TAXAND

TRANSFER PRICING GUIDE 2024

Your global tax partner

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FOREWORD

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The Guide

The Taxand Transfer Pricing Guide 2024 is a critical resource for any multinational organisation seeking to create efficiencies in its strategic management of transfer pricing. A distinguishing factor of this guide is territory specific insight into the nuances that influence transfer pricing policy management and presents core recommendations for corporates to manage risks and align their strategies with evolving global standards.

This first edition of the 2024 guide details the technical guidance from six continents compiled from the unmatched knowledge within Taxand's international network of advisors, who are able to comment with full objectivity due to their independence within our global network.

Through application of these insights, readers stand to be equipped with the guidance to drive more effective strategies, while ensuring confidence that transfer pricing affairs are fully aligned to local compliance and regulatory requirements.

Global perspective, local knowledge

In an increasingly interconnected but volatile global economy, the complexities of transfer pricing management continue to challenge a number of multinational corporations operating across diverse jurisdictions. A critical aspect of transfer pricing is the adherence to local requirements and customary practices and the most effective planning relies on understanding the global picture. The intricacies of local regulations, economic environments, and enforcement practices necessitate a nuanced approach.

The essence of transfer pricing lies in the valuation of transactions between related entities within a multinational enterprise. These valuations must reflect arm's length conditions, ensuring that profits are allocated and taxed where economic activities and value creation occur. However, the application of transfer pricing principles is far from uniform across jurisdictions.

Economic benchmarks must be carefully assessed, with market-specific adjustments considered. For instance, country risk adjustments are particularly pertinent in developing countries, reflecting the unique economic risks associated with these markets. The selection of comparables also varies, European and other jurisdictions may mainly consider private companies, while North American tax authorities typically emphasising reliance on audited financial information from publicly-listed companies.

Preparedness is paramount

Although transfer pricing documentation is often viewed as a "mere" compliance exercise, the potential benefits of maintaining contemporaneous documentation cannot be overstated. To note just a few, doing so can offer a business penalty protection in the event its transfer pricing results are challenged, the details of the analysis facilitate timely preparation of informational reporting that is required as part of most country's corporate tax filing package, and its existence can streamline the processes around an M&A or other investment life event.

The timings and formats of local file documentation are equally important and vary significantly between jurisdictions. Requirements range from the necessity to file with tax authorities directly to simply having the documentation on hand and readily available upon request. In some cases, corporates are not required to prepare it in advance at all. Our team at Global Taxand works seamlessly across jurisdictions to enable its clients to equip their business in navigating these myriad requirements and creating a bespoke "transfer pricing calendar" tailored to each company's unique needs.

Managing business change

Managing business change is a pivotal element of transfer pricing. A thoughtful approach to documenting changes in a business and the rationale for how a company has addressed such changes is essential.

This can include the economic and financial impacts of natural events, such as pandemics or natural disasters, or other global occurrences like wars, elections, inflation, as well as local or regional recessions.

Capturing these changes in a business on a timely basis is crucial, as delays can result in the loss of important details. Moreover, ensuring that the implementation of transfer pricing policies in the face of such changes follows a consistent approach, aligned with the function and risk profile presented to tax authorities, is vital.

Taxand's Take

The OECD's Base Erosion and Profit Shifting (BEPS) initiative, particularly the Pillars, are expected to have significant implications for existing transfer pricing policies. All multinationals must evaluate the potential impacts of countries implementing—or choosing not to implement—these guidelines.

The Taxand Transfer Pricing Guide 2024 provides a framework for understanding these developments and offers strategic recommendations for adapting and enhancing strategies that will strengthen business resilience, support profitability and maximise the positive attributes of an international corporate network.

Yours Truly

ARGENTINA

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Overview

Bruchou & Funes de Rioja, Taxand Argentina

Bruchou & Funes de Rioja is a legal advisory firm based in Buenos Aires which offers a full range of legal services. With respect to tax services, and in particular with transfer pricing services, the team can assist in every aspect of transfer pricing advisory. This includes, among others, compliance and reporting requirements, analysis, planning, strategy, disputes, and controversy resolutions.

Transfer Pricing Framework

Transactions subject to transfer pricing rules are governed by Argentine Income Tax Law, its Regulatory Decree, and General Resolutions of Fiscal Tax Authority ("FTA").

Taxpayers subject to transfer pricing regulations are: i) those who have transacted with "related" individuals or related legal entities domiciled abroad, ii) those who have transacted with individuals or legal entities established or located in non-cooperative or low-tax jurisdictions, iii) Argentine residents who entered into transactions with their permanent establishments located abroad, iv) Argentine residents who are owners of permanent establishments located abroad, in relation to the transactions that those permanent establishments enter into with individuals or other kinds of related parties domiciled, established or located abroad, and v) Taxpayers that carry out import and export operations between independent parties.

The Arm´s length methods listed in Argentine regulations are the same as those in the OECD Transfer Pricing Guidelines, except for the specific method regarding exports of goods at known price in transparent markets (commodities).

Accepted Transfer Pricing Methodologies

The OECD Guidelines are not incorporated in Argentine regulations, however most of the Argentine rules are based on the OECD Transfer Pricing Guidelines. The work of the OECD in this field and the provisions of the aforementioned Guideline may constitute useful tools for interpreting and applying the transfer pricing rules.

In determining transfer prices, the most appropriate method regarding the type of transaction being examined and which reflects its economic reality shall be used. For such purposes, the following considerations should be taken into account when choosing the method: i) it is the most compatible method for the business and commercial structures; ii) it has the best quality and quantity information available for suitable justification and application; iii) it considers the most suitable level of comparability of the related and non-related transactions and of the companies involved in such comparison; and iv) it requires the lowest number of adjustments for the purposes of eliminating the existing differences between the facts and the comparable situations.

Additionally, Argentine regulations provide for the application of a method that consists in the obligation of the importing or exporting agent, located in Argentina, to register with the FTA all contracts executed regarding imports or exports of goods with market quotation (commodities) that involve an international intermediary and where at least one of the following conditions exist: i) the international intermediary is related to the local agent, or ii) the exporting or importing agent is related to the local agent; or when the international intermediary is located in a non-cooperative or low-tax jurisdiction. The registration should include the relevant features of contracts, the comparability difference with the market quotation, or the discounts agreed upon the amount of which are above the market quotation.

If the taxpayer fails to submit the contract registration, the income will be based on the quoted value of the goods on the shipment loading date (including the corresponding comparability adjustments if applicable), rather than the contract date.

Transfer Pricing Documentation Requirements

Taxpayers subject to transfer pricing rules must submit certain sworn statement such as the Local Report/Transfer Pricing Study, Master File Report, information regimes and CbCR, as follows:

i) Report/Transfer Pricing Study: This Report describes the taxpayer's structure, its activities, strategies, customers, related parties or entities in non-cooperative jurisdictions, and their operations, as well as their analysis.

ii) Information Regime Form 2668: Includes taxpayers who engage in transactions with related parties or entities located in low or non-tax jurisdictions, when in the last two fiscal periods prior to the period being reported, they were required to submit information on international transactions, and thresholds are exceeded.

iii) Master Report: Taxpayers or entities linked to MNEs must submit this report to provide general information about the MNEs group's composition, if the total consolidated annual income of the MNEs group exceeds ARS 4,000,000,000 (approx. USD 4,761,905 at the Official Exchange Rate "OER" as of 12.19.2023) in the fiscal year preceding the submission, and thresholds are exceeded.

iv) CbCR: Consists of an annual information regime regarding the entities described as MNEs, as well as the fiscal jurisdictions in which they operate. MNEs whose total consolidated annual revenues are less than EUR 750,000,000 are excluded from this regime.

v) Information Regime on resident entities in Argentina which are part of MNEs groups: The information to be provided includes, among others, the following details regarding the last ultimate controlling entity (or the reporting entity, if it is not the same as the last ultimate controlling entity): Tax Identification Number, entity type, fiscal and legal address, place, and date of incorporation.

In addition to the Transfer Pricing Study, the taxpayer must keep the following documentation, among others: invoices, working papers (which allow for the identification of the operations under analysis and justify the transfer prices method), the comparison criteria used, the amounts of consideration, and the profit margins reported in the sworn statement and in the Transfer Pricing Study.

With respect to the import or export operations between independent parties, the taxpayers must keep, among other, the following documentation: a) regarding the resident subject in the country: their identifying information, activities performed, and organizational structure of the business; b) regarding independent individuals or entities abroad the country: their last name and first names, trade name or legal name, Tax Identification Number in the country of fiscal residence, fiscal address, and country of residence; c) description and characteristics of the operations, methods and execution, amount or price or agreed compensation, currency and form of payment used, and guarantees or coverages assumed.

Local Jurisdiction Benchmarks

Argentine regulations establish a preference for domestic comparable over foreign comparable. In this sense, domestic comparable, if any, should be considered as a priority in the analysis, to the extent that there are no significant differences between the comparable elements of the sample or that, if any, they do not affect the conditions analyzed, or adjustments can be made that allow their elimination and optimize the comparison.

In relation to accepted methods in Argentine, FTA generally prefers the application of CUP and TNMM.

Argentine regulations establish that when there is more than one appropriate method regarding the type of transaction being examined, it should be assessed by interquartile range and median of the prices.

In these cases, if the consideration amount set falls within the interquartile range, such prices will be considered as agreed upon between independent parties. Otherwise, the price will be considered as arranged between independent parties if it is equal to the median.

There are many cases of transfer pricing being litigated before Argentine Courts (Among others, Supreme Court, Tax court). These cases generally involve the services of pharmaceutical sector, commodities exports sector, and automotive sector.

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

Argentine regulates the APA rules and the possibility of the taxpayer requesting its application to FTA. However, regulations are still pending.

Transfer Pricing Audits

Transfer Pricing audits are not common in Argentina because there are few specialists in these matters in the FTA. However, when these do occur, tax audits performed by the FTA generally involve pharmaceutical, automotive and commodities (especially agricultural) operations/sectors more frequently than other types of operations.

Transfer Pricing Penalties

- Formal penalties

Failure to comply with filing Transfer Pricing Study, Master Report, Information Regime Form 2668 and CbCR will result in the application, among others, of the following penalties:

  - Up to ARS 200,000 (approx. USD 238 at OER): a) omission to report the membership in one or more MNEs, b) omission to report the identifying information of the designated reporting entity for the CbCR, indicating the capacity in which the entity acts, c) failure to report the submission of the CbCR by the designated reporting entity in the foreign tax jurisdiction.
  - ARS 600,000 (approx. USD 714 at OER) to ARS 900,000 (approx. 2,586 at OER) for the omission to report the CbCR or its late/incomplete filing.
  - Up to ARS 300,000 (approx. USD 357 at OER) for failure to comply with the requests made by FTA for supplementary information about the CbCR.
  - Up to ARS 20,000 (approx. USD 24 at OER) for not filling the reports covered by Transfer Pricing Rules.
  - Up to ARS 45,000 (approx. USD 53 at OER) for failure to comply an information request made by the FTA in connection with international transactions, keep documentation to justify the price, and for failure to comply with requests made by FTA to submit the Transfer Pricing Tax Return.
  - Up to ARS 450,000 (approx. USD 536 at OER) when gross revenues are higher than ARS 10 million and the taxpayer fails to comply with three requirements made by the FTA to submit transfer pricing returns.

- Transfer Pricing Adjustments

In the event of deficiency assessment (total or partial non-payment) of transfer pricing regulations, a compensatory interest at the rate of 5.91% per month will be applied.

In case of the omission of taxes (due to failure to file a tax return) the applicable penalty will be 200% of the amount of the omitted tax. When fraud is committed, a penalty of up to 600% may be applied. Additionally, the FTA might file criminal action against the directors of the company which can result in imprisonment of between 2 and 9 years.

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Local Hot Topics and Recent Updates

We highlight the following Hot Topics that have been discussed in Argentina:

1) Cases related to commodities, and specially the presence of intermediaries in their transactions, or the application/ selection of transfer pricing methods.
2) The FTA has challenged the criteria of taxpayers for using multiple fiscal years to select the comparable of the transfer pricing report method. We emphasize that Argentine regulations do not provide for a certain criterion of years to make the report.
3) The FTA has challenged the differences in prices between locally sold products and those exported to affiliated foreign companies, to whom products were sold at a lower price than the local market. To make this audit, the FTA has based on the results of certain local entities, which were used to obtain comparable regarding the export prices challenged. In this regard, taxpayers have objected to being compared to the local entities.
4) Argentine Regulations establish a preference for domestic comparable over foreign comparable.

Documentation threshold

Master file	Transactions with related parties which collectively exceed ARS 3,000,000 (approx. USD 3,571 at the OER) or individually ARS 300,000 (approx. USD 357 at the OER) ("The Thresholds"); and The total consolidated annual income of the MNEs Group exceeds ARS 4,000,000,000 (or USD 4,761 at the OER) in the fiscal year preceding the filing.
Local file	Transactions with related parties or located in low/non-tax jurisdictions when they exceed The Thresholds.
CbCR	Includes those MNEs whose total consolidated annual revenues are more than EUR 750,000,000.

Submission deadline

Master file	Within 12 months after the closing of the tax period.
Local file	Within 6 months after the closing of the tax period.
CbCR	Within 12 months after the closing of the tax period of the ultimate parent entity.

Penalty Provisions

Documentation – late filing provision	Up to ARS 20,000 (approx. USD 24 at OER).
Tax return disclosure – late/ incomplete/no filing	Up to ARS 45,000 (approx. USD 53 at OER) non or incomplete filling. This fine is cumulative with the late filing penalty.
CbCR – late/incomplete/no filing	Up to ARS 200,000 (approx. USD 238 at OER) failing to meet the CbCR obligations. Up to ARS 900,000 (approx. USD 1,071 at OER) for late or incomplete filing of CbCR. Up to ARS 300,000 (approx. USD 357 at OER), or ARS 450,000 (approx. USD 536 at OER) if thresholds are exceeded, for failing to answer FTA requests for additional information regarding CbCR.

CONTACT

Ezequiel Lipovetzky
Bruchou & Funes de Rioja
ezequiel.lipovetzky@bruchoufunes.com
+ 54 11 5171-2311

Mariano von Simons
Bruchou & Funes de Rioja
mariano.von.simons@bruchoufunes.com
+ +54 11 5171-2393

AUSTRALIA

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Overview

Corrs Chambers Westgarth, Taxand Australia

Taxand Australia is the leading independent full service commercial law firm in Australia. Our team provides full service, end-to-end tax transactional support on domestic and cross-border mandates, starting with tax due diligence and structuring advice, through to legal documentation and post-merger implementation advice.

Taxand Australia provides general tax advisory services in relation to the application of Australian transfer pricing law and related international related party tax issues.

Transfer Pricing Framework

Australia has generally adopted the OECD approach to transfer pricing, including the application of the arm's length principle. Australian transfer pricing rules are set out in Division 815 of the Income Tax Assessment Act 1997 (Cth). Under those rules, where an entity obtains a transfer pricing benefit from conditions that operate between it and another entity in connection with their "commercial or financial relations", those actual conditions are taken not to operate and instead arm's length conditions are applied. In addition, Australian transfer pricing rules require the form of actual commercial relations between parties to be disregarded if they are inconsistent with the substance of those arrangements. Australian thin capitalization rules apply in addition to transfer pricing rules to reduce or further reduce debt deductions.

An entity is required to disclose certain details of its international related party dealings in its corporate income tax return. Where the value of those dealings exceeds certain thresholds, an entity is required to prepare and file an International Dealings Schedule that includes further details of those dealings (such as the extent to which transfer pricing documentation has been obtained and the degree to which it covers the dealings disclosed).

Accepted Transfer Pricing Methodologies

Australian transfer pricing rules require arm's length conditions to be identified by reference to OECD transfer pricing guidelines. Acceptable transfer pricing methods include the comparable uncontrolled price method, the resale price method, the cost plus method, the transactional net margin method and the profit split method. The Australian Taxation Office has published guidance regarding the factors that should be taken into account when choosing an appropriate methodogy.

Transfer Pricing Documentation Requirements

Australia has country-by-country (CBC) reporting obligations for entities that are CBC reporting entities. In general terms, a CBC reporting entity includes an entity that has annual global income of AUD 1 billion or more, or is a member for a group that has annual global income of AUD 1 billion or more.

Australian CBC reporting requirements include a CBC report, a master file and a local file that is submitted as an XML file with the Australian Taxation Office. A reporting concession may be available where a CBC report or master file is submitted in another country. Reports must generally be filed within 12 months of the end of the income year to which the reports relate.

The Australian local file may require the inclusion of further details to those that are required in other countries. All Australian entities (whether subject to CBC reporting or not) are required to prepare valid transfer pricing documentation in respect of their international related party dealings by the time that the income tax return is due to be filed for that entity. Any transfer pricing adjustment that arises from a dealing that is not covered by transfer pricing documentation available at the due date for lodgement is subject to increased penalties. Australian transfer pricing documentation must address all requirements under Australian law to be valid. The documentation requirements are generally based on the OECD guidelines and allow the benchmarking methods permissible under those guidelines. There are additional obligations that must be addressed under Australian law (eg, reconstruction of transactions is allowable in all circumstances and not just the exceptional circumstances under the OECD guidelines).

There are significant uplifts in penalties that apply to significant global entities (SGEs) if additional tax is imposed in relation to any transfer pricing benefit and for failure to lodge returns, notices or statements on time (refer below).

Entities are required to include disclosures in income tax returns relating to its international related party dealings. Detailed disclosures (including dealing value, transfer pricing methodollogy and level of documentation prepared) may be required where the value of the dealings exceeds AUD 2 million.

Local Jurisdiction Benchmarks

Australian transfer pricing benchmarking and documentation requirements are generally based on the OECD guidelines and allow the benchmarking methods permissible under those guidelines. As noted above, the circumstances in which a transaction can be reconstructed for the purpose of benchmarking is significantly expanded under Australia law. The Australian Taxation Office has sought to assert rights to reconstruct transactions and this approach has received a degree of endorsement by Australian courts.

AUSTRALIA

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

Australia has a unilateral and bilateral advance pricing agreement program. An APA request from a taxpayer will be considered having regard to the particular facts and circumstances, but the Australian Taxation Office is more likely to enter into an APA where certain factors are present. These include consistency with the OECD transfer pricing guidelines, a high level of assurance of the taxpayer's compliance with tax laws, the presence of significant complexity, the arrangement the subject of the request has been, or is highly likely to be, entered into, and where there is a high probability of economic double taxation. Based on published statistics, the average length of time to negotiate an APA is approximately 2 years.

Transfer Pricing Audits

The Australian Taxation Office has an active and well resourced transfer pricing audit function and has litigated a number of transfer pricing disputes. Details of routine audit activities are not made public but the focus of its audit activity seems directed towards large multinational groups. The Australian Taxation Office has published statements that it is focussed upon cross border financing arrangements.

Transfer Pricing Penalties

Penalties are imposed for a failure to comply with Australian transfer pricing rules. These penalties may take the form of an administrative penalty or prosecution of an offence. Where a failure to comply with transfer pricing rules results in a shortfall of tax, an administrative penalty equal to 25%-75% of the shortfall in tax may apply (plus a general interest charge of approximately 11% per annum on the amount underpaid). The Australian Taxation Office has the discretion, but not an obligation, to reduce penalties based on the particular circumstances. However, the administrative penalty would be a minimum of 25% of the shortfall where a taxpayer does not have complying transfer pricing documentation.

Penalty amounts are doubled for significant global entities (SGEs). An entity will be an SGE if it is a global parent entity with annual global income of AUD 1 billion or more, or is a member of group that is consolidated for accounting purposes where the global parent entity has annual global income of AUD 1 billion or more. In addition, there are also significantly increased penalties for SGEs where certain documents are not lodged on time (including income tax returns and CBC statements). These increased penalties may be between AUD 156,500 - 782,500, depending on the number of days after the due date that the documents are lodged.

Local Hot Topics and Recent Updates

Australia has proposed amendments to its thin capitalization rules and new legislation to deny deductions for payments attributable to a right to exploit an intangible asset of an owner resident in a low tax jurisdiction. Both measures are intended to broadly take effect from 1 July 2023, notwithstanding the measures are yet to be passed as law. While not strictly transfer pricing matters, these rules will impact the way in which transfer pricing rules may operate in Australia. For example, it is possible for interest deductions to be denied under both thin capitalization rules and transfer pricing rules and this could lead to a different result under transfer pricing rules.

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Documentation threshold

Master file	Group revenue of AUD 1 billion or more
Local file	Group revenue of AUD 1 billion or more
CbCR	Group revenue of AUD 1 billion or more

Submission deadline

Master file	Generally 12 months after income year end
Local file	As above
CbCR	As above

Penalty Provisions

Documentation – late filing provision	Up to AUD 782,500 (i.e., for SGEs)
Tax return disclosure – late/incomplete/no filing	Penalty depends on circumstances but may be up to AUD 782,500 plus potential further penalties calculated as a percentage of tax shortfall
CbCR – late/incomplete/no filing	Up to AUD 782,500

CONTACT

Rhys Jewell
Corrs Chambers Westgarth
rhys.jewell@corrs.com.au
+61 3 9672 3455

Kieran Egan
Corrs Chambers Westgarth
kieran.egan@corrs.com.au
+61 2 9210 6275

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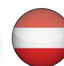


Overview

LeitnerLeitner GmbH Wirtschaftsprüfer Steuerberater, Taxand Austria

Taxand Austria´s experienced team consisting of transfer pricing specialists assist with all aspects of domestic and foreign transfer pricing obligations and documentation requirements, and with the planning and implementation of international value chains. We analyse the current situation, adapt existing transfer pricing systems or work with the client to develop recommendations for establishing a tax-optimised transfer pricing system that is designed take into account business parameters, reduce the risk of double taxation and prevent costly and time-consuming discussions with tax authorities. If needed, we also help defend existing intragroup transfer pricing mechanisms and systems.

Taxand Austria provides tax advisory services in the following fields:

- Update of existing/conceptualisation and implementation of BEPS-compliant transfer pricing systems and tax-optimised value chains,
- Creation of clear functional and risk structures, and optimisation of intragroup supply and service transactions,
- Analysis of the impact of changes on group structures (business restructuring),
- Development of/support with depicting the transfer price-specific aspects of intragroup supply and service transactions (including the development of intragroup supply, service, allocation and license agreements etc.),
- Intragroup financing, implementation of cash pools,
- Design of intragroup employee secondments,
- Efficient identification of transfer price risks and potentials for optimization,
- Tailored Quick Check for the rapid identification of potential transfer price risks,
- Conceptualisation and implementation of efficient and customised transfer price documentation models in accordance with legal requirements (centralised documentation approaches, master/local files, CbC reporting etc.),
- Advice for automation-supported tools or web-based solutions to ensure uniform documentation across countries,
- Support with audits so disputes may be settled amicably without the involvement of the courts,
- Management of bilateral and multilateral arbitration and mutual agreement procedures (MAP),
- Defense of existing intragroup transfer pricing mechanisms and transfer pricing systems in appeal proceedings,
- Request for rulings pursuant to sec. 118 BAO (Federal Fiscal Code), and initiation of advance pricing agreements (APAs),
- Benchmarking studies,
- DAC 6 analysis,
- Advice regarding VAT, customs and foreign trade legislation in connection with transfer prices.

General: Transfer Pricing Framework

In Austria, no statutory provisions dealing specifically with intercompany pricing exist and any tax issues arising from transfer pricing have to be dealt with on the basis of general rules of Austrian income tax law. Therefore, the basic provision in Sec 6 para 6 Austrian Income Tax Act contains provisions based on the principle that prices between related persons must be at arm´s length. Furthermore, transfer pricing documentation obligations exist due to the Transfer Pricing Documentation Act ("Verrechnungspreisdokumentationsgesetz" or "VPDG") implemented in 2016.

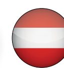
However, transfer pricing guidelines published by the Austrian Ministry of Finance in 2010 and updated in 2021 ensures the implementation of the OECD Guidelines (and any updates thereto) in Austria. From a legal point of view, the guidelines were published in the form of a ministerial decree and thus do not have the binding effect of a law.

