUR 5,000 for each EUR1 million of revenue over EUR2 million.
 - ▶ For revenues or costs between EUR20 million and EUR100 million, EUR 140,000, increased by EUR45,000 for each EUR10 million of revenues over EUR20 million.
 - ▶ For revenues or costs above EUR100 million, the threshold is EUR500,000.
 - ▶ Alternatively, the threshold is EUR 20,000 for transactions with tax havens (no revenue threshold is applied).
- ▶ **For 2019:**
 - ▶ PLN100,000 – transactions conducted with entities from tax havens
 - ▶ PLN2 million – service transactions, profit allocation to foreign branches, transactions involving immaterial values
 - ▶ PLN10 million – material and financial transactions

Master file

In 2018, obligation to prepare master file applies only for entities with revenues or costs of more than EUR20 million (in the previous year).

In 2019, taxpayers are obliged to prepare a master file only if all of the following conditions are met:

- ▶ The entity is required to prepare local documentation
- ▶ The entity belongs to the group of related entities for which consolidated financial statements are prepared
- ▶ Consolidated revenues of the Group exceeded PLN200 million (approx. US\$50.4 million) in the previous financial year

▶ CbCR

The report is mandatory in case of consolidated revenues or costs of more than EUR750 million.

c) Specific requirements

▶ Treatment of domestic transactions

There was a documentation obligation for domestic transactions in 2018. In 2019, domestic transactions are excluded as long as they fulfil the requirements listed in Article 11n of the CIT Act.

▶ Local language documentation requirement

The law mandates the use of Polish language in local file documentation. There is no formal requirement for master file documentation, however the tax authorities can request a Polish version of the document. Since 2019, a regulation exists stating that there will be 30 days to prepare such a translation upon request.

▶ Safe harbor availability

Since 2019, the regulations introduced safe harbour mark-up rates for low value-added services at the minimum level of 5% for the provision of services and a maximum of 5% for the purchase of services.

Additionally, safe harbour rules were introduced for loans fulfilling the requirements listed in Article 11g of the CIT Act. The "safe" rate is annually published by the Ministry.

d) BEPS Action 13 implementation overview

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

Yes, Poland has adopted and implemented it. There are some specific elements incorporated in the Polish law. There are also some important differences, in most cases meaning that the local requirements are even more extensive.

▶ Coverage in terms of master and local files

Both the master and local files are covered.

▶ Effective or expected commencement date

The law is effective for taxable years beginning on or after 1 January 2017.

▶ Material differences from OECD report template or format

There are material differences between the OECD report template or format and Poland's regulations. The relevant sections from the regulations state that:

- ▶ Benchmarks "covering data of Polish comparables" are required for 2018 (requirement removed in 2019).
- ▶ An indication of how particular transactions influence tax to be paid in Poland needs to be presented in the documentation for 2018 (requirement removed in 2019).
- ▶ Local management needs to sign off for the local file in a written statement. Since 2019 such a statement also has to confirm the arm's length character of the transactions.
- ▶ In the CIT TP return form, local facts are expected by Polish tax authorities for 2018. A new form (TP-R) was introduced in 2019.
- ▶ For both 2018 and 2019 the Local File should cover:
 - ▶ The market analysis;
 - ▶ The transaction values as well as the amounts actually transferred.
- ▶ Sufficiency of BEPS Action 13 format report to achieve penalty protection

There is none specified in the regulations. However, BEPS Action 13 do not fully cover explicit local file requirements (examples above).

- ▶ CbCR notification and CbC report submission requirement

There is a CbCR notification submission requirement in Poland as below:

- ▶ For 2016 – within 10 months from the year-end
- ▶ For the following years – until the end of the given financial year

There is a CbC report submission requirement in Poland (12 months from year-end).

- ▶ Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

Yes, as of 27 January 2016.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 they were required to prepare a 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 non-residents; 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 non-resident exceeds EUR5,000 and the non-resident owns an enterprise, branch or representative office in Poland.
 - ▶ The total amount of liabilities or receivables resulting from all agreements concluded with the same non-resident 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 non-residents 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 CIT law restrictions would not apply to transactions for which a taxpayer obtains an APA with the Polish Ministry of Finance. The 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 PLN 3 million plus 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 non-deductible (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, however the below apply.

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.

Since 2019 a new TP-R form has been introduced. All taxpayers obliged to prepare a local file, and those exempted due to the fact that transactions were only conducted with domestic-related entities, have to file this new electronic report within nine months from the year-end. In the TP-R

taxable person must include detailed information (including for example: results of benchmarking analysis or transfer pricing adjustments in applicable, various profitability indicators, etc.).

In addition, Polish taxpayers are obligated to file within nine months from the year-end 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. Since the beginning of 2019, this official statement must also confirm that all documented transactions were conducted at arm's length value. Furthermore the statement must be signed by the entity's managing director or by all board members empowered to representations. The statement must be submitted in the electronic form.

Transfer pricing documentation and disclosure timelines

- ▶ **Filing deadline**
- ▶ **Corporate income tax return**

The filing deadline for the CIT return in FY2017 and FY2018 is 31 March (within three months from the fiscal year-end). The deadline for filling CIT-TP or TP-R form is nine months from year-end.

- ▶ **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 and submission**

The filing deadline for the CbC report is 12 months from the year-end.

- ▶ **Documentation preparation deadline**

For 2018:

- ▶ **9 months from year-end for the local file**
- ▶ **For master file the later of the two:**
 - ▶ **Local file deadline**
 - ▶ **Consolidating entity's tax return deadline**

For 2019:

- ▶ **9 months from year-end for the local file**
- ▶ **12 months from year-end for the master file**

- ▶ **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 or deadline for submission on tax authority request**

The documentation should be submitted within seven days of the request.

5. Transfer pricing methods

a) **Applicability (for both international and domestic transactions)**

Yes

b) **Priority and 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.

Regulations binding from 1st January 2019 changed the approach of selecting TP method used for the purpose of assessing income in related-party transactions. Previously (also for 2018) the traditional methods (CUP, resale-minus, cost-plus) were indicated as the first-choice methods. Currently, the division of methods into two groups has been terminated, taxpayer can choose independently the most appropriate method for them.

Also, if use of these five methods is impossible, taxpayer can choose another, most appropriate one, including valuation methods.

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 accepted methods, and tax authorities wouldn't be able to find objective reasons that another method would fit better for economic situation of taxpayer, the method is also binding for them.

6. Benchmarking requirements

a) **Local vs. regional comparables**

For 2018, local benchmarks are recommended and the tax authority treats them as mandatory. The particular paragraph explicitly states that the analysis should cover data of Polish comparable companies. Our interpretation is that analyses without any local comparables will be rejected.

Since 1 January 2019, there is no indication that benchmarking analysis should cover local entities.

b) **Single-year vs. multiyear analysis**

There is a preference for multiyear testing although not expressed in the regulations. EY Poland usually provides three-year or five-year analysis.

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 forwards and the 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 or in case of significant change in the economic environment.

e) **Simple vs. weighted average**

There is a preference for the weighted average for arm's-length analysis (not mentioned in the regulations).

f) **Other specific benchmarking criteria, if any**

There is no particular criteria to be included.

For 2018: some detailed assumptions have to be described (excluded in 2019).

For 2019:

- ▶ Taxpayer should present financial indicators both accepted and rejected during the preparation of benchmarking analysis.
- ▶ Taxpayer is obliged to present part of the information used for benchmarking analysis in electronic form, which enables editing, formatting and sorting data.

7. Transfer pricing penalties and relief

a) Penalty exposure

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

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.

For 2018:

If the taxpayer has a complete documentation in place, the standard 19% tax rate will be applied. 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.

Since 2019:

If the tax authorities that the tax loss has been overstated or the tax profit has been understated, they can levy an additional penalty tax rate of 10% (over the standard 19% rate) (Article 58b Section 1 Tax Ordinance Act).

The rate indicated in article 58b is doubled if:

- ▶ The basis for determining additional tax liability exceeds PLN 15,000,000 – for the excess over this amount.
- ▶ It has not been 10 years since the end of the calendar year in which the taxpayer or payer obtained a final decision regarding additional taxation.
- ▶ The party did not submit to the tax authority the tax documentation.

In the event that together the conditions mentioned in points 1 and 3 arise, the rate is tripled.

The above point 3 is not taken into consideration if the documentation in full scope is delivered to the tax authorities within the time frame specified by the tax authority, not longer than 14 days.

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.

Since 1 January 2019 addition regulation has entered:

- ▶ Failure in the submission or submission after the due date of the required statement concerning preparing transfer pricing documentation or TP-R: a fine of up to 720 daily rates (Article 56c Section 1 KKS)
- ▶ Missing or failure in the delivery submission or delivery after the due date or submitting false information about transfer prices to the Head of National Revenue Administration: a fine of up to 720 daily rates (i.e., up to PLN3.36 million) (Article 80e Section 1 KKS)
- ▶ If an adjustment is sustained, can penalties be assessed?

Yes, but there are no particular regulations in place.

- ▶ Is interest charged on penalties or payable on a refund?

Yes, the current rate is 8%.

b) Penalty relief

For 2018: 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%).

For 2019: If taxpayer supplements the documentation in a full scope in time indicated by tax authorities, but not longer than 14 days. There will be no increase in the penalty rate for the lack of the documentation (Art. 58c § 3 Tax Ordinance Act)

8. 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.

9. Likelihood of transfer pricing scrutiny and related audit by the local authority

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

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, changes 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. These 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 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 the transfer pricing methodology is challenged (*high/medium/low*)

The likelihood is 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 and situations, if any, more likely to undergo audit

In practice, there is no focus on particular industries. The authorities try to focus on an automated approach, i.e., using databases to find loss-makers or limited risk companies with highly variable financial results or companies with high spending on intragroup services.

10. APA and MAP opportunities

► Availability (unilateral, bilateral and 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

Poland

- ▶ **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.**
- ▶ **Ministry of Finance is planning to issue a simplified APA procedure in 2019.**

▶ 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

There is none specified.

▶ MAP opportunities

Yes, taxpayers may request a MAP if taxation has or is likely to occur that is not in accordance with the provisions of a DTT to which Poland is signatory.

The application should be submitted no later than three years from delivery to the taxpayer or an entity related to him control protocol or tax decision that leads or may lead to double taxation, unless the double taxation agreement, which forms the basis for submitting the application, specifies another term. The three-year period begins on the first of the following dates: the date of delivery of the control report or the date of delivery of the tax decision.

Application should be supplemented with:

- ▶ **Transfer pricing documentation**
- ▶ **Financial statement**
- ▶ **Relevant agreements**
- ▶ **Benchmarking analysis**
- ▶ **Protocols from tax control or tax decisions regarding double taxation**
- ▶ **Correspondence with foreign tax authorities concerning adjustments**

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1. Tax authority and relevant transfer pricing regulations or 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 or rulings and the 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 (CITC) came into force on 16 January 2015 following the publication of Law No. 2/2014.

Ministerial Order 1446-C/2001 of 21 December (TP Ministerial Order) sets the rules for the application of the different TP methods prescribed in Article 63 and the TP documentation requirements to eligible taxpayers.

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 (effective on 17 July 2015) and is currently foreseen in Article 138 of the Corporate Income Tax Code.

Furthermore, a general anti-tax avoidance provision applies to all simulated transactions, and the rules embodied in the interest limitation, CFCs and anti-tax haven regimes may be used in the general context of transfer pricing.

Articles 121-A and 121-B added to the CITC to cover the obligation for multinational groups to submit CbC reports and for its constituent entities to communicate the reporting entity.

► Section reference from local regulation

Related party regulations are set out in no. 4 of Article 63 of the CITC.

2. OECD Guidelines treatment and reference

Portugal is a member of the OECD. The Portuguese regulations and tax practice follow the OECD Guidelines and the TP Ministerial Order indicates that in cases of greater technical complexity, it is advisable to consult the reports produced by the OECD in TP matters.

Business restructurings are specifically addressed in the Portuguese transfer pricing regulations as transactions 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 interpretations in the context of audit procedures.

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 or rules?

Yes, the Portuguese transfer pricing rules require taxpayers with turnover and other income equal to or exceeding EUR3 million in the prior year to prepare contemporaneous documentation in the Portuguese language. The documentation should provide evidence of market parity regarding the terms and conditions agreed, accepted and practiced in the transactions performed 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 or thresholds

► Transfer pricing documentation

This is applicable for entities with a turnover of EUR3 million in net sales and other operating revenue in the previous tax year.

► Economic analysis

This is not applicable.

► BEPS master and local files

This is not applicable.

► CbCR

The report should be consistent with OECD requirements (i.e., group consolidated revenue of EUR750 million).

Portugal

c) Specific requirements

► 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

There is none specified.

d) BEPS Action 13 implementation overview

► Has your country adopted or 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 local files

This is not applicable.

► Effective or expected commencement date

CbCR rules apply to fiscal years starting on or after 1 January 2016. Master file or local file rules have not been introduced, and it is hard to foresee when they will be.

► Material differences from OECD report template or format

The BEPS Action 13 TP documentation format has not been adopted in Portugal. Full local TP documentation, which combines 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

There is no such thing as penalty protection regime in Portugal.

The BEPS Action 13 format report is not sufficient to eliminate penalty exposure. 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 minimize or eliminate penalty exposure. 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 or 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.

► CbCR notification included in the statutory tax return

Yes, the deadline for preparation or submission for the CbCR notification is the end of the fifth month following the fiscal year-end.

► Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

Yes, signed on 27 January 2016.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 must 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 required to submit the CbC report. It should be completed on an aggregate 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 annexes referred above (within the IES).

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

▶ Corporate income tax return

The documentation should be filed on or before 31 May (last day of the fifth month following tax year-end).

▶ Other transfer pricing disclosures and return

The documentation should be filed on or before 15 July (7 months and 15 days after tax year-end).

▶ CbCR notification

The documentation should be filed on or before 31 May (last day of the fifth month following tax year-end).

▶ CbC report preparation and submission

The end of the 12th month of the year following the reporting year.

b) Documentation preparation deadline

The statutory deadline for preparation of transfer pricing documentation is 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 or 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 (for both international and domestic transactions)

Yes

b) Priority and preference of methods

The transfer pricing methods described in the Portuguese legislation are based on the OECD Guidelines and therefore do not introduce 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

There is a preference for local comparables and if not, Iberian comparables; if these prove scarce, European comparables may be accepted.

b) Single-year vs. multiyear analysis

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

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 forwards and update of the financials

Portugal

There are no references in the law to whether fresh benchmarking is required or not, or if updated financials are acceptable or not. Fresh benchmarking is advised and financial updates should be carefully analyzed.

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 or criteria (20%) should be used in benchmarking studies.

8. Transfer pricing penalties and relief

a) Penalty exposure

► Consequences of failure to submit, late submission or incorrect disclosures

Failure to comply with documentation requirements may result in a possible shift of the burden of proof from the tax authorities to the taxpayer and the application of secret comparables.

Non-submission of the transfer pricing documentation and the lack of presentation of the CbC report is punishable with a fine ranging between EUR500 and EUR10,000, plus 5% of daily interest for each late day in delivering the relevant document.

In addition, the General Regime on Tax Infractions (RGIT) addresses penalties for the following situations:

- **The taxpayer stated in the IES that transfer pricing documentation was prepared and, despite being notified by the tax authorities to submit it, it was late in its delivery. The penalty related to late delivery can reach EUR20,000 per year and per company.**
- **The taxpayer does not state in the IES that transfer pricing documentation was prepared but was notified by the tax authorities to submit it. The penalty for noncompliance related to an omission or lack of evidence in the IES can reach EUR45,000 per year and per company.**
- **The taxpayer stated in the IES that transfer pricing documentation was prepared, and it was notified by the tax authorities to submit it, but the documentation was not prepared. The penalty for noncompliance related to improper fulfilment can reach EUR75,000 per year and per company.**

- **The taxpayer stated in the IES that transfer pricing documentation was prepared but refused to submit it to the tax authorities (when duly requested). The penalty for noncompliance related to the refusal to submit transfer pricing documentation can reach EUR150,000 per year and per company.**

► 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 4.857% per year.

► Is interest charged on penalties or payable on a refund?

Refer to the section above.

b) Penalty relief

There is no penalty relief regime available to taxpayers in Portugal. 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 and related audit by the 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. When it comes to recurrent loss-making companies, especially those often involved in cross-border transactions, the risk increases to high.

► 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 the transfer pricing methodology is challenged (*high/medium/low*)**

The likelihood of an adjustment if transfer pricing methodology is challenged is high.

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

Recurrent loss-making companies which often perform significant cross-border transactions. Contradictions disclosed in the IES lead to audits. Companies with low profitability and considerable public exposure.

11. APA and MAP opportunities

- ▶ **Availability (unilateral, bilateral and 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 cannot exceed a three-year period, which may be renewable upon a written request to the tax authorities. 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.

- ▶ **MAP opportunities**

Yes, taxpayers may request a MAP if taxation has or is likely to occur that is not in accordance with the provisions of a Double Tax Treaty to which Portugal is signatory. Under article 1(1) of the EU Arbitration Convention (90/436/EEC), taxpayers may also request a MAP when income included in the profits of an enterprise of a Contracting State are or may be equally included in the profits of an enterprise from another Contracting State.

Contact

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

State tax regime: General Tax Authority (GTA)

Qatar Financial Centre (QFC) tax regime: QFC Authority (QFCA) Tax Department

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations or rulings and the effective date of applicability

State tax regime – Income Tax Law No. 24 of 2018 which replaces the Income Tax Law No. 21 of 2009 (Qatar Income Tax Law), effective 13 December 2018, and the Executive Regulations of Income Tax Law No. 21 of 2009 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 No. 21 of 2009.

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 and reference

Qatar is not a member of the OECD; in practice, Qatar generally follows the OECD Guidelines.

On 19 December 2017, Qatar signed the Multilateral Competent Authority Agreement on the exchange of country-by-country reports.

On 9 September 2018, Qatar published new country-by-country reporting (CbCR) requirements that are in line with the OECD’s BEPS Action 13 Final Report in the Official Gazette. These requirements also apply to entities that are registered under the QFC.

On 4 December 2018, Qatar signed the Multilateral Convention to Implement Tax Treaty-Related Measures to Prevent Base Erosion and Profit Shifting (the Multilateral Instrument or MLI).

3. Transfer pricing documentation requirements

a) Applicability

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

State tax regime: The Qatar Income Tax Law does not provide specific documentation requirements. However, because the law requires the use of the CUP method, or other transfer pricing 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, which are:

- Primary accounting records
- Tax adjustment records
- Records of transactions with an associated business
- Evidence to demonstrate an arm’s-length result (including 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 transfer pricing documentation readily available in the event of a tax inquiry by the GTA.

QFC tax regime: A transfer pricing report 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 in previous years or when compared with competitors in the industry, among other exceptional circumstances).

b) Materiality limit or thresholds

► Transfer pricing documentation

There is no materiality limit.

► Economic analysis

There is no materiality limit.

► BEPS master and local files

Currently, BEPS Action 13 master file and local file documentation requirements are not yet adopted into the domestic legislation.

▶ **CbCR**

The materiality limit is an annual consolidated group revenue of QAR3 billion (approx. USD824 million) in the preceding fiscal year.

c) Specific requirements

▶ **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 and transfer pricing rules.

▶ **Local language documentation requirement**

State tax regime: transfer pricing documentation prepared in English is currently acceptable by the GTA. However, in practice, in the event of a preapproval application to use an OECD method other than CUP, a summary memorandum should be prepared in Arabic and submitted to the GTA.

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 and equity ratios are as follows:

- ▶ The ratio is 2:1 for a nonfinancial institution
- ▶ The ratio is 4:1 for a financial institution

The safe harbor debt and equity ratios relate only to the quantum (not the interest rate) of the loan.

d) BEPS Action 13 implementation overview

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

Qatar has introduced CbCR requirements.

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

This is not applicable.

▶ **Effective or expected commencement date**

This is not applicable.

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

This is not applicable.

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

The CbC Report template is in line with the prescribed template under BEPS Action 13.

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

Multinational enterprise (MNE) groups whose ultimate parent entities are tax residents in Qatar and have annual consolidated group revenues that exceed QAR3 billion in the preceding fiscal year are required to comply with CbCR notification and CbC report submission requirements for fiscal years commencing on or after 1 January 2017 (FY2017) in Qatar.

The CbCR requirements for Qatar tax resident entities that are members of MNE groups whose ultimate parent entities or surrogate parent entities are tax residents outside Qatar are currently suspended or deferred.

▶ **CbCR notification included in the statutory tax return**

There is none specified.

▶ **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

Yes. It was signed on 19 December 2017.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 GTA in support of the annual tax declaration.

There are currently no related-party disclosures or transfer pricing-related appendices, additional forms and 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 are currently no related-party disclosures or transfer pricing-related appendices, additional forms and 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 and disclosure timelines

a) Filing deadline

► Corporate income tax return

It should be filed within four months of the end of the accounting period.

► Other transfer pricing disclosures and return

This is not applicable.

► CbCR notification

For the fiscal year beginning on or after 1 January 2018 (FY2018), the local authorities are expected to require MNE groups whose ultimate parent entities are tax residents in Qatar to file CbCR notification with Qatar's authority on or before 12 months from the end of reporting fiscal year, subject to further announcement by Qatar authorities.

► CbC report preparation and submission

It should be done within 12 months from the end of the reporting fiscal year.

b) Documentation preparation deadline

It is recommended that the transfer pricing documentation be prepared and readily available on or before the annual tax return is filed with the local authorities.

c) Documentation submission deadline

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

No.

► Time period or 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 (for both international and domestic transactions)

Yes.

b) Priority and preference of methods

There is no distinction between domestic and international transactions under the current transfer pricing 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, which is subject to approval by the GTA.

The GTA 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 as 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 and Europe).

b) Single-year vs. multiyear analysis

A multiyear analysis is adopted.

c) Use of interquartile range

The interquartile range is used.

d) Fresh benchmarking search every year vs. roll forwards and update of the financials

Roll forwards and update of the financials of a prior study is used provided 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 is applicable.