Accepted Transfer Pricing Methodologies

Austria's transfer pricing guidelines are based on and refer to the OECD Guidelines and thereby follow the revised hierarchy of transfer pricing methods according to the OECD Guidelines. In line with the OECD Guidelines, the Austrian tax authorities must begin a transfer pricing examination from the perspective of the method selected by the taxpayer. The taxpayer, however, must be able to substantiate why the chosen method is appropriate in view of the relevant facts and circumstances. The Austrian tax authority accepts the five following methods (which are in line with the OECD):

- Comparable Uncontrolled Price Method (CUP)
- Resale Price Method
- Cost Plus Method
- Transactional Net Margin Method (TNMM)
- Profit Split Method

As the Austrian Transfer Pricing Guidelines are based on and refer to the OECD Guidelines, the principles and the methods set out in the OECD Guidelines are the only recognized methods in Austria. Nevertheless, a taxpayer may use a different method to set prices, provided that it can demonstrate that it meets the arm's length principle and is more appropriate to the facts of the case than one of the OECD methods.



Regarding method selection, the Austrian Transfer Pricing Guidelines specify that the method that provides the highest certainty for determining an arm's length transfer price has to be chosen. As a consequence, the TNMM and the PSM are not regarded as methods of last resort. However, if more than one method could be used and these methods are equally reliable, there is a preference for the standard methods and the CUP method over the other methods in Austria. There is no case law in Austria dealing with the selection and use of specific methods of transfer pricing.

Transfer Pricing Documentation Requirements

The Austrian government and tax authority fully followed Action 13 of the OECD BEPS Action Plan. Therefore, the Austrian Transfer Pricing Documentation Act was enacted on 1 August 2016 and applies for fiscal years beginning on or after 1 January 2016.

CbC-Report: Austria is requiring Austrian parented MNEs or a local subsidiary with a global consolidated group turnover of at least EUR 750 million in the previous year to file a Country-by-Country (CbC) report containing the information in Annex III of the OECD's BEPS Action 13 final recommendations. The CbC report has to be filed electronically via FinanzOnline in an XML format, which is very similar to the OECD XML format.

CbC-Report notification: Every Austrian group entity or Austrian branches of MNE groups with annual revenues exceeding EUR 750 million in the preceding fiscal year has to notify the tax authority which company will file the CbC-Report.

This CbCR notification was initially set to be made annually, no later than the end of the reporting fiscal year. However, the latest Austrian Transfer Pricing Guidelines 2021 states that for fiscal years with a reporting obligation starting after 31 December 2021, a notification is only required if there are changes compared to the previous year's notification (e.g. if the ultimate parent company changes).

Master File and Local File: In general, all entities (including permanent establishments) belonging to an MNE group that are tax resident in Austria are requested to prepare a transfer pricing documentation including a Master File and a Local File in German or English language.

An entity will fall under the Master File and Local File documentation obligation if its turnover exceeded EUR 50 million in each of the two preceding years. However, a Master File must also be presented even if the Austrian entity will not exceed the revenue threshold but there is another group entity that must prepare a Master File.

Master File and Local File must be prepared no later than the statutory deadline for filing the corporate income tax return (31 March of the second year after the end of the reporting fiscal year if the taxpayer is represented by an Austrian tax advisor or 30 June of the first year after the end of the reporting fiscal year in other cases) and may only be requested by the tax authorities after such statutory deadline to be submitted within 30 days upon request from the tax authorities. Transfer pricing documentation is usually submitted to the tax authorities upon request during a tax audit.

For entities not exceeding the threshold of a turnover of EUR 50 million in each of the two preceding years, the entities would have to prepare a transfer pricing documentation based on the administrative guidelines. As such, documentation is required upon the tax authorities' request, though lacking any model/template. Formally, if documentation and/or supporting documents are not available in German, the tax authorities have the right to request a translation at the taxpayer's expense.

No other transfer pricing returns of forms are applicable.

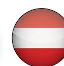
Local Jurisdiction Benchmarks

The preparation of benchmark studies based on databases as Orbis, Amadeus, Ktmine, DealScan, S&P Credit Risk Pricing is accepted in Austria, if the requirements according to the Austrian Transfer Pricing Guidelines are fulfilled. In general, Austrian comparables should be included in the final set of comparables. However, the Austrian Ministry of Finance also accepts pan-European comparables. The Austrian Transfer Pricing Guidelines include specific requirements for the preparation of benchmark studies.

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

Since 1 January 2011, there has been a unilateral advance ruling procedure in place in Austria, the so-called advance ruling or "Auskunftsbescheid". This procedure provides for the possibility to request a binding ruling on transfer pricing matters. Administrative fees of EUR 1,500 to EUR 20,000 (if part of a group of companies according to local accounting standards) will be charged for the processing of the application of unilateral APAs depending on the company's sales. Advance tax rulings are dealt with by the responsible tax office of the taxpayer. The APA request must be submitted electronically if the applicant has a domestic tax number. The application has to be processed within 2 months after submission.

In Austria, no statutory provisions dealing specifically with BAPA or multilateral APA exist. However, the new guidance on MAP and arbitration procedure published in 2022 includes details on bilateral/multilateral APA. Therefore, bilateral APAs should start with an informal discussion (prefiling meeting) prior to formal initiation of an APA. The prefiling meeting is intended to offer the taxpayer the opportunity to discuss, together with the competent authority the suitability of an APA in the specific case, the nature and scope of the available documentation, as well as a rough schedule. A request must be submitted by the taxpayer. Prior to conclusion of an APA, the taxpayer will receive a statement of the agreement reached from the authorities. If the taxpayer agrees, the APA will become binding for the competent authorities. In addition, there is also the option of a "roll-back",



i.e. extending the solution obtained through the APA for periods prior to the APA by means of a MAP. Since only a few bilateral APAs are requested in Austria, the timing mainly depends on the other contracting state.

Transfer Pricing Audits

It is unusual for the tax authority to carry out an audit specifically in respect of transfer prices alone. However, experience shows that at the beginning of a tax audit, inspectors request a description of the transfer pricing system and a transfer pricing documentation. Typically, transfer prices represent a considerable part of a tax audit of Austrian-based MNEs or subsidiaries of MNEs in Austria.

The tax authority has special TP experts who retrace and review the correctness and comparability of transfer pricing documentation including benchmarking studies. The tax authorities have access to the Orbis database.

Transfer Pricing Penalties

CbC-Report: A maximum penalty of EUR 50,000 and up to EUR 25,000 for gross negligence applies in case of non-timely or incompelte or incorret filing of the CbC report.

There are no specific penalty provisions in case of non-timely filing or incomplete or incorrect filing of Master file or Local file. However, the Austrian Administrative Code requires the taxpayer to provide the tax authority with all relevant Information. If no Transfer pricing documentation is submitted, a fine of up to EUR 5,000 might be imposed and if wilful tax evasion or tax fraud can be proven by the tax authority the fact of non-filing could aggravate the fine for such conduct. Additional penalties can arise in case of TP adjustments.

Local Hot Topics and Recent Updates

Focus on Financial Transactions

Most recently, Austrian Tax officers challenge the advance of funds and further financial transactions within MNE groups more frequently. Therefore, clients are advised on the specifics of structuring such transactions and robust transfer pricing documentation (including specific benchmarking studies) is prepared taking into account the recommendations of new Chapter X OECD Guidelines in order to defend the proposed structure in future tax audits.

Transfer Pricing Documentation for SME advantageous

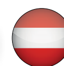
Within tax audit, entities not exceeding the threshold of a turnover of EUR 50 million in each of the two preceding years are regularly requested to submit a (subsidiary) transfer pricing documentation based on the administrative guidelines. To avoid inconvenient queries with an uncertain outcome by Austrian Tax officers, entities slightly not exceeding the thresholds are encouraged to consider the content requirements for Local Files as stipulated in the OECD Guidelines and voluntarily prepare sufficient transfer pricing documentation.

Multilateral Risk Assessment

Since July 2022, a procedural basis for the participation of the tax administration in the International Compliance Assurance Program (“ICAP”) or European Trust and Cooperation Approach (“ETACA”) for multilateral risk assessment. In accordance with the CbC reporting, the prerequisite for participation in the multilateral risk assessment is a group turnover of at least 750 million euros. The risk assessment is divided into three phases:

1) the selection phase, in which the ultimate parent entity applies for the procedure to the senior financial administration responsible for it,
2) the risk assessment phase and
3) the outcome phase, which ends with a report on the risk assessment (“outcome letter”).

These procedures shall provide a certain degree of tax and planning certainty for multinational companies, although it is not legally binding and has no prejudicial effect on later assessments or subsequent mutual agreement procedures in Austria.



Documentation threshold

Master file	Entity of MNE group with turnover exceeding EUR 50 million in each of the two preceding years
Local file	Entity of MNE group with turnover exceeding EUR 50 million in each of the two preceding years
CbCR	global consolidated group turnover of at least EUR 750 million in the previous year

Submission deadline

Master file	Only upon request
Local file	Only upon request
CbCR	12 months after the last day of the reporting fiscal year of the MNE group's ultimate parent company

Penalty Provisions

Documentation – late filing provision	no specific penalty provisions applicable
Tax return disclosure – late/incomplete/no filing	Assessment interest: in addition to the current annual rate of interest of the Austrian National Bank, an annual simple interest rate of 2% of the tax due Late filing penalty: 10% of the tax assessed may be charged by the tax office, unless the taxpayer can prove that the late filing was not his fault. If the taxpayer does not file a tax return, despite reminders from the tax authorities, the tax authorities may impose a penalty of up to EUR 5,000.
CbCR – late/incomplete/no filing	A maximum penalty of EUR 50,000 applies and up to EUR 25,000 for gross negligence with the CbC report.

CONTACT

Harald Galla
LeitnerLeitner GmbH
Harald.Galla@leitnerleitner.com
+43 1 71 89 890 532

Clemens Nowotny
LeitnerLeitner GmbH
Clemens.Nowotny@leitnerleitner.com
+ 43 732 70 903 359

Alexander Kras
LeitnerLeitner GmbH
Alexander.Kras@leitnerleitner.com
+43 662 847 093 621

Norbert Schrottmeyer
LeitnerLeitner GmbH
Norbert.Schrottmeyer@leitnerleitner.com
+43 1 71 89 890 580

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Overview

Arteo, Taxand Belgium

Arteo is a Brussels-based independent law firm founded in 2020 by the members of the tax department of a large, full-service Belgian law firm.

Arteo has developed strong expertise in matters involving transfer pricing, an evolving area in the Belgian tax market:

- Arteo regularly advises on transfer pricing issues and frequently assists in an increasing number of transfer pricing audit and litigation cases; Arteo's broad tax litigation experience is a key asset when dealing with transfer pricing issues;
- Arteo also has a substantial know-how in assisting clients in applying for advance tax rulings with respect to transfer pricing before the Belgian Ruling Commission (in collaboration with economists for the drafting of transfer pricing studies).

General: Transfer Pricing Framework

As a general principle, Belgium adheres to the arm's length criterion as proposed by the fiscal committee of the OECD. In 2004, Belgium explicitly introduced the arm's length principle into its domestic law (inspired by Article 9 of the OECD Model Convention).

The main transfer pricing adjustments are traditionally based on domestic law. Several articles of the Belgian Income Tax Code 1992 ("BITC") provide the Belgian tax authorities with a tool for scrutinizing intercompany transactions, among which:

- Art. 26 of the BITC: "abnormal or gratuitous benefits" granted by a Belgian enterprise to foreign affiliated companies are added to its taxable income;
- Art. 206/3, § 1, first indent, of the BITC: losses (whether current-year or carried forward) and tax attributes (e.g., dividend received deduction) cannot be offset against profits derived from "abnormal or gratuitous benefits" obtained from an enterprise with which the taxpayer has direct or indirect relationship of interdependence. Such profit constitutes therefore a minimum taxable basis effectively subject to Belgian corporate income tax;
- Art. 55 of the BITC: interest is deductible as a business expense, provided the interest rate is fixed on an arm's length basis taking into account the risks relating to the operation, the financial position of the debtor and the duration of the loan;
- Art. 54 of the BITC: payments of interest, royalties and service fees made to tax haven beneficiaries are deductible only if the Belgian taxpayer proves that they correspond to genuine and sincere transactions and that they do not exceed normal limits.

Belgium has introduced the requirement to prepare and file transfer pricing documentation (see below), which is intended to enable the Belgian tax authorities to carry out a proper analysis of transfer pricing risks and to conduct a more effective audit.

Accepted Transfer Pricing Methodologies

As a general principle, Belgium follows the OECD transfer pricing guidelines (see Administrative Circular 2020/C/35 dated 25 February 2020).

There is no hierarchy between the transfer pricing methods, provided that the method chosen results in an arm's length outcome for the specific transaction. In practice, taxpayers usually use one of the five OECD transfer pricing methods.

Other transfer pricing methods (or a combination of transfer pricing methods) may also be acceptable depending on the case.

The Administrative Circular 2020/C/35 recognizes that pricing between related companies is not an exact science and that both the Belgian tax authorities and the taxpayer need to show flexibility and cooperation to arrive at an arm's length price.

Transfer Pricing Documentation Requirements

A Belgian entity of a multinational enterprise ("MNE") group is required to file a master file as well as a local file (statements 275 MF and 275 LF) if it exceeds one of the following thresholds in its stand-alone financial statements of the prior financial year:

- Operating and financial income equal to or exceeding EUR 50 million (excluding non-recurring items); or
- Balance sheet total equal to or exceeding EUR 1 billion; or
- Average annual number of 100 or more FTEs.

The master file should be filed within 12 months of the last day of the reporting period of the MNE group. The local file must be filed annually as an attachment to the Belgian corporate income tax return (Art. 321/4 and 321/5 of the BITC).

A Belgian entity may also be required to file a country-by-country ("CbCR") report and/or CbCR notification form (statements 275 CBC and 275 CBC NOT) if it belongs to a MNE group having a gross consolidated revenue of at least EUR 750 million as reflected in the consolidated financial statements during the year preceding the reporting year.

The CbCR report must be filed within 12 months of the last day of the reporting period of the MNE group. The CbCR notification form should be filed no later than the last day of the reporting period of the MNE group and only insofar the information differs from that provided for the previous period (Art. 321/2 and 321/3 of the BITC).

Local Jurisdiction Benchmarks

A comparability analysis is important for all transfer pricing methods used in order to assess whether related transactions comply with the arm's length principle. Benchmarking and the establishment of a transfer pricing policy is therefore recommended and constitutes the basis for any justification of the prices used. In line with the OECD transfer pricing guidelines, the emphasis is more on the reliability of the comparability results than on the process to be followed. In practice, external comparable may be sought in publicly accessible data or commercial databases (from domestic and/or foreign information sources). The Belgian tax authorities accept pan-European benchmarks. In practice, the Belgian tax authorities consider that an update of the results obtained from the comparability analysis should be carried out every three years (except when facts and circumstances require an earlier update).

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

It is common to apply to the Ruling Commission, an autonomous section of the tax authority, for a unilateral APA in the form of an advance tax ruling (officially named "advance decision in tax matters"). The process usually starts with a pre-filing phase, in which the envisaged structure is explained and discussed. In the second phase, a written ruling application is submitted in which the facts and circumstances and tax analysis are set out in detail (together with supporting documents, such as benchmarking studies), and the decision is rendered based on this application. The entire process generally takes four to six months. An anonymized version of the advance tax ruling is subsequently published. Unilateral APAs are in principle valid for a (renewable) period of three years.

Bilateral APAs are infrequent. Applications go to the tax authorities' International Relations Department and need to be submitted before the end of the first year intended to be covered. The International Relations Department co-ordinates applications with the other relevant jurisdictions. Bilateral APAs are not published. The time taken for the process varies and can extend over several years in complex files.

The procedures to obtain advance rulings and bilateral APAs entail no filing fees in Belgium.

Transfer Pricing Audits

Lately, tax auditors have been very much on the lookout for transfer pricing and international transactions generally. They are helped by a number of transfer pricing documentation requirements (namely master file, local file and CbCR reporting; see above) and a special schedule attached to the corporate income tax return listing payments made directly or indirectly to entities established in tax havens.

There has been a substantial increase in transfer pricing litigation in Belgium as a consequence of the government's development of its transfer pricing unit, a specialist team within the federal tax authority. The transfer pricing unit controls transfer pricing arrangements of multinational companies as well as smaller international companies.

The audit usually begins with the reception of a standard transfer pricing questionnaire listing questions to be answered within 30 days. The questions relate to intra-group transactions, company overall business, functions, risks and assets (in particular intangible assets). In addition, detailed information regarding the existence of transfer pricing documentation and methodology is requested. The profile of the companies audited is diverse: industrial and trading companies, as well as holdings, or financing centres.

Transfer Pricing Penalties

Administrative fines can be imposed by the tax authorities for failure to comply with the transfer pricing documentation requirements (lump-sum fines ranging from EUR 1,250 to EUR 25,000) and/or in case of transfer pricing adjustments (ad valorem tax increases from 10% to 200%, depending on the seriousness of the infringement and the taxpayer's previous conduct). Also, the additional tax base determined by the tax authorities cannot be offset with tax losses and other tax attributes (except where no tax increase or a tax increase below 10% was imposed).

Local Hot Topics and Recent Updates

On 20 September 2023, the General Court of the European Union ruled that the so-called Belgian regime of "excess profit tax rulings" constitutes an unlawful State aid scheme and dismissed the actions that were initiated by the Belgian State and 29 beneficiary companies.

These tax rulings were granted to Belgian subsidiaries and permanent establishments of multinational groups and exempted the so-called "excess" profits (i.e., profits exceeding the profit that would have been made by comparable standalone companies operating in similar circumstances) from corporate income tax, irrespective of whether the other State adjusted the taxable profit upwards. According to the Belgian tax authorities, these excess profits were the result of synergies, economies of scale or other advantages arising from part of a multinational group, and were therefore not attributable to the Belgian entities in question.

With its judgements of 20 September 2023, the General Court reversed its prior decision in 2019 which ruled that the European Commission had erred in treating the different tax rulings granted as the implementation of a "scheme". To our knowledge, an appeal (limited to points of law only) has been lodged before the Court of Justice in most of the cases.

If these appeals are dismissed, the beneficiaries of the excess profit tax rulings will have to refund definitively to the Belgian State the advantage they have derived from it.

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Documentation threshold

Master file	• Operating and financial income equal to or exceeding EUR 50 million (excluding non-recurring items); or • Balance sheet total equal to or exceeding EUR 1 billion; or • Average annual number of 100 or more FTEs
Local file	Same criteria as for the master file
CbCR	Gross consolidated revenue of at least EUR 750 million

Submission deadline

Master file	Within 12 months of the last day of the reporting period of the MNE group
Local file	Within the deadline for filing the corporate income tax return
CbCR	Within 12 months of the last day of the reporting period of the MNE group

Penalty Provisions

Documentation – late filing provision	Fines up to a maximum of EUR 25,000
Tax return disclosure – late/incomplete/no filing	Fines up to a maximum of EUR 1,250; ad valorem tax increase ranging from 10% to 200%
CbCR – late/incomplete/no filing	Fines up to a maximum of EUR 25,000

CONTACT
Jean-Michel Degée
Arteo
jm.degee@arteo.law
+ 32 2 392 81 00

Xavier Pace
Arteo
x.pace@arteo.law
+ 32 2 392 81 00

Steven Peeters
Arteo
s.peeters@arteo.law
+ 32 2 392 81 00

CANADA

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Overview

Borden Ladner Gervais LLP, Taxand Canada

Canada's largest law firm offers clients advice on all aspects of business law from coast to coast in every major city across the country. BLG's Tax Group provides advice on all varieties of taxes in Canada, including transfer pricing in an income tax context. In particular, members of BLG's Tax Group have advised clients on obtaining advance pricing agreements, preparing contemporaneous documentation, managing transfer pricing audits, and resolving controversies at various levels, including mutual agreement procedures and before the courts.

We work with Taxand group members who have in-house economics and valuation expertise to address client needs on issues requiring such specialized transfer pricing knowledge.

General : Transfer Pricing Framework

Canada's transfer pricing regime in s. 247 of the Income Tax Act (Canada) "ITA" adopts the arm's length principle as its foundation. Unlike other regimes that are far more detailed and prescriptive, the Canadian statute adopts a somewhat minimalist approach. Briefly, where a Canadian and a non-arm's-length non-resident transact on terms and conditions that differ from those that would have been made between arm's-length persons, amounts that must be determined for Canadian tax purposes are adjusted to the amounts that would have been determined if the terms and conditions made by arm's length parties had applied. In limited circumstances, a so-called "recharacterization" rule allows the Canada Revenue Agency "CRA" to go beyond re-pricing a transaction and re-determine the amounts that would have resulted from whatever transaction (if any) arm's length parties would have entered into instead of the transaction actually undertaken by the taxpayer.

The Canadian rules require the particular transaction or series of transactions the taxpayer entered into with the non-arm's length non-resident (the "tested transaction") to be identified and then measured against the arm's-length standard set out in s. 247. Defining exactly what the tested transaction is can be critical, and is frequently a source of dispute. One of Canada's leading transfer pricing cases cautioned against "an overly broad series [that] renders the analysis required by the transfer pricing rules impractical or even impossible by unduly narrowing (possibly to zero) the set of comparable circumstances and substitutable terms and conditions." *(Cameco Corp. v. The Queen, 2018 TCC 195 at para. 704)*.

As a general rule Canadian transfer pricing jurisprudence has focused carefully on the legal rights and obligations created by each participating legal entity, and applied s. 247 based on those legal rights and obligations. The CRA adopts and applies the OECD Transfer Pricing Guidelines in its administration of s. 247, and as a result tends to focus less on actual legal rights and obligations and more on the economic results and what the CRA believes the taxpayer *should* have done. The result has been an increasing frequency of transfer pricing disputes in Canada, as courts have repeatedly observed that while OECD pronouncements may be a useful resource, "the [OECD Transfer Pricing] *Guidelines* are not controlling as if they were a Canadian statute and the test of any set of transactions or prices ultimately must be determined according to [the ITA] rather than any particular methodology or commentary set out in the *Guidelines*. (*Canada v. GlaxoSmithKline Inc.*, 2012 SCC 52, para. 20). Canada's transfer pricing regime is described in greater detail in Suarez, "Transfer Pricing in Canada", *Tax Notes International*, December 2, 2019, p. 781.

Accepted Transfer Pricing Methodologies

The Canadian statute does not prescribe any particular method or hierarchy for determining and applying arm's-length terms and conditions. The CRA endorses the "typical method" described in the OECD Transfer Pricing Guidelines for performing a comparability analysis, including a review for comparables, selection of the most appropriate transfer pricing method and application of the selected method to the taxpayer's facts. In this regard, the CRA identifies three traditional transfer pricing methods:

- comparable uncontrolled price "CUP";
- resale price; and
- cost-plus.

The profit-split and transactional net margin methods are also considered acceptable.

The CRA's view is that there is no strict hierarchy of transfer pricing methods, and that what is truly relevant is "the degree of comparability available under each of the methods and the availability and reliability of the data" for the purpose of providing "the most direct view of arm's length behaviour and pricing" (TPM-14). That said, the CRA continues to espouse the view that a "natural hierarchy" exists amongst these methods in favour of the traditional transaction methods (and in particular CUP). Transfer pricing disputes frequently involve disagreement as to what constitutes the most appropriate methodology in the taxpayer's particular circumstances.

Transfer Pricing Documentation Requirements

There are no "master file"/"local file" obligations in Canada. The primary role of documentation in Canadian transfer pricing is as a means of demonstrating to the CRA (and if necessary a court) that the taxpayer has carefully considered which transfer pricing methodology to use and applied that methodology in such a manner as to have made reasonable efforts to establish and use arm's-length transfer prices. The better the quality of the taxpayer's transfer pricing documentation, the easier it is to sustain the transfer prices in fact used by the taxpayer in the face of a CRA audit, so as to prevent the CRA from adjusting them.

Transfer pricing documentation that is prepared within 6 months from the relevant taxation year-end and meets the substantive requirements set out in s. 247(4) ITA is a necessary (but not sufficient) condition to preventing

penalties from being applied in the event that the CRA makes transfer pricing adjustments in excess of a specified threshold. There is no statutory obligation to prepare such documentation or to file it with the CRA however.

A Canadian taxpayer is obliged to file a Form T106 for each non-arm's length non-resident with whom the taxpayer has transacted during the year (subject to a *de minimus* exception). The Canadian taxpayer must also file a T106 Summary form annually summarizing all such transactions with all non-arm's-length non-residents during the year. These forms constitute the primary way in which the CRA is alerted to transactions of interest from a transfer pricing perspective. Each late-filed T106 form is subject to a penalty of $25/day ($2,500 maximum) and a failure to file is penalized at $500 ($12,000 maximum), which is doubled ($1,000/month, $24,000 maximum) where the CRA has served a demand to file.

Local Jurisdiction Benchmarks

Identification of suitable comparables remains the foundation of Canada's transfer pricing system. There are no legislative guidelines for establishing comparability, so determining appropriate comparables is an area of judgment on which taxpayers and the CRA frequently disagree. Foreign comparables are acceptable, and the CRA has expressed the view that while domestic comparables would be assumed to be more reliable where the Canadian taxpayer is the tested party, foreign comparables meeting the same standards of comparability are valid.

The CRA insists on establishing current-year comparables for each particular taxation year under review. Multi-year data is not considered acceptable for any particular year, and the use of an inter-quartile range is also rejected, at least formally (although it is sometimes used in practice). The are no "safe harbours" for these purposes.

The CRA often uses comparables taken from other taxpayers the source of which the CRA will refuse to disclose to the taxpayer under audit (so-called "secret comparables"). Such confidential third-party information can be frustrating to deal with during an audit, since without full knowledge of the source of the "secret comparable" it is difficult for the taxpayer to assess its true comparability. Usually the taxpayer will only be able to gain full knowledge of such "secret comparables" at the litigation stage, once the audit has been completed and the CRA Appeals process concluded.

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

APAs are available in Canada, and are frequently a cost-effective alternative to lengthy and expensive audit disputes. APAs may be unilateral, bilateral or multilateral. The CRA has a strong preference for bilateral or multilateral APAs. Business restructurings are not accepted for the APA program. The typical term of an APA is 3 – 5 taxation years.

The APA process involves a pre-filing meeting with the CRA to discuss potential suitability. This is followed by the taxpayer making a formal request setting out the relevant taxpayers, transactions and years to be covered by the APA requested. If the CRA accepts the taxpayer's proposal, the taxpayer prepares the formal APA submission setting out the proposed transfer pricing methodology and underlying data, for the CRA team to review. There are usually a number of follow-up information requests for the taxpayer from the CRA before the final version is settled and executed, as well as negotiations with other relevant tax authorities for bilateral or multilateral APAs. Depending on the countries and issues involved, two years is a common time-frame from start to finish.

Transfer Pricing Audits

The CRA regularly and aggressively conducts transfer pricing audits, which are extremely document-intensive and time-consuming to respond to. The CRA applies a "risk-based approach to file selection, proper assessment of the facts and circumstances relevant to OECD comparability factors, well-supported and documented audit files, and assessments that respect the arm's-length principle."

The audit process generally begins with a formal demand for the taxpayer's contemporaneous documentation, which triggers a 90-day period for the taxpayer to deliver such to the CRA (there are no extensions permitted for this deadline). The CRA audit team will generally also seek oral interviews with various personnel within the multinational enterprise of which the Canadian taxpayer is a member, and (depending on the circumstances) site visits. Recent legislative changes have significantly expanded the CRA's powers to require oral interviews, and the CRA views this tool (and in particular functional interviews to determine how functions and risks are allocated within the MNE) as an essential element of the audit process.

It is essential for the taxpayer to assemble a team of internal and external resources to conduct the transfer pricing audit in an organized and effective manner, and to minimize the risk of the CRA audit team receiving misinformation that creates an unfavourable or misleading image with the CRA. This is generally achieved by establishing a single point of taxpayer contact with the CRA audit team, a process for handling the CRA audit team's requests, and identifying communications and analysis that are protected from disclosure under lawyer-client privilege.

Near the end of the audit, the CRA team leader will issue a "proposal letter" indicating the adjustments that the CRA intends to make and inviting final submissions in response (the usual response time offered is 30 days, which can often be lengthened if requested). Following that process, the taxpayer will generally receive a final letter stating what adjustments the CRA is making, followed by the issuance of a formal notice of re-assessment. The taxpayer has 90 days from there to initiate the appeals process within the CRA Appeals branch by filing a Notice of Objection, with

other potential recourse (i.e., MAP, litigation before the courts) potentially available. The taxpayer can usually obtain a copy of the auditor's T20 report and supporting working papers on request, which should be scrutinized for factual deficiencies.

Transfer Pricing Penalties

Transfer pricing penalties apply under s. 247(3) ITA in certain circumstances, serving as a deterrent to under-allocating income to Canada. The amount of the penalty is computed as 10% of the taxpayer's net adverse transfer pricing adjustments made by the CRA (not 10% of the increased tax resulting therefrom). As such, penalties can apply even if the taxpayer is in a loss position for the year, and are onerous by international standards.

These penalties apply where the taxpayer's net transfer pricing adjustment for the year exceeds the lesser of C$5 million and 10% of the taxpayer's gross revenue for the year. In this regard, the taxpayer's net transfer pricing adjustment for the year is defined to exclude those adjustments in respect of which the taxpayer made "reasonable efforts" to determine and use arm's-length prices and allocations – as such, "reasonable efforts" are a defence against penalties even where an adverse adjustment occurs. While what constitutes such "reasonable efforts" is not set out in the statute (there are no safe harbours) and so must be determined in each case based on the taxpayer's particular circumstances, a taxpayer is deemed not to have made such reasonable efforts unless it prepares contemporaneous documentation within 6 months of each taxation year-end (a shorter time period than the 1 year applicable in many countries) that meets the substantive requirements in s. 247(4) ITA, and delivers it to the CRA within 90 days of a demand for it. Whenever the dollar threshold is met for transfer pricing adjustments, the CRA will frequently assess penalties on the basis that the taxpayer's contemporaneous documentation does not meet the required substantive standard. Such a penalty assessment requires approval from the CRA's internal Transfer Pricing Review Committee.

While not a penalty per se, when adverse transfer pricing adjustments are made to the Canadian taxpayer, there will usually be a "secondary adjustment" to reflect the value of the Canadian taxpayer having charged too little for goods and services it has delivered to, or paid too much for goods and services received from, a non-arm's-length non-resident. The amount of that secondary adjustment will usually be treated as a deemed dividend triggering non-resident withholding tax (25% unless reduced by a tax treaty), unless the non-resident has repatriated the relevant amount back to the Canadian taxpayer with the CRA's concurrence.

Local Hot Topics and Recent Updates

In June 2023, the federal government released a consultation paper on Canada's transfer pricing rules, which included draft legislative amendments to the ITA. If enacted, these proposed amendments would significantly amend Canada's existing transfer pricing regime. While ostensibly providing "greater clarity" on the application of the arm's-length principle, the proposals are clearly geared towards moving Canada's transfer pricing rules further towards the OECD Transfer Pricing Guidelines by de-emphasizing reliance on the legal rights and obligations created by the parties and elevating the importance of their "economically relevant characteristics."

This initiative is a response to the government's resounding defeat in the Cameco case, where the CRA sought unsuccessfully to apply the "recharacterization" rule in s. 247(2)(b) and (d) ITA. The proposed amendments would make it easier for the government to entirely replace (rather than merely reprice) the taxpayer's intra-group transaction. They would also include a rule requiring Canada's transfer pricing rules to be generally interpreted in a manner consistent with the OECD Transfer Pricing Guidelines.

The proposals set out in the June 2023 transfer pricing consultation paper also include the following:

- increasing to $10 million the threshold for transfer pricing adjustments to potentially trigger penalties;
- aligning existing contemporaneous documentation standards with those used by the OECD; and
- adopting streamlined approaches for certain situations (e.g., intra-group loans, routine distribution activities, etc.).

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Documentation threshold

Master file	Not Applicable
Local file	Not Applicable
CbCR	€ 750M

Submission deadline

Master file	Not Applicable
Local file	Not Applicable
CbCR	12 months from year-end

Penalty Provisions

Documentation – late filing provision	Not Applicable; however, absence/inadequacy of timely contemporaneous documentation exposes taxpayer to penalties if transfer pricing adjustments exceed prescribed threshold
Tax return disclosure – late/incomplete/no filing	Late filing penalty of 5% of taxes owing plus a further 1% per month late (maximum 12 months)
CbCR – late/incomplete/no filing	$500/month to a maximum of 24 months

CONTACT

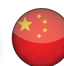
Steve Suarez

Borden Ladner Gervais

SSuarez@blg.com

+ 416 367 6702

CHINA



Overview

Hendersen, Taxand China

Hendersen is a boutique professional tax and accounting service firm estalished in 2004. With extensive exposures to world-class clients and hands-on experiences in various industrial business, our technical and industrial expertise as well as practical experiences is simply among the top class in China. We have dedicated and experienced transfer pricing specialists, worldwide professional databases, close interaction with Taxand global transfer pricing network as well as strong connection with tax authorities. We always focus on clients' specific needs and aim to provide tailor-made solutions to our clients. All these enable us to provide top-quality transfer pricing services to our clients and be highly competitive in this special areas including conducting transfer pricing model and policy review, planning and restructuring, as well as transfer pricing risk and opportunity assessment; documentation client's transfer pricing policies and prepare supporting materials in a systematic manner to prepare for any checks from the tax authority, including preparation of transfer pricing contemporaneous documentation; providing transfer pricing audit defense support including risk management, documents preparation and negotiation with tax authority to achieve the best audit result; assisting in Advanced Pricing Arrangement ("APA") from pre-filing meeting, formal application, negotiation, to signing and execution of the APA; assisting the clients to review and structure intercompany transactions,in order to lower the overall tax burden on their China operations while in full compliance with China tax and transfer pricing regulations, etc.

General : Transfer Pricing Framework

Under article 110 of the Implementation Regulations of the Enterprise Income Tax Law (EITIR), the arm's length principle is defined as the principle adopted by unrelated parties when conducting business transactions based on fair transactional prices and normal business practices. Transfer pricing legislation is governed by Notice 42/2016 with the requirements of related party reporting and contemporaneous documentation. The State Administration of Taxation (SAT) issued Notice 64/2016 to improve the administration of APAs. In additon, Notice 6/2017 regulars the administration of Special Tax Investigation and Adjustment and Mutual Agreement Procedures and clarifis certain key transfer pricing issues, as well as the methodology and procedures for special tax audits and adjustments.

Accepted Transfer Pricing Methodologies

In addition to the traditional five transfer pricing methodologies recommended by the OECD principles, Notice 6/2017 introduced other methods, including asset valuation methods such as the cost method, market method, income method, etc., which are consistent with the arm's length principle as "supplementary methods".

There is no special order of the methods to be used. The taxpayer is given the right to choose any method or combination of the above methods as long as the method is reasonable and appropriate taking into account the factors such as type, nature of transactions and investigation results of the tax authority.

Transfer Pricing Documentation Requirements

In addition to the annual reporting forms on related party transactions, Notice 42/2016 introduces a three-tier documentation framework, as set out in the OECD's framework in BEPS Action 13.

Transfer pricing contemporaneous documentation consists of a Master File, a Local File and a Special Issue File.

Local entity whose annual related party transactions exceed one of the prescribed thresholds should prepare the local file. These thresholds are as follows:

- For tangible buy-and-sell related party transactions: RMB 200 million;
- For intangible buy-and-sell related party transactions: RMB 100 million;
- For all other related party transactions: RMB 40 million.

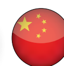
As for the Master File, the local entity shall submit the Master File if either of the following conditions is met:

- The local entity has overseas related party transactions, and the group's ultimate holding company has prepared a Master File; or
- The local entity has related party transactions exceeding RMB 1 billion during the year.

The Special Issue File is required for taxpayers engaging in a cost sharing agreement or falling under the thin capitalization requirement.

The CbCR forms are part of reporting forms on the transactions between related parties together with the annual enterprise income tax return. The CbC reporting forms are required from the Chinese resident enterprise if:

- it is the ultimate holding company of a group with consolidated revenues of over RMB 5.5 billion; or
- it is nominated as the CbCR entity.



Local Jurisdiction Benchmarks

Based on Notice 42/2016, a comparable analysis must be made in order to select reasonable transfer pricing methods. The following factors should be considered in the comparable analysis:

- characteristics of the assets or services transferred;
- functions, risks and assets of the parties involved;
- terms of contracts;
- economic environment; and
- business strategies.

For more detailed information on Chinese companies, such as segmented profit and loss statements, Chinese specific databases (in Chinese language) such as Wind or Tianxiang are used. Public information for companies listed in Shanghai, Shenzhen and Shenzhen small-medium size enterprises are used for Chinese comparables. For comparables worldwide, China Tax authorities usually would adopt the international database such as OSIRIS, as well as their internal database.

Taxpayers are expected to determine whether internal comparable information can be found within the company. If the information is unavailable, companies are expected to carry out an external comparable study using Chinese and/or foreign comparable companies.

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

Article 42 of the Enterprise Income Tax Law (EITL) provides for the possibility of negotiation and entering into an APA with the tax authority. According to Notice 64/2016, APA candidates must meet all of the following requirements for 3 years prior to the application:

- the annual related party transactions must exceed RMB 40 million;
- they have reported related party transactions in their annual tax filings properly; and
- they have maintained the required contemporaneous documentation.

According to Notice 64/2016, an APA usually covers a period of 3 to 5 years following the year of application. Notice 64/2016 also allows an APA to apply retroactively to the year of application or previous years upon approval of the tax authority.

There is no filing fee for APAs in China. The applicant can submit application to the local tax bureau, or SAT if the APA involves more than one province or if it is a bilateral/ multilateral APA. Negotiation and execution of an APA usually involves six stages, i.e. pre-filing meeting, formal application, examination and appraisal, negotiation signing of arrangements and supervision of implementation.

Transfer Pricing Audits

There is a 10-year statute of limitation for tax adjustments. This does not apply in cases of fraud, wilful default or negligence.

The transfer pricing audit process is generally initiated by a request for financial and management information such as statutory accounts, tax computation, pricing information, management accounts and transfer pricing documentation. Based on this information, the tax authority will carry out a review of the documents and decide if a more detailed review is required. A field visit will be carried out if it has been found necessary after review of the submitted information.

Transfer Pricing Penalties

Taxpayers who fail to comply with the requirements for providing information or provide false information or do not provide the infor-mation in time will be fined according to the relevant articles of the Administration of Tax Collection Law (TCAL). The penalty described in the TCAL could range from CNY 10,000 to CNY 50,000 in serious cases.

Penalty interest will generally be imposed on tax adjustments made under the EITL (including transfer pricing adjustment). The interest rate shall be calculated based on an RMB loan benchmarking rate published by the People's Bank of China plus 5%. The interest on underpaid taxes is on a daily basis, starting from 1 June of the tax year following the one to which the tax payment is related until the day the underpaid tax is settled.

In addition, if a taxpayer can provide contemporaneous documentation and/or other information/documents requested by the tax authority, the additional 5% surcharge may be waived.

The additional tax assessment, together with penalty interest (if any), should be -settled with the tax authority within the prescribed deadline, overdue payment would be subject to an additional 0.05% penalty interest per day.

Local Hot Topics and Recent Updates

Transfer pricings, particularly of MNCs who have extensive intercompany charges, become the focus of the Chinese tax authorities' and Customs offices' attention. We've seen cases that the tax authorities' supervision and review of related party transactions has been enhanced by the "Golden Tax Project Phase IV". Customs authorities, by leveraging the newly established Customs National Supervision Center for Duty Collection, have increased the supervision and monitoring of import transactions between related parties. Therefore, it's essential for MNCs to consider the balance between tax authority and Customs office when structuring pricing model of intercompany transactions.

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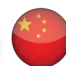

Documentation threshold

Master file	Related party transactions exceeding RMB 1 billion
Local file	Tangible buy-and-sell related party transactions RMB 200 million; intangible buy-and-sell related party transactions RMB 100 million; all other related party transactions RMB 40 million
CbCR	RMB 5.5 billion

Submission deadline

Master file	Within 12 months after the fiscal year-end
Local file	30 June of the following year
CbCR	31 May of the following year

Penalty Provisions

Documentation – late filing provision	Under RMB 2,000; RMB 2,000 to RMB 10,000 in serious cases
Tax return disclosure – late/incomplete/no filing	RMB 10,000 to RMB 50,000 in serious cases Late payment interest 0.05% per day
CbCR – late/incomplete/no filing	Under RMB 2,000; RMB 2,000 to RMB 10,000 in serious cases

CONTACT
Eloise Pan
Hendersen
eloise.pan@hendersen.com
+86 21 6447 7878

Eve Xiao
Hendersen
eve.xiao@hendersen.com
+86 21 6447 7878

Overview

Gómez Pinzón Abogados, Taxand Colombia.

Taxand Colombia is a comprehensive advisory firm located in Bogotá and Medellín, offering a wide spectrum of legal services, which encompass tax advisory services for various client categories, such as individuals, local private entities, estate entities, multinational corporations, and private equity firms. Taxand Colombia's dedicated team is proficient in handling all facets of transfer pricing services, including:

- Compliance and Reporting: This involves preparing transfer pricing informative returns, master files, and local file documentation, which can be customized to suit your specific needs. We can assist with local filings and reviewing files prepared by foreign global advisors, ensuring that your functional and financial data is presented comprehensively. Additionally, we offer support for Country-by-Country reporting.
- Analysis and Planning: Our services extend to optimizing the value chain, facilitating business restructuring, providing comprehensive assistance in devising your transfer pricing strategy and policy, or simply offering a thorough review and sustainability analysis to avoid penalties or litigation.
- Strategy: We offer guidance in transfer pricing audits and help in preventing or resolving tax disputes, ensuring that your tax matters are managed effectively and efficiently.

General : Transfer Pricing Framework

Chapter XI of the Colombian Tax Code ("CTC"), specifically articles 260-1 to 260-11 (introduced by means of Laws 788 of 2002 and 863 of 2003, subsequently modified by Law 1607 of 2012 and Law 1819 of 2016), along with Decree 3030 of 2013, which was amended by Decree 2120 of 2017 and compiled under Title 2 of the General Tax Decree (GTD), serve as the prevailing legal framework in Colombia governing transfer pricing matters.

Per Article 260-2 of the CTC, individuals and entities subject to income tax in Colombia, who engage in transactions with foreign related parties, tax heavens, low taxation or preferential regimes ("Special Tax Regimes"[1]) and/or local free trade zones, must comply with the arm's-length principle and the general documentation requirements, if they have a gross income equal or greater than 61.000 Tax Units[2] (2023: COP$2.587.132.000 – Approx. USD$631.000) or gross assets equal or greater than 100.000 Tax Units (2023: COP$4.241.200.000 – Approx. USD$1.035.000)

Accepted Transfer Pricing Methodologies

Article 206-3 of the CTC determines the transfer pricing methods that are available in the Colombian legislation. Under this legislation, the taxpayer is required to substantiate why the selected method is appropriate, considering the relevant facts and circumstances. The CTC acknowledges the five primary methods recognized by the OECD: (i) CUP Method, (ii) resale price method, (iii) Cost Plus Method, (iv) Transactional Net Margin Method, and (iv) profit split method.

1.Comparable

While the CUP method is the preferred approach in principle, it is often challenging to find comparable uncontrolled transactions. Consequently, the TNMM method is also commonly used as a transfer pricing method in practice.

Notwithstanding, except for commodity transaction which must be analyzed under the CUP method, Taxpayers are allowed to apply other methods as long as they can demonstrate that such methods result in an arm's length outcome.

Transfer Pricing Documentation Requirements

The CTC imposes a set of formal obligations on taxpayers engaged in transactions with foreign related parties, provided they meet specific criteria. Under this regulation, taxpayers subject to income tax in Colombia, whose stand alone gross assets on the last day of the year are equal to or exceed 100,000 Tax Units or whose gross income exceeds 61,000 Tax Units, are required to submit an informative return detailing all transactions with foreign related parties, Special Tax Regimes, and/or local free trade zones.

Additionally, taxpayers must prepare and submit supporting documentation, which comprises a Master File containing relevant global information of the multinational group, and a Local File containing information related to each type of transaction carried out by the taxpayer, demonstrating the proper application of transfer pricing rules. It's important to note that the Master File requirement only applies if the taxpayer belongs to a multinational group; otherwise, it is not necessary. A Local File, however, is still required

Transactions conducted by taxpayers with individuals, companies, or entities located, resident, or domiciled in Special Tax Regimes are subject to the transfer pricing regime and require the submission of supporting documentation, including both the Master File and Local File.

However, it's worth noting that, according to Article 1.2.2.1.2. of the GTD, there is no obligation to prepare and submit the Local File or master file if the annual cumulative amount of each operation does not exceed the equivalent of 45.000 Tax Units (2023: COP$1,908,540,000 – Approx USD$466.000) for the year or taxable period relevant to the supporting documentation. If the transaction is conducted with (or jointly with) a Special Tax Regime, this threshold is reduced to 10,000 Tax Units (COP$424.120,000 – Approx. USD$103.000).

Furthermore, taxpayers belonging to a multinational group with consolidated gross earnings exceeding 81,000,000 Tax Units (2023: COP$3,435,372,000,000 – Approx. USD$838,000,000) must submit a Country-by-Country report if they are the parent company of the

1. Transactions with these regimes will be subject to the same rules as transactions with related parties.

2. Tax Unit for 2023: 42.412 – Approx. 10,5 USD

multinational group or if they have been designated by the parent company as a substitute to file the Country-by-Country Report. If these requirements are not met, but the multinational company is subject to the Country-by-country report, a country-by-country notification must be filed in the informative transfer pricing return.

This notification should include details such as the name of the multinational group, the entity responsible of filing the country-by-country report, and the domicile of said entity. On the other hand, the report itself should contain information regarding the global allocation of income and taxes paid by the multinational group, along with specific indicators related to its global economic activity.

Local Jurisdiction Benchmarks

The Colombian Tax Authority accepts global or local benchmarks, provided that they meet comparable search strategy standards set by the Colombian Tax Authority; however, please consider that if there are internal comparables, the taxpayer must prioritize them when conducting the transfer pricing analysis. Under Colombian regulation a financial update is to be conducted every year.

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

The Tax Administration is vested with the authority to enter into agreements with taxpayers subject to income tax, whether they are of national or foreign origin. These agreements are designed to determine the prices or profit margins of various transactions carried out by taxpayers with their related parties.

The determination of prices through such agreements will be based on the methods and criteria applicable to transfer pricing operations. These agreements can take effect in the year they are signed, the immediately preceding year, and up to three taxable periods following the agreement's signing.

To initiate this process, taxpayers must formally request the conclusion of the agreement in writing. Upon receiving this request, the Tax Administration has a maximum period of nine months from the date of the unilateral agreement request to conduct necessary analyses, seek modifications and clarifications, and accept or reject the request. For bilateral or multilateral agreements involving two or more states, the timeframe will be determined jointly by the competent authorities.

In cases of unilateral agreements, the entire process must be completed within two years from the date of acceptance of the request. If this timeframe expires without the signing of the advance pricing agreement, the proposal may be deemed rejected.

Once the advance pricing agreement is signed, the taxpayer may request its modification if they believe that significant changes have occurred in the assumptions considered at the time of its conclusion during its validity period. The Tax Administration has two months to accept, reject, or deny the modification request, as per the regulations.

Should the Tax Administration determine significant changes in the assumptions considered when the agreement was signed, they will inform the taxpayer. The taxpayer has one month from the knowledge of the report to request the modification of the agreement. If this deadline expires without the corresponding request, the Tax Administration will cancel the agreement.

If the Tax Administration finds that the taxpayer has failed to comply with any of the conditions agreed upon in the signed agreement, it will proceed to cancel the agreement. Furthermore, if the Tax Administration discovers that the taxpayer provided inaccurate information at any stage of the agreement process or during its validity period, the agreement will be revoked and rendered ineffective from the date of its signing.

The taxpayer who enters into such an agreement is obligated to submit an annual report on the transactions covered by the agreement in accordance with the regulations.

It's important to note that there are no appeals allowed against acts issued during the stages prior to the signing of the agreement or during the process of analyzing a modification request for an agreement. However, against resolutions by which the Tax Administration unilaterally cancels or revokes the agreement, the an appeal is admissible, which must be filed before the official who made the decision within fifteen days following its notification. The Tax Administration then has two months from the filing to resolve the appeal.

Transfer Pricing Audits

The Colombian tax authorities have the authority to carry out two types of audits, which are conducted randomly:

1. Formal Audits: Formal audits involve a review of the submitted documentation to ensure that all aspects of the files are completed and that all required annexes have been provided. These audits are primarily concerned with verifying the completeness and adherence to formal requirements of the documentation related to transfer pricing and related party transactions. Formal audits can be conducted within the three years following the submission of the documents.

2. In-Depth Audits: In-depth audits, on the other hand, go beyond the formality check and involve a thorough examination of the functional and economic analysis. The purpose of these audits is to assess whether the transactions in question comply with the arm's length principle. These in-depth audits can be conducted at any time before the statute of limitations for the income tax return applies, which is currently set at five years.