8. Transfer pricing penalties and relief

a) Penalty exposure

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

There are currently no specific transfer pricing penalties for failure to maintain transfer pricing 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 transfer pricing 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 or payable on a 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 GTA. 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 or related audit by the local authority

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

State tax regime: The likelihood is 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: The likelihood is high; the QFCA Tax Department is more aggressive than the GTA with respect to transfer pricing reviews and 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 transfer pricing 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 the 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 transfer pricing documentation is available.

QFC tax regime: The likelihood of an adjustment is characterized as medium to high.

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

State tax regime: The GTA 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.

11. APA and MAP opportunities

► Availability (unilateral, bilateral and 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.

► Tenure

There is none specified.

► Rollback provisions

There is none specified.

► MAP opportunities

This is not applicable.

Contact

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Tax Administration of Serbia

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the effective date of applicability

Articles 59 through 62 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 2019).

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 and 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 or 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 or 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

The threshold is RSD8 million (approximately EUR65,000).

▶ BEPS master and local files

This is not applicable.

▶ CbCR

This is not applicable.

c) Specific requirements

▶ 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 or implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No

▶ Coverage in terms of master and local files

Not applicable

▶ Effective or expected commencement date

Not applicable

Republic of Serbia

▶ **Material differences from OECD report template or 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 included in the statutory tax return**

Not applicable

▶ **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

No

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 and disclosure timelines

a) Filing deadline

▶ **Corporate income tax return**

The deadline is 1 July 2019 for year ending on 31 December 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 and return**

The deadline is 1 July 2019 for year ending on 31 December 2018.

▶ **CbCR notification**

This is not applicable.

▶ **CbC report preparation and submission**

This is not applicable.

b) Documentation preparation deadline

There is a statutory deadline and 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 or 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.

6. Transfer pricing methods

a) Applicability

▶ **International transactions – yes**

▶ **Domestic transactions – yes**

b) Priority and 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. multiyear analysis

Use of a multiyear analysis is mandatory.

c) Use of interquartile range

Use of the interquartile range is mandatory.

d) Fresh benchmarking search every year vs. roll forwards and 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 and relief

a) Penalty exposure

▶ Consequences of failure to submit, late submission 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 or payable on a refund?

Legislation in the Republic of Serbia prescribes that the interest is charged on penalties or payable on refund at a yearly rate set by the National Bank of Serbia and increased by 10%.

b) Penalty relief

Taxpayers may opt for 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).

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 and related audit by the local authority

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

The likelihood is 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*)

The likelihood is 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 the transfer pricing methodology is challenged (*high/medium/low*)

The likelihood is medium, for the same reasons given above.

► Specific transactions, industries and 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 and MAP opportunities

► Availability (unilateral, bilateral and multilateral)

Advance rulings and APAs are not available in the Republic of Serbia.

► Tenure

This is not applicable.

► Rollback provisions

This is not applicable.

► MAP opportunities

This is applicable through double tax treaties. There is no elaborate practice in Republic of Serbia regarding MAP.

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1. Tax authority and relevant transfer pricing regulation or 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 or rulings and the 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 which defines related party/associated enterprise

Refer to the section above.

2. OECD Guidelines treatment and 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 or 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 for submission of the annual corporate income tax return (the 25th day of the 3rd month after the tax year-end).

Romania

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 or 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 requirements

▶ 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 or 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 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 or 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 or 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 to be submitted 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.

- ▶ **CbCR notification included in the statutory tax return**

No, not included in the tax return.

- ▶ **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

Yes. 19 December 2017.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 non-resident companies for which the Romanian company has an obligation to withhold taxes**
- ▶ **Disclosure or registration of contracts concluded by Romanian entities with non-resident 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 non-resident 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 and 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 and return**

Not applicable.

- ▶ **CbCR notification**

Notification to the competent authority in Romania is required to be submitted 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 and 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 or 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

- ▶ Yes.

b) Priority and 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. multiyear analysis

There is a preference for single-year testing; multiyear 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 forwards and 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 multiyear analyses.

f) Other specific benchmarking criteria, if any

None specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

► Consequences of failure to submit, late submission 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 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 will be imposed on the large- and medium-sized taxpayers, respectively, and between RON2,000 and RON3,500 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 or payable on a 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 and related audit by the 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 high.

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

Based on the observed practice of the tax authorities, the likelihood is medium to high that the transfer pricing methodology will be challenged if transfer pricing is reviewed as part of the audit.

► Likelihood of an adjustment if the 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.

Romania

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

There are no such specific transactions and industries.

11. APA and MAP opportunities

- ▶ **Availability (unilateral, bilateral and 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.

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.

- ▶ **MAP opportunities**

If requested under a Romanian DTT, Romanian taxpayers must make a MAP request before the deadline stipulated established under the relevant DTT, from the date of the ANAF notification which leads or may lead to double taxation. Taxpayers have three years to present a case to ANAF under the EU Arbitration Convention (90/436/EEC).

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1. Tax authority and relevant transfer pricing regulation or 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 or rulings and the effective date of applicability

There is the 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, and documentation for multinational groups of companies, effective from 1 January 2012.

▶ Section reference from local regulation

Major transfer pricing 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 and 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 or 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 or thresholds

▶ Transfer pricing documentation

▶ Cross-border transactions between related parties: With respect to 2018 and previous reporting periods, no materiality limits existed for recognizing cross-border transactions between related parties as subject to transfer pricing control. Starting from 1 January 2019, a threshold of RUB60 million applies for cross-border transactions to be classified as controlled for transfer pricing purposes.

▶ Cross-border transactions between unrelated parties concerning sale of commodities or in case a party to transactions is located in a low-tax jurisdiction: There is a threshold of RUB60 million.

▶ Domestic transactions between related parties: Refer to the "Specific requirements" section below.

▶ Economic analysis

There is no materiality limit.

▶ BEPS master and local files

There is a threshold of 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

Russia

There is a threshold of 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 requirements

► Treatment of domestic transactions

With respect to 2018 and previous reporting periods, there was a documentation obligation for domestic transactions. The local transfer pricing documentation requirements covered domestic related-party transactions exceeding RUB1 billion (or from RUB60 million to RUB100 million if a party to a transaction is, for instance, subject to certain tax incentives).

Starting from 1 January 2019, a significant number of domestic transactions was excluded from the transfer pricing control in Russia. Related-party transactions remaining under transfer pricing control are those exceeding RUB1 billion per year and meeting one of the following conditions:

- The parties to the transaction apply different tax rates on profits derived from that transaction.
- One of the parties pays mineral extraction tax at ad valorem rates.
- One party applies or both parties apply a special tax regime (for example, the unified tax on imputed income or the unified agricultural tax).
- One of the parties is exempt from profits tax.
- One of the parties is an operator or holder of a license to develop a new offshore deposit.
- One or both parties are residents of the Skolkovo research center.
- One or both parties apply an investment tax deduction for profits tax purposes.
- One of the parties pays tax on additional income from the hydrocarbons extraction with respect to income from the transaction.

For those domestic transactions which fall outside the transfer pricing control from 2019, there is still a possibility for the local tax authorities to review those from the perspective of the unjustified tax benefit. When doing so, a pricing approach in those domestic transactions may be examined using the transfer pricing methods.

► Local language documentation requirement

The transfer pricing 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 harbor, a taxpayer is still able to conduct an economic analysis to sustain the rate.

d) BEPS Action 13 implementation overview

► Has your country adopted or 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 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 or 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 or format

There are a few material differences between the OECD report template or format and Russian regulations. The relevant sections from the regulation are mentioned below and mainly relate to the master file content:

- 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).
- 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.

Entities are required to complete XML forms of CbCR notification as per the orders issued in May 2018.

- ▶ **CbCR notification included in the statutory tax return**

No

- ▶ **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

Yes, it is so as of 26 January 2017.

4. Transfer pricing return and related-party disclosures

- a) Related-party disclosures and 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 2019 for 2018).

- b) Transfer pricing-specific returns**

There are no other specific transfer pricing returns in Russia.

5. Transfer pricing documentation and disclosure timelines

- a) Filing deadline**

- ▶ **Corporate income tax return**

28 March

- ▶ **Other transfer pricing disclosures and 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 and 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 and recommendation for preparation of transfer pricing documentation (local file). It only needs to be finalized by the time of submitting upon request.

- ▶ **Both the existing local transfer pricing 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. For years 2018 and 2019, the BEPS-compliant local file may be requested not earlier than 31 December of the year following the reporting calendar year.**

- ▶ **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?**

o, transfer pricing documentation should not be provided along with the tax return but may be requested by the tax authorities annually.

- ▶ **Time period or deadline for submission on tax authority request**
 - ▶ Both the existing local transfer pricing 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 three months of request.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

Yes, it is applicable for both international and domestic transactions.

b) Priority and 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.

It is also allowed to use the independent valuation report for one-off transactions where none of the five transfer pricing methods can be applied.

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 and Pan-Asian search).

b) Single-year vs. multiyear 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 exchange quotations or the recognized pricing agencies' data – in the latter case, the full range of pricing data is acceptable. 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 forwards and 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 and 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 simple and 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 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 on the basis of the combination of the above criteria.**

8. Transfer pricing penalties and relief

a) Penalty exposure

- ▶ **Consequences of failure to submit, late submission 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 or late submission of a master file may result in a penalty of RUB100,000 (applies for financial years starting in 2020).
 - ▶ Failure to submit or 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 or payable on a 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). Any amendment of the notification form, if submitted, will renew the statute of limitation from the amendment date.

10. Likelihood of transfer pricing scrutiny and related audit by the 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 the 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 and 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

Russia

have been focused on cross-border commodity transactions and transactions involving low-tax jurisdictions. Additional high-risk factors include intercompany 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 and MAP opportunities

► Availability (unilateral, bilateral and multilateral)

The APA program has been available since 1 January 2012 and is only for “major taxpayers.” The unilateral APAs were made possible from 1 January 2012, whilst bilateral and multilateral APAs were enabled only on 4 June 2018 when a special procedure for such APAs was issued by the Russian competent authority.

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

There is none specified.

► MAP opportunities

MAPs are generally available under the double tax treaties which Russia has with its treaty partners. The competent authority which is responsible for MAP cases in Russia is the Russian Ministry of Finance. In January 2019, the Russian Ministry of Finance issued MAP guidelines for taxpayers.

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

General Authority of Zakat and Tax (GAZT)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the effective date of applicability

Kingdom of Saudi Arabia (KSA) income tax law (ITL) has the following provisions:

- ▶ Article 63(c) of the KSA ITL 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.

On 15 February 2019, GAZT published final transfer pricing bylaws (TP bylaws) (pursuant to Board Resolution No. [6-1-19] dated 25/05/1440H corresponding to 31/01/2019) along with frequently asked questions (FAQs). Further, Article 24 for the TP bylaws provides that detailed TP guidelines may be issued upon approval by the Governor of the Authority.

▶ Section reference from local regulation

Article 64 of the KSA ITL and the TP bylaws were issued on 15 February 2019.

2. OECD Guidelines treatment and reference

Saudi Arabia is not a member of the OECD. However, Saudi Arabia has made a commitment to the BEPS minimum standards and the TP bylaws mostly follow the OECD TP Guidelines.

3. Transfer pricing documentation requirements

a) Applicability

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

The TP bylaws has introduced the three-tiered TP documentation including master file, local file and country-by-country report broadly aligned with the OECD TP Guidelines.

Article 2 of the TP bylaws state that the transfer pricing provisions apply to all taxable persons under the Income Tax Law. Hence, entities or persons that are subject only to Zakat are not subject to the TP Bylaws. Further FAQs also clarify that applicability extends to mixed-ownership entities whose income is subject to corporate income tax to the extent attributed to shares owned by non-Saudis and those treated by Saudis.

▶ Does transfer pricing documentation have to be prepared annually?

Yes, however, the master file need not be prepared on an annual basis if the taxpayer can determine that it reflects the most recent information pertaining to the group.

b) Materiality limit or thresholds

▶ Transfer pricing documentation

Local file needs to be prepared and maintained if arm’s-length value of controlled transactions during any 12 months period is SAR6 million or above.

▶ Economic analysis

This is not applicable.

▶ BEPS master and local files

Both master file and local file needs to be prepared and maintained if arm’s-length value of controlled transactions during any 12 months period is SAR6 million or above.

▶ CbCR

The report should be submitted if the consolidated group revenue of a multinational enterprise group during the year immediately preceding the current reporting year as reflected in its consolidated financial statement exceeds SAR3.2 billion (approx. EUR750 million).

Saudi Arabia

c) Specific requirements

► Treatment of domestic transactions

Domestic transactions are not excluded from the scope of TP provisions as per the TP bylaws.

► Local language documentation requirement

Regarding CbCR, the TP bylaws specify that the documentation needs to be submitted in the language and form that the Authority may specify. Further for master file and local file, the TP bylaws do not specify any language; however, the FAQs recommend the use of official language (Arabic) to the extent reasonably possible.

► Safe harbor availability

There is none specified.

d) BEPS Action 13 implementation overview

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

The TP bylaws has introduced TP documentation and CbCR requirements that are broadly aligned with the OECD's BEPS Action 13 Final Report.

► Coverage in terms of master and local files

The TP bylaws incorporates the master file, local file and CbCR concept as recommended under BEPS Action 13 on TP documentation.

► Effective or expected commencement date

This is applicable for fiscal years ending on or after 31 December 2018.

► Material differences from OECD report template or format

As per the TP bylaws, the following difference can be noticed:

Local file – in addition to OECD local file template, the TP bylaws prescribes for a comprehensive industry analysis.

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

There is none specified. All penalties and fines under the Income Tax Law are applicable to all income tax matters.

► CbCR notification and CbC report submission requirement

KSA taxpayers that are members of an MNE Group with consolidated group revenue exceeding SAR3.2 billion during the year immediately preceding the current reporting year as reflected in its consolidated financial statement will be subject to CbC reporting in Saudi Arabia, and will be required to notify the GAZT regarding the submission of the CbC report within 120 days following the end of the reporting year. The CBCR shall be filed not later than 12 months after the last day of the reporting year of the MNE Group. In cases of more than one constituent entities operating in KSA, a designated entity can file CbCR notification on behalf of all other entities by notifying about the same to the tax authority.

► CbCR notification included in the statutory tax return

Yes

► Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports.

No

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

All income tax payers in Saudi Arabia will be required to submit to the GAZT, together with their annual income tax declaration, a disclosure form containing information related to their controlled transactions. Saudi Arabian taxpayers that have controlled transactions will have to submit the disclosure form within 120 days after the last day of the fiscal year (i.e., by 30 April 2019, for fiscal year ending 31 December 2018).

b) Transfer pricing-specific returns

Disclosure form, as explained above.

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

► Corporate income tax return

The documentation should be filed 120 days from the end of the taxable year.

► Other transfer pricing disclosures and return

The documentation includes disclosure form along with CITR.

► **CbCR notification**

The documentation should be filed within 120 days following the end of the reporting year. CbCR notification is an integral part of the disclosure form.

► **CbC report preparation and submission**

The documentation should be submitted within 12 months from the end of the reporting year of the MNE group.

b) Documentation preparation deadline

The preparation of contemporaneous TP local file is recommended along with disclosure form due to the shorter period (minimum 30 days) available for submitting local file upon request from the tax authority. During the 2019 calendar year, all taxpayers will be given an extension of 60 days.

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 TP documentation. The TP documentation will need to be submitted upon request.

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

The transfer pricing documentation shall be provided to GAZT upon request within the specified duration (which shall be not lesser than 30 days from the date of request). During the 2019 calendar year, all taxpayers will be given an extension of 60 days.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

Yes, Article 7 of the TP bylaws provides the five approved methods to determine the arm's-length result of transactions; while Article 9 provides for the use of methods, other than the approved methods.

b) Priority and preference of methods

No, Article 7 B of the TP bylaws provides that there is no order of preference for the five approved methods. However, the other methods provided under Article 9 can be applied only if the five approved methods cannot be applied.

7. Benchmarking requirements

a) Local vs. regional comparables

Article 13 C of the TP bylaws provides that foreign Comparable Transactions can be used in the absence of domestic comparable transactions.

b) Single-year vs. multiyear analysis

Multiple-year analysis for comparable companies is acceptable, providing sufficient reasons in the local file.

c) Use of interquartile range

Article 11 provides for use of arm's-length range; however, there is no specific reference to interquartile range.

d) Fresh benchmarking search every year vs. roll forwards and update of the financials

Taxpayers are required to perform comparability analysis on tri-annual basis, if there is no change in conditions and circumstances of the taxpayer and its controlled transactions.

e) Simple vs. weighted average

There is none specified.

f) Other specific benchmarking criteria, if any

Article 13 A and B provide that secret comparables cannot be used.

8. Transfer pricing penalties and relief

a) Penalty exposure

► **Consequences of failure to submit, late submission or incorrect disclosures**

There is none prescribed. All penalties and fines under the Income Tax Law are applicable to all income tax matters.

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

Currently, there is no specific TP penalty prescribed under the ITL. However, all penalties and fines under the Income Tax Law are applicable to all income tax matters including TP.

► **Is interest charged on penalties or payable on a refund?**

There is none specified.

b) Penalty relief

No penalty relief is currently specified under KSA ITL.

9. Statute of limitations on transfer pricing assessments

There is no specific statute of limitations set out in KSA ITL regarding TP assessments. The general statute of limitations (Article 65) for GAZT 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 and related audit by the local authority

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

No detailed information is currently available about the level of TP audit risk. Since the TP bylaws are recently introduced, no patterns of audit risk have yet been established. However, due to release of TP bylaws, the likelihood of TP related audits will be high.

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

Refer to the section above.

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

This might depend on whether the taxpayers have maintained TP local file.

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

There is none specified.

11. APA and MAP opportunities

► Availability (unilateral, bilateral and multilateral)

Currently, there is no APA procedure in place. However, taxpayers can apply for advance rulings with the tax authorities on specific matters.

► Tenure

This is not applicable.

► Rollback provisions

This is not applicable.

► MAP opportunity

This is not applicable.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Senegalese Revenue Authorities (SRA) (Direction Générale des Impôts et Domaine or DGID)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the effective date of applicability

There are the General Tax Code (GTC) articles 17 (arm's-length principle), 31bis (annual declaration of foreign related-party transactions), 31ter (CbCR), 638 and 639 (transfer pricing documentation obligation), 9-2 (thin capitalization legislation, applied in the context of certain intragroup financing arrangements only, e.g., intragroup interest payments on intragroup debt), 667-III.a (annual TP return fines) 667-III.c (transfer pricing documentation fine) and 667-III.b (CbCR fine). The effective date of applicability is 1 January 2018.

▶ Section reference from local regulation

Direct taxes in the GTC

2. OECD Guidelines treatment and reference

Senegal is not a member of the OECD. However, as a member of the inclusive framework, Senegal agrees to implement a minimum BEPS standard (Actions 5, 6, 13 and 14). In addition, the guides published regarding TP by the SRA clearly refers to OECD Principles.

3. Transfer pricing documentation requirements

a) Applicability

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

Yes

▶ Does transfer pricing documentation have to be prepared annually?

Yes

b) Materiality limit or thresholds

▶ Transfer pricing documentation

Taxpayers that fulfill at least one of the following conditions need to prepare the TP documentation:

- ▶ Turnover excluding taxes or gross assets equal to XOF5 billion at least
- ▶ Holding, at the end of the FY, directly or indirectly more than half of the share capital or voting rights of a company, located in Senegal or abroad, which generates a turnover excluding taxes or holds gross assets equal to XOF5 billion at least
- ▶ Being directly or indirectly held at least for more than half of the share capital or voting rights by a company generating a turnover excluding taxes or hold gross assets equal to XOF5 billion

▶ Economic analysis

There is no materiality limit prior to 2018. For financial years starting on or after 1 January 2018, only "important intercompany transactions" need to be indicated in the TP documentation.

▶ BEPS master and local files

As from financial years opened after 1 January 2018, the content of the documentation is fully in line with BEPS, Action 13 (master file and local file).

▶ CbCR

Taxpayers that fulfill at least one of the following conditions need to file the CbC report:

- ▶ The Senegalese tax-resident company has been elected by the multinational group to file a CbC report and has informed the Senegalese tax administration.
- ▶ The Senegalese tax-resident company fails to give evidence that another company of the multinational group [either based in Senegal or in a country that has implemented a similar CbCR requirement or in a jurisdiction that has concluded with Senegal a qualified exchange of information instrument] has been designated for purposes of filing of the CbC report.
- ▶ The Senegalese jurisdiction has been notified regarding a systematic failure to exchange the information.

c) Specific requirements

▶ Treatment of domestic transactions

Senegal

There is no documentation obligation for domestic transactions. However, it is expected for domestic transactions to follow arm's-length principles as they may be under scrutiny during tax audit.

▶ **Local language documentation requirement**

There is no guidance as for the language for documentation. However, tax auditors are entitled to request a translation of the documentation if it is provided in English.

▶ **Safe harbor availability**

There is no specific guidance.

d) BEPS Action 13 implementation overview

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

Yes.

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

Both the master and the local files are covered.

▶ **Effective or expected commencement date**

The effective date is 1 January 2018. However, the local file is also due for FY17.

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

There is none specified.

▶ **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 relating to the Senegalese entity itself (including amounts of intragroup transactions) needs to be sourced from the Senegalese statutory accounts.

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

The Senegalese entity subject to the filing of the CbCR should notify SRA of its UPE or SPE status, or which entity is declaring (name and tax residency) by the last day of the MNE's fiscal year. The CbC report should be submitted within 12 months following the end of FY.

▶ **CbCR notification included in the statutory tax return**

Yes, it is there if the Senegalese entity is not the UPE or SPE.

▶ **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

Yes

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

The TP documentation only needs to be provided upon request during a tax audit.

b) Transfer pricing-specific returns

The TP return needs to be submitted in French as part of the taxpayer's annual tax return. Online submission tool is provided.