It's noteworthy that while formal audits have historically focused on verifying the completeness of documentation, there has been a recent shift towards conducting more in-depth audits, especially for large multinational groups.

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This shift signifies an increased emphasis on evaluating the economic substance and pricing of transactions between related parties to ensure compliance with transfer pricing regulations.

Transfer Pricing Penalties

Colombian law establishes three primary types of penalties concerning transfer pricing issues: (i) failure to file documentation, (ii) delayed filing of documentation, (iii) omission of information, and (iv) inclusion of incorrect information in the documentation. Each of these penalties is subject to specific calculations and thresholds.

Additionally, the Colombian Tax Authority has the authority to modify the income tax return if the transfer pricing documentation does not align with the arm's length principle. In such cases, amending the return can result in a penalty for inaccuracies, which may be as high as 100% of the greater tax amount owed or the lesser balance in favor, as determined by the tax authority.

Local Hot Topics and Recent Updates

The most recent ruling issued by the Administrative Supreme Court (the State Council) in transfer pricing matters addresses the question of whether it is appropriate to make adjustments in the comparability analysis between the controlled operation/part and the comparables within the transfer pricing regime.

This ruling examines the practice of making adjustments to the financial data of comparable transactions or companies when conducting a transfer pricing analysis. These adjustments are often made to align the financials of the comparables more closely with those of the controlled operation or party, thereby enhancing the accuracy of the arm's length pricing determination.

Documentation threshold

Master file	COP$1,908,540,000 – Approx USD$466.000
Local file	COP$1,908,540,000 – Approx USD$466.000
CbCR	COP$3,435,372,000,000 – Approx. USD$838,000,000

Submission deadline

Master file	December of each year
Local file	September of each year
CbCR	December of each year

Penalty Provisions

Documentation – late filing provision	N/A (a more complex rule)
Tax return disclosure – late/incomplete/no filing	N/A (a more complex rule)
CbCR – late/incomplete/no filing	N/A (a more complex rule)

CONTACT

Alvaro Andres Diaz Palacios
Gómez Pinzón
adiaz@gomezpinzon.com
+57 601 5144098

Manuela Orozco
Gómez Pinzón
morozco@gomezpinzon.com
+57 601 5144017

CROATIA

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Overview

LeitnerLeitner, Taxand Croatia

LeitnerLeitner Consulting d.o.o. is a consulting firm based in Zagreb, Croatia and offering a full range of services. We offer individual and innovative solutions for all questions around tax, accounting, payroll-related and financial advisory services.

Our services related to transfer pricing include all aspects of transfer pricing services, including compliance and reporting, analysis, tax planning and strategy and assistance during tax audits. We are focused on the preparation of customized transfer price documentation in compliance with local legislation.

General: Transfer Pricing Framework

In Croatia, transfer pricing documentation legislative framework is set out with the Profit Tax Act and the Profit Tax Regulations, as well as the Transfer Pricing Audit Manual (issued by the Ministry of Finance, with the latest version dated July 2019). In addition, Croatian Tax Administration uses the OECD Transfer Pricing Guidelines in practice, although it is not directly adopted into Croatian legislation, nor it contains any references to it.

The use of an arm´s length range or statistical measures is not proscribed in the domestic legislation. However, the use of interquartile range is accepted and used in practice.

Accepted Transfer Pricing Methodologies

In principle, the Comparable uncontrolled price method ("CUP") method is the preferred method by the Croation Tax Authorities ("CTA") but because comparable uncontrolled transactions are difficult to find, in practice, Transactional net margin method ("TNMM") method is the most common transfer pricing method used.

The taxpayer is allowed to apply any other method as long as it can be demonstrated that it leads to an arm's length outcome. The most commonly used methods are CUP, mainly for financial transactions and license fees, and TNMM due to the ability to perform a benchmark with sufficient reliable comparable data. The profit split method is becoming more accepted by the authorities over time but in practice this method is felt to be complicated from a practical perspective.

Transfer Pricing Documentation Requirements

Entities required to prepare transfer pricing documentation in Croatia are companies that conduct transactions with foreign related parties and domestic related parties if one of the related parties is in a privileged tax position or has the right to carry forward tax losses from a previous period.

Taxpayers are required to prepare transfer pricing documentation but submit it only upon request of the tax authorities. The three-tier standardized approach as proposed by the OECD has been implemented in Croatia. There are no local guidelines summarizing the recommendations from BEPS Action 13, but the latter are followed by the competent tax authorities. In general, compliance with the recommendations of the BEPS Action 13 imply compliance with local rules. Also, there is no threshold below which the transaction does not fall under transfer pricing rules.

The transfer pricing documentation must be submitted in Croatian language.

The documents that must be submitted without specific request by a tax inspector are the notification and filing of a country-by-country report for MNE's that exceed the €750 million annual revenue threshold. Filing of a country-by-country report is only required if the ultimate parent entity or the surrogate parent entity is tax-resident in Croatia. Also, it is required to submit a "PD-IPO form" together with the corporate income tax return which includes an overview of transactions effected with related parties.

Local Jurisdiction Benchmarks

Benchmarking helps to demonstrate that transfer prices are set at arm's length. The CTA accepts pan-European benchmarks if they meet comparable search strategy standards set by the CTA. The CTA generally refers to multiple year data and the interquartile range in terms of benchmarking. In line with the OECD TP Guidelines, a financial update is to be conducted every year. In Croatia, domestic legislation does not explicitly require an annual renewal of the comparability analysis. In practice, a regular update of the financial data (2-year update period) has proven as accepted in practice.

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

The Profit Tax Act as of January 1, 2017, provides the option to enter into APA's through which taxpayers can agree on the method of determining transfer prices with the Tax Administration ("TA").The following fees apply: EUR 2,000 for taxpayers with a revenue of up to EUR 400,000, EUR 4,000 for a taxpayer with a revenue between EUR 400,000 and 2.65 million, and EUR 6,600 for a taxpayer with revenue exceeding EUR 2.65 million. In case of a BAPA, there is additional fee of EUR 6,600, for Multilateral APA - of EUR 13,200.

There is no prescribed deadline for APA. In practice, it takes more than one year to conclude an APA.

Transfer Pricing Audits

Taxpayers are required to prepare transfer pricing documentation but submit it only upon request of the tax authorities. During a tax audit, the TA usually provides for 8 plus days for submission of the information requested. In case of transfer pricing documentation, this deadline is usually extended to 30 days, though this extension is not covered by laws and is upon discretion of the tax inspector.

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Transfer Pricing Penalties

In Croatia, there are no specific penalties if the obligation for transfer pricing documentation is not met. Since transfer prices are subject to corporate income tax audits, general penalties are applicable. A penalty of EUR 260 to 26,540 can be imposed if the corporate income tax base is not in line with the legal rules. In addition, higher fines are possible for repeated offences.

Local Hot Topics and Recent Updates

In Croatia it seems that the CTA over the last year have had a strong focus on requesting transfer pricing documentation (Local file) and financial transactions and the application of arm-length interest rates.

Documentation threshold

Master file	N/A
Local file	N/A
CbCR	€750 million

Submission deadline

Master file	Upon request
Local file	Upon request
CbCR	Within 12 months from the last day of the reporting tax year

Penalty Provisions

Documentation – late filing provision	N/A
Tax return disclosure – late/incomplete/no filing	€260 to 26,540
CbCR – late/incomplete/no filing	N/A

CONTACT
Pavo Djedovic
LeitnerLeitner
Pavo.Djedovic@leitnerleitner.com
+385 91 606 44-00

CYPRUS

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Overview

Taxand Cyprus

Taxand Cyprus is a tax law firm offering comprehensive legal services focused on taxation matters. This includes advising clients on tax planning, compliance, and disputes. Services cover income tax, corporate tax, international taxation, tax treaties, transfer pricing and assistance with audits. Expertise in navigating complex tax codes and providing strategic counsel to minimise liabilities is a key aspect of our offerings. We also represent clients in negotiations with tax authorities and handle litigation if disputes arise.

With respect to transfer pricing, we provide guidance on pricing policies, documentation, and compliance. We assist in developing and implementing strategies that align with regulatory requirements, mitigate risks, and optimise tax positions. This includes preparing transfer pricing documentation, conducting benchmarking analyses, planning and strategy, and supporting clients in transfer pricing audits and disputes. More specifically:

- Intra-Group Services Pricing: Advising on the pricing of services provided by one entity to another within the same group.
- Financial Transactions Transfer Pricing: Analysing and advising on the transfer pricing implications of financial transactions, including intercompany loans, cash pooling and guarantees.
- Intellectual Property Valuations: Assessing the value of intellectual property for accurate pricing.
- Business Restructuring: Providing guidance on transfer pricing considerations during business restructuring, including the transfer of functions, risks, and assets among group entities.
- Assistance in Tax Controversy Matters: Supporting multinational enterprises in tax disputes, including obtaining Advance Pricing Agreements ("APAs") and Mutual Agreement Procedure ("MAP") agreements.

General: Transfer Pricing Framework

With effect from 1 January 2003, article 33 of the Income Tax Law of 2002, N118(I), as amended ("ITL"), incorporates the arm's length principle ("ALP") and is in line with Article 9 of the OECD Model. Further, with effect from 1 January 2022, ITL provides for specific documentation requirements that generally follow Chapter V of the OECD Transfer Pricing Guidelines ("OECD Guidelines") for all Cypriot taxpayers entering into controlled transactions unless such taxpayers fall under a de minimis threshold. It should be noted that the OECD Guidelines are specifically incorporated in the ITL; therefore, the transfer pricing rules and arm's length principle are generally in line with the OECD Guidelines. The phrase controlled transactions refers to transactions between associated persons (entities or individuals), who, in a broad context, have a direct or indirect relationship of 25% or more.

Accepted Transfer Pricing Methodologies

Given that the OECD Guidelines have been legislatively incorporated into the ITL, all transfer pricing methods approved by the OECD should be equally applicable.

Considering that the ITL does not provide for a hierarchy between the 5 OECD-approved methods, the guidance provided in the OECD Guidelines with respect to the selection of the most appropriate transfer pricing method to the circumstances of the case should be followed. Notably, Cypriot taxpayers should provide justification for why the selected method is deemed suitable, taking into account the pertinent facts and circumstances. Generally speaking, the Cyprus Tax Department ("CTD") favours the CUP method, however, due to challenges in finding comparable uncontrolled transactions, in practice, the TNMM has become the most widely used transfer pricing method.

Transfer Pricing Documentation Requirements

The CTD requires taxpayers to be able to substantiate all related party/intercompany transactions in transfer pricing documentation. Yet, Cypriot taxpayers involved in controlled transactions with an arm's length value in aggregate more than EUR 750,000 annually in each of the following five transaction categories (as defined in the summary information table) are required to prepare a Cyprus local file:

1) sale/purchase of goods;
2) provision/receipt of services;
3) financing transactions;
4) receipt/payment of IP licensing/royalties; and
5) others.

Therefore, all Cypriot taxpayers who are involved in controlled transactions should prepare a local file unless they fall in the above small size exemption (i.e. de minimis of EUR 750,000). The content of the local file is generally aligned with Chapter V of the OECD Guidelines. It should be noted that a person holding a practising certificate from ICPAC or any other recognised institute of certified accountants in Cyprus should conduct a Quality Assurance Review for the local file. Further, the local file should be readied by the deadline for submitting the Income Tax Return for the relevant tax year. Following the preparation deadline, the taxpayer must provide and submit the local file to the tax authorities within 60 days upon request. Under the Assessment and Collection of Taxes Law (1978, 4/78), as amended ("ACTL"), failure to submit the local file after receiving a request from the CTD will result in penalties ranging from EUR 5,000 to EUR 20,000. Finally, Cypriot taxpayers must also file the summary information table ("SIT") by the submission deadline of the tax return of the specific year of assessment. Failure to submit the SIT, a penalty of EUR 500 will apply.

With respect to the master file, the obligation to prepare and maintain a master file applies exclusively to Cypriot taxpayers who serve as the ultimate parent or surrogate parent entity for an MNE group subject to Country-by-Country reporting. All other entities are exempt from this requirement. Like with the local file, the content of the master file is generally aligned with Chapter V of the OECD Guidelines and the taxpayer must provide and submit the master file to the tax authorities within 60 days upon request. Failure to submit the master file after receiving a request from the CTD will result in penalties ranging from EUR 5,000 to EUR 20,000.

Local Jurisdiction Benchmarks

The CTA considers local and pan-European benchmarks acceptable, given that they adhere to comparable search strategy standards of the OECD Guidelines. Generally, the CTA relies on contemporaneous and multiple-year data and uses the interquartile range for benchmarking. Importantly, the ITL provides that the local file should be updated on a yearly basis, and any significant changes in the market conditions that may impact the information and data should be documented in the local file.

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

Cypriot taxpayers have the option to present APAs to the CTD to pre-determine pricing methodologies. These APAs can be applied unilaterally, bilaterally, or multilaterally and remain valid for a duration of up to four years.

Transfer Pricing Audits

Random transfer pricing audits can be conducted by the CTD and all Cypriot taxpayers are subject to audit for any open tax year (the ordinary statute of limitation is six years). In identifying areas of interest, the SIT serves as a risk assessment tool for the CTD in selecting the taxpayers for transfer pricing audit. This is because the SIT includes various useful information, such as an overview of the controlled transactions, specifying the counterparties' identity, their tax residency jurisdiction, and describing the nature of the controlled transactions (i.e. services, intangible, financial transactions, sale of goods, and other). Additionally, the corresponding values of these controlled transactions should be explicitly stated. Hence, tax inspectors are inclined to incorporate the SIT into their criteria for selecting taxpayers for audits, recognizing the significant role these factors play in the selection process. Currently, there seems to be more attention on financial transactions, in particular to intra-group loans.

Transfer Pricing Penalties

In addition to the penalties noted above, the ACTL outlines penalties for any additional taxes resulting from transfer pricing adjustments. Specifically, if the temporary income declared (including any revised estimated returns) is lower than 75% of the income as finally determined and shown in the tax return filed by the taxpayer or amended by the CTD by issuing additional assessment, in addition to the balance of the tax due an additional amount of tax equal to 10% is also payable. Further, interest is imposed where the tax due is not paid by the prescribed dates, either when the payment is made under a self-assessment or when the payment is made on the basis of an assessment raised by the Tax Commissioner. Finally, in case a person fails to pay the tax due by the due date or within the period prescribed by a notice issued by the Tax Commissioner, there is a penalty equal to 5% of the tax due.

Local Hot Topics and Recent Updates

In Cyprus, it seems that the CTA has focused strongly on financial transactions and the application of arm-length interest rates over the last few years. Nevertheless, considering the implementation of the new documentation requirements and the annual submission of the SIT, it is anticipated that the scope of transfer pricing audits will extend to encompass additional controlled transactions.

CYPRUS

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Documentation threshold

Master file	Consolidated revenue exceeding EUR 750 million
Local file	Cumulatively, per category (as defined in the SIT) exceeds the arm's length amount of EUR750,000 per tax year.
CbCR	Consolidated revenue exceeding EUR 750 million

Submission deadline

Master file	To be submitted to the CTD upon request within 60 days.
Local file	Local file To be submitted to the CTD upon request within 60 days. Further, the local file should be readied by the deadline for submitting the Income Tax Return for the relevant tax year.
CbCR	Submission to the CTD must occur within 12 months following the conclusion of the MNE group's reporting fiscal year.

Penalty Provisions

Local file and master file	Ranging from EUR 5,000 to EUR 20,000
Tax return disclosure – late/incomplete/no filing	EUR 100 and penalties imposed under ACTL noted above.
CbCR – late/incomplete/no filing	Ranging from EUR 500 to EUR 20,000

CONTACT
Christos A. Theophilou
Taxand Cyprus
ctheophilou@cy.taxand.com
+357 22 875723

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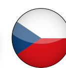

Overview

LeitnerLeitner Tax s.r.o., Taxand Czech Republic

LeitnerLeitner Tax s.r.o. provides the full scope of transfer pricing services such as compliance and reporting, analysis, planing, strategy and tax audits. We can help you with the set up and the implementation of business models and group transactions. We will prepare transfer pricing documentation including the benmark studies or submit a request for a binding ruling to the Czech tax authorities. Our experts with many years of experience will support you in the negotiations with the tax authorities. In addition, we can assist you with transfer pricing audits, with Mutual Agreements Procedures and with concluding bilateral or multilateral APAs in the Czech Republic.

General : Transfer Pricing Framework

The arm's-length principle is governed by Section 23/7 of the Czech Income Taxes Act. In general, the transactions between related parties should be set up at arm's length. If the prices agreed between related parties differ from the prices which would be agreed between independent parties under the same or similar conditions and the difference between the prices is not reasonably justified, the tax base can be adjusted by the difference.

The Czech General Financial Directorate has published Transfer pricing guidance (Decree D-34) that refers to the OECD Transfer Pricing Guidelines. In addition, the Czech Ministry of Finance has published the guidance on the recommended scope of transfer pricing documentation (Decree D-334).

The transfer pricing rules and arm's length principle in the Czech Republic are generally in line with the OECD Guidelines.

Accepted Transfer Pricing Methodologies

The OECD Guidelines are not incorporated in the Czech Income Taxes Act. Based on the Decree-34, the OECD Guidelines are regarded as internationally accepted guidance providing explanation and clarification of the arm's length principle. In line with the OECD Guidelines, the Czech tax authorities accept using the 5 basic methods.

When selecting an appropriate method, it is recommended to proceed from the CUP method, through other traditional transactional methods, to transactional profit methods. The taxpayer is allowed to apply any method or its combination as long as it can be demonstrated that it leads to a proper arm's length setup.

Transfer Pricing Documentation Requirements

The transfer pricing documentation is not obligatory in the Czech Republic but is highly recommended. The documentation should be provided by the taxpayers during a tax audit or when applying for a binding ruling (APA) or MAP.

In addition, selected taxpayers are required to complete an Attachment to the Corporate Income Tax Return, which contains details about transactions with related parties. This includes items such as the name of the related party, the volume of the transaction, and the types of transactions carried out in the respective taxable period.

Multinational enterprises must prepare a country-by-country report, containing information on the worldwide distribution of their revenue, taxes, etc., if the consolidated group turnover amounted to EUR 750 million or more in the previous fiscal year.

Local Jurisdiction Benchmarks

Benchmarking is a key instrument to demonstrate that transfer prices are at arm´s length. There is preference to use domestic comparables and if no sufficient number of domestic comparables is available, foreign comparables are used. In practice, the geographic region used for most comparability studies are mainly EU or all European countries.

There is no preference to use a specific database in the Czech Republic, however the Czech tax authorities use the TP Catalyst database. The search strategy is recommended to be renewed at least every 3 years and at the same time the arm´s length price range observed for selected independent entities should be updated annually.

The internal CUPS are generally acceptable (if available).

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

Czech tax law provides for a possibility to conclude APAs as an instrument eliminating disputes between tax administration and taxpayers in respect of transfer pricing. In the Czech Republic, APAs are regulated in sections 38nc and 38nd of Czech Income Taxes Act and in Decree D-32. The fee for filing an application is CZK 10,000 (approx. EUR 420).

Based on the Czech tax law, the Czech tax authorities approve the proposed transfer pricing method or the methodology of profit allocation to a permanent establishment.

The APAs (both unilateral or bilateral) are in the form of a binding ruling and are valid for up to 3 years. The requirements for both APAs are in general the same. The unilateral APA is usually completed within approx. three to six months from filing, while bilateral APA (BAPA) can take approximately up to two years.

Transfer Pricing Audits

The Czech tax authorities can carry out tax audits on a random basis and do not conduct audits on a regular basis. However, transfer pricing is currently the frequent subject of tax audit in the Czech Republic, especially in respect of loss-making companies.

The Czech tax authorities have broad experience with TP audits of contractual manufacturers/service providers with limited risks and they are increasing their experience with international MAP and BAPA procedures. The loss-making

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entities are of particular interest and a typical area of focus of the Czech tax authorities is the functional and risk analysis.

Regarding the intercompany services, the Czech tax authorities focus on three-tier testing: i) the substance test (if the services were actually received), ii) the benefit test (if the recipient has benefited from receiving the service), and iii) the arm's length test. The arm's length prices are tested only if both substance and benefit tests are confirmed. In addition, failing to prove substance and benefit test leads to tax non-deductibility of the costs plus an additional CIT and VAT liability assessed by the Czech tax authorities.

Transfer Pricing Penalties

No penalties are imposed for lack of having a transfer pricing documentation, as the documentation is not obligatory in the Czech Republic.

Fines up to a maximum of CZK 600,000 (approx. EUR 25,000) for non-compliance with the CbCR notification obligations, alternatively up to a maximum of CZK 1,500,000 (approx. EUR 62,500) for non-compliance with the CbCR obligations can be imposed by the Czech tax authorities.

Local Hot Topics and Recent Updates

Based on a recent Czech court case, even transactions with an unrelated party may be regarded as controlled transactions if they have been influenced by a related party. In this case, the Czech contract manufacturer has sold goods to unrelated parties and was in a loss-making position. The court ruled that if the prices for the goods were agreed at the group level, the group should have compensated the Czech manufacturer as there was a hypothetical service provided by the Czech manufacturer to the group.

Documentation threshold

Master file	N/A
Local file	N/A
CbCR	Turnover € 750 million

Submission deadline

Master file	N/A
Local file	N/A
CbCR	Submission within 12 months after the end tax year

Penalty Provisions

Documentation – late filing provision	N/A
Tax return disclosure – late/incomplete/no filing	Fines up to CZK 300,000 (approx. EUR 12,500).
CbCR – late/incomplete/no filing	Fines up to a maximum of CZK 600,000 (approx. EUR 25,000) for non-compliance with the CbC notification obligations Fines up to a maximum of CZK 1,500,000 (approx. EUR 62,500) for non-compliance with the CbC reporting obligations

CONTACT
Miroslav Král
LeitnerLeitner
miroslav.kral@leitnerleitner.com
+ 420 228 883 917

Hannes Gurtner
LeitnerLeitner
hannes.gurtner@leitnerleitner.com
+43 732 70 93 329

DENMARK

Overview

Bech-Bruun, Taxand Denmark

Bech-Bruun is a full-service law firm based in Copenhagen and Aarhus and deals with both domestic and cross-border matters. Bech-Bruun's tax department advises on all aspects of corporate tax and is one of the leading tax teams in Denmark. Our advisers are highly specialized in transfer pricing matters, and their expertise extends to all matters regarding intragroup transactions, including compliance and reporting, planning and strategy, and disputes.

General: Transfer Pricing Framework

The OECD Transfer Pricing Guidelines have a significant impact on how Danish transfer pricing regulations are interpreted. Article 9 of the OECD Model Convention serves as the fundamental framework for transfer pricing standards within Danish legislation.

Central to the Danish transfer pricing rules is the concept of "arm's-length" transactions. The legal framework of the arm's-length principle in Danish tax law is found in section 2 of the Tax Assessment Act. This provision states that:

Taxpayers:

- over whom natural or legal persons exercise a controlling influence (i.e., directly or indirectly own more than 50% of the share capital or control more than 50% of the votes in another country),
- who exercise a controlling influence over legal persons,
- who are associated with a legal person,
- who have a permanent establishment abroad,
- who are foreign natural or legal persons with a permanent establishment in Denmark, or
- who are foreign natural or legal persons with hydrocarbon-related business as defined in the Hydrocarbon Tax Act section 21 (1) and (4)

shall, for the purpose of determining their income for tax and dividend purposes, use prices and terms in relation to commercial or financial transactions with the parties specified above (controlled transactions) that are equivalent to those that could have been obtained had the transactions been conducted between independent parties.

Transactions between companies meeting the above-mentioned tests are referred to as controlled transactions. The rules contained in section 2 of the Tax Assessment Act not only apply to transactions between Danish and foreign companies but also to transactions between a Danish head office and its foreign permanent establishment, as well as to transactions between two or more Danish companies.

Accepted Transfer Pricing Methodologies

As outlined in the Danish Legal Tax Guide provided by the Danish Tax Agency, the assessment of pricing and contractual terms by the Danish Tax Agency should align with the OECD Guidelines. This aligns with the underlying legislative historical development of Danish transfer pricing regulations. The OECD Guidelines are, however, not directly incorporated into Danish tax law, but the Danish Parliament, relying on the principles set forth by the OECD Guidelines, harmonized Danish transfer pricing provisions with those of the OECD.