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

▶ **Corporate income tax return**

The deadline is 30 April following each FY end.

▶ **Other transfer pricing disclosures and return**

The annual TP return due date is 30 April of each year.

▶ **CbCR notification**

The deadline is by the last day of the MNE's fiscal year (31 December).

▶ **CbC report preparation and submission**

CbC report submission is to be submitted within 12 months following the FY end.

b) Documentation preparation deadline

It should be available by the time of a tax audit (accounts examination on site).

c) Documentation submission deadline

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

No, there is no submission deadline.

- ▶ **Time period or deadline for submission on tax authority request**

The deadline is 20 days following the tax auditor's request of the TP documentation.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

There is applicability for international transactions. Domestic transactions between related companies should only respect arm's-length principle.

b) Priority and preference of methods

These methods are accepted: CUP, resale price, cost-plus, profit split and TNMM.

7. Benchmarking requirements

a) Local vs. regional comparables

There is no specific indication. However, local comparables would be preferred.

b) Single-year vs. multiyear analysis

There is no guidance provided.

c) Use of interquartile range

Yes, there are requirements.

d) Fresh benchmarking search every year vs. roll forwards and update of the financials

There is no guidance provided.

e) Simple vs. weighted average

There is no guidance provided.

f) Other specific benchmarking criteria, if any

There is no guidance provided.

8. Transfer pricing penalties and relief

a) Penalty exposure

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

XOF10 million fine applies for the failure or delay to submit the TP return. XOF25 million fine applies for the failure or delay to submit the CbC report. For missing or incomplete documentation, the fine applies at the rate of 0.5% of the volume of transactions that were not documented or are missing.

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

After a transfer pricing reassessment is made, the profit indirectly transferred should be qualified as a deemed distribution of a benefit. Such "benefit" transfer should entail CIT and WHT on distributed amounts payments. Accordingly, tax auditors should apply penalties at the rate of 25% applied on the due CIT and 50% applied on the due WHT on distributed amounts.

- ▶ **Is interest charged on penalties or payable on a refund?**

No interest will apply on the penalties mentioned above.

b) Penalty relief

Subject to further negotiations with tax authorities

9. Statute of limitations on transfer pricing assessments

4 years

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

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

The likelihood is medium as it will allow tax authorities to assess the effective profit which should be taxed locally.

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

Senegal

The likelihood is medium if they assume that the company chose this method to lower the taxable base.

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

The likelihood is medium as we assume that challenging TP method may entail for SRA an increase of the taxable base.

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

The industries are large companies – telecommunication, oil and gas, mining, and companies in the hospitality industry.

► **Rollback provisions**

There is no guidance provided.

► **MAP opportunities**

Yes, taxpayers may request an MAP if taxation has or is likely to occur that is not in accordance with the provisions of a Double Taxation Treaty to which Senegal is signatory.

11. APA and MAP opportunities

► **Availability (unilateral, bilateral and multilateral)**

Unilateral and bilateral APAs are available.

► **Tenure**

The APA application should be filed at least six months before the beginning of the first fiscal year indicated in the APA request.

Contact

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Inland Revenue Authority of Singapore (IRAS)

b) Relevant transfer pricing section reference

- ▶ The name of transfer pricing regulations or rulings and the effective date of applicability

The Singapore Government published, on 22 February 2018, the "Income Tax (Transfer Pricing Documentation) Rules 2018" (the TPD Rules) under the Singapore Income Tax Act (ITA) in the Singapore Government Gazette. The TPD Rules are effective as of 23 February 2018 and apply for the basis period for the Year of Assessment (YA) 2019 and thereafter.

In addition, on 23 February 2018, the IRAS released the fifth edition of the Singapore transfer pricing guidelines (2018 Singapore Transfer Pricing Guidelines). The changes incorporate the TPD Rules into the guidelines and provide examples and explanations on certain aspects of the TPD Rules.

Section 34D of the ITA¹ 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.

Section 34E allows the comptroller to impose a surcharge of 5% on the transfer pricing adjustments made by the comptroller with effect from the YA 2019.

Section 34F legislates the mandatory requirement for contemporaneous and adequate transfer pricing documentation, and penalties for noncompliance from YA 2019.

- ▶ Section reference from local regulation
- ▶ Under section 13(16) of the Singapore ITA, a "related party, in relation to a person, means 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."

¹Relevant sections of the Singapore ITA 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. OECD Guidelines treatment and reference

Singapore is not an OECD member country; however, it is a BEPS Associate country (as announced on 16 June 2016).

The 2018 Singapore Transfer Pricing Guidelines are generally consistent with the OECD Guidelines.

3. Transfer pricing documentation requirements

a) Applicability

- ▶ Does your country have transfer pricing documentation guidelines or rules?

Yes. With effect from YA 2019, Singapore has compulsory transfer pricing documentation requirements.

- ▶ Does transfer pricing documentation have to be prepared annually?

Transfer pricing documentation should be prepared annually under the 2018 Singapore Transfer Pricing Guidelines. However, to reduce taxpayers' compliance burden, IRAS allows taxpayers to use the transfer pricing documentation they have prepared previously (past transfer pricing documentation) to support the transfer price in the basis period concerned if the transfer pricing documentation is a qualifying past transfer pricing documentation.

Qualifying past transfer pricing documentation means:

- ▶ Past transfer pricing documentation prepared for the first basis period immediately preceding the basis period concerned and which satisfies certain conditions

Or

- ▶ In the absence of subparagraph (a), past transfer pricing documentation prepared for the second basis period immediately preceding the basis period concerned and which satisfies certain conditions

Hence, the transfer pricing documentation is required to be refreshed only once every three years if the existing transfer pricing documentation qualifies as past transfer pricing documentation.

For existing transfer pricing documentation to be qualifying past transfer pricing documentation, the following conditions must be satisfied:

Singapore

- ▶ The transaction for which the past transfer pricing documentation was prepared is of the same type as the transaction undertaken in the basis period concerned
- ▶ The transaction for which the past transfer pricing documentation was prepared and the transaction in the basis period concerned are undertaken with the same related parties
- ▶ The past transfer pricing documentation must contain documentation at group level and entity level as prescribed in the TPD Rules
- ▶ The past transfer pricing documentation must be dated and prepared in English
- ▶ The information contained in the past transfer pricing documentation on the following matters accurately describes the same matters in relation to the transaction in the basis period concerned:
 - ▶ The commercial or financial relations between the taxpayers and their related parties
 - ▶ The conditions made or imposed between the taxpayers and their related parties
 - ▶ The transfer pricing method that is used for the transaction
 - ▶ The arm's-length conditions

To make use of qualifying past transfer pricing documentation for a related-party transaction undertaken in the basis period concerned, taxpayers need only to prepare simplified transfer pricing documentation for that transaction. The simplified transfer pricing documentation need only:

- ▶ Contain a declaration by the taxpayer that it has prepared qualifying past transfer pricing documentation
- ▶ Include, by way of an attachment, a copy of the qualifying past transfer pricing documentation

There is still a requirement to conduct annual testing of the actual results against the arm's-length results in the qualifying past transfer pricing documentation.

As mentioned above, with effect from YA 2019, Section 34F legislates the requirement for Singapore taxpayers to prepare contemporaneous transfer pricing documentation. Taxpayers are required to prepare transfer pricing documentation if they meet certain conditions. Transfer pricing documentation is required to be prepared no later than the statutory deadline for the filing of the income tax return.

Additionally, per paragraph 6.6 of the 2018 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 and thresholds

▶ Transfer pricing documentation

Unless exemption from transfer pricing documentation for specified transactions applies, taxpayers must prepare transfer pricing documentation for their related-party transactions undertaken in a basis period (referred to as the "basis period concerned") when either of these two conditions is met:

- ▶ Condition (a): The gross revenue from their trade or business for the basis period concerned is more than S\$10 million.
- ▶ Condition (b): They were required to prepare transfer pricing documentation under Section 34F of the ITA for the basis period immediately before the basis period concerned. In other words, taxpayers who were required to prepare transfer pricing documentation for a previous basis period, would continue to be required to do so for the subsequent basis period, and so on.

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 or exempt from Singapore tax 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 that fall under Annex C of the 2018 Singapore Transfer Pricing Guidelines
- ▶ Where the taxpayer applies the indicative margin for related-party loans in accordance with the administrative practice

- ▶ When the related-party transactions are covered under an APA, although annual compliance reports are still required under an APA
- ▶ When the related-party transaction does not exceed certain value as follows:
- ▶ SGD15 million for purchase or sale of goods (respectively)
- ▶ SGD15 million for loans owned to or by related parties (respectively)
- ▶ SGD1 million for all other categories of transactions (e.g., service income and expenses, royalty income and expense, rental income and expense, and guarantee income and 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.

▶ 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 albeit the details requested are for the applicable Singapore entity. The 2018 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 Singapore-resident ultimate parent entities (UPEs) of the following two types of multinational enterprise (MNE) groups are required to submit a country-by-country (CbC) report to the comptroller (or an authorized person):

- ▶ **Type A group:** An MNE group with consolidated revenues of at least S\$1.125 billion (US\$850 million) and has two or more entities that are tax residents in different countries

- ▶ **Type B group:** An MNE group with consolidated revenues of at least S\$1.125 billion and has a single entity that is tax resident in one country, but is also subject to income tax for its business carried out through a permanent establishment in another country

c) Specific requirements

▶ 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 or exempt from tax 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 6.40(c) of the 2018 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 2018 Singapore Transfer Pricing Guidelines for routine services and paragraph 13.28 of the 2018 Singapore Transfer Pricing Guidelines for related-party loans).

d) BEPS Action 13 implementation overview

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

▶ Coverage in terms of master and 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.

Singapore

▶ Effective or expected commencement date

This is already in place (under the requirements for local Singapore transfer pricing documentation).

▶ Material differences from OECD report template or 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 noncompliance with transfer pricing documentation requirements.

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

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.

▶ CbCR notification included in the statutory tax return

This is not applicable.

▶ Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

Yes. It is so as of 21 June 2017.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

With effect from YA 2018, a new related-party transactions reporting requirement for companies was introduced. 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 and disclosure timelines

a) Filing deadline

▶ Corporate income tax return

Corporate income tax return should be filed by 30 November (paper filing) or 15 December (electronic filing).

▶ Other transfer pricing disclosures and return

With effect from YA 2018, it should be filed by 30 November (paper filing) or 15 December (electronic filing) for Related-Party Transactions Form which is to be submitted together with Form C.

▶ CbCR notification

There is no CbCR notification requirement in Singapore. Nonetheless, Singapore-headquartered MNEs which have a filing obligation in Singapore will be required to provide the following information to the IRAS at least three months before the filing deadline via email:

▶ Name and UEN of the UPE (i.e., reporting entity)

▶ Financial reporting period of the UPE (DD/MM/YYYY to DD/MM/YYYY)

▶ Contact person's name and contact number

▶ Email of contact person (if different from that used to provide your reply)

▶ CbC report preparation and 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 or deadline for submission on tax authority request**

Transfer pricing documentation should be submitted within 30 days upon request.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

Yes

b) Priority and 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 2018 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 2018 Singapore Transfer Pricing Guidelines recommend a three-step approach:

- ▶ **Conduct a comparability analysis**
- ▶ **Identify the most appropriate transfer pricing method and tested party**
- ▶ **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. multiyear analysis

Single-year results of the tested party are expected to be compared with multiple-year results of the comparables.

c) Use of interquartile range

Interquartile range calculation is acceptable.

d) Fresh benchmarking search every year vs. roll forwards and update of the financials

There is no need to conduct a fresh benchmarking search every year; however, the 2018 Singapore Transfer Pricing Guidelines state that taxpayers should update their transfer pricing documentation, including the benchmarking set, when there are material changes that impact the functional analysis or transfer pricing analysis. Taxpayers are also required 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 5.50 (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 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.**

- ▶ 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 and relief

a) Penalty exposure

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

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

A S\$1,000 (US\$760) penalty is imposed on the failure to file the CbC report by the due date or to retain all records used to prepare a CbC report for a period of five years. If the penalty is not paid, the responsible person may be imprisoned for up to six months. An additional penalty of up to S\$50 (US\$38) per day may also be imposed for every day during which the failure continues after conviction.

A penalty of up to S\$10,000 (US\$7,600) applies to the filing of false or misleading CbCR information. The responsible person may also be imprisoned for up to two years.

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 if the taxpayer has prepared contemporaneous documentation.

- ▶ Is interest charged on penalties or payable on a refund?

This is 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 in relation to noncompliance with transfer pricing documentation requirements.

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 2015 is 31 December 2019).

10. Likelihood of transfer pricing scrutiny and related audit by the 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 and results arrived at; and the transfer pricing method applied, as well as economic substance questions and request for evidence.

- ▶ Likelihood of an adjustment if the 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 or situations, if any, more likely to undergo audit

There is none specified.

11. APA and MAP opportunities

▶ **Availability (unilateral, bilateral and 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.

▶ **MAP opportunities**

They are available. Taxpayers should submit a MAP application to the IRAS within the time limit specified in the MAP article of the relevant DTT.

Contact

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1. Tax authority and relevant transfer pricing regulation or 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 or rulings and the effective date of applicability

The Slovak transfer pricing 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 transfer pricing method used in transactions with foreign related parties. The Slovak Ministry of Finance regularly issues official guidance on the contents of transfer pricing 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 and 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 2017 BEPS-updated version of the OECD Guidelines in the Slovak legislation (except for the update regarding the transfer pricing documentation – see below).

3. Transfer pricing documentation requirements

a) Applicability

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

Yes.

▶ Does transfer pricing documentation have to be prepared annually?

No. However, tax authorities can request the transfer pricing documentation for relevant year once the obligation to file the tax return for relevant period was fulfilled

b) Materiality limit or thresholds

▶ Transfer pricing documentation

- ▶ Obligation to prepare full documentation is set for every cross-border transaction (or a group of such transactions) value of which exceeds EUR10 million during the tax period. Basic documentation will be required for each cross-border transaction (or group of such transactions) that exceeds the value of EUR1 million. The basic documentation should also be prepared by every taxpayer with revenues exceeding EUR8 million regardless of the value of a cross-border transaction.

▶ Economic analysis

Economic analysis should be performed as part of the full documentation for each transaction exceeding the materiality threshold. Shortened analysis substantiating the used transfer pricing method (but not requiring the benchmark) is required for basic documentation.

▶ BEPS master and local files

New Slovak guidelines for transfer pricing documentation issued in 2018 are almost fully compatible with the BEPS recommendations for local and master file.

▶ CbCR

CbC reporting is required.

c) Specific requirements

▶ Treatment of domestic transactions

There is a documentation obligation for domestic transactions but only in specific cases, i.e., material transactions of taxpayers applying for tax relief, APA, MAP or corresponding adjustments

▶ **Local language documentation requirement**

The transfer pricing documentation should be submitted in the local language. However, it is also possible to submit the documentation in English if permitted by the tax authority. Tax authority can always request translation into Slovak language.

▶ **Safe harbour availability**

This is not reflected formally in Slovak tax regulations but, in general, tax authorities abide by OECD transfer pricing guidelines.

d) BEPS Action 13 implementation overview

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

Yes.

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

Both the master and local files are covered.

▶ **Effective or expected commencement date**

The law is applicable for the fiscal year beginning on 1 January 2018.

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

There is none specified.

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

BEPS Action 13 format report should be sufficient to achieve penalty protection. However, the OECD templates do not match with local reality completely and some details might be missing either in functions, assets and risk (FAR) analysis or intercompany transactions. Thus, local review is recommended.

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

There is a CbCR notification and CbC report submission requirement in the Slovak Republic.

▶ **CbCR notification included in the statutory tax return**

This is not applicable.

▶ **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

Yes. The date is 27 January 2016.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 or 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 and disclosure timelines

a) Filing deadline

▶ **Corporate income tax return**

The deadline is usually three months after the end of the fiscal year, with the possibility of a three-month extension.

▶ **Other transfer pricing disclosures and return**

The high-level information on IC transactions is submitted within the CIT return.

▶ **CbCR notification**

Yes. The deadline is the same as for CIT return.

▶ **CbC report preparation and submission**

The deadline is 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 or 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 (for both international and domestic transactions)

- ▶ 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 those listed above.

b) Priority and 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 and preferred.

b) Single-year vs. multiyear analysis

Multiyear 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 forwards and update of the financials

Slovak legislation does not explicitly require new benchmark studies every year but our experience indicates that it is recommended to at least update benchmark searches annually. Brand new benchmark should be prepared every three years.

e) Simple vs. weighted average

There is none specified (not formally mentioned in regulations).

f) Other specific benchmarking criteria, if any

Comparables with not more than 25% ownership (including) are specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

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

The penalty is EUR3,000 per any type of noncompliance; it can be assessed repeatedly.

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

Refer to the section below.

- ▶ Is interest charged on penalties and payable on a refund?

If any discrepancies are identified in transfer prices, the Slovak Tax Authorities (SKTA) would levy an additional tax at the rate of 21% 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.

There is also a system of transfer pricing-related penalties under which SKTA can impose a 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 using arm's-length prices in transactions with the taxpayer's related parties and that the general anti-abuse rules stated in the Slovak tax legislation have 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 or 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 and related audit by the local authority

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

In general, the likelihood of a corporate income tax audit in Slovakia is medium, while the likelihood that the taxpayer's related-party transactions will be reviewed as part of that audit is 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 transfer pricing documentation was introduced, the tax authority has intensified its activity on transfer 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 transfer pricing 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*)

The likelihood is 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 the transfer pricing methodology is challenged (*high/medium/low*)

The likelihood is medium to high. As per experience, the SKTA usually tries to push for its position, but many circumstances are taken into account during the audit process from the standpoint of both the client and authorities.

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

This can vary depending on transfer pricing structure, though structure on royalties, services, financial transactions and limited-risk manufacturers is an area of relatively straightforward challenge.

11. APA and MAP opportunities

► Availability (unilateral, bilateral and multilateral)

In 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 if the tax authority may approve the particular price or margin percentage used. Nevertheless, in practice 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 information regarding the specific targeted remuneration considering the model under application. Given this, an APA should provide a reasonable level of comfort for taxpayers.

► Tenure

The tenure is 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.

► MAP opportunities

MAP is applicable under tax treaties and the EU Arbitration Convention and the Ministry of Finance has issued Guidance in February 2018. From July 2019, an act governing the MAP and local procedure for resolution of transfer pricing disputes in Slovakia will be effective.

Contact

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1. Tax authority and relevant transfer pricing regulations or 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 or rulings and the 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 and 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 or 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 years is not acceptable.

b) Materiality limit and thresholds

▶ Transfer pricing documentation

There is no materiality limit.

▶ Economic analysis

There is no materiality limit.

▶ BEPS master and local files

This is not applicable.

▶ CbCR

The CbCR requirement applies to multinational groups with consolidated revenues of EUR750 million or above in the reporting period.

c) Specific requirements

▶ Treatment of domestic transactions

All transactions with related parties should be included in the transfer pricing documentation.

▶ 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 or 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 local files**

This is not applicable.

▶ **Effective or 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 or format**

Slovenian requirements on the CbCR template or format follow the OECD report template or 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.

▶ **CbCR notification included in the statutory tax return**

CbCR notification to be filed as an appendix to the CIT return.

▶ **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

Yes, as of 27 January 2016

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 and disclosure timelines

a) Filing deadline

▶ **Corporate income tax return**

The documentation should be filed 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 and return**

Related-party transaction volumes should be reported in an appendix to the CIT return.

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► CbCR notification

The CbCR notification should be filed as an appendix to the CIT return.

► CbC report preparation and 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 or 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 and 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. multiyear 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 multiyear 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 forwards and 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 and relief

a) Penalty exposure

- ▶ Consequences of failure to submit, late submission 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 or payable on a 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 and related audit by the 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

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► **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 the 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 and 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 and MAP opportunities

► **Availability (unilateral, bilateral and 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.

► **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**

There is none specified.

► **MAP opportunities**

Guidance on the access and the use of MAP is available on the website of the Ministry of Finance of the Republic of Slovenia.

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1. Tax authority and relevant transfer pricing regulation or 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 or rulings and effective date of applicability

Section 210 (1) and 211 of Tax Administration Act, 2011. Amendments contains fixed amount penalties for non-compliance with regards to CbCR filing in South Africa.

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 and 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 or 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 or 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 requirements

▶ 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 or implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

Yes.

▶ Coverage in terms of master and local files

It covers the master file and local file.

▶ Effective or 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 or 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 Income tax return (ITR14) 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.

- ▶ **CbCR Notification is send via an email to the revenue authority and not part of the statutory return.**

Filing deadlines for CbCR notification and statutory tax returns are same; i.e. 12 months from the last day of reporting fiscal year.

CbC report where applicable should be captured via the same e-filing platform as the statutory return.

- ▶ **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

Yes. 27 January 2016.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 and 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 and 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 and 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 or 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 and 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. multiyear analysis

Multiple-year analysis.

c) Use of interquartile range

Interquartile range is applicable.

d) Fresh benchmarking search every year vs. roll forwards and 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 and relief

a) Penalty exposure

► Consequences of failure to submit, late submission 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.

Prior to 11 May 2018, the filing of the CbC report was compulsory however, no specific interest or penalties were assigned for non-compliance. However, from May 2018, a fixed amount penalty is imposed by section 211 and it varies from R250 to R16,000 per month, dependent on the amount of an assessed loss or taxable income for the preceding year. The amount of the penalty will increase automatically by the same amount for each month that the person fails to remedy the non-compliance.

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

Penalty being an amount resulting from applying the highest percentage (between 200% – 0%) to the shortfall arising from the understatement resulting from an adjustment in the event of default, omission, incorrect disclosure or misrepresentation. The 200% penalty can be reduced depending on the applicable behaviour in which the understatement relates as per section 223 of the Tax Administration Act.

► Is interest charged on penalties or payable on a 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.