To determine whether a price meets the arm's-length standard according to section 2 of the Tax Assessment Act, the Danish Tax Agency generally applies the methods described in chapters II and III of the OECD Guidelines.

The Danish Tax Agency indicated in the Legal Tax Guide that other approaches may be accepted provided that they are duly justified and that the price set is compliant with the arm's length principle.

The choice of the most suitable transfer pricing method depends on:

1) The strengths and weaknesses of each method concerning the pricing of the specified controlled transaction.
2) The availability of information regarding internal or external comparable transactions, as required to apply the methods.
3) The identified key comparability factors for the controlled transaction and the ability to make adjustments for any differences.

Transfer Pricing Documentation Requirements

Denmark has a statutory documentation and reporting requirement regarding transfer pricing between related entities.

In accordance with section 38 of the Tax Control Act, taxpayers are required to provide comprehensive information regarding the nature and extent of controlled transactions in their tax return. Additionally, they must indicate in their tax return whether they are subject to the transfer pricing provisions.

Taxpayers subject to transfer pricing documentation are required to provide information on the commercial operations of their group, a detailed description of the controlled transactions, any conducted comparability analyses, the adherence to the arm's-length standard, and a copy of any written agreements related to the controlled transactions.

It is important to note that the Danish documentation requirements apply to several types of entities, including Danish subsidiaries, branches, and permanent establishments.

However, different transfer pricing documentation rules and deadlines apply depending on whether a company is considered a small or large business.

Small businesses:

Taxpayers who alone or on a consolidated group* basis have

- less than 250 employees

and either

1) a net worth of less than DKK 125 million (approx. EUR 16.75 million)

or

2) a yearly turnover of less than DKK 250 million (approx. EUR 33.5 million)

are subject to the Danish limited transfer pricing documentation rules.

A consolidated group includes companies where the same shareholders directly or indirectly hold more than 50% of the shares or the voting rights (controlling influence cf. above).

If the taxpayer alone or on a consolidated group basis falls within the scope of the limited transfer pricing documentation rules, the taxpayer shall only prepare, maintain, and submit documentation if they are involved in:

1) Controlled transactions with individuals and legal persons resident in a country with which Denmark has not concluded an income tax treaty and which is not a member of the EU or EEA;
2) Controlled transactions with a permanent establishment located in a country with which Denmark has not concluded an income tax treaty and which is not a member of the EU or EEA; and
3) Controlled transactions with a permanent establishment in Denmark provided the taxpayer is resident in a country with which Denmark has not concluded an income tax treaty and which is not a member of the EU or EEA.

The documentation requirements in relation to the limited transfer pricing documentation are generally similar to the requirements in relation to the full scope transfer pricing documentation as detailed below. However, it is essential to note that the obligation to submit transfer pricing documentation only applies to the abovementioned specified types of transactions.

While small businesses are typically exempt from the documentation requirements it is important to emphasize that all intra-company transactions must comply with the arm's-length principle.

As specified in the Danish Legal Tax Guide, the Danish Tax Agency has the authority, during a tax audit, to request that the taxpayer substantiate that the prices and terms for a transaction not subject to formal documentation requirements have indeed been determined in accordance with the arm's-length principle.

Large businesses:

Taxpayers who alone or on a consolidated group basis have

- more than 250 employees

and either

1) a net worth of more than DKK 125 million (approx. EUR 16.75 million)

or

2) a yearly turnover of more than DKK 250 million (approx. EUR 33.5 million)

are subject to the Danish full scope transfer pricing documentation rules.

If the taxpayer alone or on a consolidated group basis falls within the scope of the full scope transfer pricing documentation rules, the taxpayer shall prepare, maintain, and submit documentation if they are involved in the following transactions:

1) One party to the controlled transaction is a foreign individual or legal entity, cf. the Danish Tax Control Act, section 37(4), or constitutes a permanent establishment located in the Faroe Islands, Greenland, or a foreign state, including under the provisions of a double taxation treaty. However, the written documentation does not need to be prepared if all parties to the controlled transaction are permanent establishments in Denmark of companies located in the Faroe Islands, Greenland, or a foreign state, including under the provisions of a double taxation treaty, or head offices of companies resident in Denmark.
2) One party to the controlled transaction is taxed under the Tonnage Tax Act unless all parties to the controlled transaction are taxed under the Tonnage Tax Act. The written documentation must also be prepared where the taxpayer calculates income covered by the Danish Tonnage Taxation Act, section 13(2).
3) One party to the controlled transaction is taxed under the Hydrocarbon Tax Act unless all parties to the controlled transaction are taxed under the Hydrocarbon Tax Act.
4) One party to the controlled transaction is subject to the Corporation Tax Act, section 1(1)(3), unless all parties to the controlled transaction are subject to the Corporation Tax Act, section 1(1)(3).
5) One party to the controlled transaction is subject to the Corporation Tax Act, section 17 A, unless all parties to the controlled transaction are subject to the Corporation Tax Act, section 17 A.
6) One party to the controlled transaction is subject to the Corporation Tax Act, section 1(1)(6).
7) One party to the controlled transaction is covered by the Corporation Tax Act, section 3.

8) Where the taxpayer's income is to be calculated in accordance with the Withholding Tax Act, section 2(8), the Corporation Tax Act, section 2(7), or the Corporation Tax Act, section 8(6).

The taxpayer is not required to submit written documentation for controlled transactions that are immaterial in size and frequency.

As per point 1 above, it is specified that only cross-border transactions need to be detailed in the transfer pricing documentation. Consequently, intra-group transactions between e.g., a Danish parent company and a Danish subsidiary (domestic transactions) are generally not required to submit transfer pricing documentation.

Nonetheless, the documentation must encompass adequate information to enable the Danish Tax Agency to ascertain if the pricing and associated terms and conditions align with the arm's length principle.

Documentation requirements:

According to Regulation No. 468 of 19 April 2022 (the "Transfer Pricing Documentation Regulation"), the transfer pricing documentation must contain two parts: the Master File and the country-specific reporting Local file.

Both the Local file and the Master File requirements align with Annexes I and II to Chapter V of the OECD Guidelines.

Deadlines:

Starting from income years commencing on or after 1 January 2021, transfer pricing documentation, whether limited or full scope, needs to be submitted to the Danish Tax Agency within 60 days following the corporate tax return deadline.

If a company uses the calendar year as its fiscal year (from 1 January to 31 December), the corporate tax return must be filed by 30 June of the year immediately following the relevant income year. The tax return for the income year 2023 should therefore be submitted by 30 June 2024.

Consequently, for companies using the calendar year as their fiscal year, the deadline for submitting transfer pricing documentation is 29 August in the income year following the relevant income year.

The documentation must be submitted through the company's E-tax system, known as "TastSelv-Erhverv." Failure to submit adequate transfer pricing documentation to the Danish Tax Agency within the deadline may result in fines ranging from EUR 15,000 to EUR 30,000, plus an additional 10% of any potential income increase.

It is generally not possible to obtain an extension of the deadline for filing the transfer pricing documentation. However, it is under specific circumstances possible to submit the Master File from the previous income year as preliminary documentation.

The documentation may be prepared in either the Danish, Norwegian, Swedish, or English language.

Country-by-country reporting (CbCR):

Danish businesses that are either the ultimate parent company or the surrogate parent entity of a group subject to CbCR must submit a CbCR to the Danish Tax Agency.

According to section 48 of the Danish Tax Control Act, a Danish ultimate parent company of a multinational group must submit a CbCR if the group on a consolidated basis has a turnover of more than EUR 750.4 million in the income year prior to the relevant reporting year.

The deadline for submitting the CbCR is 12 months after the last day of the income year concerned.

A Danish group company that is not the ultimate parent company of a multinational group (surrogate parent entity), is required to submit a CbCR if the company is tax resident in Denmark and if the following conditions are met:

1) The ultimate parent company is not obligated to file a CbCR in the country where it is domiciled.
2) There is no automatic exchange of CbCR since there is no agreement between the competent authorities in Denmark and the jurisdiction where the ultimate parent company is domiciled, even though there is an international agreement on the exchange of tax information.
3) There is a systematic error regarding the jurisdiction where the ultimate parent company is domiciled, and the Danish Tax Agency has informed the Danish surrogate parent entity of this.

However, a Danish group company is not obligated to file a CbCR to the Danish Tax Agency if the multinational group files a CbCR to the competent tax authorities through another surrogate parent entity. The following conditions must be met:

1) The country where the surrogate parent entity is domiciled requires submitting of CbCR.
2) The country where the surrogate parent entity is domiciled has entered into an international agreement with Denmark on the automatic exchange of CbCR.
3) There is no systematic error regarding the jurisdiction where the surrogate parent entity is domiciled, or the Danish Tax Agency has not informed the Danish group company of this.
4) The jurisdiction where the surrogate parent entity is domiciled has received a message from another group company, which is tax resident in the same jurisdiction as the surrogate parent entity, stating that the group company is considered the surrogate parent entity.
5) The group company has informed the Danish Tax Agency that it is obligated to file a CbCR.

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Local Jurisdiction Benchmarks

On 30 November 2021, Act no. 2194 introduced a relatively minor change to section 39(4), first sentence of the Danish Tax Control Act concerning the preparation of database studies. However, this seemingly minor amendment has significant implications for how taxpayers should approach their transfer pricing documentation.

The amendment now requires that taxpayers must incorporate benchmark studies into their transfer pricing documentation to substantiate the comparability analysis. Failure to include benchmark studies in the documentation could result in the Danish Tax Authority deeming the documentation insufficient. This exposes the taxpayer to potential penalties and discretionary arm's length adjustments, with a reversed burden of proof.

This provision became effective starting from the 2022 income year, impacting transfer pricing documentation submissions to the Danish Tax Agency for the first time in 2023.

According to section 7 of the Transfer Pricing Documentation Regulation, a benchmark study should encompass the following elements:

1) Identification and determination of the controlled transaction or activity and the selection of the transfer pricing methodology, including Profit Level Indicator (PLI).
2) An outlined selection process, which involves both quantitative and qualitative selection criteria.
3) The incorporation of comparability adjustments.
4) The utilization of statistical methodologies.

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

In Denmark, it is possible to obtain a unilateral Advance Pricing Agreement in the form of a binding tax ruling. Such a tax ruling must always be approved by the Office for International Taxation. The ruling must be issued by the Danish Tax Board (Skatterådet) if any of the following conditions are met:

1) The answer may have consequences for a larger number of taxpayers;
2) The answer concerns large financial amounts;
3) The answer concerns an interpretation of significant importance to the legislation;
4) The issue involves a question of EU law of significant scope; or
5) The matter has attracted or is deemed to attract great public interest.

A fee of DKK 400 (2023) is payable if the ruling concerns only the taxpayer. Generally, a binding tax ruling is binding for the parties for a period of five years.

Under Danish legislation, the Danish tax authorities do not have the authority to enter into a bilateral Advance Pricing Agreement. However, such an agreement can be reached based on provisions in Danish treaties equivalent to Article 25 of the OECD Model Convention.

The Danish competent authority can thus enter into a mutual agreement with the competent authority in another treaty state. However, Article 25 does not provide the Danish tax authorities with the authority to enter into a binding agreement with taxpayers.

Transfer Pricing Audits

There are no specific audit procedures or guidelines that provide the Danish Tax Agency with details of controlled transactions concerning group companies. While the Danish Legal Tax Guide includes a dedicated section on transfer pricing matters, it does not offer a comprehensive guide.

To determine the need for a transfer pricing audit, the Danish Tax Agency may depend on the information provided in the tax return concerning controlled transactions.

An audit must be initiated no later than six years after the end of the income year during which the controlled transaction took place.

Transfer Pricing Penalties

Failure to submit adequate transfer pricing documentation to the Danish Tax Agency within the deadline (cf. above) may result in fines ranging from EUR 15,000 to EUR 30,000, plus an additional 10% of any potential income increase.

Local Hot Topics and Recent Updates

In 2021, Denmark implemented stricter regulations regarding transfer pricing documentation. These new provisions entail the mandatory submission of comprehensive transfer pricing documentation, including a Master File and one or more Local Files. The deadline for filing requires that the transfer pricing documentation is submitted within 60 days following the company's income tax return deadline.

Furthermore, intercompany agreements and benchmarking studies that support the transfer pricing methods applied by the company are now also expected to be included when filing the transfer pricing documentation. These new requirements represent a significant difference from the previous Danish regulations, where the completion of transfer pricing documentation was only necessary at the time of filing the corporate income tax return and was only to be submitted to the Danish Tax Agency upon request.

Non-compliance with the transfer pricing documentation rules will lead to penalties, cf. further above.

It is our experience that the penalty will be automatically imposed on companies and legal entities that fail to submit their transfer pricing documentation within the designated submission deadline. In addition, we have observed that the Danish Tax Agency has started investigating

companies that have not submitted their transfer pricing documentation within the deadline, which thus will be subject to a transfer pricing audit.

We have observed that the most common challenges that companies have faced were:

1) Recognizing that even small legal entities in Denmark must adhere to the submission requirement because the group meets the threshold for preparing transfer pricing documentation.

2) Acknowledging that there is no minimum transaction volume for determining when a controlled transaction is considered insignificant.

3) Acknowledging that comprehensive comparability analyses and benchmarking studies – even for relatively small transactions – must be presented to the Danish Tax Agency to comply with the Danish transfer pricing documentation rules.

Given the recent regulatory changes, it is crucial for companies operating in Denmark to conduct an annual review of their procedures and financial practices to guarantee accurate and timely compliance.

Documentation threshold

Limited documentation requirements (Local File + Master File)	Alone or consolidated group basis has less than 250 employees and either a net worth of less than DKK 125 million (approx. EUR 16.75 million) or a yearly turnover of less than DKK 250 million (approx. EUR 33.5 million)
Full scope documentation requirements (Local File + Master File)	Alone or on a consolidated group basis has more than 250 employees and either a net worth of more than DKK 125 million (approx. EUR 16.75 million) or a yearly turnover of more than DKK 250 million (approx. EUR 33.5 million)
CbCR	Consolidated group turnover over DKK 5.6 billion

Submission deadline

Limited documentation (Local File + Master File)	60 days after the deadline for filing the corporate tax return (30 June if the fiscal year is the calendar year).
Full scope documentation (Local Lile + Master File)	60 days after the deadline for filing the corporate tax return (30 June if the fiscal year is the calendar year).
CbCR report CBCR notification	12 months after the last day of the income year in question.

Penalty Provisions

Documentation – late filing, incomplete or no filing	A fine of DKK 250,000 (approx. EUR 33,500) is imposed
Reduced fine in case of subsequent satisfactory documentation	A fine of DKK 125,000 (approx. EUR 16,740) is imposed
Increased fine in case of an increase in income	An additional fine of 10% of the income increase, will be imposed
CbCR – late/incomplete/no filing	A fine will be imposed. The amount of the fine will be determined on a case-specific assessment.

CONTACT

Chelina Rose Larsen
Bech-Bruun
chel@bechbruun.com
+45 72 27 34 99

Thomas Frøbert
Bech-Bruun
thf@bechbruun.com
+45 72 27 34 33

FINLAND

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Overview

Borenius, Taxand Finland

Borenius is a leading Finnish law firm headquartered in Helsinki.

Borenius' top-ranked tax practice provides high-quality tax services that cover both domestic and international taxation. Our versatile team focuses on delivering high-quality integrated tax advice independent from audit work to corporate entities, associations, authorities, and private individuals.

As part of its offering, Borenius provides full range of transfer pricing services with focus on advisory, planning and tax dispute resolution. Our transfer pricing services include:

- planning, adjusting and implementing transfer pricing models and strategy;
- advising in transfer pricing model changes and related party restructuring;
- assisting in transfer pricing controversy throughout the process;
- assisting in MAP and APA processes, as well as domestic pre-emptive processes; and
- assisting in transfer pricing related reporting obligations.

General : Transfer Pricing Framework

Finland's transfer pricing regulation and tax practice generally follow the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations ("OECD Guidelines"), however OECD Guidelines are not directly adopted in the legislation. The Finnish documentation rules also conform to the principles established in the Code of Conduct for Transfer Pricing Documentation in the European Union.

The Finnish Act on Tax Assessment [1558/1995] ("ATA") contains provisions concerning the arm's length principle, as well as the transfer pricing documentation that have been in effect since 1 January 2007. The provisions concerning transfer pricing documentation were revised based on BEPS Action 13, applying from 2017 onwards. Additionally, the Finnish Tax Administration has published guidelines dealing specifically with transfer pricing documentation.

Section 31 of the ATA enacts the arm's length principle for related party transactions. It applies where a taxpayer and a related party have agreed on or defined terms that are different from what would have been agreed upon by independent parties, and, in consequence, the taxable income of the taxpayer is less or the taxpayer's loss is more than what it would have been using arm's length terms. Where the rule applies, the taxable income can be increased to the amount that it would have been, if the terms had been the same as would have been agreed upon by independent parties.

Accepted Transfer Pricing Methodologies

In Finland the transfer pricing methods are applied in line with the OECD Guidelines. As the OECD Guidelines state, the transfer pricing method selected should be the most appropriate method in the circumstances of the case, i.e., there is no direct hierarchy in applying the methods. However, where a traditional transfer pricing method (comparable uncontrolled price ("CUP"), resale price or cost plus) and a transactional profit method (profit split or transactional net margin method) are both equally valid in the circumstances, the traditional method is seen as preferable. Further, the CUP method is considered preferable, when applicable, because it is deemed to best correspond to the arm's length principle.

The taxpayer is allowed to also apply any other method if it can be demonstrated that it leads to an arm's length outcome. This is typically relevant especially in connection with related party restructurings described in Chapter IX of the OECD Guidelines.

Transfer Pricing Documentation Requirements

Finnish companies and branches are obliged to to prepare transfer pricing documentation, including Master File and Local File, on the transfer pricing applied in transactions with foreign related parties.

Documentation on a group level, i.e., Master File, is not required if the transaction amount between the taxpayer and every associated enterprise in a group falls below EUR 500,000. Further, in case the total transactions between two parties during a fiscal year remain below EUR 500,000, the taxpayer is subject to lighter Local File documentation requirements, essentially allowing documentation without functional and economic analyses.

Further, relief from the transfer pricing documentation requirement applies to small- and medium-sized enterprises. These enterprises do not need to prepare transfer pricing documentation, although they are required to comply with the arm's length principle. The definition of "small- and medium-sized enterprise" is as follows:

- The company has less than 250 employees.
- The company's turnover does not exceed EUR 50 million or its balance sheet does not exceed EUR 43 million.
- The company meets the criteria of small and medium-sized enterprises under the European Commission's recommendation 2003/361/EC.

Documentation may be prepared and submitted in Finnish, Swedish or English. If considered necessary by the Finnish Tax Administration, taxpayers must present a Finnish or Swedish summary translation of documentation written in English.

Although the content of the documentation is codified in the ATA in line with BEPS Action 13 and Annexes to Chapter V of the OECD Guidelines, the structure of the documentation is not regulated.

The documentation must be submitted within 60 days to the Finnish Tax Administration ("FTA") only after a specific documentation request. However, the documentation must not be presented earlier than 6 months after the end of a financial year.

Local Jurisdiction Benchmarks

FTA generally accepts pan-European benchmarks if they meet comparable search strategy standards set by the FTA. The standards include, e.g., preference for Nordic and North-European comparables, sufficient financial screening as well as use of multi-year data and interquartile range.

In line with the OECD TP Guidelines, a financial update is to be conducted every year. In practice, however, most taxpayers do not update their benchmark searches on an annual basis. In cases when a business activity does not undergo significant changes, a search is typically updated every 3 years. The 3 years interval is also in line with the guidelines of the FTA dealing with transfer pricing documentation.

In addition to benchmarking studies, internal CUPs and other sources of comparable information are accepted as basis for comparable data.

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

There are no domestic rules concerning (B)APAs in Finland. However, APA process may be initiated under Mutual Agreement Procedure ("MAP") article included in a tax treaty or the EU Arbitration Convention. Therefore, the rules and limitations applicable to each APA may differ.

In general, APA procedures are relatively common in Finland. The FTA has highly skilled Competent Authorities that routinely work with their cross-border colleagues in negotiating APAs and MAPs concerning Finnish taxpayers. Further to formal APAs, FTA has introduced cross-border dialogue as a more flexible and informal alternative to an APA, which is in practice a formal discussion between the tax authorities of the relevant jurisdictions as well as the taxpayer seeking to address and resolve a specific transfer pricing issue. To conclude, multi-national entities should strongly consider including APAs in their toolbox when seeking tax certainty on Finnish transfer pricing matters. As of today, FTA does not levy a fee for an APA or MAP, further increasing their applicability on also tax issues with more limited financial interest.

Further to the cross-border proceedings, a taxpayer may also request a binding advance ruling about income taxation in general, including transfer pricing questions. As an alternative to the advance ruling procedure, companies can opt for a pre-emptive discussion with the tax administration regarding challenging tax questions, including transfer pricing questions.

The purpose of a pre-emptive discussion is to increase the predictability of the taxpayer's taxation and provide the taxpayer with guidance before the execution of arrangements involving tax questions that are subject to interpretation. Pre-emptive discussions are free of charge for the taxpayer. The tax administration can give statements on transfer pricing issues from a Finnish perspective through this procedure, should the matter not require an advance ruling. In practice, pre-emptive discussions have proved to be a highly useful tool for resolving complex transfer pricing issues prior to their execution, including e.g. valuations.

Transfer Pricing Audits

In the past, transfer pricing audits have been common in Finland. However, recent developments indicate that FTA is adopting a more pre-emptive and collaborative approach to transfer pricing matters instead of retroactive transfer pricing audits. FTA has indicated shift of emphasis towards APA's and pre-emptive discussions and also encourages taxpayers to resolve their transfer pricing issues through these processes.

However, although less frequent, FTA has not fully halted its transfer pricing audit activity. The risk assessment is typically carried out through transfer pricing compliance, including transfer pricing documentation discussed above as well as transfer pricing related information disclosed on the CIT return. Additionally, FTA has highly sophisticated tools to analyse big data to discover potential changes in profit levels of taxpayers or volumes of the business. Instead of a full transfer pricing audit FTA may also execute a control visit to analyse transfer pricing of a taxpayer. Transfer pricing may also be an item included in a standard tax audit initially focusing on other area of tax.

As a main rule in Finnish tax practice, the burden of proof resides with the tax administration to demonstrate that there is a significant deviation by the taxpayer from the arm's length principle. ATA has a special provision stipulating that the party that can best provide the required evidence should provide it. Considering a taxpayer's broad duty to provide additional information, in practice, the burden of proof rests with the taxpayer. Therefore, if the FTA questions the arm's length nature of the transaction, the taxpayer must provide evidence that the allegations are unfounded.

Transfer Pricing Penalties

The tax administration may impose a punitive tax increase as a result of a fault committed by the taxpayer, either with regard to the tax assessment procedure in general or to transfer pricing documentation.

Special penalties relating to transfer pricing documentation are set out in Section 32(1)(2) and 32a(8) of the ATA. A maximum tax increase of EUR 25,000 may be imposed if the transfer pricing documentation or requested additional information is not submitted within the time limit, or the documentation or information submitted are essentially incomplete. However, given the 60-day submission window documentation related penalties are rare in practice.

In addition, the ordinary tax penalties (i.e., tax increases), are typically imposed in connection with transfer pricing related reassessments. A punitive tax increase can amount to as much as 10% of the adjusted income. If the punitive tax

increase cannot be calculated based on the adjusted income, the increase can amount to up to 50% of the increased tax.

Local Hot Topics and Recent Updates

The domestic Finnish transfer pricing adjustment rule was revised at the beginning of 2022 to alignment with the OECD Guidelines, as the statute was interpreted more narrowly in case law previously. In practice, the revision broadened FTA's ability to re-characterise or disregard related party transactions. The impact to tax practice is not yet clear, as there is no published case law regarding the new provisions.

Partly aligned with the lesser transfer pricing audit activity, as mentioned above the emphasis on various pre-emptive processes is significant both on FTA and taxpayer sides. Finland is a remarkably active APA/MAP player and has a broad range of concluded and pending processes with other jurisdictions. Combined with the increasing use of pre-emptive discussions, the pre-emptive processes have assumed a primary role in resolving transfer pricing issues. We have very good experiences from utilising said processes for the benefit of Finnish taxpayers, and strongly recommend considering these in connection to broad range of Finnish tax and transfer pricing matters.

Documentation threshold

Master file	Documentation obligation can apply if the total value of taxpayers' cross-border related party transactions exceeds EUR 500,000 during the financial year. Please refer to section *Transfer Pricing Documentation Requirements* above for details
Local file	No des minimis threshold based on volume of related party transactions. However, if the total value of cross-border related party transactions between two parties does not exceed EUR 500,000 during the financial year, documentation omitting the functional and comparability analysis as well as method selection is allowed. Please refer to section *Transfer Pricing Documentation Requirements* above for details.
CbCR	CbCR obligation in Finland applies if the group revenue exceeds EUR 750 million in the financial year immediately preceding the reporting year.

Submission deadline

Master file	60 days from request
Local file	60 days from request
CbCR	12 months from the end of reporting year.

Penalty Provisions

Documentation – late filing provision	Up to EUR 25,000
Tax return disclosure – late/incomplete/no filing	Minimum of EUR 150 assuming to impact on taxable income.
CbCR – late/incomplete/no filing	Up to EUR 25,000

CONTACT

Aapo Pessi
Borenius
aapo.pessi@borenius.com
+358 50 918 4773

Einari Karhu
Borenius
einari.karhu@borenius.com
+358 50 377 1036

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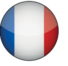


Overview

Arsene, Taxand France

Arsene's Transfer Pricing and Business Structuring team is composed of twenty-five lawyers and economists, including four partners. Arsene's expertise covers all issues relating to intragroup transactions, including design and implementation of transfer pricing policies, (re)structuring of activities and transactions, economic analyses (including benchmarking studies and valuation of assets or activities), legal and transfer pricing documentation, compliance, assistance to tax audit, litigation, mutual agreement procedure, advance pricing agreement procedure.

General : Transfer Pricing Framework

The arm's length principle as defined by the OECD and the OECD's Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations are recognised and applied in France.

Article 57 of the French Tax Code "FTC" allows the French Tax Authorities "FTA" to reassess the taxable result declared by entities when they are involved in transactions with related parties that have not been made at arm's length.

The FTA have issued administrative comments (BOFiP database) to clarify their position and provide recommendations on specific topics (e.g., financial transactions).

Furthermore, a guide on transfer pricing for small and medium-sized enterprises ("SMEs") has been issued by the FTA in a view to help SMEs to understand the applicable transfer pricing standards and the FTA's expectations in terms of transfer pricing policies and compliance.

Finally, it is important to note that transfer pricing standards are also used by the FTA to audit domestic transactions between French related entities. In this regard, certain exceptions to the arm's length principle are allowed for transactions between entities belonging to the same tax consolidation group.

Accepted Transfer Pricing Methodologies

There is no specific French legislation or regulation on transfer pricing methodologies and French transfer pricing standards are based on OECD methodologies (i.e., CUP, Resale Price, Cost Plus, Transactional Net Margin Method and Profit Split).

French administrative comments indicate that OECD-based methodologies are most commonly applied, but that other approaches may be accepted provided that they are duly justified and that the price set is compliant with the arm's length principle.

There is no preferred method. Nevertheless, the CUP method is considered the most reliable method when it can be reliably applied, and certain methods have been confirmed as appropriate by case law in certain cases.

Transfer Pricing Documentation Requirements

Transfer pricing documentation requirements are based on the OECD Transfer Pricing Guidelines. Article L.13 AA and L.13 AB of the French Tax Procedure Code "FTPC" require the transfer pricing documentation, including a Master file and a Local file report, to be made available to the FTA from the start of the tax audit or at the latest 30 days upon formal request from the tax authorities (can be extended by a further 30 days).

The content of the Master file and Local file reports is broadly in line with OECD standards and is detailed in administrative comments issued by the FTA.

Transfer pricing documentation requirements apply to French entities, if (i) themselves, (ii) an entity owning them directly or indirectly (majority ownership), (iii) a direct or indirect subsidiary (majority ownership) or (iv) another entity belonging to the same the French tax consolidation group has revenues or gross assets above € 400 million.

The FTA has specified in their administrative comments that only cross border transactions with related entities higher than €100,000 per type of transactions for a given fiscal year should be documented.

In practice, since TP documentation is always requested by the FTA at the beginning of the tax audit, it is strongly recommended that transfer pricing documentation also be prepared for taxpayers who do not meet the above criteria.

In addition to transfer pricing documentation, taxpayers may be required to file a transfer pricing return. Article 223 quinquies B of the FTC states that a "simplified" transfer pricing documentation is mandatory for entities with a turnover or gross assets value in excess of €50 million. It is based on a dedicated form delivered by the FTA (form 2257-SD). The 2257-SD form must be submitted within six months following the corporate income tax return filing deadline.

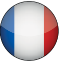
Finally, Country-by-Country Reporting "CbCR" requirements have been adopted by the French legislation and are governed by Article 223 quinquies C of the FTC. CbCR requirements are in line with OECD standards.

Local Jurisdiction Benchmarks

French benchmark requirements follow OECD principles. The taxpayer must provide a benchmarking study most likely to justify the arm's length character of the transaction to which the study relates. Contemporaneous benchmarks are requested, meaning that the benchmarking study should be fully reviewed every three years and financial data of comparable companies (when applicable) should be updated every year.

In this regard, it is strongly recommended to first assess whether internal comparables can be used (in any case, it is important to justify for which reasons they may be rejected).

Comparability adjustments are accepted provided that they result in making comparables more relevant for the transaction to be documented.



As far as searches for comparable companies are concerned, regional benchmarks may be accepted provided that it can be demonstrated that there are no differences between the markets in which the comparable companies operate, or that differences have no impact on the profit level indicator.

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

APAs may be unilateral, bilateral, or even multilateral. They are based on tax treaties concluded between France and other jurisdictions, which means that this procedure is only available with jurisdictions having concluded a tax treaty with France and containing a provision similar to Article 25 of the OECD Model Tax Convention on Income and Capital.

The competent authority is the Bureau de Prévention et résolution des différends internationaux (SJCF-4B). No filing fees are due for this procedure.

The agreement comes into force on the date agreed by the parties (with no retroactive effect for fiscal years not covered by the agreement), and the duration of the agreement is set as part of the negotiation procedure. It may not be less than 3 years or more than 5 years.

Transfer Pricing Audits

Transfer pricing audits are always part of a tax audit, and there is no audit focusing solely on transfer pricing issues. In practice, transfer pricing is systematically audited, and transfer pricing documentation systematically requested by the FTA in the first questionnaires at the beginning of the tax audit.

Transfer pricing issues may be dealt with directly by the tax inspector, or the tax inspector may request assistance from the tax authorities' team of transfer pricing consultants.

Transfer Pricing Penalties

Where the audited taxpayer fails to produce the required documentation, or produces partial documentation, within 30 days of receiving formal notice from the FTA (or within the period duly extended), it is liable to the penalties provided for in Article 1735 ter of the FTC.

The penalties are decided by the FTA and they depend on the seriousness of the infringement. In particular, the penalties may be the higher of the following two amounts:

- 0.5% of the amount of the transactions for which no or partial documentation has been provided.
- 5% of the income tax adjustments based on Article 57 of the FTC and relating to the transactions for which no or partial documentation has been provided.

In any case, the penalties cannot be less than €10,000 and they apply to each of the fiscal years covered by the tax audit.

As far as the transfer pricing return is concerned, in the event of failure to file a return and in the event of omissions or inaccuracies, the penalties provided for in Article 1729 B of the FTC are as follows:

- failure to file the 2257-SD form: penalties of €150.
- omissions or inaccuracies in the 2257-SD form: penalties of €15 per omission or inaccuracy, with the total penalties not less than €60 and not more than €10,000.

As far as CbCR is concerned, penalties up to €100,000 may be imposed by the FTA in the event of failure to file the CbCR.

Local Hot Topics and Recent Updates

In June 2023, the French Government has published a roadmap for action against public finance fraud (including tax fraud). Unprecedented resources will be deployed over the next five years.

In this context, as part of the draft finance bill for 2024, new measures are contemplated to strengthen the FTA's position in terms of transfer pricing audit. The main measures dealing specifically with transfer pricing are detailed below.

Transfer Pricing documentation requirements

The threshold for transfer pricing documentation requirements would be lowered from €400 million to €150 million for fiscal years starting as from January 1, 2024. In addition, the minimum amount of penalties for failure to provide the transfer pricing documentation would be increased from €10,000 to €50,000.

Enforceability of transfer pricing documentation

Under the contemplated rule, transfer pricing documentation would become binding for the taxpayer and any deviation from the methods set out in the documentation that results in a lower taxable result would be presumed to constitute a transfer of profits, unless the taxpayer demonstrates, by any means, the absence of a transfer of profits.

Increase in the limitation period for the disposal of some intangible assets

The French Government plans to extend the period within which the FTA can reassess taxpayers' taxable result beyond the common statute of limitations for transfers of hard-to-value intangible assets (6 years vs. 3 years).

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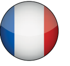

Documentation threshold

Master file	Revenues or gross assets above €400 million for the fiscal year to be documented (taxpayer or shareholder or subsidiary).
Local file	
CbCR	Annual consolidated group revenues above €750 million in the immediately preceding fiscal year.

Submission deadline

Master file	Should be available at the start of the tax audit and provided upon request.
Local file	
CbCR	No later than 12 months after the last day of the reporting fiscal year of the MNE group.

Penalty provisions

Documentation – late filing/late provision	The highest of the following amounts: • 0.5% of the amount of the transactions for which no or partial documentation has been provided. • 5% of the income tax adjustments based on Article 57 of the FTC and relating to the transactions for which no or partial documentation has been provided. • €10,000 per audit fiscal year.
Tax return disclosure - late/ incomplete/no filing	Transfer pricing return (form 2257-SD): • failure to file the 2257-SD form: penalties of €150. • omissions or inaccuracies in the 2257-SD form: penalties of €15 per omission or inaccuracy, with the total penalties not less than €60 and not more than €10,000.
CbCR – late/ incomplete/no filing	Penalties up to €100,000.

CONTACT

Fabien Billiaert
Arsene
Fabien.Billiaert@arsene-taxand.com
+ 33 1 70 39 47 82

Benoit Bec
Arsene
Benoit.Bec@arsene-taxand.com
+ 33 1 70 39 47 76

Vincent Desoubries
Arsene
Vincent.Desoubries@arsene-taxand.com
+ 33 1 70 39 54 90

Justine Schoutteten
Arsene
Justine.Schoutteten@arsene-taxand.com
+33 1 70 38 92 52

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Overview

Flick Gocke Schaumburg, Taxand Germany

Flick Gocke Schaumburg has been dedicated to tax-focused legal advice for 50 years with numerous offices in Germany. Our company was one of the first law firms in Germany to focus intensively on international tax law and international transfer pricing. Our transfer pricing expertise includes the planning, implementation, documentation and defence of transfer pricing systems as well as the conduct of mutual agreement procedures (MAPs), bilateral advance pricing agreements (bilateral APAs) and tax court proceedings, in particular. Through this focus, we have gained expertise that ensures comprehensive advice at the highest professional level for our clients. Our clients are domestic and foreign parented corporate groups as well as internationally active family-owned and medium-sized companies.

General : Transfer Pricing Framework

The arm's length principle is implemented in Section 1 of the German Foreign Tax Act (hereinafter referred to as "FTA"). Furthermore, the legal framework for transfer pricing in Germany is supplemented by various decree laws and administrative guidelines published by the German Federal Ministry of Finance (e.g. concerning business restructurings). For instance, Section 1(5) FTA contains rules specifically dealing with the attribution of profits among permanent establishments and the head office and with intracompany dealings, transposing the Authorised OECD Approach (AOA) into domestic tax law. These rules are supplemented by a Decree Law on the Profit Allocation of Branches and Administrative Guidance on the profit allocation of permanent establishments. Also, Section 1(3b) FTA specifically deals with the transfer pricing implications on business restructurings, which is supplemented by a recently amended Decree Law on the Transfer of Functions and administrative guidelines interpreting these provisions.

The general transfer pricing documentation requirements are laid down in Section 90(3), the Decree Law on the Documentation of Income Allocation, and 138(a) German Fiscal Code (hereinafter referred to as "GFC"). Moreover, Administrative Guidance on Documentation requirements and a taxpayer's duties of cooperation have been issued on December 3, 2020.

Section 89a GFC was introduced in 2021 to stipulate a domestic legal basis for advance pricing agreements (bilateral APAs).

Following the update of the OECD Guidelines Transfer Pricing (hereinafter referred to as "OECD Guidelines") in January 2022, an update of the Administrative Guidance on Transfer Pricing was published on 6 June 2023. The German Tax Authorities not only refer to the OECD Guidelines but have explicitly adopted the OECD Guidelines' view by attaching the OECD Guidelines as an annex to this Administrative Guidance on Transfer Pricing.

Accepted Transfer Pricing Methodologies

The OECD Guidelines are not incorporated in German legislation, however based on Section 1(3) FTA and the Administrative Guidance on Transfer Pricing, the OECD Guidelines are considered as internationally accepted guidance providing explanation and clarification of the arm's-length principle and its application. In essence, Section 1(3) FTA specifies that a transfer price and the other conditions of an intercompany transaction must be determined in accordance with the arm's-length principle and that the actual circumstances of the relevant transaction are to be decisive. Section 1(3) FTA applies the most appropriate method as a criterion for the selection of the applicable transfer pricing method.

Moreover, Section 1(3) FTA and the Administrative Guidance on Transfer Pricing also stipulates use of the income-based valuation methods and the discounted cash flow methods, which are based on the discounted value of the projected future income streams or cash flows for the subject of valuation, as recognized methods.

Additionally, Section 1(3) FTA and the Administrative Guidance on Transfer Pricing provide the hypothetical arm's-length test. If no comparable values from transactions between unrelated parties can be identified, a hypothetical arm's-length comparison must be applied to determine the arm's-length price on the basis of economically recognized valuation methods. When applying the hypothetical arm's-length test, the minimum price of the service provider or licensor and the maximum price of the service recipient or licensee regularly results in a "consensus" range, whereas the average value of the settlement range is to be taken as a basis if the taxpayer does not credibly demonstrate that another value within the "consensus" range complies with the arm's-length principle. In the view taken by the German Tax Authorities, the hypothetical arm's-length test prevails over the other transfer pricing methods in case of licensing of IP. The concept of the hypothetical arm's-length test is problematic because it opens the door to arbitrary results during tax audits.

For financing transactions, the CUP method or the cost of funds method is normally regarded as the most appropriate method.

Transfer Pricing Documentation Requirements

The general transfer pricing documentation requirements are laid down in Section 90(3) GFC, the Decree Law on the Documentation of Income Allocation, and the Administrative Guidance on Documentation. A Local File has to be prepared by a German taxpayer (i.e., subject to unlimited and limited tax liability in Germany) if the threshold for remuneration for supply of goods exceeds EUR 6 million and the total remuneration from other services exceeds EUR 600,000 (combines view of all German group companies). A Master File has to be prepared by a German taxpayer who belongs to a multinational group and has stand-alone revenues of at least EUR 100 million in the previous fiscal year. Until 2024, Local Files and the Master File are usually to

be submitted only during a tax audit and only upon request by German Tax Authorities and within a time period 60 days. As of 2025, the Local Files and the Master File must be "pro-actively" submitted within 30 days after the receipt of the announcement of the tax audit.

In principle, there is no obligation to prepare contemporaneous documentation with the exception for extraordinary transactions. For example, extraordinary transactions include the conclusion and amendment of long-term agreements having a significant impact on the income generated therefrom with related parties, and any business restructurings.

Furthermore, Section 12 of the Tax Havens Prevention Act stipulates an increased obligation to electronically provide documentation within twelve months after the end of the fiscal year, which exceeds the regular transfer pricing documentation requirements vis-à-vis tax jurisdictions that qualify as non-cooperative.

According to Section 138a GFC, German-based companies are subject to country-by-country (hereinafter referred to as "CbCR") reporting requirements, if they prepare consolidated financial statements and whose consolidated revenues in the previous year is equal to at least EUR 750 million. Such businesses subject to CbCR reporting requirements have to prepare and file a CbCR report to the German Federal Tax Office one year after the end of the fiscal year for which the CbCR report is being generated.

Local Jurisdiction Benchmarks

Benchmarking helps to demonstrate that transfer prices are at arm's length. If a German taxpayer uses benchmark studies for the demonstration of arm's-length prices, the German taxpayer must comprehensively disclose the search process, including the definition of the applied search strategy to identify potential comparable companies, the search result and the selection process. The entire search process must be transparent and, at the time of a tax audit, verifiable. Moreover, the configuration of the database with which the search process has actually been conducted must be comprehensively documented.

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

Since 2021, Section 89a GFC regulates the availability and access to APA proceedings, the resolution of APA cases and implementation of APAs reached. An APA procedure is only possible in Germany if there is a risk of double taxation regarding the specific facts of the case and it is likely to avoid double taxation through the APA procedure and to reach a consensual agreement interpretation with the competent authority of the other contracting state. The initiation of an APA proceeding requires a formal request made by the taxpayer and the holding of a pre-filing meeting with the German competent authority.

The German APA procedure is then limited to a certain period of validity, which in general should not exceed five (5) years. Once an APA has been concluded, subsequent renewals are also possible. In addition, the German APA procedure enables the German taxpayer to request for a retroactive application of the APA to previous tax years (so called "rollback"). In practice, the entire APA procedure might take two (2) to four (4) years and a fee is charged by the German Tax Authorities in the amount of EUR 30,000 for each APA request and in the amount of EUR 15,000 for each renewal APA request in case of transfer pricing matters. If the German APA procedure relates to matters other than transfer prices, the fee charged by the German Tax Authorities is reduced to EUR 7,500 (first application) and to EUR 3,750 (renewal).

Transfer Pricing Audits

As a standard procedure, the German tax auditor requests the taxpayer's comprehensive transfer pricing documentation covering all cross-border intercompany transactions or just specific parts therefrom. Afterwards, the tax auditor selects those transactions that may require an in-depth examination.

German tax auditors are likely to examine in detail the following situations:

- when the profitability of non-German subsidiaries has increased significantly;
- when the German taxpayer has entertained a transfer of functions involving substantial operations (e.g. the conversion of fully-fledged distributors into limited-risk distributors, sales agents, or commissionaires for a related person that may operate as a principal);
- when the German taxpayer's income has declined sharply or the German taxpayer has suffered permanent losses;
- when the German taxpayer has carried out intercompany transactions with related parties situated in low-tax countries;
- when the German taxpayer has applied the TNMM and year-end adjustments; and
- when the taxpayer has carried out corresponding or secondary adjustments.

From a transaction perspective, German tax auditors commonly focus on the following types of controlled transactions:

- licensing of IP;
- provision of intragroup services;
- financing transactions (e.g. shareholder loans, cash-pooling, factoring);
- business restructuring;
- distribution and procurement functions.

In addition, German tax auditors are increasingly focusing on transfer pricing related issues, such as withholding taxes, creation of permanent establishments, the

place of effective place of management and the general anti-abuse rule.

Transfer Pricing Penalties

If the German taxpayer does not submit a comprehensive transfer pricing documentation at all or if the transfer pricing documentation submitted is mostly "unusable" for the tax authorities, it is rebuttably presumed that the taxable income of the taxpayer is higher than the declared income. If the German taxpayer is able to rebut the presumption and can demonstrate the compliance with the arm's-length principle, the German Tax Authorities will impose a penalty of EUR 5,000 in any case. If the German taxpayer is unable to rebut the presumption, the penalty imposed by the German Tax Authorities amounts to at least 5% but not exceeding 10% of the income adjustment.

In case of late submission of the transfer pricing documentation, the penalty is EUR 100 per day that the German taxpayer is late and can be up to EUR 1,000,000.

Any failure to provide information or documents within an appropriate time frame that has been requested by the German Tax Authorities during a tax audit can trigger a penalty of up to EUR 250,000 per non-compliance pursuant to Section 146(2c), 2000(1) GFC.

Local Hot Topics and Recent Updates

Transfer pricing and the documentation of arm's-length transfer prices are currently subject to aggressive tax audits in Germany. Taxpayers have to deal with increasing and complex documentation requirements. Administrative guidance provides for an expanded obligation to submit documents and data, such as expert opinions, emails and messaging services. Moreover, the German tax authorities demand access to information located abroad allowing the scrutiny of transfer pricing.

In particular, the introduction of the best-method approach puts the burden of proof directly on the taxpayer. Furthermore, the taxpayer is obliged to document why it considers the applied transfer pricing method in each case to be the most appropriate method. The German tax authorities have also the discretion to choose an alternative transfer pricing method, if they consider it to be the most appropriate method.

It is highly doubtful that such an approach would be accepted by the tax authorities of the respective foreign-related party. This will result in an increasing number of double taxation cases leading to costly and time-consuming MAPs or litigations.

Consequently, taxpayers have to prepare thorough factual documentation and to treat the transfer pricing system as part of the tax compliance of the multinational group.

Finally, rather recently German legislation introduced more specific transfer pricing rules and implemented the OECD transfer pricing guidelines in German law.

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Documentation threshold

Master file	Turnover EUR 100 million of individual entity, i.e. no group perspective
Local file	Remuneration for supply of goods exceeds EUR 6 million and the total remuneration from other services exceeds EUR 600,000 (combined view of all German entities, i.e. no stand-alone perspective)
Enhanced TP Documentation	Any transactions involving non-cooperative tax jurisdictions
CbCR	Turnover EUR 750 million

Submission deadline

Master file	Until 2024: Submission only upon request by German Tax Authorities within 60 days. As of 2025: Submission within 30 days after the receipt of the announcement of the tax audit.
Local file	Until 2024: Submission only upon request by German Tax Authorities within 60 days. As of 2025: Submission within 30 days after the receipt of the announcement of the tax audit.
Enhanced TP Documentation	12 months after the end of the fiscal year
CbCR	Submission within 12 months after end of the tax year

Penalty Provisions

Documentation – late filing provision	Penalties up to EUR 1,000,000
Tax audit – lateness in cooperation	Penalties up to EUR 250,000
Tax return disclosure – late/incomplete/no filing	Penalties up to EUR 25,000
CbCR – late/incomplete/no filing	Penalties up to EUR 10,000

CONTACT
Dr Sven Eric Baersch
Flick Gocke Schaumburg
sven-eric.baersch@fgs.de
+49 69 71703 0

Overview

Zepos & Yannopoulos Law firm (Taxand Greece) has a top-tier tax practice—consisting of a team of over 40 experts with academic backgrounds in law, economics and accounting—which is ideally positioned to help clients address the challenges created by this environment. Combining the transactional expertise of a leading, internationally-oriented, law firm with the experience in tax and accountancy services, Zepos & Yannopoulos Law firm offers its clients comprehensive solutions for complying, creating added value through managing tax impact, and understanding the critical tax considerations of innovative transactions.

Regarding the transfer pricing field, the services span the following areas:

- Preparation and review of the full scope of the transfer pricing documentation files for Greek compliance purposes. Further, assistance with the preparation and submission to the tax authorities of the Summary Information Table ("SIT") and the CbCR notification.
- Planning and optimization of intra-group transactions and transfer pricing models, with a particular focus on business restructurings and related concerns.
- Negotiation of Advance Pricing Agreements ("APAs"), including rulings for local service centers (formerly known as Law 89 entities)
- Assistance during tax and transfer pricing audits
- Representation in domestic or cross-border dispute resolution procedures
- Valuation of Intellectual Property ("IP") and companies for transfer pricing and transactional purposes

General : Transfer Pricing Framework

Greek transfer pricing legislation is aligned with article 9 of the OECD Model Tax Convention and the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD Guidelines) currently in force. The OECD Guidelines mainly revolve around the application of the "arm's length principle", which is the international consensus on the valuation of transactions between associated enterprises for tax purposes.

The arm's length principle is captured in the context of article 50 of the Greek Income Tax Code (GITC - L. 4172/2013), according to which, in the event that a transaction between a Greek entity and its affiliated persons is deemed to have been concluded at economic or commercial terms which differ from those that would have been concluded between independent parties (i.e. at arm's length), then the taxable profits of such entity will have to be adjusted in order to reflect under arm's length terms. Furthermore, the above adjustments are applicable only to the extent that the taxable results of the taxpayer are not decreased from the application of the arm's length principle i.e. downward adjustments are not commonplace.

Further to the above, a recent addition to the Greek Income Tax Code enabled Greek entities to apply for a reverse adjustment to their taxable results in cases where the taxable profits of a Greek related entity were adjusted (i.e. increased) within the context of a tax audit and deriving from an inter-company arrangement between said enterprises.