SARS must remit the understatement if

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- ▶ it resulted from a bona fide inadvertent error (“a misstatement that genuinely is not achieved through or does not result from deliberate planning; or a misstatement that is genuinely, sincerely, and honestly unintentional, unintended, unpremeditated, unplanned and unwitting.”) or
- ▶ There was “substantial understatement” and the taxpayer have
 - ▶ made full disclosure of the arrangement, and
 - ▶ is in possession of an opinion by an independent registered tax practitioner that
 - ▶ was issued by or before the return was due:
 - ▶ was based on full disclosure of specific facts and circumstances of the arrangement, however this is not applicable for opinions regarding cases of substance over form doctrine or anti-avoidance provision unless the taxpayer can demonstrate that all steps or parts of arrangement were fully disclosed to the tax practitioner.
 - ▶ confirms that the taxpayer ‘s position is more likely than not to be upheld if matter goes to court.

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 where the Commissioner issued a notice to the taxpayer prior to the prescription. This can be extended or removed in the cases of fraud, misrepresentation or nondisclosure of material facts.

10. Likelihood of transfer pricing scrutiny and 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.

- ▶ 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 and MAP opportunities

- ▶ 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.

- ▶ MAP opportunities

None specified.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

National Tax Service (NTS)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the effective date of applicability

The following regulations refer to transfer pricing:

- ▶ Law for the Coordination of International Tax Affairs (LCITA) (since December 1995)
- ▶ Presidential Enforcement Decree (PED) of LCITA (since December 1995)
- ▶ Enforcement Regulations of LCITA (since March 1996)
- ▶ Basic Rulings of LCITA (since June 2004)
- ▶ Section reference from local regulation which defines related party or associated enterprise

LCITA Article 2 (1) 8 defines the term "special relationship" for transfer pricing purposes.

2. OECD Guidelines treatment and 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 or rules?

Yes.

▶ Does transfer pricing documentation have to be prepared annually?

Taxpayers meeting certain thresholds must prepare BEPS transfer pricing documentation (i.e., master file, local file and CbCR) annually.

Taxpayers that are not subject to the BEPS transfer pricing documentation but wish to be eligible for penalty relief should prepare and maintain a transfer pricing study report at the time of filing their corporate income tax return (CITR) and submit the report within 30 days upon request from the tax authority.

b) Materiality limit or thresholds

▶ Transfer pricing documentation

There is none specified.

▶ Economic analysis

There is none specified.

▶ BEPS master and local files

Domestic corporations and foreign corporations with a domestic place of business must prepare BEPS master and local files if they meet the following conditions:

- ▶ Revenue of the relevant fiscal year exceeds KRW100 billion
- ▶ Total cross-border related-party transaction amount for the relevant fiscal year exceeds KRW50 billion.

▶ CbCR

CbCR should be submitted by the following:

- ▶ A domestic ultimate parent entity with consolidated group revenue in the immediately preceding fiscal year exceeding KRW1 trillion will be required to submit the CbCR.
 - ▶ Taxpayers whose foreign ultimate parent meets the prescribed threshold (i.e., equivalent to EUR750 million) will be required to submit the CbCR if any of the following condition applies:
 - ▶ The ultimate parent jurisdiction does not impose CbCR submission requirement
- Or
- ▶ There is no exchange of CbCR between the relevant jurisdictions due to the absence of tax treaty or other reasons.

c) Specific requirements

South Korea

► 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

The local file and master file must be submitted in Korean. While the master file can be initially submitted in English, a Korean version must be additionally submitted within one month of the date of submitting the English version. (See LCITA PED Article 21-2, Paragraph 5 and 6.)

► Safe harbor availability

There is none specified.

d) BEPS Action 13 implementation overview

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

Yes. After the OECD's announcement of the BEPS actions in 2015, the NTS revised the LCITA reflecting the BEPS Action 13 recommendations to implement the "Combined Report of International Transactions (CRIT)" which comprises the CbCR, master file and local file.

► Coverage in terms of master and local files

It covers both master file and local file.

► Effective or expected commencement date

It was enacted in December 2015, effective for fiscal years starting on or after 1 January 2016.

► Material differences from OECD report template or format

There is no material difference between the OECD report template and the Korean master file and local file templates released by the NTS. However, as the NTS released the standardized template for the preparation of the master and local files, the taxpayer needs to localize the reports prepared and provided from a foreign affiliate to fully align with the Korean standardized templates (following the exact standardized template form is not strictly required for the master file as long as the relevant contents are covered).

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

Penalty protection is available to taxpayers that have

prepared and submitted a local file and master file in Korean by the prescribed due date and where the tax authorities acknowledge that the transfer pricing method as documented in the local file was reasonably selected and applied.

► CbCR notification and CbC report submission requirement

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 domestic ultimate parent entity (UPE) has consolidated revenue of the prior year above KRW1 trillion, or where the NTS cannot obtain the relevant CbC report from the other foreign tax jurisdiction due to the absence of a relevant exchange agreement, the CbC report must be filed by the Korean entity as part of the CRIT within 12 months of the end of the fiscal year.

Taxpayers in Korea are required to submit the CbCR notification to the tax authorities within six months of the end of the relevant fiscal year. If a taxpayer, whose ultimate parent is a foreign entity, fails to submit the CbCR notification in Korea by the prescribed due date, it will be required to directly submit the CbC report to the tax authorities within 12 months of the end of the relevant fiscal year.

► CbCR notification included in the statutory tax return

No.

► Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

Yes. It was signed on 30 June 2016.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

The LCITA requires a taxpayer to submit the following transfer pricing disclosure forms at the time the corporate income tax return is filed:

- 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)
- A summary of cross-border transactions with foreign related parties

- ▶ **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 disclosure forms mentioned above should be filed with the tax authority at the time of the corporate income tax filing.

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- ▶ **Corporate income tax return**

Taxpayers that do not meet the thresholds for master file and local file documentation requirements, but, nonetheless, wish to be eligible for penalty protection, should prepare and maintain a transfer pricing study report by the time of filing their CITR. The CITR is due three months from the fiscal year-end date (four months in the case of a consolidated return).

- ▶ **Other transfer pricing disclosures and return**

Transfer pricing 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 one month of submitting the English version.

- ▶ **CbCR notification**

CbCR notification is due within six months of the end of the fiscal year.

- ▶ **CbC report preparation and submission**

Domestic ultimate parent entities with consolidated group revenue in the immediately preceding year exceeding KRW1 trillion are required to prepare and submit the CbC report within 12 months of the end of the relevant fiscal year.

If the Korean entity's foreign UPE meets the CbCR filing threshold (i.e., equivalent to EUR750 million), but the NTS cannot obtain the CbCR successfully from the other foreign

tax jurisdiction (e.g., due to the absence of a tax treaty), the Korean entity will be required to submit the CbCR to the Korean tax authorities within 12 months of the end of the relevant fiscal year.

b) Documentation preparation deadline

There is no specified deadline for the preparation of transfer pricing documentation.

However, taxpayers that are not subject to BEPS transfer pricing documentation requirements (i.e., master file, local file and CbCR), but wish to be eligible for penalty protection, should prepare and maintain a transfer pricing study report at the time of filing the CITR and submit it within 30 days upon request by the tax authority.

c) Documentation submission deadline

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

Taxpayers that meet the thresholds for BEPS transfer pricing documentation (i.e., master file, local file and CbCR) must prepare and submit such documentation within 12 months from the end of the relevant reporting year.

- ▶ **Time period or deadline for submission on tax authority request**

In general, the taxpayer has 60 days to submit the documentation upon request. In a tax audit setting, however, the taxpayer will be expected to submit the documentation within a very short timeframe upon request.

6. Transfer pricing methods

a) Applicability

- ▶ **International transactions**

Yes.

- ▶ **Domestic transactions**

This is not applicable; fair market value gets priority for domestic transactions.

b) Priority and 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.

South Korea

According to the recent amendments to the LCITA (Article 5), the tax authority must thoroughly understand the actual circumstances of the transaction between a resident and its foreign related party by considering the commercial, financial and other important conditions of the transaction, and evaluate whether the tested transaction can be considered commercially reasonable by comparing it with third-party transactions between independent companies that engage under similar circumstances. If the tested transaction is determined to considerably lack commercial rationality, making it difficult to calculate an arm's-length price, the transaction can be denied as a whole and recharacterized for the purpose of application of the transfer pricing methods.

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. multiyear analysis

Multiyear is preferred.

c) Use of interquartile range

The NTS has its own version of calculating the interquartile range.

d) Fresh benchmarking search every year vs. roll forwards and update of the financials

There is none specified.

e) Simple vs. weighted average

The weighted average is preferred for arm's-length analysis in practice.

f) Other specific benchmarking criteria, if any

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

- ▶ Consequences of failure to submit, late submission 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 penalty 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. A penalty of KRW5 million applies for each foreign related party.

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 KRW30 million (USD27,000) per report.

▶ 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 tax resulting from a transfer pricing adjustment.
- ▶ The underpayment penalty, which is an interest payment in nature, is calculated as 0.03% of the additional tax on a transfer pricing adjustment per day (10.95% per year) on 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 or payable on a 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 it is acknowledged that such documentation supports the reasonableness of the transfer pricing methods reported, the penalty for underreporting may 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 request by the NTS.

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 by the due date.

10. Likelihood of transfer pricing scrutiny or related audit by the 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, in practice and as a matter of policy, requests transfer pricing documentation at the onset of a tax audit. Such requests can also be made separately from a field tax audit (e.g., desk 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 the transfer pricing methodology is challenged (*high/medium/low*)

The likelihood is high to medium, depending on the size and nature of transactions, industries and situations. Refer to the section below.

► Specific transactions, industries and 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 and MAP opportunities

► Availability (unilateral, bilateral and 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 from tax audit. In addition, the APA officials of the NTS are making continuous efforts to shorten the APA processing period.

► Tenure

An APA with the NTS is generally for three to five years with rollbacks to previous open tax years.

► Rollback provisions

Five-year rollback is applicable for bilateral and multilateral APAs, and three-year rollback is applicable for a unilateral APA.

► MAP opportunities

Taxpayers can resort to MAP under the relevant tax treaty in order to resolve double taxation arising from a transfer pricing adjustment. MAP can generally be requested within three years from the date that the taxpayer becomes aware of the adjustment (depending on the applicable tax treaty, the time limit for requesting MAP may be extended).

A request for MAP requires the submission of a request form and position paper on audit background, assessment, issues addressed and taxpayer's position along with supporting material.

MAP is often initiated in the jurisdiction that is expected to make a tax refund. Competent authority (CA) negotiations will commence at the date the relevant CA sends a letter to the other CA accepting the request for MAP. The CAs will then discuss issues through the exchange of position papers and via CA meetings in a year (generally one to two meetings).

MAP will be deemed to be closed where no agreement is reached within five years (or eight years if extended for three more years).

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South Sudan

1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

National Revenue Authority, Ministry of Finance

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the effective date of applicability

There are no special transfer pricing regulations or rulings in South Sudan.

The TP regulations are contained in Taxation Act 2009 as part of the Tax Act 2009 – Regulations.

▶ Section reference from local regulation

Section 81 of The Taxation Act, 2009 and Regulation 1.81 Transfer Pricing.

2. OECD Guidelines treatment and 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 or rules?

Yes.

▶ Does transfer pricing documentation have to be prepared annually?

The law is silent on this. However, taxpayers engaged in cross border related party transactions must keep separate documentation of each transaction including the transfer price paid and the arm's length price.

b) Materiality limit or thresholds

▶ Transfer pricing documentation

No materiality limit

▶ Economic analysis

Required

▶ BEPS master and local files

Not applicable

▶ CbCR

Not applicable

c) Specific requirements

▶ 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 or implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No.

▶ Coverage in terms of master and local files

Not applicable.

▶ Effective or expected commencement date

Nothing is expected on BEPS Action 13 in 2018 and 2019.

▶ Material differences from OECD report template or format

No prescribed format. Limited information required compared to OECD report and transfer pricing methods limited to CUP, Resale Price and Cost plus in that order of priority. Separate documents of each transaction as opposed to OECD template.

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

Significant modification and adaptation will be required.

▶ CbCR notification and CbC report submission requirement

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

▶ CbCR notification included in the statutory tax return

Not applicable.

- ▶ Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

No.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

Not applicable

b) Transfer pricing-specific returns

Not applicable

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- ▶ Corporate income tax return

1 April of the year following the tax period, which is the calendar year.

- ▶ Other transfer pricing disclosures and return

Not applicable

- ▶ CbCR notification

Not applicable

- ▶ CbC report preparation and submission

Not applicable

b) Documentation preparation deadline

No specific deadline is prescribed under the Taxation Act, 2009 and the accompanying regulations.

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 or deadline for submission on tax authority request

Normally, the tax authority gives seven days.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- ▶ International transactions – Transfer pricing rules apply
- ▶ Domestic transactions – Not subject to transfer pricing rules

b) Priority and preference of methods

The CUP method, followed by the resale price or cost-plus methods in that order of priority

7. Benchmarking requirements

a) Local vs. regional comparables

There is a preference for local and regional comparables based on geographical market area comparability.

b) Single-year vs. multiyear analysis

There is a preference for single-year analysis.

c) Use of interquartile range

None specified.

d) Fresh benchmarking search every year vs. roll forwards and update of the financials

Fresh benchmarking is not needed every year but economic conditions must be comparable.

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 and relief

a) Penalty exposure

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

Not applicable, since filing is not a requirement.

South Sudan

► **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 or payable on a refund?**

1% per month.

b) Penalty relief

No defence 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 Commissioner of Domestic Taxes, 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 and related audit by the 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 the transfer pricing methodology is challenged (*high/medium/low*)**

Refer to the section above.

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

Refer to the section above.

11. APA and MAP opportunities

► **Availability (unilateral, bilateral and multilateral)**

There is no APA program available in South Sudan.

► **Tenure**

Not applicable.

► **Rollback provisions**

Not applicable.

► **MAP opportunities**

Not applicable.

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

Spanish National Tax Agency (AEAT) and General Directorate of Taxation (DGT)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the effective date of applicability

The transfer pricing regulations are contained in the Corporate Income Tax Law (CITL) 27/2014, of November 27 and in the Corporate Income Tax Regulations (CITR), approved by Royal Decree 634/2015, of July 10.

▶ Section reference from local regulation

The section of reference is article 18 of the CITL and articles 13 and following of the CITR.

2. OECD Guidelines treatment and reference

Spain is a member State of the OECD.

The CITL's Explanatory Statement explicitly says that Spanish transfer pricing regulations must be interpreted in accordance with the OECD Transfer Pricing Guidelines and with the recommendations of the Joint Transfer Pricing Forum of the EU, insofar as they do not contradict what is expressly stated in the CITL.

3. Transfer pricing documentation requirements

a) Applicability

▶ Does your country have transfer pricing documentation guidelines or 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 or 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.

Additionally, transfer pricing documentation is not required in the following cases:

- ▶ Transactions carried out within the same consolidated tax group
- ▶ Transactions carried out with its members, or with other entities forming part of the same consolidated tax group, by economic interest groupings (AIEs), and temporary joint ventures (UTES)
- ▶ Transactions carried out in the context of share public offerings or takeover bids

▶ 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 requirements

▶ Treatment of domestic transactions

There is a documentation obligation for domestic transactions.

▶ Local language documentation requirement

No specific rules are set out in this regard. If documentation is drafted following the recommendations of the EU Joint Transfer Pricing Forum, it should be acceptable. Although documentation in English may be acceptable in practice, a tax auditor may request a translation into Spanish, depending on the case. Penalties are not applied in practice to documentation prepared in English if translated in the course of a tax audit.

▶ Safe harbor availability

There is none specified.

d) BEPS Action 13 implementation overview

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

Yes

► **Coverage in terms of master and local files**

Both the master and local files are covered.

► **Effective or expected commencement date**

1 January 2016

► **Material differences from OECD report template or format**

There are no material differences between the OECD report template or 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.

► **CbCR notification included in the statutory tax return**

No

► **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

Yes, as of 27 January 2016.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 by Royal Decree 634/2015, relates to the reporting obligations of transactions with related parties, which has been traditionally complied with in the annual corporate income tax return 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 and disclosure timelines

a) Filing deadline

► **Corporate income tax return**

The documentation should be filed 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 and return**

Informative statement of related transactions and operations and situations related to tax havens (Model 232): the statement should be filed within one month after a 10-month period after the end of the fiscal year. Normally, 30 November for companies closing books on 31 December.

► **CbCR notification**

The documentation should be filed before the end of the fiscal year.

► **CbC report preparation and submission**

During the 12 months following the end of the fiscal year to which it refers.

b) Documentation preparation deadline

TP documentation should be available for the tax authorities by the end of the voluntary period for filing the CIT return.

c) Documentation submission deadline

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

No

► **Time period or 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 and 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. multiyear 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 forwards and update of the financials

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

e) Simple vs. weighted average

The weighted average is preferred, as per common practice.

f) Other specific benchmarking criteria, if any

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

- ▶ Consequences of failure to submit, late submission 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 or false facts. Certain limits apply.

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 or payable on a 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 interrupted and a new one begins.

10. Likelihood of transfer pricing scrutiny and related audit by the 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 the transfer pricing methodology is challenged (*high/medium/low*)**

The likelihood is high, when the methodology is not accepted, an adjustment will normally occur.

► **Specific transactions, industries and 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.

► **Rollback provisions**

An APA can be rolled back to reach previous tax periods for which the tax authority's right to conduct a tax audit has not become statute-barred and no final assessment in relation to the transactions referred in the APA request has been carried out.

► **MAP opportunities**

MAP opportunity is made available. Spain had a total of 275 active MAP applications as of 31 December 2017. The average time needed to close MAP cases started before 1 January 2016 is 39 months for transfer pricing cases, and 31 months for other cases. Spain has been allocating more resources to the MAP function in order to meet the target of 24 months average timeframe to resolve MAP cases.

If requested under a Spanish DTT, taxpayers must make a MAP request before the end of the period provided for in the respective DTT, starting from the day following the notification of the act which causes or is likely to cause the taxation not in accordance with the provisions of the Convention. If requested under the EU Arbitration Convention (90/436/EEC), taxpayers have three years to present a case to the tax authorities.

11. APA and MAP opportunities

► **Availability (unilateral, bilateral and 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 APA will take effect with respect to the transactions carried out after the date on which it is approved, and will be valid for the tax periods specified in the agreement itself, without exceeding the four tax periods following that of the date in which it is approved.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Department of Inland Revenue (IRD)

b) Relevant transfer pricing section reference

- ▶ Name of transfer pricing regulations or rulings and the effective date of applicability

The Sri Lankan Government is currently in the process of drafting a new set of transfer pricing regulations which are to be effective from the year of assessment 2018-19 onwards. Therefore, this chapter reflects our current understanding of the new transfer pricing regulations.

- ▶ Section reference from local regulation

Refer to the section above.

2. OECD Guidelines treatment and 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 or rules?

Transfer pricing regulations are currently in the draft stage.

- ▶ Does transfer pricing documentation have to be prepared annually?

Transfer pricing documentation (i.e., master file and local file) 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.

b) Materiality limit or thresholds

- ▶ Transfer pricing documentation

Taxpayers are required to maintain transfer pricing documentation, comprising a local file and master file, if the following thresholds are met:

- ▶ Local file – If the value of associated enterprise transactions exceeds LKR200 million
- ▶ Master file – If the aggregate turnover exceeds LKR7.5 billion

- ▶ Economic analysis

There is none specified.

- ▶ BEPS master and local files

The transfer pricing documentation requirements are broadly based on the OECD master file-local file concept.

- ▶ CbCR

The CbCR is required from the year of assessment 2019-20, if the multinational enterprise (MNE) group's turnover exceeds LKR115 billion in the preceding financial year. CbC report must be lodged within 12 months of the end of the MNE group's reporting financial year.

c) Specific requirements

- ▶ Treatment of domestic transactions

In the case of domestic transactions, the transfer pricing provisions apply only in the following cases:

- ▶ If exemptions are granted to any one of the associated enterprises

Or

- ▶ If the associated enterprises are taxed at the same income tax rates

Or

- ▶ If any one of the associated enterprises have incurred losses

- ▶ Local language documentation requirement

Taxpayers are required to keep and maintain transfer pricing documentation in English.

- ▶ Safe harbor availability

There is none specified.

d) BEPS Action 13 implementation overview

Sri Lanka

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

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.

The IRD is currently drafting a new set of transfer pricing regulations, which consist of a three-tiered approach to transfer pricing documentation (i.e., master file, local file and CbCR).

► Coverage in terms of master and local files

Both master and local files are covered.

► Effective or expected commencement date

The effective commencement date is 1 April 2018.

► Material differences from OECD report template or format

The Sri Lankan format is generally in line with the format of the OECD.

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

There is no concept of penalty protection in Sri Lankan tax law.

► CbCR notification and CbC report submission requirement

There is neither a CbCR notification nor CbC report submission requirement in Sri Lanka in the year of assessment 2018-19. These will be implemented from the year of assessment 2019-20.

► CbCR notification included in the statutory tax return

Refer to the section above.

► Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

No

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

The taxpayer needs to file a Transfer Pricing Disclosure Form along with the income tax return by the due date. The Transfer Pricing Disclosure Form should provide information related to transaction, associated enterprise, transfer pricing methodology and arm's-length price.

b) Transfer pricing-specific returns

Refer to the section above.

5. Transfer pricing documentation and 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 and return

The Transfer Pricing Disclosure Form specified in Section 4 above should be filed along with the income tax return.

► CbCR notification

This is not applicable.

► CbC report preparation and submission

This is 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 draft transfer pricing regulations require taxpayers to retain documents for a period of six years.

► Time period or deadline for submission on tax authority request

The taxpayer has to submit the master file and local file within 30 days from the corresponding notice by the IRD in an audit or inquiry. Usually, the IRD will determine a submission deadline for other documents, which can vary greatly from case to case (e.g., from only one week to several weeks).

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- ▶ International transactions – yes
- ▶ Domestic transactions – yes

b) Priority and preference of methods

The draft 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 draft 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.

7. Benchmarking requirements

a) Local vs. regional comparables

Draft 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 analyses.

b) Single-year vs. multiyear 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

As per the draft transfer pricing regulations, the use of interquartile range is mandatory.

d) Fresh benchmarking search every year vs. roll forwards and update of the financials

As per the draft transfer pricing regulations, if no significant changes have occurred, 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

Where more than one price is determined by the most appropriate method, the arm's-length price shall be taken to be the median 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

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

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

There is none specified.

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

There is none specified.

- ▶ Is interest charged on penalties or payable on a refund?

The new transfer pricing-specific penalty regime became effective from 1 April 2018. Such penalties are imposed as follows:

- ▶ For not maintaining documentation, a penalty of up to 1% of the aggregate transaction value may be levied.
- ▶ For not furnishing required documents, a penalty of up to LKR250,000 may be levied.
- ▶ For nondisclosure of any required information, a penalty of up to 2% of the aggregate transaction value may be levied.
- ▶ For failure to submit documents on the specified date, a penalty of up to LKR100,000 may be levied.
- ▶ Concealment of income, furnishing inaccurate particulars or evasion lead to a penalty of 200% of incremental tax on the transfer pricing adjustment.

b) Penalty relief

Sri Lanka

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 generally 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 30 months 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 and related audit by the 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 to understand the key risk factors that prompt transfer pricing audits:

- ▶ Are the transactions with associated undertakings large or complex?
- ▶ Does the Sri Lankan entity have transactions with associated undertakings in low-tax jurisdictions?
- ▶ Are there other dealings with associated undertakings

that are not charged for?

- ▶ Has there been a business restructuring recently?
- ▶ Are there secondments of senior management to associated undertakings?
- ▶ Are there local entities or permanent establishments in Sri Lanka with operating losses?
- ▶ Does the Sri Lankan entity pay royalty fees for use of intangible assets to associated undertakings?
- ▶ Was there a failure to submit the Transfer Pricing Disclosure Form as required by the regulations?
- ▶ 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 the 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 and situations, if any, more likely to undergo audit

No particular transaction, industry or 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 and MAP opportunities

► **Availability (unilateral, bilateral and multilateral)**

The draft transfer pricing regulations provide an opportunity for taxpayers to opt for a unilateral, bilateral or multilateral APA.

► **Tenure**

The draft transfer pricing regulations provide that an APA is available for a period not exceeding four years. This term could be reduced if economic circumstances change drastically from one year to another. However, the corresponding guidelines have not yet been issued specifying the procedures to be followed.

► **Rollback provisions**

As stated above, the corresponding guidelines have not yet been issued.

► **MAP opportunities**

In the case of international transactions, the taxpayer may request relief from double taxation under the double tax treaty.

Contact

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

Swedish Tax Agency

b) Relevant transfer pricing section reference

- ▶ Name of transfer pricing regulations or rulings and the 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 and 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 or 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 or thresholds

▶ Transfer pricing documentation

The Swedish transfer pricing documentation requirements are based on the OECD master file-local file concept. Documentation is not required if the company has less than 250 employees, and the company has either an annual turnover of SEK450 million or less, or a balance sheet value of SEK400 million or less. The thresholds are evaluated based on consolidated numbers, i.e., on group level.

Additionally:

- ▶ Insignificant transactions do not need to be documented.
- ▶ 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.
- ▶ For the materiality limit to be applied to transactions involving intangible assets, the intangible assets at hand need to be considered immaterial or insignificant for the business operations engaged.

▶ Economic analysis

This is not applicable; refer to the section above.

▶ BEPS master and local files

See above.

▶ 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 or branch may be obligated to file the report in Sweden.

c) Specific requirements**▶ Treatment of domestic transactions**

There are 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

There is none specified.

d) BEPS Action 13 implementation overview**▶ Has your country adopted or 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 local files

It covers both the master file and local file.

▶ Effective or expected commencement date

Financial years starting after 31 March 2017.

▶ Material differences from OECD report template or format

There are no material differences.

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

Transfer pricing documentation prepared in line with the documentation requirements may give 50-100% penalty protection, if provided on a timely basis and if the company has adhered to the principles described in the documentation.

▶ 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.

▶ CbCR notification included in the statutory tax return

No.

▶ Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

Yes, the agreement was signed on 27 January 2016.

4. Transfer pricing return and related-party disclosures**a) Related-party disclosures and 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 or 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 and return

There is none specified.

▶ CbCR notification

Before the end of the reporting year.

▶ CbC report preparation and submission

The report has to be submitted 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?**

Sweden

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

- ▶ **Time period or 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 (for both international and domestic transactions)

- ▶ International transactions – Yes
- ▶ Domestic transactions – No

b) Priority and 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. multiyear analysis

Single-year analysis is preferred.

c) Use of interquartile range

Yes, interquartile range calculation is preferred.

d) Fresh benchmarking search every year vs. roll forwards and update of the financials

Swedish tax law does not explicitly require a fresh benchmarking search every year; financial updates are generally acceptable.

e) Simple vs. weighted average

The weighted average is generally preferred.

f) Other specific benchmarking criteria, if any

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

- ▶ **Consequences of failure to submit, late submission 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 case of adjustments. 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 or payable on a 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 when submitting the tax return. Transfer pricing documentation prepared in line with the documentation requirements may give 50-100% penalty protection, if provided on a timely basis and if the company has adhered to the principles described in the 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 and related audit by the 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.

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 the 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 and situations, if any, more likely to undergo audit**

Business restructurings and transactions involving intangible assets are often subject to audit.

11. APA and MAP opportunities

► **Availability (unilateral, bilateral and 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.

► **MAP opportunities**

Taxpayers may request a MAP if taxation has or is likely to occur that is not in accordance with the provisions of a DTT to which Sweden is signatory. Taxpayers have three years to present a case to the STA under the EU Arbitration Convention (90/436/EEC).

Contact

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1. Tax authority and relevant transfer pricing regulations or 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 or rulings and the 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 or individuals. A direct or indirect participation in the management, control or capital is not required. The crucial criterion is whether the tested transaction was conducted only as a consequence of the close relationship or not.

2. OECD Guidelines treatment and 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 or rules?

Switzerland does not have transfer pricing documentation guidelines or 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 a 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 or thresholds

► Transfer pricing documentation

This is not applicable for local file and master file. For CbCR, please see below.

► Economic analysis

This is not applicable.

► BEPS master and local files

This is 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.

c) Specific requirements

► 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 or 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 local files

This is not applicable.

► Effective or expected commencement date

This is not applicable.

► Material differences from OECD report template or format

This is not applicable.

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

This is 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.

► CbCR notification included in the statutory tax return

This is not applicable.

► Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

Yes, it was signed on 27 January 2016.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

This is not applicable.

b) Transfer pricing-specific returns

This is not applicable.

5. Transfer pricing documentation and 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 and return

This is 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 and submission

Switzerland

The CbC report must be filed with the SFTA within 12 months following the end of the reporting period.

b) Documentation preparation deadline

It is 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?

It is only applicable for CbCR. The submission deadline is 12 months following the end of the reporting period.

► Time period or 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

There is none specified. In principle, the same methods as for international transactions should be used.

b) Priority and 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. multiyear analysis

Both, in principle, are accepted, but the multiyear 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 forwards and 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

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

► Consequences of failure to submit, late submission or incorrect disclosures

Swiss tax legislation does not contain specific TP 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:

- **Assessment of the taxable base by the tax authorities:** If the taxable base cannot be properly determined during a tax assessment (for example, because of inappropriate documentation), it 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.
- **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 non-refundable 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:

- ▶ **Administrative penalty for late submission: CHF200 per day after the expiration of the deadline, capped at a maximum amount of CHF50,000**
- ▶ **Criminal sanctions:**
 - ▶ **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**
 - ▶ **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 or payable on a 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 during 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 and related audit by the 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 of the transfer pricing methodology being challenged is medium.

Switzerland

Switzerland has various safe-harbour and administrative guidelines (e.g. debt-capacity, interest rates, low value adding services, valuation, etc.), and it is common practice for the tax authorities to assess the appropriateness of transfer prices on the basis of these guidelines. In case where tax payers follow a different methodology or exceed the safe harbour thresholds, there is a high likelihood of inquiry by the tax administration, either upon the tax return assessment or in a tax field audit.

Another area in which disputes arise more frequently is business valuations; 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 the transfer pricing methodology is challenged (*high/medium/low*)**

In cases in which the transfer pricing methodology is challenged, the likelihood of a transfer pricing adjustment is medium, as the disallowance of the methodology regularly leads to an adjustment of profitability.

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

The risk of scrutiny is high, concerning the transfers of intangibles and restructurings leading to significant base erosion, unless agreed upfront in a tax ruling with the authorities. Risk of scrutiny is moderate for intercompany financing and guarantee fees. The risk of scrutiny for tangible transactions is low.

11. APA and MAP opportunities

► **Availability (unilateral, bilateral and multilateral)**

The mechanisms available in Switzerland to prevent and resolve transfer pricing disputes include rulings, bilateral APAs, multilateral APAs and mutual agreement procedures (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 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 MAP 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 proven 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**

The tenure period is subject to negotiation, but only up to three to five years.

► **Rollback provisions**

Depending on the countries involved, taxpayers have the option of requesting rollbacks.

► **MAP opportunities**

Taxpayers may request a MAP, if taxation has or is likely to occur that is not in accordance with the provisions of a Double Tax Treaty (DTT) to which Switzerland is signatory. Most of Switzerland's DTTs permit taxpayers to present a case to the SIF within three years from the first notification to the taxpayer of the actions giving rise to taxation not in accordance with the DTT. It is prudent to consult the relevant DTT to determine the time limit that applies and to ensure that the deadline for presenting a case is not missed.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

National Taxation Bureau

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the 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 and 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 or 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 Country-by-Country Report (CbCR).

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 or 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 requirements

▶ 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 MF 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:

- ▶ The MOF released a letter ruling 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:
- ▶ 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

- ▶ 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 MF are provided as follows:

- ▶ A Taiwan profit-seeking enterprise that is a member of an MNE group can be exempted from the MF requirement if either of the criteria below is met (the letter ruling was released by the MOF on 13 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 ruling 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 or implemented BEPS Action 13 for transfer pricing documentation in your local regulations?**

MOF 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 MF, CbCR, 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 local files**

Both the master and local files (TP report) are covered.

- ▶ **Effective or expected commencement date**

The MF and CbCR requirements come into effect starting fiscal year 2017.

- ▶ **Material differences from OECD report template or 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 CbCR 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 CbCR or the surrogate entity appointed by the group, as well as whether it is required to file a CbCR 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 CbCR 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 CbCR 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 CbCR 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 CbCR 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.**
- ▶ **CbCR notification included in the statutory tax return**

Yes, it is included in page B6 of income tax return.

- ▶ **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCRs**

No.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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**

- ▶ 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 carry forwards 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 tax authority does not currently require transfer pricing-specific returns.

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- ▶ Corporate income tax return

31 May (example for a calendar-year profit-seeking enterprise)

- ▶ Other transfer pricing disclosures and return

31 May (example for a calendar-year profit-seeking enterprise)

- ▶ MF notification – Notification shall be done upon the filing of an income tax return by completing a form of the tax return (Page B6).
- ▶ MF preparation/submission – The MF shall be prepared upon the filing of income tax returns and submitted to the tax authority within 12 months after the fiscal year-end.

b) CbCR notification

Notification shall be done upon filing income tax return by completing a form of the tax return.

c) CbCR preparation and submission

The CbCR 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 CbCR shall be submitted to the tax authority within 12 months after the fiscal year-end.

The MF 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 or 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 CbCR 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 (for both international and domestic transactions)

Yes

b) Priority and preference of methods

In accordance with the OECD Guidelines, the pricing methods are as follows: comparable uncontrolled price, 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. multiyear analysis

Multiyear 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 forwards and 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 and relief

a) Penalty exposure

- ▶ Consequences of failure to submit, late submission 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 or payable on a 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 and related audit by the 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 tax authority frequently conducts corporate income tax audits.

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 tax authority, 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

Taiwan

- ▶ 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 the 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 and 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 and MAP opportunities

- ▶ Availability (unilateral, bilateral and 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**

Three to five years.

▶ **Rollback provisions**

Yes, upon the successful agreement of Bilateral (or Multilateral) APA, taxpayer could further request both tax authorities (Taiwan and treaty party) to consider and agree with the application of APA conclusion to prior years which have not been assessed yet.

▶ **MAP opportunities**

Yes, Taiwan has concluded 32 double tax agreements in total and all of them include a MAP article with language in general equivalent to Article 25 of the OECD Model Tax Convention. In June 2018, the MOF further published "Regulations Governing Application of Mutual Agreement Procedure for Double Taxation Agreements" which provide procedures to taxpayers and tax authorities for making the dispute resolution mechanism more effective and settling the cases within a reasonable time frame.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Tanzania Revenue Authority (TRA)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the 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 regulations were issued on 7 February 2014 and published in May 2014.

Updated regulations were published on 27 April 2018 as The Tax Administration (Transfer Pricing) Regulations, 2018.

▶ Section reference from local regulation

Associates are defined under Section 3 of the ITA 2004.

2. OECD Guidelines treatment and 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 2018 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 or rules?

Yes. The Tax Administration (Transfer Pricing) Regulations, 2018, was issued by way of a gazette notice published on 27 April 2018 and took effect on the publication date.

▶ Does transfer pricing documentation have to be prepared annually?

Yes. The regulations require contemporaneous transfer documentation to be prepared "for the year of income" (Regulation 7(3)).

b) Materiality limit or thresholds

▶ Transfer pricing documentation

There is no materiality threshold for transfer pricing documentation. However, the filing of the transfer pricing document together with the income tax return is required for entities with an aggregate value of related party transactions of TZS10 billion and above.

▶ Economic analysis

This is required.

▶ BEPS master and local files

This is not applicable.

▶ CbCR

This is not applicable.

c) Specific requirements

▶ 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 transfer pricing documentation needs to be submitted in either of the official languages of Tanzania (English or Swahili). However, in practice, transfer pricing documents are normally completed in English.

▶ Safe harbor availability

This is not applicable.

d) BEPS Action 13 implementation overview

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

▶ Coverage in terms of master and local files

This is not applicable.

▶ Effective or expected commencement date

This is not applicable.

▶ Material differences from OECD report template or format

This is not applicable.

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

Yes. This is applicable to a large extent. Additional details will be required.

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

This is not applicable. There is no CbCR notification requirement in Tanzania.

► **CbCR notification included in the statutory tax return**

This is not applicable.

► **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

No

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 Tanzania in its tax return.

b) Transfer pricing-specific returns

This is not applicable.

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

► **Corporate income tax return**

The filing deadline is six months after the financial year-end of the company.

► **Other transfer pricing disclosures and return**

The filing should be made together with the CIT return six months after the company's financial year-end (if the value of the related party transactions is TZS10 billion or more).

► **CbCR notification**

This is not applicable.

► **CbC report preparation and submission**

This is not applicable.

b) Documentation preparation deadline

Yes. The documentation should be prepared upon the 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?**

Yes. Taxpayers with an aggregate value of related-party transactions of TZS10 billion and above should submit the documentation by the deadline for CIT return.

► **Time period or 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. This applies to taxpayers with an aggregate value of related-party transactions less than TZS10 billion.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

Yes.

b) Priority and 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. multiyear analysis

Tanzania

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 forwards and 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 an 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

The Regulations stipulate that: where four or less comparable data points are used, the average is the arm's-length result; meanwhile, in the case of more than four comparable data points, the arm's-length result shall be the data point between the 35th percentile and 60th percentile. If the result falls outside the arm's-length range, the price should be adjusted to the median point of the range.

8. Transfer pricing penalties and relief

a) Penalty exposure

► Consequences of failure to submit, late submission or incorrect disclosures

The penalty for taxpayers who fail to comply with the transfer pricing regulations is set at a minimum of 3,500 currency points as prescribed from time to time by the Commissioner (currently 1 currency point is equal to TZS15,000) which results in a penalty of TZS52.5 million. This penalty is in addition to a possible penalty of 100% of the adjusted amount that is applicable for failure to comply with the arm's-length principle when transacting with associates.

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

Yes. It will be 100% of the adjusted amount.

► Is interest charged on penalties or payable on a refund?

Yes. A strict interpretation of the law provides for interest on penalties and refunds at the current statutory rate (7%). However, in practice, the tax authority does not apply interest on penalties and refunds.

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 (previously three), effective from 1 July 2016, from the date of filing the tax return applies.

The tax authorities can ignore the five-year limitation when they suspect fraud or intention to evade the payment of tax.

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

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

The likelihood is high. The tax authority has revamped its transfer pricing team and there has been an increased number of transfer pricing audits.

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

The likelihood is high. Refer to the section above.

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

The likelihood is high. Refer to the section above.

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

A wide range of related-party transactions are targeted and, thus, all related-party transactions are potentially auditable by the tax authority. However, there is an increased focus on intra-group services such as management services and IP-related transactions.

11. APA and MAP opportunities

▶ **Availability (unilateral, bilateral and 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**

This is not applicable.

▶ **Rollback provisions**

This is not applicable.

▶ **MAP opportunities**

Yes. However, it is in the context of double tax treaties.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Thai Revenue Department (TRD)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the 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:
- ▶ Section 35 ter
- ▶ Sections 65 bis (4) and (7)
- ▶ Section 70 ter
- ▶ Section 71 bis and section 71 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 21 November 2018, Thailand's Transfer Pricing Act (TP Act) was published in the Royal Gazette. The TP Act adds 3 new provisions (i.e., section 35 ter, 71 bis and 71 ter) to the TTC to stipulate the annual compliance requirements concerning transactions between related parties. The new provisions are to apply to financial years commencing on or after 1 January 2019.

A key feature of the TP Act is that a taxpayer with related party is required to prepare a report (TP disclosure form) disclosing information of the related-party relationships and the respective value of related-party transactions for each fiscal year, in accordance with a specified format, and should be submitted to the tax authority together with the corporate income tax return. The specific content and format of the TP disclosure form will be stipulated in related Ministerial Regulations, which are not yet 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 and reference

Thailand is not a member of the OECD.

However, 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 provide useful guidance, covering areas not addressed by DI 113.

3. Transfer pricing documentation requirements

a) Applicability

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

Yes, Thai transfer pricing guidelines, i.e., DI 113, outline the content requirements for Thai transfer pricing documentation.

▶ Does transfer pricing documentation have to be prepared annually?

Thai tax authority typically requests transfer pricing documentation before tax or transfer pricing audits. In that case, taxpayers will usually be required to provide their transfer pricing documentation within 60 days of receiving such request.

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 or thresholds▶ **Transfer pricing documentation**

A taxpayer having annual revenue not exceeding THB200 million (US\$6 million) per year will be exempted from the requirement to submit the TP disclosure form for each applicable fiscal year.

▶ **Economic analysis**

This is not applicable.

▶ **BEPS master and local files**

This is not applicable.

▶ **CbCR**

This is not applicable.

c) Specific requirements▶ **Treatment of domestic transactions**

Domestic transactions between related parties should also comply with the arm's-length principle, and appropriate transfer pricing documentation is expected to be prepared for these transactions since the inception of such 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**

A taxpayer having annual revenue not exceeding THB200 million (US\$6 million) per year will be exempted from the requirement to submit the TP disclosure form for each applicable fiscal year.

d) BEPS Action 13 implementation overview▶ **Has your country adopted or 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 local files**

Relevant requirements were not yet released at the time of this publication.

▶ **Effective or expected commencement date**

Relevant requirements were not yet released at the time of this publication.

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

Relevant requirements were not yet released at the time of this publication.

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

Relevant requirements were not yet released at the time of this publication.

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

Relevant requirements were not yet released at the time of this publication.

▶ **CbCR notification included in the statutory tax return**

Relevant requirements were not yet released at the time of this publication.

▶ **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

It was not a signatory at the time of this publication.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

Under the TP Act, a taxpayer with related party is required to prepare a TP disclosure form disclosing information concerning related-party relationships and the respective value of related-party transactions for each fiscal year, in accordance with a specified format, and submit it to the tax authority within 150 days from the close of the accounting period. The specific content and format of the TP disclosure form was not released at the time of this publication.

b) Transfer pricing-specific returns

Refer to the section above.

5. Transfer pricing documentation and 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 and return

TP disclosure form should be submitted within 150 days after each financial year-end of the taxpayer, along with the corporate income tax return.

► CbCR notification

Relevant requirements were not yet released at the time of this publication.

► CbC report preparation and submission

Relevant requirements were not yet released at the time of this publication.

b) Documentation preparation deadline

Full 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?

No

► Time period or deadline for submission on tax authority request

Within five years from the date of filing the TP disclosure form, the tax authorities can request additional documents or evidence necessary to analyze the related-party transactions. The taxpayer is required to submit the additional documents (i.e., full transfer pricing documentation) within 60 days after receiving a request letter. If necessary, the taxpayer can request a 120-day extension to respond to the additional information requests. A 180-day extension is available for taxpayers if it is their first time receiving such request letter.

6. Transfer pricing methods

a) Applicability (for both international and domestic 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 and DI 113.

b) Priority and preference of methods

Refer to "Applicability" section above.

7. Benchmarking requirements

a) Local vs. regional comparables

There is no specific regulation; however, in practice, Thai comparables are requested.

b) Single-year vs. multiyear analysis

Both single-year and three-year testing are required.

c) Use of interquartile range

Interquartile range calculation using Excel Quartile formulas is acceptable.

d) Fresh benchmarking search every year vs. roll forwards and update of the financials

In practice, there is a need to conduct new benchmarking on a three-year basis – i.e., after new benchmarking study is prepared in a fiscal year, conducting only financial updates on that benchmarking study are acceptable for the next two years.

e) Simple vs. weighted average

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

f) Other specific benchmarking criteria, if any

- The selected comparable companies should not be owned with 50% common shareholding (indirectly or directly).
- The selected comparable companies should not have any related-party transactions of more than 20%.