Accepted Transfer Pricing Methodologies

The OECD Guidelines are incorporated in Greek legislation. Ministerial Decision 1097/2014, as further amended by Ministerial Decision 1144/2014, also makes reference to the acceptable TP documentation methods used in the economic analysis to support and substantiate the arm's length nature of the pricing policies in place.

In line with the OECD Guidelines, the traditional transaction methods are preferred, where especially CUP is considered to be the most accurate method.

The selection of the most appropriate TP documentation method for each transaction under scope should be accompanied by a detailed description of the evaluation process carried out which led to the proper justification of such selection.

The Greek TP legislation does not provide any safe harbor rules for the documentation of any type of transaction. Therefore, reference to a profit margin determined within the context of a simplified approach (e.g. low value-adding intra-group services profit markup) are not generally acceptable in a potential tax audit.

Transfer Pricing Documentation Requirements

According to article 21 of the Greek Code of Tax Procedures (GCTP - L. 4987/2022, which was set out on 4 November 2022 replacing L. 4174/2013), entities operating in Greece, are required to prepare transfer pricing documentation to support the arm's length nature of their transactions with both domestic and foreign affiliated entities & foreign permanent establishments. The above obligation is also applicable for Greek permanent establishments of foreign entities regarding their transactions with affiliated persons, as well as with their head office.

Certain thresholds are in place, i.e., for entities with a total annual turnover which is equal or lower than € 5,000,000, a TP documentation requirement is in place in the event that the total value of their annual inter-company transactions exceeds the amount of € 100,000 for the year under review. For entities with an annual turnover exceeding € 5,000,000, the relevant threshold is increased to € 200,000 of total inter-company transactions.

For each fiscal year, taxpayers falling within the above annual thresholds are required to prepare the following:

- A TP documentation file including the content instructed by the OECD TP Guidelines, and
- A Summary Information Table (SIT) which contains core information regarding the company and the group in which it belongs, transaction amounts, applicable TP methods, contracting parties, functions performed etc.

Both the TP file and the SIT are prepared within the lawful deadline for the filing of the entity's annual Corporate Income Tax (CIT) return for the year under review, which normally expires on the last day of the sixth month following the end of the fiscal year. In case than an extension to the above CIT deadline is granted by the tax authorities, the TP documentation timeframe is also extended accordingly.

The TP documentation file may be prepared and kept by the taxpayer in an internationally acceptable language (e.g. in English). However, in the event of a tax audit, a translation into Greek should be performed and provided to the auditing authority within 30 days upon an official request.

Information included in the SIT is compiled using specific application tools developed by the Greek Ministry of Finance. Data is submitted electronically to the General Secretariat of Informational Systems of the Ministry of Finance through a separate application interface within the Greek tax authorities' electronic platform (TaxisNet).

Pursuant to L. 4484/2017, Greece transposed EU Directive (EU) 2016/881, introducing the automatic exchange of Country-by-Country (CbC) reports within the EU, into its domestic legislation. In addition, according to L. 4490/2017, Greece ratified the OECD Multilateral Competent Authority Arrangement, facilitating the exchange of financial information in tax matters among a total of 61 jurisdictions.

Multinational groups realizing total annual consolidated revenues exceeding € 750 million are required to submit a CbC report on an annual basis, providing tax authorities with information on revenue, profit before income tax, income tax paid and other details regarding the allocation of the group profits in different jurisdictions. The CbC report also provides information on which group entity is operating in a particular tax jurisdiction and the business activities in which each entity is engaged in.

A Greek entity may be designated to prepare and submit a CbC Report for the group in Greece (i.e. act as the group's reporting entity) under certain conditions; e.g., if it is the ultimate parent entity or a surrogate parent entity of the group. If acting as the reporting entity, the Greek entity should file the report before the Greek tax authorities ("GTA") within 12 months from the end of the reporting fiscal year.

A Greek entity of a multinational group which is not obliged to file the CbC report for the group, should still notify the GTA of the identity of the group's reporting entity and its tax jurisdiction by the end of the reporting fiscal year.

Local Jurisdiction Benchmarks

The selection of comparables for the purposes of the economic analysis is subject to specific comparability criteria, mainly set out in Ministerial Decisions 1142/2015 and 1227/2015.

In particular, the use of external databases is allowable, provided that specific reference of the database name & version is made in the TP file. Comparability search studies should be performed using versions made available not earlier than two months before the end of the relevant fiscal year and not later than the deadline for the submission of the SIT. In practice, this implies a timeframe typically of 8 months. Two months before the year-end until six months after the year-end which is the initial deadline for the submission of the SIT. However, if an extension is granted for the submission of the SIT, this timeframe is extended as well. For example, if year-end is 31/12/2023, the acceptable releases are from November 2023 to June 2024. If the deadline for the SIT is extended to July 2024, then the timeframe for the benchmarking studies is also extended.

Greek taxpayers may use the benchmarking studies for a total of 2 consecutive years after the year that the original benchmarking study has been prepared, by updating the financial results of the initial study to the last 3-year period. The use of updated benchmarking studies is acceptable only if the taxpayer's operations & functional profile has remained unchanged and the original study sample is verified to remain comparable and reflect uncontrolled transactions. In every case, a new full search for comparables should be performed at least once every three years.

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

The Tax Procedures Code (Law 4174/2013) includes the possibility of an advance pricing agreement (APA) with the tax authorities. This agreement is made in advance and determines the transfer pricing methodology to be used in setting the prices for cross-border intercompany transactions along with the critical assumptions, under which such methodology will remain valid. An APA term cannot exceed four (4) years. The option of a preliminary cycle of discussions with tax authorities, with a view to obtaining their input on the possible outcome of an intended APA application, is provided to the taxpayer.

Greece now provides for the roll-back of bilateral or multilateral APAs in cases where the relevant facts and circumstances in the earlier fiscal years are the same. Taxpayers filing for an APA may submit a relevant roll-back request, provided that the earlier fiscal years have not been time-barred and that there is no tax audit mandate communicated to the taxpayer with respect to the relevant fiscal years. It should be noted that, as set out by the legislature, the roll-back request shall not impair the tax auditors from performing a tax audit on such fiscal years, and the APA may not be rolled back to the extent that a final assessment is issued in this respect.

The APA may be revised, revoked or cancelled in the case where the taxpayer does not comply with the terms or responsibilities arising therefrom or the critical assumptions change or are proved incorrect or in the case of a different outcome arising in the context of the mutual agreement procedure pursuant to the relevant bilateral tax treaty or in the context of the convention of the member states of the European Union on the correction of profits of associated enterprises.

Finally, Ministerial Decision 1107/2023 by the General Secretariat of Public Revenue provides clarifications and guidance for the application of the APA procedure.

Transfer Pricing Audits

The GTA conduct audit examinations at random and all companies are subject to audit for any open period. Starting from tax year 2014 onwards, the provisions of L. 4174/2013 apply in relation to Statute of Limitation period ("SoL"). Said rules provide in principle for a SoL of 5 years following the end of the year within which the CIT return of the FY concerned must be filed, resulting to 6 years following each fiscal year-end (standard SoL).

The TP file is prepared and kept within the company's premises along with its accounting books & records. In the event of a tax audit, the TP file should be provided to the tax auditors within 30 days from the date of receiving the relevant request in written form.

Transfer Pricing Penalties

The penalties for non-compliance with domestic TP documentation & CbC Reporting requirements are summarized in the following table, as set out in the Greek tax legislation:

TP File

In the case of failure to provide the transfer pricing file to the tax authorities within 30 days upon an official request, a penalty of EUR 5,000 applies, which is increased to EUR 10,000 if the file is provided after 60 days, and to EUR 20,000 if the file is provided after 90 days or if it is not provided at all.

Summary Information Table

- In case of late filing of Summary Information Table, a penalty of € 500 to € 2,000 applies, calculated as 1/1,000 of the company's inter-company transactions.
- • In case of late filing of an amended Summary Information Table, a penalty of € 500 to € 2,000 applies, calculated as 1/1,000 of the company's inter-company transactions, imposed only if the total revisions exceed the amount of € 200,000.
- In case of non-filing of a Summary Information Table, a penalty of € 2,500 to € 10,000 applies.
- In case of filing of an inaccurate Summary Information Table, a penalty of € 500 to € 2,000 applies, calculated as 1/1,000 of the company's inter-company transactions, imposed only if the total inaccurate information exceeds 10% of the company's total inter-company transactions.

Country by Country report

In case of late or non-accurate filing of CbC Report, a penalty of € 10,000 is imposed, whereas in case of non-filing the penalty is increased to € 20,000.

Local Hot Topics and Recent Updates

Ministerial Decision A. 1107/2023 issued and in force as of 28 July 2023 abolished the previous Ministerial Decision governing the APA process that was issued back in 2013 (i.e. POL 1284/2013). However, there are no specific case studies or recent updates of note.

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Documentation threshold

Master file	Total value of annual intragroup transactions exceeding the amount of € 100,000 for entities with a total annual turnover which is equal or lower than € 5,000,000. For entities with an annual turnover exceeding € 5,000,000, the relevant threshold is increased to € 200,000 of total value of annual intra-group transactions.
Local file	Total value of annual intragroup transactions exceeding the amount of € 100,000 for entities with a total annual turnover which is equal or lower than € 5,000,000. For entities with an annual turnover exceeding € 5,000,000, the relevant threshold is increased to € 200,000 of total value of annual intra-group transactions.
CbCR	Turnover EUR 750 million

Submission deadline

Master file	N/A – there is no requirement to submit transfer pricing documentation in the ordinary course.
Local file	N/A – there is no requirement to submit transfer pricing documentation in the ordinary course.
Summary Information Table	Submission until the deadline for the Corporate Income Tax returns, normally until the last day of the sixth month following the end of the fiscal year
CbCR & CBCR notification	Submission of the CBCR within 12 months after the end of the tax year under review. Notification must be submitted by the end of the reporting fiscal year.

Penalty Provisions

Please see the above remarks.

CONTACT
Panagiotis Stamatogiannis
Zepos & Yannopoulos Law
p.stamatogiannis@zeya.com
+30 210 6967 146

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Overview

LeitnerLeitner Tax | Audit | Advisory, Taxand Hungary

Our tax consulting company located in Budapest, Hungary, provides our clients with complex, personalized, high quality transfer pricing professional support and security. The transfer pricing expertise, combined with the full-service coverage in all tax areas, accounting and legal topics is a guarantee for our clients to achieve tailor-made best assistance. Our full services in the field of transfer pricing covers the followings:

- transfer pricing consultancy services
- transfer pricing expert activity: planning of intercompany transfer pricing structures, preparation and introduction of policies
- preparing, reviewing, updating transfer pricing documentation (Local Files and Master Files)
- preparing, reviewing database search, benchmark analysis
- preparation of the requests, representation in advanced pricing arrangement (APA) procedures
- representation in mutual agreement procedures (MAP)
- country by country reporting (CbCR) advisory services
- representation in transfer pricing audits and remedy procedures

General: Transfer Pricing Framework

The Hungarian legislation applies the Arm's Length Principle as an essence of transfer pricing; and the Hungarian Corporate Income Tax Act refers to the OECD Transfer Pricing Guidelines (TP Guidelines). Though the TP Guidelines are not legally binding in Hungary, the Hungarian transfer pricing regulations are based on the TP Guidelines. The main rules of the Hungarian transfer pricing are provided in the Corporate Income Tax Act, in the Decree of the Ministry of Finance on the transfer pricing documentation and in the Act on the International Administrative Cooperation in the field of taxes and other duties. In general, the transfer pricing requirements also apply not only to cross-border relations but equally to domestic transactions. In Hungary, the transfer pricing documentation is mandatory.

Accepted Transfer Pricing Methodologies

In accordance with the TP Guidelines, the domestic law defines the methods that can be used when determining the arm's length price (CUP, RSP, CPM, TNMM, PSM - methods designated by law). Based on the domestic legislation, the arm's length price shall be determined applying one of the methods listed by the law, or by an "other method" -this latter however requires specific and explicit explanation and reasoning for the elimination of the traditional methods. The Hungarian legislation; otherwise, does not determine the hierarchy of the methods, only the "other method" may be used only if the arm's length price cannot be determined by none of methods designated by law.

Transfer Pricing Documentation Requirements

In Hungary, the transfer pricing documentation includes the Master file for the corporate level (based on Annex I to Chapter V of the TP Guidelines) and the Local files to be prepared on a transactional basis (based on Annex II to Chapter V of the TP Guidelines). If there is only one transaction for the MNE that requires the preparation of the Local file, in this case the Master file must also be prepared. There are a number of exceptions. e.g., small companies, non-profit associations, state-controlled enterprises; taxpayers having an APA coverage are exempt from the transfer pricing documentation obligation. As of 2022, the materiality threshold is HUF 100 million, approx. EUR 249,000, meaning that transaction below this yearly threshold need not be documented – although even in this case the application of the arm's length principle is obligatory with a preference of a benchmark support. The CbCR, as a third level of transfer pricing documentation, is also relevant for Hungary; however, MNEs are not required to prepare CbCR if their consolidated revenue is under EUR 750 million in the financial year preceding the financial year reported.

The preparation deadline of the Local file(s) is the effective filing date of the yearly corporate income tax return. The transfer pricing documentation does not need to be submitted to the tax authority together with the corporate income tax return; however, it should be available and disclosed upon request of a tax audit theoretically within 3 working days. Since FY 2022, the yearly CIT return also contains a reporting of the related party transactions in a very detailed transactional base format.

The Master file should be available by the end of the following financial year at the latest (i.e. until the deadline for preparing the MF for the ultimate parent company of the group, but not later than the end of the year following the tax year). As the MF is also frequently asked in the course of tax audit, it is highly advisable to ensure the availability and the conformity of such document with the Hungarian legislation.

The CbCR (if applicable) shall be submitted within 12 months following the end the reporting period. In addition, Hungarian entities that belongs to a group over the threshold have a notification obligation, the deadline for which is the last day of the financial year of the multinational company group.

Local Jurisdiction Benchmarks

The Hungarian rules follow the guidance in Chapter III of the OECD Transfer Pricing Guidelines regarding benchmark studies.

Internal CUPs are acceptable in Hungary. Moreover, if there is internal comparable data available, it precedes data from an external source, as internal comparable data provides the highest level of comparison. In the absence of internal comparable data, a benchmark study is required in order to determine the arm's length price of the controlled transaction.

The arm's length price is usually determined using the TNMM and with the use of a business database containing company-level data, but - if the available data allows - the CUP (with the application of internal comparables or with the use of a database containing comparables, mainly for financial transactions and license fees) and the CPM are used.

Database regarding comparable products or services, furthermore database regarding comparable enterprises can be applied.

Companies are required to use databases that are publicly available or accessible or can be verified by the Hungarian Tax Authority. Strict documentary requirements apply to the database search support (e.g. saving search information, webpage screen-shots).

A database search of companies selected as comparable should be prepared every 3rd year. The result of the benchmark study must be updated annually i.e. the 2 years in between.

Local companies are preferred for purposes of the comparability analyses. The geographic selection criteria are as follows: Hungary, Visegrád countries and if necessary, the scope can be extended further.

The latest available version of the database should be applied. The basis of calculations shall be the data of the latest financial years that are available, typically of the latest three years (multiannual analysis), pooled method is preferred.

In case of the company group-level benchmark, we suggest supporting and supplementing it with a local database search to be accepted by the Hungarian Tax Authority as this is safer for the Hungarian entity and is more personalized from its point of view.

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

In Hungary, unilateral and bilateral / multilateral APAs are also available. The Ministry of Finance approves the procedure for establishing the arm's length price (practical application of the transfer pricing method), the facts and circumstances based on which it is determined, and, if possible, the arm's length price or price range.

The request shall be submitted before the conclusion of the contract (or other transaction). Or a request for an APA may be submitted after the date of conclusion of the contract if the contract is performed in a continuous manner. This means that the contract is concluded for a minimum term of six months, and a) under which at least one performance takes place every other month, or b) under which one of the parties maintain specific credit facilities in favour of the other party during the contract, or c) that contains the requirement of continuous availability for either of the parties.

The application for establishing the arm's length price shall be submitted by way of electronic means using the electronic form designed for this purpose.

The binding power of the resolution establishing the arm's length price shall be determined for a fixed period of at least three, but no longer than five years. The starting date of the effect of the resolution shall be established based on applications, but it shall not be earlier than the first day of the tax year when the application was submitted, nor later than the first day of the tax year following the date when the resolution becomes final. If requested by the taxpayer, in bilateral or multilateral proceedings, in case the competent authorities so agree, the binding force of the resolution may cover the tax years before the submission year provided that these tax years a) are not closed by a tax authority audit, b) have not been expired; and c) are not affected by an audit in progress, which results in a period closed by an audit, at the time when competent authorities conclude their agreement.

For unilateral APA, the procedural fee payable amounts to HUF 8 million (approx. 21,000 EUR). For bilateral or multilateral APA, the fee is HUF 12 million (approx. 31,000 EUR). The fees for modification or extension of the APA resolution are half of the original fee.

The APA process should officially be finished within 120 days, but it can be extended 2 times for 60 days. In case of bilateral or multilateral APAs, and the MAP with the foreign competent tax authority shall be closed within 2 years, but it can be extended by one year.

Transfer Pricing Audits

In Hungary, the tax authority's priority area of audit is the examination of transfer prices applied between associated enterprises. Revision of the content of the transfer pricing documentation has been deepened. An increasing expertise of tax auditors and increasingly complex and detailed examination of transfer price issues are typical. Transparency requirement of OECD is implemented (3-tiered transfer pricing documentation, information exchanges, tax authority and business databases, TP data reporting obligation), the taxpayer can be an „open book" for the tax authority.

The importance of the value creation, added value analysis, the functional analysis and proper characterization is constantly emphasized. Significantly unprofitable operation is of particular interest (loss-making entities are in the focus of the tax authority, especially if the profitability data of the company group does not support this). The tax authority audits the financial transactions between the associated enterprises. Most recently, the thematic investigations of the tax authority included transfer pricing audits in the automotive sector.

Transfer Pricing Penalties

In case of non-compliance with the transfer pricing documentation, a penalty of up to HUF 5 million (approx. EUR 13,000) may be levied per transaction per year. In recurring cases, a penalty of up to HUF 10 million (approx. EUR 26,000) may be imposed also per transaction per year. If the CbC report is incomplete or contains inaccurate information or it is submitted after the expiration of the statutory deadline, a penalty of up to HUF 20 million (approx. EUR 52,000) may be imposed. The same CbCR penalty is also applicable fo the lack or incomplete notification as well.

In case of any discrepancies identified in transfer prices by the tax authorities resulting in the correction of the corporate income tax base, the adjustment may be subject to a corporate income tax of 9% over the profit and the local business tax of 2% over an adjusted turnover. In addition, a penalty of up to 50% of the tax deficiency amount and late payment interest calculated at the Central Bank base rate and increased by 5% may be imposed.

Local Hot Topics and Recent Updates

From the tax year starting in 2022, the Hungarian companies have to count on far more stricter Hungarian transfer pricing rules, and the possibility of more efficient tax authority actions.

Transfer pricing reporting in the yearly corporate income tax return

A new obligation was introduced for the 2022 tax year, according to which it is necessary to report detailed transfer pricing and related party data in the yearly corporate income tax return in connection with the determination of the arm's length price. The transaction-based, detailed data provision is another incentive tool to ensure that the transfer pricing documentation is prepared together with the corporate income tax return. The provision of data means additional information to make the tax authority's risk analysis more efficient.

Significant increase of transfer pricing default penalty

The default penalty in connection with the obligation to prepare and preserve of transfer pricing documentation was increased to 2.5-times than earlier. Painful, especially in case of the significant number of transactions for which transfer pricing documentation is required.

Widening the obligation to use the interquartile range

During the analysis based on the database – among others for the most widely used TNMM methods -, the obligation to use the interquartile range has become general.

Introduction of legal provisions on transfer pricing adjustment

The obligatory rule for median adjustment was also introduced starting from the 2022 tax year. In case of companies where the applied transfer pricing results in a value below the lower or higher as the upper quartile (i.e. PLI is out of the IQR), the adjustment must be made to the median value, as required by law, and not to the lower quartile value anymore.

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Documentation threshold

Master file	HUF 100 million, approx. EUR 249,000.
Local file	HUF 100 million, approx. EUR 249,000.
CbCR	EUR 750 million

Submission deadline

Master file	Submission: within 3 business days upon request of the competent tax authority Preparation deadline: until the deadline for preparing the MF for the ultimate parent company of the group, but not later than the end of the year following the tax year
Local file	Submission: within 3 business days upon request of the competent tax authority Preparation deadline: by the submission of the yearly corporate income tax return, which deadline is 150 days following the tax year
CbCR	Submission and preparation: within 12 months following the end the reporting period

Penalty Provisions

Documentation – late filing provision	up to HUF 5 million (~ EUR 13,000), in recurring cases up to HUF 10 million (~ EUR 26,000) / per transaction per year
Tax return disclosure – late/incomplete/no filing	up to HUF 500,000 (~ EUR 1,300) per return
CbCR – late/incomplete/no filing	up to HUF 20 million (approx. EUR 52,000) – also in the event of a violation of the notification obligation

CONTACT
Judit Jancsa-Pék
LeitnerLeitner
Judit.Jancsa-Pek@leitnerleitner.com
+36 1 279 29-30

INDIA

Overview

Economic Laws Practice, Taxand India

Economic Laws Practice is a leading full-service law firm in India and assists in planning, streamlining, managing, and solving complex transfer pricing issues to mitigate transfer pricing risk and aligning it with the client's global business operations and objectives. Services include strategic advice on the remuneration model that aligns with value chains, providing solution-based economic analysis, and documenting positions to support regulatory requirements, resolving disputes and gaining tax certainty. We have outlined below transfer pricing engagements / analysis carried out by us:

- Transfer pricing study and documentation;
- Inter-company transfer pricing policies for tangible goods, intangibles and services;
- Transfer pricing planning Services and litigation;
- Supply chain advisory.

General : Transfer Pricing Framework

The Transfer Pricing "TP" Regulations were introduced in India in the year 2001, in order to prevent erosion of Indian tax base. The Indian TP Regulations are contained in Chapter X of the Income-tax Act, 1961 "IT Act" under the title "Special Provisions relating to avoidance of tax". The Indian TP Regulations recognize the "arm's length principle" and require income from an international transaction to be computed having regard to the arm's length price. Further, India TP regulations have evolved over the years and various provisions / concepts were introduced in order to align the same with global developments such as:

- Introduction to Advance Pricing Agreement in 2012;
- Safe Harbour Rules - the Central Board of Direct Taxes "CBDT" was empowered to make Safe Harbour Rules vide Finance Act 2009 and the same were introduced / notified in the year 2013
- Framework for use of multiple year data and range concept in benchmarking analysis
- Three tier TP documentation structure as per BEPS (Base Erosion and Profit Shifting) Action Plan 13 in 2016;
- Secondary adjustment provisions and limiting interest deduction for thinly capitalized companies in 2017

The TP legislation in India is broadly based on the OECD TP Guidelines including the contents of the three-tier TP documentation structure, transfer pricing methods etc. Though OECD Guidelines are not directly applicable, both the taxpayers and the Revenue authorities have placed reliance on the OECD TP guidelines especially in cases where guidance is not available under the domestic legislation.

Accepted Transfer Pricing Methodologies

As per India TP Regulations, six methods are prescribed for determining the arm's length price of an international transaction. The said six prescribed methods under the India TP Regulations are as under:

- Comparable Uncontrolled Price "CUP"
- Resale Price Method "RPM"
- Cost Plus Method "CPM"
- Profit Split Method "PSM"
- Transactional Net Margin Method "TNMM"
- Other Method – This method has been prescribed by the CBDT as any method which takes into account the price which has been charged or paid, or would have been charged or paid, for the same or similar uncontrolled transactions, with or between non-associated enterprises, under similar circumstances, considering all the relevant facts.

Further, there is no hierarchy in selection from the above-mentioned methods and the most appropriate method can be selected for determining the arm's length price of the international transaction considering the Functions, Asset & Risk Analysis of the Associated Enterprises "AE".

Transfer Pricing Documentation Requirements

The taxpayers who have entered into international transactions with their AE have to obtain a report, certified from an Accountant (being an independent Chartered Accountant), in prescribed Form no. 3CEB wherein Chartered Accountant has to certify inter alia the nature, quantum, arm's length value and the method considered to be the most appropriate method of such international transaction. Taxpayers have to electronically file the Form no. 3CEB certified by an Accountant before the due date i.e. 31st October.