- ▶ Auditors' opinion on comparable companies should be reviewed to ensure that financial data is reliable before financial analysis is performed.

8. Transfer pricing penalties and relief

a) Penalty exposure

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

Failure to comply with the transfer pricing disclosure, or submitting incorrect information, will be subject to a penalty of not exceeding THB200,000.

- ▶ 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 or payable on a 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

Transfer pricing assessments may apply within five years from the date of filing the TP disclosure form.

10. Frequency of transfer pricing scrutiny and related audit by the local authority

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

Based on our observation, the Thai tax authority uses DI 113 as a guideline in conducting tax audits. As a result, the likelihood of transfer pricing-related issue being reviewed as part of an audit is considered high.

- ▶ 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 the transfer pricing methodology is challenged (*high/medium/low*)

Based on our observation of tax audits in Thailand, the likelihood of adjustment is high.

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

The Thai tax authority does not focus on a specific country or industry, but rather on multinational 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.

Thailand

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.

Yes, taxpayers may request a MAP, however, as there are no specific provisions for the MAP procedure in domestic law, taxpayers must rely on the MAP provisions under DTTs, to which Thailand is signatory. It is also worth noting that indirect taxes are not covered under Thailand's DTTs.

11. APA and MAP opportunities

► Availability (unilateral, bilateral and multilateral)

Bilateral APAs are available in Thailand. The Thai transfer pricing and bilateral APA guidelines were issued in 2002 and 2010, respectively.

► Tenure

It is up to five years.

► Rollback provisions

This is not applicable.

► MAP opportunities

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

- ▶ Ministry of Finance (Tunisia)
- ▶ The General Directorate of Taxes (La Direction Générales des Impôts)

b) Relevant transfer pricing section reference

- ▶ Name of transfer pricing regulations or rulings and the effective date of applicability

The Finance Act for the year 2019 introduced, within the local tax regulation, the following main articles that govern transfer pricing aspects:

- ▶ Article 48septies of the Personal & Corporate Income Tax Code (PCITC), which was initially added by Article 51 of the Finance Act for the year 2010 and modified by virtue of the Article 29 of the Finance Act for the year 2019: Governing the Transfer Pricing Adjustments, defining the associated enterprises and regulating the transfer pricing rules with entities resident or established in low tax jurisdictions
- ▶ Article 59 paragraph II bis of the PCITC: Governing the Annual Transfer Pricing return requirements aspects
- ▶ Article 38bis of the Code of Fiscal Rights & Procedures (CFRP): Governing the Documentation supporting the Transfer Pricing Policy requirements aspects in case of a comprehensive tax audit
- ▶ Article 17ter of the CFRP: Governing the Country-by-Country reporting (CbCr) requirements aspects
- ▶ Article 35bis of the CFRP: Governing the Advance Pricing Agreements (APAs) aspects
- ▶ Article 84nonies of the CFRP: Governing the sanctions and fines that may be applicable in case of noncompliance with the Annual Transfer Pricing return requirements aspects
- ▶ Article 84undecies of the CFRP: Governing the sanctions and fines that may be applicable in case of noncompliance with the documentation supporting the Transfer Pricing Policy requirements aspects in case of a comprehensive tax audit
- ▶ Article 84decies of the CFRP: Governing the sanctions and fines that may be applicable in case of noncompliance with the CbCr filing requirements aspects

All the transfer pricing rules added by virtue of the Finance Act for the year 2019 are applicable to the tax position starting from 1 January 2020.

In addition to the above, Tunisian tax regulation contains other legal tax references that are in force even before the Finance Act for the year 2019 and that are not rescinded by virtue of this law, which are mainly the following :

- ▶ Article 94 of the CFRP: Governing the sanctions and fines that may be applicable in case of noncompliance with the arm's-length principle
- ▶ Article 101of the CFRP: Governing the sanctions and fines that may be applicable in case of abuse of rights (even in terms of transfer pricing policy aspects)
- ▶ Section reference from local regulation

Please see above.

2. OECD Guidelines treatment and reference

Tunisia is not a member of the OECD. However, the Tunisian transfer pricing newly incorporated regulations that will be applicable starting from 1 January 2020 is highly inspired from the OECD guidelines (mainly the BEPS Action 13).

3. Transfer pricing documentation requirements

a) Applicability

- ▶ Does your country have transfer pricing documentation guidelines or rules?

According to Tunisian tax regulation, which will be in force starting from 1 January 2020, the transfer pricing documentation requirements are summarized as following:

- ▶ An Annual Transfer Pricing return (to be filed annually): This is required by associated enterprises as defined by Article 48septies of the PCITC and of which the annual sales inclusive of all taxes exceed TND20 million. The form of the Annual Transfer Pricing return, which should be e-filed, is fixed by the tax authorities.
- ▶ The Documentation supporting the Transfer Pricing Policy (to be submitted to tax authorities in charge of the tax audit when this latter occurs): This is required by associated enterprises as defined by Article 48septies of the PCITC and of which the annual sales inclusive of all taxes exceed TND20 million. The form of the

Documentation supporting the Transfer Pricing Policy is fixed by a ruling of the Minister of Finances.

- ▶ **The CbCr (to be filed annually):** This is required according to the conditions detailed in the below section "CbCR notification and CbC report submission requirement." The form of the CbCr, which should be e-filed, is fixed by a ruling of the Minister of Finances.
- ▶ **Does transfer pricing documentation have to be prepared annually?**
 - ▶ The Annual Transfer Pricing return and the CbCr (if it applies) have to be prepared and filed annually.
 - ▶ The Documentation supporting the Transfer Pricing Policy has not to be prepared annually, but should be submitted to tax authorities in charge of the tax audit when this latter occurs.

b) Materiality limit or thresholds

▶ Transfer pricing documentation

The tax regulation provisions currently in force have not provided any materiality limit or thresholds.

▶ Economic analysis

According to the current regulation in force, this aspect is still not yet covered.

▶ BEPS master and local files

The tax regulation provisions currently in force have not provided any materiality limit or thresholds.

▶ CbCR

The tax regulation provisions currently in force have not provided any materiality limit or thresholds.

c) Specific requirements

▶ Treatment of domestic transactions

Domestic transactions are covered by the transfer pricing regulation governing cross-border transactions without any difference (e.g., same adjustments rules, same documentation rules).

The only exception is that domestic transactions are excluded from the APAs, i.e., only cross-border transactions may be covered by an APA.

▶ Local language documentation requirement

There are no law provisions governing transfer pricing aspects that may require any particular language that should be adopted for the documentation requirement.

▶ Safe harbor availability

The current legislation did not mention any safe harbour availability.

d) BEPS Action 13 implementation overview

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

▶ Coverage in terms of master and local files

Although the new Tunisian tax regulation governing transfer pricing aspects that is published until this date (i.e. the Finance Act for the year 2019) did not indicate clearly the reference to the terms master files or local files, considering that the tax regulator was highly inspired by the BEPS Action 13, presumably the ruling of the Minister of Finances considered as the initial main transfer pricing documentation guidelines, which will be published in order to explain and comment the Law provisions, would cover the master files and local files aspects.

▶ Effective or expected commencement date

These provisions apply to financial years starting on or after 1 January 2020, and subject to a notice of a comprehensive tax audit notified as from 1 January 2021.

▶ Material differences from OECD report template or format

This aspect is still not yet covered by the current legislation. The ruling of the Minister of Finances considered as the main transfer pricing documentation guidelines would probably specify if there would be material differences from OECD report template or format.

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

This aspect is still not covered by the current legislation. The ruling of the Minister of Finances considered as the main transfer pricing documentation guidelines would probably specify if there would be sufficiency of BEPS Action 13 format report to achieve penalty protection.

▶ CbCR notification and CbC report submission requirement

Any company that is established in Tunisia and meets all conditions exposed below, are required to file, within the twelve months after the year-end date and by reliable

electronic exchange means, a CbCr, based on a form established by the tax administration and containing the distribution of the country-by-country profits of the companies' group it belongs to, and tax and accounting data, as well as information regarding the location where the activities are carried out:

- ▶ The company owns interests directly or indirectly in one or many companies, which make it a requirement to prepare consolidated financial statements in accordance with the current accounting legislation in force, or where it is required to do so if its stocks are listed on the Tunis Stock Exchange.
- ▶ The company's annual consolidated sales exclusive of taxes is equal to or greater than TND1.636 million during the period prior to the period concerned by the reporting.
- ▶ No other company owns direct or indirect interests in the concerned company in accordance with the above first point (i.e., no other entity can include it within its consolidated financial statements).
- ▶ It is also required to file the reporting within the deadlines and in the means and form, where any company resident in Tunisia should meet at least one of the following conditions:
- ▶ It is owned, directly or indirectly, by an enterprise resident in a state not requiring the filing of the country-by-country reporting, but who would be required to file that return, if it is resident in Tunisia.

Or

- ▶ It is held, directly or indirectly, by an enterprise resident in a state not included in the list of states having concluded an agreement with Tunisia authorizing the automatic exchange of the country-by-country reporting, but with which Tunisia has concluded a tax information exchange agreement

Or

- ▶ It is designated for this purpose by the group of related companies to which it belongs and has informed the tax administration.

The content of this reporting is fixed by a ruling of the Minister of Finances.

The CbCr is subject, under reserve of reciprocity, to an automatic exchange with the states that have concluded an agreement with Tunisia for this purpose.

These provisions are effective for financial years beginning from 1 January 2020.

▶ **CbCr notification included in the statutory tax return**

The CbCr should be filed within the twelve months after the year-end date, but is not required to be filed within the same deadlines as such as the annual statutory tax return (Corporate Income Tax return).

▶ **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

The list of states having an agreement with Tunisia authorizing the automatic exchange of the CbCr is fixed by a ruling of the Minister of Finances (list in progress: not yet published at the date the Finance Act for the year 2019 is adopted).

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

Companies of which gross annual sales are equal to or greater than TND20 million are required to communicate to the tax administration agents, at the starting date of the comprehensive tax audit of their tax position, the Documentation supporting the Transfer Pricing Policy applied to transactions with associated enterprises according to article 48septies of the PCITC. The content of this documentation is fixed by a ruling of the Minister of Finances.

These documents do not replace supporting documents relevant to each transaction.

In case these documents are not presented to tax administration agents, at the starting date of the comprehensive tax audit of their tax position, or are incomplete or inaccurate, tax administrations should send to the concerned company a formal notice in which the concerned company is required to present or to complete the missing information within 40 days after the notification. The tax administration should specify the nature of the concerned documents.

These provisions are effective for financial years that begin from 1 January 2020 and that have been subject to a prior notice starting from 1 January 2021.

b) Transfer pricing-specific returns

Companies resident or established in Tunisia that are controlled by other companies or that control other companies according to article 48septies of PCITC and of which gross annual sales are equal to or greater than TND20 million, are required to submit an Annual Transfer Pricing return using reliable electronic means according to a form established by tax authorities, and this is, within the same deadlines as such as the CIT return.

This return should provide (for indicative, but not limitative, purposes):

- ▶ **Information about the group of companies of which mainly:**
 - ▶ Information about the activity including changes that occurred during the fiscal year
 - ▶ Information about the companies' group transfer pricing policy
 - ▶ List of assets owned by the group of companies and used by the reporting company, as well as the corporate name and the country of tax residency of the owner
 - ▶ **Information about the reporting company:**
 - ▶ Information about the activity including changes that occurred during the period
 - ▶ A summary statement of financial and commercial transactions with companies that are controlled by the reporting company or that control the reporting company according to article 48septies of the PCITC – This statement includes the nature and the amount of transactions, the corporate names and the country of tax residency of controlled or controlling companies concerned by the transactions, methods for setting transfer pricing applied by the group of companies, and the changes that occurred during the period
 - ▶ Information about loans and borrowings with companies that are controlled by the reporting company or that controls the reporting company according to article 48septies of the PCITC
 - ▶ Information about financial and commercial transactions with companies that are controlled by the reporting company or that control the reporting company according to article 48septies of the PCITC for free or for a non-monetary counterpart
 - ▶ Information about transactions with companies that are controlled by the reporting company or that control the reporting company according to article 48septies
- of the PCITC, which are subject to an Advance Pricing Agreement or a tax ruling concluded between the companies concerned by the transactions and tax authorities of other states**
- These provisions are effective for financial years beginning from 1 January 2020.
-
- ## 5. Transfer pricing documentation and disclosure timelines
-
- ### a) Filing deadline
- #### ▶ Corporate income tax return
- For companies that close the fiscal year by 31 December, the CIT return should be filed no later than 25 March that follows the year-end closing date, and in case the company is subject to the requirement of the appointment of a statutory auditor, the return filed on 25 March may have a provisional statute and the final CIT return should be filed no later than the 15th day that follow the Annual General Shareholders Ordinary Meeting that approve the Financial Statement without exceeding 25 June that follows the year-end closing date.
- #### ▶ Other transfer pricing disclosures and return
- The Annual Transfer Pricing return should be filed within the same deadlines as such as the CIT return.
- The Documentation supporting the Transfer Pricing Policy is not to be filed annually but should be communicated to the tax administration agents, at the starting date of the comprehensive tax audit, and no later than 40 days in case it is not communicated by the starting date of the same comprehensive tax audit.
- #### ▶ CbCR notification
- Within the twelve months after the fiscal year closing date
- #### ▶ CbC report preparation and submission
- Within the twelve months after the fiscal year closing date
- ### b) Documentation preparation deadline
- Same deadlines as such as filing deadlines
- ### c) Documentation submission deadline
- Same deadlines as such as filing deadlines
- ▶ Is there a statutory deadline for submission of transfer pricing documentation?

Transfer pricing documentation requirements have to be filed, prepared and submitted within the same deadlines (as indicated above in a), b) and c)).

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

Apart from the cases of the Annual Transfer Pricing return as well as the CbCr that should be submitted “spontaneously” (i.e. not upon request by Tax Authorities), on an annual base, the companies of which gross annual sales are equal to or greater than TND20 million are required to communicate to the tax administration agents at the starting date of the comprehensive tax audit of their tax position, the Documentation supporting the Transfer Pricing Policy applied to transactions with associated enterprises according to article 48 septies of the PCITC. In case these documents are not presented to tax administration agents at the starting date of the comprehensive tax audit of their tax position, or are incomplete or inaccurate, tax administrations should send to the concerned company a formal notice in which the concerned company is required to present or to complete the missing information within 40 days after the notification.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

Prior to the adoption of the new transfer pricing rules by virtue of the Finance Act for the year 2019, Tunisian regulation recognized the OECD's traditional transaction methods (i.e., the comparable uncontrolled price method, the resale price method and cost-plus method), and this is, by virtue of the Tunisian Accounting Standard n°39 governing the Related Parties. However, according to the wording of the previous version of Article 48 septies of the PCITC, which governed the transactions between associated enterprises, and this is, before being amended by the Finance Act for the year 2019, it can be understood that the method that was recognized from a tax standpoint was the CUP.

Currently, and after the adoption of the new transfer pricing rules by virtue of the Finance Act for the year 2019, the tax legislator is moving toward the recognition of the OECD's methods.

b) Priority and preference of methods

Prior to the adoption of the new transfer pricing rules by virtue of the Finance Act for the year 2019, the CUP was the preferred method.

Based on the current new tax regulation adopted by the Finance Act for the year 2019, it may not be excluded that the tax legislator is moving toward the recognition of the OECD 5 methods, but there is not yet specified preferred or prioritized methods. In all cases, the method should be the base that reflects as fair as possible the arm's-length principle, i.e. any other method other than the OECD 5 methods that may lead to a better compliance with the arm's-length principle may be accepted by authorities

7. Benchmarking requirements

a) Local vs. regional comparables

The current legislation does not cover any specific benchmarking “Local vs. regional comparables” requirements.

b) Single-year vs. multiyear analysis

The current legislation does not cover any specific benchmarking “Single-year vs. multiyear analysis” requirements.

c) Use of interquartile range

The current legislation does not cover any specific benchmarking “Use of interquartile range” requirements.

d) Fresh benchmarking search every year vs. roll forwards and update of the financials

The current legislation does not cover any specific benchmarking “Fresh benchmarking search every year vs. rollforwards and update of the financials” requirements.

e) Simple vs. weighted average

The current legislation does not cover any specific benchmarking “Simple vs. weighted average” requirements.

f) Other specific benchmarking criteria, if any

The current legislation does not cover any specific benchmarking requirements.

8. Transfer pricing penalties and relief

a) Penalty exposure

► **Consequences of an adjustment of the taxable income following a transfer pricing adjustment**

- The additional tax in base is required on the additional adjusted income (Article 48 septies of the PCITC),

- ▶ The proportional delay penalties on the additional tax in base would be required as following (Article 82 of the CFRP):
 - ▶ 1.25% per month or a proportion of a month based on the nonpaid due additional CIT liability in base
 - ▶ 2.5% based on the nonpaid due additional tax liability in base.
- ▶ The fixed delay penalties on the additional tax in base would be required as following (Article 81 of the CFRP):
 - ▶ 1.25% based on the nonpaid due additional CIT liability in base, in case the delay does not exceed 60 days
 - ▶ 2.5% based on the nonpaid due additional CIT liability in base, in case the delay exceeds 60 days
- ▶ A prison sentence that varies from 16 days to 3 years and a fine that varies from TND1,000 to TND50,000, especially in the case of the use of invoices including exaggerated amounts compared to the arm's-length principle, and this is, in order to implement tax avoidance planning based on non-fair transfer pricing rules (Article 94 of the CFRP).
- ▶ WHT on deemed divided may also apply (not expressly provided by the tax regulation but this measure is adopted by the tax audit authorities practices).
- ▶ Consequences of failure to submit, late submission or incorrect disclosures
 - ▶ Annual Transfer Pricing return: Any company that has not filed the annual transfer pricing return within the legal deadlines is liable to an administrative tax fine equal to TND 10,000. Any missing information in the above-mentioned return or any information provided in an incomplete or inaccurate manner gives rise to the application of a fine equal to TND50 per information, without exceeding TND 5,000 (Article 84nonies of the CFRP).
 - ▶ The Documentation supporting the Transfer Pricing Policy: Any company that did not communicate the documentation supporting the transfer pricing policy to tax authorities or that presents incomplete or inaccurate documents within 40 days after the notification are exposed to a tax fine equal to 0.5% of the amount of the concerned transactions for the missing or inaccurate documents with a minimum of TND50,000 per year covered by the tax audit (Article 84undecies of the CFRP).

- ▶ The CbCr: Any company that has not filed the country-by-country reporting within the legal deadlines is punished by an administrative tax fine equal to TND50,000. Any information not provided in the reporting or provided in an incomplete or inaccurate manner, gives rise to the application of a fine equal to TND100 per information, without exceeding TND10,000 (Article 84decies of the CFRP).

b) Penalty relief

Article 78 of the CFRP allows tax authorities to grant a relief for criminal tax offenses of which finding, or prosecution is incumbent on them, before a final judgment relating thereto is pronounced, and this is, excluding the offenses referred to in Article 102 of the CFRP and articles 180 and 181 of the Penal Code. In other words, the offenses provided for in Articles 94, 84nonies, 84undecies and 84 decies of the CFRP, which may be applicable to the noncompliance with transfer pricing rules, are liable to the said transaction. Article 79 of the CFRP provides that the transaction is based on a tariff fixed by a ruling of the Minister of Finance, after adjustment by the offender of his tax position.

9. Statute of limitations on transfer pricing assessments

- ▶ In case of compliance with the tax returns filing requirements: the current considered year and the 4 previous years.
- ▶ In case of noncompliance with the tax returns filing requirements (failure to file tax returns): the current considered year and the 10 previous years.

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

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

High

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

High

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

High

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

No specifications: Tax authorities may challenge all transfer pricing transactions, industries and situations.

11. APA and MPA opportunities

- ▶ **Availability (unilateral, bilateral and multilateral)**

Companies with dependency or control relationships, within the meaning of the fourth paragraph of Article 48septies of the PCITC, with companies established outside Tunisia can request from tax authorities to conclude an Advance Pricing Agreement in terms of transfer pricing on the method to be applied in the future, with associated enterprises established outside Tunisia.

The procedures for concluding the agreement and its effects are set by a ruling of the Minister of Finances.

These provisions are effective for financial years beginning from 1 January 2020.

- ▶ **Tenure**

The APA is concluded for a term that may vary from three to five years. Parties cannot end the agreement before the expiry of the period fixed in the agreement.

- ▶ **Rollback provisions**

This is not applicable as the APA may cover only future transactions and, so, cannot have a retroactive effect.

- ▶ **MAP opportunities**

Mutual agreement procedure remains possible by virtue of double taxation treaties. However, in practice, it is too rare to apply MAP.

Contact

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Not available

1. Tax authority and relevant transfer pricing regulations or 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 or 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 and 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 or 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 or thresholds

► Transfer pricing documentation

There is none specified.

► Economic analysis

There is none specified.

► BEPS master and local files

A threshold of TRY250 million net sales and assets applies for the master file and there is no threshold for the local file (draft legislation).

► CbCR

Entities that exceed TRY2.037 million of consolidated group revenue are required to submit the report (draft legislation).

c) Specific requirements

► 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

There is none specified.

d) BEPS Action 13 implementation overview

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

The documentation is still in draft stage.

► Coverage in terms of master and local files

This is not applicable.

► Effective or expected commencement date

There is none specified.

► Material differences from OECD report template or format

This is not applicable.

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

This is not applicable.

► CbCR notification and CbC report submission requirement

This is not applicable.

► CbCR notification included in the statutory tax return

This is not applicable.

► Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

No

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 and disclosure timelines

a) Filing deadline

▶ Corporate income tax return

The documentation should be filed on or before 25 April.

▶ Other transfer pricing disclosures and return

The documentation should be filed on or before 25 April.

▶ CbCR notification

This is not applicable (draft legislation not yet finalized).

▶ CbC report preparation and submission

This is 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 or 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 (for both international and domestic transactions)

Yes

b) Priority and 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. multiyear analysis

A multiyear analysis is preferred.

c) Use of interquartile range

The interquartile range is preferred.

d) Fresh benchmarking search every year vs. roll forwards and 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 and relief

a) Penalty exposure

- ▶ Consequences of failure to submit, late submission 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, 22% 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 or payable on refund?

Additionally, late-payment interest (2.0% 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 and related audit by the 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 and 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 and MAP opportunities

► Availability (unilateral, bilateral and multilateral)

Companies can apply for unilateral, bilateral or multilateral APAs for their cross-border intercompany transactions.

► Tenure

The term could be as long as three 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.

- In connection with an application for an APA with a rollback that results in a transfer pricing adjustment, there will neither be the imposition of a deemed dividend (arising as a result of the transfer pricing adjustment) nor an associated withholding tax on such deemed dividend if the following conditions are met:

- Any corporate income tax difference related to the amount is paid on time.
- In the framework of general accounting principles, the amount is added to the earnings of the related year and amended within the books of the related year.
- An amount is booked as an account receivable from the related party resident abroad or as paid in cash to the entity in Turkey.

► MAP opportunities

Applicable.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Federal Tax Authority (FTA)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or 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 and reference

The United Arab Emirates (UAE) are not a member of the OECD.

However, it has joined the BEPS Inclusive Framework.

3. Transfer pricing documentation requirements

a) Applicability

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

Yes

▶ Does transfer pricing documentation have to be prepared annually?

No

b) Materiality limit or thresholds

▶ Transfer pricing documentation

The UAE is now a BEPS associate and currently does not have transfer pricing rules in place, it is likely that it will issue, at the least, stand-alone legislations to govern CbCR.

▶ Economic analysis

Not applicable

▶ BEPS master and local files

Not applicable

▶ CbCR

None specified

c) Specific requirements

▶ Treatment of domestic transactions

None specified

▶ 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 or implemented BEPS Action 13 for transfer pricing documentation in your local regulations?

No, however the OECD announced that United Arab Emirates (UAE) has joined the BEPS Inclusive Framework (BEPS IF). It is expected to issue stand-alone legislations to govern CbCR.

▶ Coverage in terms of master and local files

Not applicable

▶ Effective or expected commencement date

Not applicable

▶ Material differences from OECD report template or format

Not applicable

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

Not applicable

▶ CbCR notification and CbC report submission requirement

None specified

▶ CbCR notification included in the statutory tax return

None specified

▶ Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

United Arab Emirates

Yes – 24 June 2018

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

Not applicable

b) Transfer pricing-specific returns

Not applicable

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

▶ Corporate income tax return

Not applicable

▶ Other transfer pricing disclosures and return

Not applicable

▶ CbCR notification

Not applicable

▶ CbC report preparation and 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 or deadline for submission on tax authority request

Not applicable

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

Not applicable

b) Priority and 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. multiyear analysis

Not applicable

c) Use of interquartile range

Not applicable

d) Fresh benchmarking search every year vs. roll forwards and 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 and relief

a) Penalty exposure

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

Not applicable

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

Not applicable

- ▶ Is interest charged on penalties or payable on a refund?

Not applicable

b) Penalty relief

Not applicable

9. Statute of limitations on transfer pricing assessments

Not applicable

10. Likelihood of transfer pricing scrutiny and related audit by the 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 and situations, if any, more likely to undergo audit

None

11. APA and MAP opportunities

- ▶ Availability (unilateral, bilateral and multilateral)

Not applicable

- ▶ Tenure

Not applicable

- ▶ Rollback provisions

Not applicable

- ▶ MAP opportunities

Yes. As BEPS Associates, the UAE will have to work closely with other jurisdictions to monitor the implementation of the minimum standard on dispute resolution under the BEPS plan. This will complement the other BEPS minimum standards and facilitate taxpayers' access to effective and expedient dispute resolution mechanisms under bilateral tax treaties.

Contact

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Uganda Revenue Authority (URA)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the 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 and 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 or rules?

Yes.

▶ Does transfer pricing documentation have to be prepared annually?

No.

b) Materiality limit or 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

Economic analysis required taking into account the five comparability factors i.e. the characteristics of the property or services transferred or supplied; the functions undertaken by the person entering the transaction taking into account of assets used and risks assumed; the contractual terms of the transactions; the economic circumstances in which the transaction take place; and the business strategies pursued by the associate to the controlled transaction.

▶ BEPS master and local files

Not applicable.

▶ CbCR

Not applicable.

c) Specific requirements

▶ 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

None specified.

d) BEPS Action 13 implementation overview

▶ Has your country adopted or 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 local files?

Only the local file is required.

▶ Effective or expected commencement date

None specified.

▶ Material differences from OECD report template or 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.

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

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

- ▶ **CbCR notification included in the statutory tax return**

Not applicable.

- ▶ **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

No.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 and 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 and return**

Not applicable.

- ▶ **CbCR notification**

Not applicable.

- ▶ **CbC report preparation and 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 or 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 (for both international and domestic transactions)

Yes

b) Priority and preference of methods

Uganda accepts the five methods specified in the OECD Guidelines:

Uganda

- ▶ 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. multiyear 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 forwards and 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:

- ▶ Determination of the years to be covered
- ▶ Broad-based analysis
- ▶ Understanding of the controlled transactions
- ▶ Selection of the most appropriate method
- ▶ Existing internal comparable data

- ▶ Sources of external comparables
- ▶ Identification of potential comparables
- ▶ Comparability adjustments
- ▶ Interpretation and use of the data collected

8. Transfer pricing penalties and relief

a) Penalty exposure

- ▶ Consequences of failure to submit, late submission 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 or payable on a 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 and related audit by the 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 the 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 and 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 and MAP opportunities

► Availability (unilateral, bilateral and 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.

► MAP opportunities

None specified.

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United Kingdom

1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Her Majesty's Revenue and Customs (HMRC)

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations or rulings and the effective date of applicability

The United Kingdom's transfer pricing legislation is 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

For accounting periods beginning on or after 1 April 2018, the UK transfer pricing legislation operates by reference to the version of the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations published by the OECD on 10 July 2017 (the OECD 2017 Guidelines) by Treasury Order in SI 2018.266 in exercise of powers conferred in TIOPA 2010, section 164(4)(b).

Related parties are defined by the "participation condition" in Section 148 of the TIOPA 2010 and the related interpretative sections.

2. OECD Guidelines treatment and reference

The UK is a member of the OECD.

The OECD Guidelines are effectively imported into the UK transfer pricing rules because the Guidelines are required to be used in interpreting the rules. 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 accounting periods beginning on or after 1 April 2011 and ending on or before 31 March 2016, the version of the OECD Guidelines approved by the OECD on 22 July 2010 (the 2010 Guidelines) is to be used in reinterpreting the UK Transfer Pricing legislation. For accounting periods beginning on or after 1 April 2016, the transfer pricing guidelines to be used are the 2010 Guidelines as revised by the report *Aligning Transfer Pricing Outcomes with Value Creation, Actions 8-10 – 2015 Final Reports* for accounting periods beginning on or after 1 April 2018. See the section above.

3. Transfer pricing documentation requirements

a) Applicability

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

Yes

► Does transfer pricing documentation have to be prepared annually?

Yes, the minimum requirement to achieve this is by maintaining appropriate evidence that transactions meet the arm's-length standard and to show this position has been considered for each relevant accounting period.

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 or 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 transactions carried out by a business that is a small or medium-sized enterprise. However, 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 is to the characteristics of the whole group of associated enterprises, and not the UK entity alone to determine whether the SME exemption applies.

► Economic analysis

There is no specific requirement in this regard except that there is evidence of compliance with the arm's-length principle.

▶ **BEPS master and local files**

There is no requirement to produce documentation aligned with BEPS Action 13, although documents so prepared will be regarded as meeting the UK compliance requirements provided they are full and complete.

▶ **CbCR**

The UK follows the OECD threshold limit.

c) Specific requirements

▶ **Treatment of domestic transactions**

Domestic transactions have the same transfer pricing obligations as cross-border transactions under the law. In practice, HMRC takes 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 transfer pricing documentation in English and English translations would be requested.

▶ **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 and special rules will apply.

d) BEPS Action 13 implementation overview

▶ **Has your country adopted or 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 and would be accepted as meeting UK requirements.

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

This is not applicable.

▶ **Effective or expected commencement date**

This is not applicable.

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

This is not applicable.

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

Yes

▶ **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 does not require CbCR or does not exchange CbC reports with HMRC.

▶ **CbCR notification included in the statutory tax return**

There is a separate process to be followed where a CBC report is required.

▶ **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

Yes, as of 27 January 2016.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 may well leave prior years open to discovery assessments, as in many cases there will not be sufficient disclosure in tax returns for HMRC to arrive at a fully informed view about the compliance with the arm's-length principle.

b) Transfer pricing-specific returns

There is none specified.

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

► Corporate income tax return

The deadline is 12 months after the end of the accounting period.

► Other transfer pricing disclosure and return

This is not applicable.

► CbCR notification

The deadline is the last day of the accounting period (or 30 September 2017, if later).

► CbC report preparation and submission

The deadline is 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 does not require CbCR or does not 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. The evidence in support of compliance with the arm's-length principle to all provisions needs to exist as at the time the relevant tax return is 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.

► Time period or 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 (for both international and domestic transactions)

Yes

b) Priority and preference of methods

The OECD Guidelines are followed with regard to pricing methods. HMRC's publicly available transfer pricing 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 is 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 Guidelines.

a) Local vs. regional comparables

There is none specified in the legislation but HMRC has a preference in practice for local comparables where available.

b) Single-year vs. multiyear analysis

It is not specified in the legislation but HMRC follows the OECD Guidelines in generally preferring the use of multiyear data.

c) Use of interquartile range

It is not specified in the legislation but in practice HMRC often challenges prices which fall outside an interquartile range.

d) Fresh benchmarking search every year vs. roll forwards and update of the financials

Generally, a fresh benchmarking search is not needed every year, although it should always be considered if there are specific factors that may render prior searches unreliable.

e) Simple vs. weighted average

It is not specified in either legislation or guidance and in practice HMRC has accepted both.

f) Other specific benchmarking criteria, if any

There is none specified in the legislation but there is extensive commentary on best practice in selecting comparables in HMRC's publicly available guidance.

8. Transfer pricing penalties and relief

a) Penalty exposure

► Consequences of failure to submit, late submission or incorrect disclosures

Under the UK's corporation self-assessment regime, a UK company is obliged to self-assess its liability to UK corporation tax including its compliance with all aspects of the UK's transfer pricing legislation. There is a penalty regime in UK law which applies in cases including inaccuracies in tax returns and failure to notify HMRC of an underassessment to tax.

For accounting periods ending on or after 1 April 2008, the provisions for penalties are set out in Schedule 24 of Finance Act 2007. These provisions are couched in terms of careless or deliberate inaccuracies. They are tax-geared at up to 100% of the potential lost revenue. 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.

Under this regime, the level of any penalty will reflect the behaviors which led to the inaccuracy. For an error despite taking reasonable care, there is no penalty. For a careless error, there is a lower tax-geared penalty (up to 30%), and for deliberate inaccuracies the penalty will be higher (up to 70%). For deliberate mis-statement which is then concealed, the penalty can be up to 100% of the tax lost.

Examples of careless inaccuracies 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 transfer pricing adjustments; refer to the section above. It is currently HMRC's practice to consider penalties for any transfer pricing adjustment which results in increased taxable profits in the UK, with the level of penalty reflecting the facts and circumstances of the case.

► Is interest charged on penalties or payable on a refund?

Interest is charged on overdue tax and the current late-payment interest is 3.25%. Interest is also payable on overpaid tax at similar rates.

b) Penalty relief

The best protection against 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 and applied to each intra-group provision.

Normally, adjustments are mutually agreed in the course of an enquiry. Transfer pricing settlements are required to be reviewed by HMRC's Transfer Pricing Board to achieve consistency across HMRC. There is a similar board-level review for transfer pricing penalties.

United Kingdom

As part of the penalty process, HMRC is obliged to consider suspending the penalty if certain terms and conditions apply.

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 currently rare for transfer pricing cases to be taken to tribunal or court in the UK.

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 and related audit by the 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 tax audits. The likelihood that transfer pricing will be reviewed as part of a wider 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 typically then be subject to an audit.

Companies with low or no tax entities in their supply chain may find themselves within the Diverted Profits Tax (DPT) regime and for which there will be a requirement to notify. DPT is levied at 25% rather than the CT rate of 20%. HMRC has recently launched a Profit Diversion Compliance Facility under which companies impacted by DPT may come forward with revised analysis and an offer to settle.

► 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 the transfer pricing methodology is challenged (*high/medium/low*)

The likelihood is medium to high; not all audits will result in an adjustment but, equally, given HMRC's initial risk assessment approach, their expectation is that they will achieve adjustments in the majority of cases.

► Specific transactions, industries and 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.

As noted above, the UK has an additional tax potentially chargeable, the Diverted Profits Tax, which is increasingly being applied by HMRC to achieve UK tax adjustments on cross-border arrangements. 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 and MAP opportunities

► Availability (unilateral, bilateral and multilateral)

Bilateral APA opportunities are available, including now for financial transactions, but admissions to the program are not expected to increase much beyond the current levels, given HMRC resource constraints. There are complexity thresholds to satisfy to gain admission to the program but HMRC also considers whether double taxation is likely without an APA and whether it is worth their while in admitting an APA to the program. There is no automatic admission and no fees. HMRC has indicated in its statement of practice a strong preference for bilateral and multilateral APAs, although unilateral APAs remain potentially available but in very limited circumstances (such as for a UK-based group finance company).

The UK was one of the group of 8 tax authorities which signed up for the initial pilot exercise for the International Compliance Assurance Program (ICAP) and welcomes approaches from taxpayers who may wish to take part in this program going forward.

► **Tenure**

APAs typically do not exceed five years.

► **Rollback provisions**

Rollbacks should be available subject to appropriate fact patterns.

► **MAP opportunities**

A MAP request can be made when a taxpayer considers that the actions of one or both contracting states' tax authorities results, or may result, in taxation not in accordance with the relevant DTA. The United Kingdom resolved 71 MAP applications in 2017-18 but admitted 103 new applications. The average time needed to close MAP cases is currently 27.5 months.

Contact

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

State Fiscal Service of Ukraine

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations or rulings and the 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) regulates 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 non-residents 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.
- Decree of the Cabinet of Ministers of Ukraine No. 191 (29 March 2017) defines an approval of the procedure for the weighted average profit level indicator calculation of the comparable party for transfer pricing purposes.
- Decree of the Cabinet of Ministers of Ukraine No. 1045 (27 December 2017) 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) features amendments to the Ukrainian Tax Code regarding transfer pricing.

- Law of Ukraine No. 2245-19 (7 December 2017) features 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: These are the 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 and 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.

3. Transfer pricing documentation requirements

a) Applicability

- Does your country have transfer pricing documentation guidelines or rules?

Yes

- Does transfer pricing documentation have to be prepared annually?

Yes

b) Materiality limit or 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**

This is not specified.

▶ **BEPS master and local files**

It is expected.

▶ **CbCR**

It is expected.

c) Specific requirements

▶ **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**

This is not specified.

d) BEPS Action 13 implementation overview

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

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

Not applicable

▶ **Effective or expected commencement date**

Not applicable

▶ **Material differences from OECD report template or 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 included in the statutory tax return**

Not applicable

▶ **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

No

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 and disclosure timelines

a) Filing deadline

▶ **Corporate income tax return**

60 calendar days after the end of the year

▶ **Other transfer pricing disclosures and return**

1 October for the Report on Controlled Transactions; 30 calendar days upon the tax authorities' request for the TP documentation

Ukraine

► CbCR notification

Not applicable

► CbC report preparation and submission

Not applicable

b) Documentation preparation deadline

There is no statutory deadline for 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 or 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 (for both international and domestic transactions)

For international transactions – Yes

b) Priority and 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.

b) Single-year vs. multiyear analysis

Both are possible; however, the selection of multiyear analysis should be substantiated in the TP documentation file .

c) Use of interquartile range

The interquartile range must be used.

d) Fresh benchmarking search every year vs. roll forwards and 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

Paragraph 39.3.2.9 of the Tax Code of Ukraine prescribes the list of three mandatory criteria that must be used:

- Activity code criteria (NACE Rev.2)
- Financial criteria (positive operating profit for at least one of the years that are used to calculate PLI)
- Twenty percent independence criteria.

8. Transfer pricing penalties and relief

a) Penalty exposure

► Consequences of failure to submit, late submission or incorrect disclosures

The Report on Controlled Transactions is mandatory and due on 1 October.

The penalty for not filing the Report on Controlled Transactions is 300 times the subsistence minimum (for FY 2018, UAH528,600 or approximately USD19,435).

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 one time the subsistence minimum (for violations in FY 2018, UAH1,762 or USD65) 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 five times the subsistence minimum (for violations in FY 2018, UAH8,810 or USD324) 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 one time 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 2018, UAH352,400 or approximately USD13,000). Non-submission of the documentation after 30 calendar days upon expiration of the term for penalty payment for non-submission entails penalties of five times the subsistence minimum for each calendar day of non-submission of the documentation. Late submission of the documentation is penalized by two times the subsistence minimum (for violations in FY 2018, UAH3,520 or USD130) 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 18.0% per year as of 1 December 2018.

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

Refer to the section above.

► **Is interest charged on penalties or payable on a refund?**

The amount of tax understatement 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 18.0% per year as of 1 December 2018.

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 and related audit by the local authority

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

The likelihood is 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.

Ukraine

► **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 the 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.

Corresponding adjustments in the case of transactions with nonresidents are not prescribed by the Law.

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

None

11. APA and MAP opportunities

► **Availability (unilateral, bilateral and 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).

Decree of the Cabinet of Ministers of Ukraine No. 518 (04 July 2018) features amendments to 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**

It is up to five years.

► **Rollback provisions**

It is available, although number of years are not specified.

► **MAP opportunities**

Yes, MAP opportunities are available. Most of Ukraine's DTTs provide a three-year limitation period for filing MAP applications.

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

Internal Revenue Service (IRS)

b) Relevant transfer pricing section reference

- ▶ Name of transfer pricing regulations or rulings and the effective date of applicability

The following are the transfer pricing regulations or rulings:

- ▶ 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 2017, the US passed a major tax reform effective from 1 January 2018. The legislation, informally known as the Tax Cuts and Jobs Act of 2017 (TCJA), lowered the US corporate income tax rate to 21% and introduced a number of new provisions with transfer pricing implications. Some of the key provisions of the TCJA affecting transfer pricing are the following:
 - ▶ Base Erosion and Anti-Abuse Tax (BEAT): The BEAT minimum tax, detailed in the new Internal Revenue Code, Section 59A, is due if the BEAT tax amount is greater than the regular corporate tax for a year.
 - ▶ Foreign Derived Intangible Income (FDII): The TCJA inserted a new section into the IRC, Section 250, which provides a special deduction for a US corporation's FDII. The new section provides a lower rate of tax on a portion of profits derived from sales into foreign markets.
 - ▶ Global Intangible Low Taxed Income (GILTI): The GILTI regime of the TCJA added new Sections 250 and 951A to the Internal Revenue Code and revised Section 960. The TCJA imposes a US tax on GILTI, while providing a deduction equal to 50% of the GILTI amount and allowing an 80% foreign tax credit (FTC).
 - ▶ The TCJA also includes an expanded definition of intangibles and has moved the definition from Section 936 to Section 367(d)(4).
- ▶ In 2018, the IRS issued Transfer Pricing Examination Process (Publication 5300 (6-2018)), a guide to best practices and processes to assist with the planning,

execution and resolution of transfer pricing examinations. The publication, which will be shared with taxpayers at the start of an examination, is intended to be consistent with the Large Business & International (LB&I) Examination Process (LEP) (Publication 5125).

- ▶ Section reference from local regulation

Refer to the section above.

2. OECD Guidelines treatment and 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 or rules?

Yes. However, transfer pricing documentation is not required by law, although, 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

United States

- ▶ 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 or thresholds

▶ Transfer pricing documentation

There is no materiality limit.

▶ Economic analysis

There is no materiality limit.

▶ BEPS master and local files

This is not applicable.

▶ CbCR

The limit is USD850 million (approximately EUR700 million).

c) Specific requirements

▶ Treatment of domestic transactions

There is no US federal documentation obligation for domestic transactions between related parties who 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, Treas. Regs. Section 1.482 provides taxpayers the opportunity to use applicable federal rates (AFRs) for intercompany loans and advances; further, under certain conditions, only a charge of fully loaded cost may be used for intercompany services transactions.

d) BEPS Action 13 implementation overview

▶ Has your country adopted or 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 local files

The master and local files are not covered.

▶ Effective or expected commencement date

The law is applicable for taxable years beginning on or after 30 June 2016.

▶ Material differences from OECD report template or 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. Regs. 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. Regs. 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 (form 8975) must be prepared and submitted for tax years beginning on or after 30 June. It is voluntary for tax years beginning on or after 1 January.

► **CbCR notification included in the statutory tax return**

This is not applicable.

► **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

No.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 and disclosure timelines

a) Filing deadline

► **Corporate income tax return**

The deadline is 15 March; extension is available until 15 October.

► **Other transfer pricing disclosures and return**

The deadline is 15 March.

► **CbCR notification**

This is not applicable.

► **CbC report preparation and submission**

Filing is due with the tax return for the respective year.

b) Documentation preparation deadline

If the 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?**

The submission is based on the request of tax authorities.

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

Taxpayers must provide the documentation to the IRS within 30 days of an examiner's request.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

This is applicable only for international transactions.

b) Priority and 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 regarding local comparables; foreign and regional comparables are generally acceptable to local tax authorities provided comparability requirements are met.

b) Single-year vs. multiyear analysis

United States

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 related to the uncontrolled comparables or the controlled taxpayer for one or more years before or after the year under review. If data related to uncontrolled comparables from multiple years is used, data related 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 the 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 and 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 forwards and update of the financials

There is no legal requirement for a fresh benchmarking search every year as roll forward and 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

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

► Consequences of failure to submit, late submission 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 or 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 or related audit by local authority

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

The likelihood of an annual tax audit depends on 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 is requested frequently 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, experiences have shown that well-reasoned documentation reduces the likelihood of further scrutiny.

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

The likelihood is high. Once the IRS commits significant resources to the audit, a Notice of Proposed Adjustment should be expected.

► **Specific transactions, industries and 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.

IRS increased user fees for APAs in early 2018.

► **Tenure**

This is not applicable.

► **Rollback provisions**

Rollbacks are applicable.

► **MAP opportunities**

Revenue Procedure 2015-40 (Rev. Procs. 2015-40) sets forth the "Procedures for Requesting Competent Authority Assistance under Tax Treaties." Taxpayers may request MAP assistance, often referred to as a "Competent Authority Request" if taxation has or is likely to occur that is not in accordance with the provisions of a double tax treaty (DTT) to which the United States is signatory. In addition, the taxpayer must be a resident either in the United States or in the other relevant contracting state; they must meet the prescribed time limits; and satisfy the prescribed conditions for a Competent Authority Request. Most of the United States' DTTs permit taxpayers to present a case to the IRS within a prescribed period from the first notification to the taxpayer of the actions giving rise to taxation not in accordance with the DTT. However, time limits may vary, and the relevant DTT should be consulted for the applicable time limit.

11. APA and MAP opportunities

► **Availability (unilateral, bilateral and multilateral)**

Taxpayers may request unilateral, bilateral or multilateral APAs. The APA process is administered by the IRS' Advance Pricing and Mutual Agreement Program. Guidance regarding APAs can be found in Rev. Procs. 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. Procs. 2015-40.

Contact

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1. Tax authority and relevant transfer pricing regulation or 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 or rulings and the 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
 - ▶ Presidential Decree No. 353/018, dated 26 October 2018
 - ▶ DGI Resolution No. 2.084/009, dated 1 December 2009
 - ▶ DGI Resolution No. 094/2019, dated 4 January 2019

2. OECD Guidelines treatment and 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 or 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 or thresholds

▶ Transfer pricing documentation

This is not applicable.

▶ Economic analysis

This is 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 total consolidated revenue of the Group should equal or exceed EUR750 million.

c) Specific requirements

▶ Treatment of domestic transactions

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 are subject to TP regime. 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 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**

There is none specified.

d) BEPS Action 13 implementation overview

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

Yes

► **Coverage in terms of master and local files**

It covers both the master file and local file.

► **Effective or 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 or format**

There are no material differences between the OECD report template or 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**

All CIT taxpayers that integrates a specific Multinational Group of Great Economic Dimension are obliged to notify and submit the CbCR. The Group of Great Economic Dimension is considered to be those whose total consolidated revenues at the group's fiscal year-end are equal to or greater than EUR750 million.

In that sense, all CIT taxpayers that comply with the above mentioned are included in this regime; even when they do not have transactions with related entities; are in an inactive,

closing or liquidation state; are Free Zone users; are exempt from the tax; or obtain income from a foreign source.

The CbCR must be submitted annually, except when it must be presented by an entity that is a member of the Multinational Group and is obliged to inform a tax administration of a jurisdiction with which our Uruguay has an information exchange agreement with competent authorities of foreign States in the framework of international agreements or conventions, and this report can be effectively exchanged with our local tax authority (DGI).

► **CbCR notification included in the statutory tax return**

Not specified

► **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

Yes, it is so as of 30 June 2016.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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**
- **Audited financial statements 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, among questions, 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.

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

► Corporate income tax return

23 April (four months after the fiscal year-end)

► Other transfer pricing disclosures and return

23 September (nine months after the fiscal year-end).

► CbCR notification

The deadline is by the end of the reporting fiscal year. However, for fiscal years ending between 31 December 2017 and 28 February 2019, deadline is 31 March 2019.

► CbC report preparation and submission

The deadline is 12 months after the end of the reporting fiscal year. However, for fiscal years ending between 31 December 2017 and 30 November 2018, deadline is 15 months after the end of the reporting fiscal year.

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 USD 6 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 or 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 (for both international and domestic transactions)

► International transactions – yes

► Domestic transactions – yes

b) Priority and preference of methods

There are no differences between an analysis of international and domestic transactions; the same preferences apply for both types of 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.

7. Benchmarking requirements

a) Local vs. regional comparables

There is a preference for local comparables for arm's-length analysis.

b) Single-year vs. multiyear 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 forwards and 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

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

► Consequences of failure to submit, late submission 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.

Failure to submit the CbC report may result in progressive penalties up to US\$250,000, depending on the severity of the failure.

In addition, tax certificate could be denied or at least suspended. Without that certificate, companies would be in a position in which they would not be able to sell or import goods. Therefore, the lack of that certificate is highly disruptive from a business standpoint.

► 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 or payable on a refund?

According to the law, the interest for nonpaid 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 experiences 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 and related audit by the 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.

Uruguay

► **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 the 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 and 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 and MAP opportunities

► **Availability (unilateral, bilateral and 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**

There is none specified.

► **MAP opportunities**

There is none specified.

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1. Tax authority and relevant transfer pricing regulation or 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 or 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 is mentioned 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

The section reference is Venezuelan Income Tax Law, Articles 109 to 168.

2. OECD Guidelines treatment and reference

Venezuela is not a member of the OECD.

Article 113 of the ITL states that establishes 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 or 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 or thresholds

- ▶ Transfer pricing documentation

This is not applicable.

- ▶ Economic analysis

This is not applicable.

- ▶ BEPS master and local files

This is not applicable.

- ▶ CbCR

This is not applicable.

c) Specific requirements

- ▶ Treatment of domestic transactions

There is no documentation obligation for domestic transactions.

- ▶ Local language documentation requirement

Venezuela

The transfer pricing 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 the taxpayer during the lapse provided for in the law, duly translated into Spanish if applicable."

► **Safe harbor availability**

There is none specified.

d) BEPS Action 13 implementation overview

► **Has your country adopted or 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 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 or expected commencement date**

This is not applicable.

► **Material differences from OECD report template or format**

This is not applicable (Master File and CbCR).

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

This is 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.

► **CbCR notification included in the statutory tax return**

No.

► **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

No.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

This is 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 or 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 and return**

The deadline is six months after the end of the taxpayer's fiscal year.

► **CbCR notification**

This is not applicable.

► **CbC report preparation and submission**

This is 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 transfer pricing 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, the deadline is 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 or 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 (for both international and domestic transactions)

For international transactions: Yes.

b) Priority and 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 Canadá.

b) Single-year vs. multiyear analysis

There is a preference for both single-year and multiyear 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 forwards and 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

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

► **Consequences of failure to submit, late submission or incorrect disclosures**

A failure to file PT-99 will trigger a penalty of 150 tax units 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 two hundred percent (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 and payable on refund?**

No. The 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.

10. Likelihood of transfer pricing scrutiny and related audit by the 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 the transfer pricing methodology is challenged (*high/medium/low*)

The likelihood is high.

► Specific transactions, industries and 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 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 and MAP opportunities

► Availability (unilateral, bilateral and 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

There is none specified.

► MAP opportunities

There is none specified.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

General Department of Taxation (GDT)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the 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:

- ▶ Related parties are parties having relationships where:
 - ▶ A party participates directly or indirectly in the management or control of, or contributes capital to or invests in, the other party
 - ▶ Parties are directly or indirectly managed, controlled or invested in by another party
- ▶ Related parties referred to in Clause 1 of this Article shall be subject to the following specific provisions:
 - ▶ An enterprise directly or indirectly owns at least 25% of the investment capital of the other enterprise.
 - ▶ Both enterprises directly or indirectly own at least 25% of the investment capital by a third party.
 - ▶ 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.

- ▶ An enterprise guarantees or offers another enterprise a loan under any form (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.
- ▶ 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.
- ▶ 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, are appointed by a third party.
- ▶ 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 or foster father and natural or foster child, natural or foster older sibling and natural or foster younger sibling, brother or sister-in-law, maternal or paternal grandfather or grandmother and maternal or paternal grandchild, and maternal or paternal aunt and uncle and sibling.
- ▶ Both business entities are head office and permanent establishments or permanent establishments of the same overseas entity or individual.
- ▶ One or more enterprises are under the control of one individual through either his or her investment capital into those enterprises or his or her direct involvement in administration of those enterprises.
- ▶ 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 and 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 or 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 finalization return of the respective year (i.e., 90 days after the financial year-end).

b) Materiality limit or 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 01 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 or 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 requirements

- ▶ 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 01 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 01 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 or implemented BEPS Action 13 for transfer pricing documentation in your local regulations?**

Yes

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

It covers both the master file and local file.

▶ **Effective or expected commencement date**

It is 1 May 2017.

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

The Vietnamese format is generally in line with the OECD format.

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

This is not applicable.

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

There is no CbCR notification requirement in Vietnam.

▶ **CbCR notification included in the statutory tax return**

This is not applicable.

▶ **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

No

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and 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 VND18,000 billion and having operations in many countries or 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 and disclosure timelines

a) Filing deadline

▶ **Corporate income tax return**

90 days from the end of the financial year

▶ **Other transfer pricing disclosures and return**

90 days from the end of the financial year

▶ **CbCR notification**

Not applicable

▶ **CbC report preparation and 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

Vietnam

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

No

► **Time period or 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 (for both international and domestic transactions)

Yes

b) Priority and 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. multiyear 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 forwards and 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 and relief

a) Penalty exposure

► **Consequences of failure to submit, late submission 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 or payable on a 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 and related audit by the local authority

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

The likelihood is medium to high, as the tax authority is currently paying more attention to transfer pricing.

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

The likelihood is 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 the transfer pricing methodology is challenged (*high/medium/low*)

The likelihood is high, mostly around CUP applicability, and in the case of application of CPM or TNMM, the challenges are around the selection of comparables and comparability of the selected comparables.

▶ Specific transactions, industries and 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 and MAP opportunities

▶ Availability (unilateral, bilateral and 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

Rollback provisions are not available for prior years.

▶ MAP opportunities

Yes, taxpayers may request an MAP if taxation has or is likely to occur that is not in accordance with the provisions of a Double Taxation Treaty (DTT) to which Vietnam is signatory. Most of Vietnam's DTTs permit taxpayers to present a case to the tax authorities within two or three years from the first notification to the taxpayer of the actions giving rise to taxation not in accordance with the DTT. However, time limits may vary, and the relevant DTT should be consulted for the applicable time limit.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Zambia Revenue Authority (ZRA)

b) Relevant transfer pricing section reference

► Name of transfer pricing regulations or rulings and the 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.

As per amendment of transfer pricing regulations through government gazette dated 6 April 2018, Zambia has adopted OECD's transfer pricing guidelines July 2017 recommendations. The amendment seeks to enhance the existing transfer pricing regulations, by providing detailed guidance on application of arm's-length principle and Zambia's transfer pricing documentation requirement.

► Section reference from local regulation

Section 97A to 97D

2. OECD Guidelines treatment and reference

Zambia is not a member of the OECD. However, the transfer pricing regulations recognize the application of OECD transfer pricing guidelines and the United Nations practical manual on transfer pricing for developing countries. However, the regulations and Zambian income tax act (ITA) will prevail in case of any inconsistencies.

3. Transfer pricing documentation requirements

a) Applicability

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

Yes, Zambia recently published transfer pricing documentation guidelines or rules.

► Does transfer pricing documentation have to be prepared annually?

Yes, the transfer pricing documentation has to be prepared on annual basis and maintained for ten years.

b) Materiality limit or thresholds

► Transfer pricing documentation

Taxpayers with an annual net turnover equal to or exceeding ZMK20 million (approx. USD2.1 million) are required to prepare documentation. However, the threshold will not apply to multinational enterprises (MNEs), effectively rendering all MNEs subject to transfer pricing requirements.

► Economic analysis

This is not applicable.

► BEPS master file and local files

This is not applicable.

► CbCR

This is not applicable.

c) Specific requirements

► Treatment of domestic transactions

The transfer pricing regulation apply to an establishment solely in Zambia with turnover above ZMW 20 million (approx. US \$ 2.1 million). Domestic transactions have the same transfer pricing obligations under the law.

► Local language documentation requirement

The transfer pricing reports are to be prepared in the local language (English). The Income Tax (Transfer Pricing) (Amendment) Regulations, 2018 state that if the documents are prepared in a language other than English, the taxpayer will have to translate the documentation at the person's own expenses and certified by a translator before a Notary Public.

► Safe harbour availability

A safe harbour is provided on the amount charged for the provision of a low value-added service between associated person.

d) BEPS Action 13 implementation overview

► Has your country adopted or 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 local files**

No, Zambia has not explicitly adopted BEPS Action 13 for transfer pricing documentation in local regulations, but there are some elements thereof. Effective or expected commencement date

This is not applicable.

► **Material differences from OECD report template or format**

This is not applicable.

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

This is not applicable.

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

This is not applicable.

► **CbCR notification included in the statutory tax return**

This is not applicable.

► **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**

No

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

Effective from 2018 (including FY 2017), taxpayers have to state all related party transactions in the annual income tax return. Taxpayers are required to disclose details of new related companies (worldwide) within a month of the companies becoming related. The penalty for non disclosure is US\$600 per day for the company and each of the Directors.

b) Transfer pricing-specific returns

This is not applicable.

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

► Corporate income tax return

For FY 2017, the due date for the return filing is 21 June 2018; prior to FY 2017, the due date for the corporate income tax return filing was 21 June of the following year.

► Other transfer pricing disclosures and return

Taxpayers have to disclose all related party transactions in their annual returns, effective FY 2017. The newly published regulations state that transfer pricing documentation must be prepared by the date of submission of the annual income tax return, but a transfer pricing return does not need to be submitted.

► CbCR notification

This is not applicable.

► CbC report preparation and submission

This is not applicable.

b) Documentation preparation deadline

Effective from 2018, for FY 2017 and each subsequent year, contemporaneous transfer pricing 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 or deadline for submission on tax authority request

Transfer pricing documentation should be submitted within 30 days upon written request.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

Yes

b) Priority and preference of methods

The 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. multiyear analysis

Multiyear analysis

c) Use of interquartile range

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

d) Fresh benchmarking search every year vs. roll forwards and update of the financials

As a practice, fresh benchmarking search is not required every year.

e) Simple vs. weighted average

A simple average is preferred, as per common practice.

f) Other specific benchmarking criteria, if any

There is none specified.

8. Transfer pricing penalties and relief

a) Penalty exposure

- ▶ Consequences of failure to submit, late submission or incorrect disclosures
 - ▶ Noncompliance with the regulations may result in an offence and liability on conviction to penalties specified under the Income Tax Act (i.e. from 1st January 2018 to 31st December 2018 penalty is ZMW 3000, and with effect from 1st January 2019 penalty is ZMW 24,000,000).

- ▶ 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 or payable on a 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 a specific statute of limitations on transfer pricing assessments (10 years) with effect from 1 January 2019. The normal income tax statute of limitations of six years is applicable. With effect from 1 January 2019, taxpayers are also required to retain transfer pricing related records for a period of 10 years (6 years for other tax records).

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

- ▶ Likelihood of transfer pricing-related audits is high

The audit program is risk-based, concentrating on thinly capitalized MNEs and specific sectors of the economy such as mining related companies and distributors.

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

The likelihood is medium; tax authorities will usually challenge the characterization of the entity. The method is not often challenged.

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

The likelihood is 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 and situations, if any, more likely to undergo audit**

At the time of this publication, the mining industry (mining companies and suppliers) and distributors seemed to be the revenue authorities' focus.

11. APA and MAP opportunities

- ▶ **Availability (unilateral, bilateral and multilateral)**

Zambia does not have a formal APA program.

- ▶ **Tenure**

This is not applicable.

- ▶ **Rollback provisions**

This is not applicable.

- ▶ **MAP opportunities**

This is not applicable.

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Zimbabwe

1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Zimbabwe Revenue Authority (ZIMRA)

b) Relevant transfer pricing section reference

▶ Name of transfer pricing regulations or rulings and the effective date of applicability

Zimbabwe Transfer Pricing regulation.

▶ Section reference from local regulation

Section 2A of the Income Tax Act(23:06) defines an associated party as the following: “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.

Section 98B as read with the 35th schedule of the Income Tax Act (23:06) provides specific laws on Transfer Pricing.

2. OECD Guidelines treatment and reference

Zimbabwe is not a member of the OECD but makes reference to the OECD and the UN Transfer Pricing guidelines. The OECD guidelines are relevant sources of interpretation and application for Transfer Pricing purposes.

3. Transfer pricing documentation requirements

a) Applicability

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

There are limited rules provided in the 35th schedule of the Income Tax Act (23:06). The authority is in the process of preparing the Transfer Pricing guidelines.

▶ Does transfer pricing documentation have to be prepared annually?

Yes, transfer pricing documentation must be prepared annually. This involves updating transaction values and documenting new transactions.

b) Materiality limit or thresholds

▶ Transfer pricing documentation

Zimbabwe has no safe harbor rules. Every person who transacts is required to have TP documentation including small to medium enterprises.

▶ Economic analysis

No minimum thresholds.

▶ BEPS master and local files

No minimum thresholds.

▶ CbCR

Not yet adopted.

c) Specific requirements

▶ Treatment of domestic transactions

The legislation applies to both domestic and cross-border transactions.

▶ Local language documentation requirement

The transfer pricing documentation report need to be submitted in English.

▶ Safe harbor availability

Zimbabwe does not have safe harbor rules at this stage

d) BEPS Action 13 implementation overview

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

Yes. The 2017 TP guidelines which Zimbabwe refers to for interpretation has aspects of Action 13. Our local legislation (35th schedule of the Income Tax Act) refer to local file requirements as prescribed in Action 13. Our Legislation does not however refer specifically to Action 13.

▶ Coverage in terms of master and local files

There is no mention of master or local file in our local legislation.

- ▶ **Effective or expected commencement date**
It is not applicable.
- ▶ **Material differences from OECD report template or format**
Zimbabwe uses OECD and UN manual guidelines.
- ▶ **Sufficiency of BEPS Action 13 format report to achieve penalty protection**
It is yet to be tested.
- ▶ **CbCR notification and CbC report submission requirement**
It is not applicable.
 - ▶ **CbCR notification included in the statutory tax return**
It is not applicable.
- ▶ **Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports**
No.

4. Transfer pricing return and related-party disclosures

a) Related-party disclosures and transfer pricing-related appendices

The format of the Transfer Pricing Return as well as specific related party disclosures are yet to be made public.

b) Transfer pricing-specific returns

See a) above.

5. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- ▶ Corporate income tax return

The filing deadline is 30 April of the following year.

- ▶ Other transfer pricing disclosures and return

No other return required.

- ▶ **CbCR notification**

Not applicable.

- ▶ **CbC report preparation and submission**

Not applicable.

b) Documentation preparation deadline

The transfer pricing documentation must be available on request by ZIMRA officers with effect from 1 January 2016, when the transfer pricing legislation was introduced.

c) Documentation submission deadline

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

Yes

- ▶ **Time period or deadline for submission on tax authority request**

The commission give annual notice and Returns must be submitted within 30 days from the date of notice.

6. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

Yes.

b) Priority and preference of methods

The following are the approved transfer pricing methods in Zimbabwe:

- ▶ CUP
- ▶ Resale price
- ▶ Cost-plus
- ▶ TNMM
- ▶ Transactional profit split

Zimbabwe

When all the above-mentioned methods can be applied with equal reliability, the determination of arm's-length conditions shall be made using the CUP method.

7. Benchmarking requirements

a) Local vs. regional comparables

A determination of whether comparables from other geographic markets are reliable has to be made on a case-by-case basis.

b) Single-year vs. multiyear analysis

Single.

c) Use of interquartile range

Yes.

d) Fresh benchmarking search every year vs. roll forwards and update of the financials

Not specified.

e) Simple vs. weighted average

Simple.

f) Other specific benchmarking criteria, if any

None.

8. Transfer pricing penalties and relief

a) Penalty exposure

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

Penalties for noncompliance with transfer pricing legislation are:

- ▶ 10% of the shortfall tax liability where taxpayer TP documentation report has been prepared in accordance with the TP regulations and Guidelines.
- ▶ 30% of shortfall tax liability where the TP documentation prepared does not meet both the local TP regulations and TP guidelines.

- ▶ 100% of shortfall tax liability where there is evidence of tax evasion.

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

Yes.

- ▶ Is interest charged on penalties or payable on a refund?

Not on penalty but on principal tax payable.

b) Penalty relief

Penalties can be waived or reduced through negotiation with ZIMRA.

9. Statute of limitations on transfer pricing assessments

It is six years from the relevant year of the assessment.

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

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

High.

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

High.

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

High.

- ▶ Specific transactions, industries and 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. Sectors include mining and financial services; transactions include intangibles, group services, restructuring and sale of property.

11. APA and MAP opportunities

▶ **Availability (unilateral, bilateral and multilateral)**

No legislation in place.

▶ **Tenure**

Not applicable

▶ **Rollback provisions**

Not applicable

▶ **MAP opportunities**

Available to 16 countries with which it has DTAs with.

Contact

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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.

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.

MNE (multinational enterprise)/MNC (multinational corporation)

A member of a related group that carries on business directly or indirectly in two or more countries.

MCAA (Multilateral Competent Authorities Agreement)

The purpose of the CbC MCAA is to set forth rules and procedures as may be necessary for Competent Authorities of jurisdictions implementing BEPS Action 13, to automatically exchange CbC Reports prepared by the Reporting Entity of an MNE Group and filed on an annual basis with the tax authorities of the jurisdiction of tax residence of that entity with the tax authorities of all jurisdictions in which the MNE Group operates.

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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