As per India TP Regulations, mandatory TP documentation as prescribed under the Income-tax Rules, 1962, is required to be maintained by the Taxpayers where the aggregate value of international transactions with their AE exceeds INR 10 million. The documentation is required to be submitted only when the same is called for by the tax authorities.

Master File is required to be electronically filed in Form no. 3CEAA where the value of international transactions of the enterprise with its AE exceeds INR 500 million (INR 100 million in case of intangible related transactions) during the relevant accounting year and the consolidated global turnover of the International Group "IG" exceeds INR 5 billion. The due date of filing Form no. 3CEAA is 30th November.

Country by Country Reporting "CbCR" provisions are applicable where the annual consolidated group revenue of the IG in the immediately preceding accounting year is more than INR 64 billion. CbCR requirements are to be complied with in India if the Ultimate Parent Entity "UPE" of the IG is resident in India or where the IG has designated an alternate reporting entity for the purposes of filing CbCR in India. The due date for filing CbCR in the prescribed Form no. 3CEAD in India is 12 months from the end of reporting accounting year of the UPE preparing consolidated financial statements.

CbCR filing requirements are also triggered in India if:

- the UPE of the IG is a resident of a country with whom India does not have an agreement for exchange of the CbCR; or
- the UPE of the IG is not obligated to file CbCR in its jurisdiction; or
- there has been a systematic failure on part of the UPEs jurisdiction to share information and such failure has been intimated to the Indian entity

Local Jurisdiction Benchmarks

Under India TP Regulations, benchmarking exercise is required to evaluate the arm's length nature of the international transaction. A local benchmark is generally preferred. However, in certain situations wherein the tested party is the entity outside India, selecting global benchmark may be used as the same may be more beneficial. Benchmarking analysis may be challenged by the tax authorities on account of comparability analysis and use of appropriate filters if comparable benchmarks include loss-making entities, high margin entities, high value intangibles, etc. Further, internal comparables are acceptable for the tax authorities.

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

APA is an agreement between the tax administration and taxpayer, which determines, in advance, the arm's length price or specifies the manner of the determination of arm's length price (or both), in relation to an international transaction.

The APA programme was introduced in India in the Finance Act, 2012 and seeks to provide certainty for 5 prospective years with a roll back option for 4 previous years. Taxpayers can opt for unilateral, bilateral or a multilateral APA and there are no thresholds on the value of international transactions for the Taxpayers to opt for APAs. Any taxpayer who has undertaken an international transaction or is contemplating to undertake an international transaction is eligible to file for an APA. The APA Rules provide for a preliminary consultation before formally lodging an APA application. In such consultation, the taxpayer and the APA team will discuss and clarify the scope of the APA, the transfer pricing issues involved and whether an APA can be executed or not. An application for a unilateral agreement should be made to the Director General of Income Tax (international taxation) "DG-IT". For BAPA/MAPA, application should be made to the Competent Authority in India. The Competent Authority will send the application to DG-IT who in turn will send it to respective APA teams. The APA filing fee depends upon the amount of the proposed covered transactions over the proposed APA term, as below:

- 1 million INR for international transactions up to 1 billion INR
- 1.5 million INR for international transactions up to 2 billion INR
- 2 million INR for international transactions greater than 2 billion INR

There is no specific time lines within which the APA process is to be concluded. Generally, it takes around 2-3 years for UAPA and 3-5years for BAPA.

Transfer Pricing Audits

The entities may be subject to TP audits where the tax returns are selected for scrutiny assessment depending upon the risk parameters. The tax / TP officer may request for TP documentation maintained by taxpayer for the purpose of its audit and such documentation is to be provided within 10 days from the date of receipt of notice from the TP officer. The tax / TP officer may also independently determine the arm's length price of the international transaction entered by the taxpayer during the audit period and if there is variance in arm's length price determined by TP officer and arm's length price computed by taxpayer, such difference may be regarded as primary adjustment and be taxable in India for the taxpayer.

Transfer Pricing Penalties

The Indian tax laws provide for various penalties for non-compliance or violations relating to transfer pricing provisions in India. Various penalties as per India TP Regulations as mentioned below:

- 2% of value of international transaction for failure to maintain specified information / documents, failure to report transactions in Form no. 3CEB and TP documentation, maintenance of incorrect information, failure to submit information during TP audits
- INR 0.1 million for failure to file Form 3CEB
- 50% of tax amount in case of underreporting of income
- 200% of tax amount in case of misreporting of income
- INR 0.5 million for failure to furnish master file
- INR 5,000 per day for one month, INR 15,000 per day after one month, INR 50,000 per day after the date of service of penalty order for failure to furnish CbCR before the statutory due date.
- INR 0.5 million for furnishing inaccurate information

Local Hot Topics and Recent Updates

Outbound intra-group payments

While dealing with intra-group transactions, one often encounters situations wherein an AE being a service provider procures certain goods or services in its own name but for back-to-back sale to the foreign affiliate. In such cases, the key question is if mark-up should be charged or not on cost of all goods & services procured. In India, many multinational group entities enter into back-to-back arrangements for the group entities outside India. The problem is acute for such entities which though may procure capital intensive goods/ services for their related parties outside India but may incur only a nominal incremental cost towards the arrangement. Recently, Hon'ble Delhi Tribunal in the matter of ADM Agro Industries Kota & Akola P. Limited [TS-355-ITAT-2023(DEL)-TP]) held that where the taxpayer was purchasing goods from third parties in India and selling goods to its AE on a back-to-back basis, no mark-up was warranted on the cost of goods as the profit earned by the taxpayer was only linked to the operating expense incurred by it.

However, the aforesaid proposition may not apply to cases where an entity assumes significant risks with respect to the goods/ services procured, such as inventory risk, credit risk and product/ service delivery risk and also performs significant functions such as inventory management and vendor/ customer management.

Therefore, the factual matrix of the case needs to be critically evaluated to conclude whether a particular cost qualifies as a pass-through cost or not. For instance, in cases where the goods or services procured do not influence the functions performed and the risks undertaken by the entity, the cost of goods or services can assume the status of pass-through costs. The concept is usually prevalent in the case of service providers or limited risk distributors.

Notional interest on outstanding inter-company receivables

Outstanding inter-company balances, especially overdue balances, are often scrutinized by tax authorities. On one hand, the taxpayers contest that such outstanding balances are not a separate transaction as they emanate from the main controlled transaction, such as the provision of service or sale of goods, thereby not warranting any separate arm's length analysis. While on the other hand, the Indian tax authorities seek to re-characterise such outstanding receivables as an advance/loan extended to an AE under the garb of delay in realisation within a reasonable credit period. Further, there is some subjectivity involved with respect to the manner of making such adjustments in terms of what is considered a reasonable credit period, the arm's length interest rate to be used for computing notional interest, and allowing set-off for overdue payables, etc.

Litigation in connection with net margin of captive entities

Tax Authorities at lower levels typically tend to litigate the margins earned by low-end / back-end IT, IT Enabled and support service providers and propose high margins to be earned by taxpayers in India. In case of low net margins (typically less than 18-20 per cent), there is a likelihood of adjustment in the TP Assessment stage.

Filings and documentation for overseas entities earning income from India

Overseas entities having income taxable in India are required to undertake requisite compliances including filing of Form 3CEB and preparation and maintenance of Transfer Pricing Study Report. In certain cases, overseas entities relied upon the Transfer Pricing Study Report maintained by the Indian affiliate with whom they have entered into international transaction. However, recent trends suggest that Revenue Authorities are insisting on a separate Transfer Pricing Study Report prepared and maintained by such overseas entities.

INDIA

Documentation threshold

Master file	Value of international transaction exceeds INR 500 million (INR 100 in relation to intangibles) and international group turnover exceeds INR 5 billion
Local file	INR 10 million
CbCR	INR 64 billion

Submission deadline

Master file	30th November 2023 for FY 2022-23
Local file	10 days from the date of receipt of a notice from tax authorities calling for the information
CbCR	12 months from the end of reporting accounting year of the UPE

Penalty Provisions

Documentation – late filing provision	2% of value of international transaction for failure to maintain / submit the specified information / documents INR 0.5 million for failure to furnish master file
Tax return disclosure – late/incomplete/no filing	INR 0.1 million for failure to file Form 3CEB 2% of value of international transaction for failure to report transactions in Form no. 3CEB and TP documentation
CbCR – late/incomplete/no filing	INR 5,000 per day for one month, INR 15,000 per day after one month, INR 50,000 per day after the date of service of penalty order

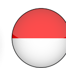
CONTACT

Rohit Jain
Economic Laws Practice
RohitJain@elp-in.com
+91 90046 04350

Nishant Shah
Economic Laws Practice
NishantShah@elp-in.com
+91 93238 01835

Mitesh Jain
Economic Laws Practice
MiteshJain@elp-in.com
+91 98202 99298

Rahul Charkha
Economic Laws Practice
RahulCharkha@elp-in.com
+91 94220 03850



Overview

PB Taxand, Taxand Indonesia

PB Taxand is a tax advisory firm based in Jakarta and Surabaya, which offers a full range of tax services that focus on multinational as well as local companies.

PB Taxand's team is equipped to assist in every aspect of transfer pricing services, ranging from (1) compliance and reporting; to (2) analysis, planning and strategy; and (3) disputes and controversy:

- Under compliance and reporting, we cover the preparation of transfer pricing country-by-country reports, master file and local file documentation.
- With analysis, planning and strategy, we cover business restructuring, the set-up of a TP strategy, and the preparation of a pricing policy.
- With disputes and controversy, we cover assistance in transfer pricing audits; objections; appeals; judicial reviews; Mutual Agreements Procedures; arbitration; and the prevention or resolution of tax disputes, by concluding unilateral, bilateral or multilateral APAs.

General: Transfer Pricing Framework

The rule of the arm's-length principle is stipulated under article 18 paragraph 3 and 4 of the Corporate Income Tax Law No 36 Year 2008 ("CIT") and article 32, 33, 35, 36 and 37 of Government Regulation No 55 Year 2022, while the general documentation requirements are regulated under Article 10 of Government Regulation No 74 year 2011 ("PP 74") and Minister of Finance Regulation No 213/PMK.03/2016 ("PMK 213").

The Indonesian Tax Office "ITO" provides detailed regulations regarding advance pricing agreements under Minister of Finance Regulation No 22/PMK.03/2020 ("PMK 22"). In PMK 22, the Indonesian Tax Office also provides detailed regulations regarding the application of the arm's-length principle and the definition of a special relationship. Meanwhile, the regulation details concerning mutual agreement procedures is under Minister of Finance Regulation No 49/PMK.03/2019 ("PMK 49").

The Indonesian transfer pricing rules and arm's length principle are generally in line with the OECD Guidelines.

Accepted Transfer Pricing Methodologies

The OECD Guidelines are not formally incorporated in the Indonesian legislation, however, in practice, the ITO adopts the OECD TP Guidelines when drafting TP regulations in Indonesia. The ITO also acknowledges the OECD TP Guidelines as an internationally accepted guide in providing explanations and clarifications on the (application of the) arm's length principle.

In line with the OECD Guidelines, the ITO must begin transfer pricing examinations by analyzing the approach of the Taxpayers, including the methodology selection. The taxpayer, however, must be able to substantiate the reason for the selected method, which is deemed appropriate in view of the relevant facts and circumstances.

The ITO also adopts the five (5) methodologies prescribed by the OECD TP Guidelines:

- Comparable Uncontrolled Price method ("CUP")
- Cost Plus Method
- Resale Price Method
- Profit Split Method
- Transactional Net Margin Method ("TNNM")

Aside from the five methods stated above, the ITO also regulates the following methodologies for use:

- Comparable Uncontrolled Transaction Method
- Tangible Asset and Intangible Asset Valuation
- Business Valuation

The CUP method is generally the preferred method by the ITO, but due to comparable uncontrolled transactions being difficult to find, in practice, the TNMM method is the most used transfer pricing method. The taxpayer is allowed to apply any other method if it can be proved that the degree of comparability of the selected method is higher in comparison to other methods.

Transfer Pricing Documentation Requirements

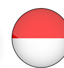
Article 10 of PP 74 requires taxpayers to document and substantiate all intercompany transactions to support its arm's length nature. As no threshold applies to this obligation, this also applies to small and medium-sized companies. The provision requires Indonesian taxpayers to document the transactions conducted with related parties, which includes both cross-border and domestic transactions.

With regards to the obligation of preparing Transfer Pricing Documentation, under PMK 213, MNEs and domestic companies are obligated to prepare country-by-country reports, master files and local files, if the criteria to prepare Transfer Pricing Documentation are met.

In the regulation, it is stated that although the taxpayer does not meet the criteria to prepare Transfer Pricing Documentation, the tax office may conduct transfer pricing audits and the tax auditor may issue tax adjustments on transfer pricing matters.

Local Jurisdiction Benchmarks

Comparable selection depends on the applied TP method. Under PMK 22, a local comparable is the preferred comparable over an overseas comparable. However, in practice, it is difficult to find a local comparable in an international database. Therefore, due to the lack of a local comparable, the ITO would accept an overseas comparable to apply the arm's length principle in Indonesia. The Taxpayers only use a local comparable if they use an internal comparable.



Advance Pricing Agreement ("APA") Overview

Under PMK 22, the Taxpayer may submit a Unilateral APA or Bilateral APA application to the ITO for its related party transactions. APA can be applied to domestic related party transactions in Indonesia. An APA can cover five forward years as well as open historical years under a rollback. Open historical years can only be covered by an APA roll-back where they meet specific criteria, such as a tax audit that has not been concluded for that past year or such year is not subject to the criminal investigation.

Below are the requirements to apply for an APA.
A taxpayer must:

a) have fulfilled the obligation to submit its Annual CITR for three fiscal years prior to the fiscal year for which the APA is being applied;

b) have been obligated and has fulfilled the obligation to prepare and maintain Transfer Pricing Documentation in the form of master file and local file for three fiscal years prior to the fiscal year for which the APA is being applied;

c) not be subject to a criminal investigation or taxation criminal proceedings;

d) only include related party transactions that have already been reported by the Taxpayer in the Corporate Income Tax Return; and

e) apply the Arm's Length Principle to the related party transactions AND the application of the arm's length principle would not result in a situation where operating profit of Taxpayer is lower than operating profit already reported in the Corporate Income Tax Return.

The implementation of the APA must be documented in the taxpayer's transfer pricing documentation on an annual basis

Transfer Pricing Audits

There are no specific Transfer Pricing audits in Indonesia. TP audits are usually a part of a general tax audit or a specific audit for Income Tax or Value Added Tax. However, the ITO is currently very aggressive in analyzing intercompany transactions, especially with related parties overseas.

In practice, the ITO is focused on the following transfer pricing issues:

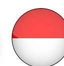
- Company in a loss position or with a very thin profit
- The conducting of special transactions, use of intangible, intragroup services, and intragroup loans

Transfer Pricing Penalties

Under the elucidation of article 18 paragraph 3, the ITO will apply a secondary adjustment on every tax adjustment based on transfer pricing matters during the tax audit. There will only be a single treatment on the secondary adjustment as a deemed dividend, no matter the transaction and the counterparty.

Local Hot Topics and Recent Updates

Indonesia is a capital import country; therefore, there are many special transactions conducted by overseas head offices and/or regional hubs to their Indonesian subsidiaries. Therefore, the use of intangible transactions, intercompany service transactions and intercompany loan transactions are often scrutinized by the ITO.



Documentation threshold

Master File and Local File	Criteria to Prepare Master File and Local File
The Taxpayer has related party transactions with:	The Taxpayer has related party transactions with: a. a gross revenue in the previous fiscal year of more than IDR 50 billion, or b. a related party transaction amount in the previous fiscal year of: - more than IDR 20 billion for tangible goods transactions; or - more than IDR 5 billion for each provision of service, payment of interest, use of intangible goods, or other related party transactions, or c. The related party is domiciled in a country or jurisdiction with a tax rate lower than the prevailing tax rate in Indonesia (the current tax rate in Indonesia is 22%).
CbCR	Criteria to Prepare Country-by-Country Report a. Consolidated group turnover of at least IDR 11 trillion, or b. A Taxpayer who is a member of a Business Group, with a parent entity that is a Foreign Taxpayer, is required to file a Country-by-Country Report if the country or jurisdiction where the parent entity is domiciled: - does not require the filing of Country-by-Country Report, or - does not have any exchange of tax information agreement with Indonesia, or - has an exchange of tax information agreement, but the Indonesian Government does not receive the Country-by-Country Report from the related country/jurisdiction.

Submission deadline

Master file	Should be available in the taxpayer’s administration within four months after the end of the fiscal year.
Local file	Should be available in the taxpayer’s administration within four months after the end of the fiscal year.
CbCR report	Submission is within 12 months after the end of the fiscal year.
CBCR notification	Submission is within 12 months after the end of the fiscal year.

Penalty Provisions

Documentation – late filing provision	ITO may reject TP Documentation, and ITO may prepare benchmarking and ITO may consider the Taxpayer to not have filed the Corporate Income Tax Return
Tax return disclosure – late/ incomplete/no filing	Administrative sanction of IDR 1 million. The Tax Auditor may conduct a full tax audit and request detailed supporting documents for every transaction.
CbCR – late/ incomplete/no filing	ITO may consider the Taxpayer to not have filed the Corporate Income Tax Return.

CONTACT

Permana Adi Saputra

PB Taxand

permana@pbtaxand.com

+62 21 835 6363

ITALY

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Overview

Alma LED, Taxand Italy

Alma LED is a fully integrated professional reality, created by Alma Società Tra Avvocati and LED Taxand Tax Law Firm. Alma LED offers customized assistance, providing expert advice on tax and legal issues and developing innovative solutions that allow the optimization of clients' projects.

Alma LED has a dedicated Transfer Pricing and Business Restructuring team that provides tailor-made assistance to the clients. The services provided include the following:

- Business model analysis, Definition/Design of TP Policies and corporate restructuring
- Business/IP valuation, IP planning and structuring, Assistance with Patent Box regime
- Assistance during tax audits and litigation, Negotiation of mutual agreements and arbitration procedures
- Preparing transfer pricing documentation and assisting with Country-by-Country reporting.

General: Transfer Pricing Framework

Transfer Pricing rules are laid down in the Income Tax Code ("ITC", approved by the Presidential Decree No. 917 of 22 December 1986). Art. 110 para. 7 of the ITC, as amended in June 2017, is applicable to transactions that occurred between an Italian enterprise and non-resident companies that: "directly or indirectly control the Italian enterprise, or are controlled by it, or are controlled by the same company controlling the Italian enterprise". The Ministerial Decree dated May 14, 2018 (in the following "the Ministerial Decree"), implementing the arm's length principle in the general tax system, provided additional clarifications with reference to the definition of "associated enterprises", and namely:

a) "associated enterprises" means an enterprise resident in the Italian territory as well as non-resident companies where:

1) one of them participates directly or indirectly in the management, control, or capital of the other, or

2) the same person participates directly or indirectly in the management, control or capital of both enterprises;

b) "participation in the management, control or capital" means:

1) a participation of more than 50% in the capital, voting rights or profits of another enterprise; or

2) the dominant influence over the management of another enterprise, based on equity or contractual constraints.

The Decision of the Commissioner of the Italian Revenue Agency "Agenzia delle Entrate" of 23 November 2020 "the Provision", Circular Letter no. 15/2021 and Circular Letter no. 16/2022 provide some rules and clarifications concerning transfer pricing documentation requirements and the arm's length range.

Accepted Transfer Pricing Methodologies

The Italian Transfer Pricing legislation follows the OECD standards. The Ministerial Decree implements the arm's length principle in Italy and sets forth the methods to be applied, consistently with the OECD Guidelines, updated from time to time.

In particular, the Ministerial Decree (in Article 4) refers to both traditional transaction methods (CUP, Resale Price, Cost Plus) and income methods (TNMM and Profit Split). Alternative methods can be selected where appropriate and when taxpayers can demonstrate the following:

i) none of those methods could be applied with reliable results to determine the pricing of a controlled transaction based on the arm's length principle; and

ii) such different method produces a result consistent with what independent enterprises would expect to obtain in carrying out comparable uncontrolled transactions.

In compliance with the OECD Guidelines "the best method rule" applies. However, when a traditional method and an income method can be applied with the same degree of reliability, the former must be preferred. Furthermore, if the CUP method can be applied with the same degree of reliability as other traditional methods, the former must be applied.

Transfer Pricing Documentation Requirements

Documentation requirements were first introduced in 2010 and updated in 2020 by the November 23 Provision. The Italian Tax Authority provided additional clarifications with the Circular Letter no. 15, released on 26 November 2021. In general terms, local rules are consistent with the OECD Guidelines. However, there are some differences that taxpayers must consider.

Local regulations do not require the taxpayer to prepare the documentation (Masterfile and Local File) as an obligation. Taxpayers filing "proper" documentation will benefit of so called "penalty protection" in case of upward adjustments assessed by the Tax Authority. Penalty protection is recognized only if the formal and substantive requirements of the Provision are met.

The Masterfile can be drafted in English; Local File must be drafted in Italian.

Both Masterfile and Local File must be prepared annually and signed electronically by the legal representative (or a delegate) with a time stamp, to be put by the date of filing of the relevant income tax return (for taxpayers with calendar year: 30 September of each year).

The documentation does not have to be sent to the Italian Tax Authority. Its possession must be communicated by "checking the box" in the annual tax return ("Modello UNICO", Section RS, Line 106). In case of tax audit, the taxpayer shall submit the transfer pricing documentation to the Tax Authority in electronic form within 20 days upon request.

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Country-by-country reporting "CbCR" was introduced in Italy by Law No. 208 dated December 2015, (published in the Official Gazette No. 302 on December 30, 2015) and entered into force on January 1, 2016. Ministerial Decree dated 23 February 2017 "the CbCR Decree" and the Decision of the Commissioner of the Italian Revenue Agency dated 28 November 2017 provided for detailed implementation guidance of CbCR.

In principle, CbCR must be prepared by eligible taxpayers, i.e., parent companies of multinational groups with a consolidated turnover exceeding €750 million. However, in some cases (e.g., where the group foreign parent company is not obliged to or fails to file the CbCR in its jurisdiction), the burden of filing the CbCR falls on an Italian entity of the group.

The CbCR Decree clarified that an entity (parent or subsidiary) subject to reporting obligation, within the deadline to file the tax return referred to the fiscal year forming the scope of the reporting must notify the Italian Tax Authority of its reporting obligation.

Local Jurisdiction Benchmarks

When the TNMM is selected following the "most appropriate method rule", a benchmark is required to demonstrate that related party transactions are at arm's length. Economic analyses can be carried out using Bureau Van Dijk databases or other ones (e.g., Bloomberg Professional Service©), taking into consideration the features of the transactions to be analysed.

When the tested party is the Italian entity local comparables are preferred; anyway, pan-European comparables are acceptable as well, providing Italian ones in the set. It should be noted that the selection of comparables is one of the most challenged topics in the event of an audit.

Taxpayers must carry out relevant benchmark analyses on a yearly basis. Small and medium-sized enterprises can update relevant financial data (i.e., not performing a "fresh" benchmarking), assuming that the comparability analysis is based on information from publicly available sources and that there have been no changes in the comparability factors.

The Italian Tax Authority provides clarification on the arm's length range with the mentioned Circular Letter no. 16/2022, stating that any point in the full range should be considered at arm's length, assuming that comparables are equally reliable. However, in practice, the median is usually taken as reference in case of upward adjustments.

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

In general APAs (unilateral/bilateral/multilateral) are available in Italy.

An APA may be requested by resident companies with "international activities", i.e., fulfilling one or more of the following requirements:

- having transactions with non-resident associated companies;
- holding stakes in the assets, funds, capital of non-resident companies or whose assets, funds, capital are held by non-resident companies;
- paying to or receiving by non-resident companies income items such as dividends, interests or royalties;
- conducting their business through a permanent establishment outside Italy;
- transferring their residence from Italy to another State or from another State to Italy.

A specific application must be sent to the Italian Tax Authority; details of the procedure are set out in the Decision of the Commissioner of the Italian Revenue Agency of 21 March 2016. Filing an application for a bilateral or multilateral APA requires the payment of a fee as follows:

- € 10,000 for groups with consolidated revenues up to € 100 million.
- € 30,000 for groups with consolidated revenue of more than € 100 million and less than € 750 million.
- € 50,000 for groups with consolidated revenues over € 750 million.

The fees listed above are reduced to 50% in case of renewal of a previous APA. There is no charge for unilateral APA.

The procedure is concluded with a binding agreement between the Italian Tax Authority and the taxpayer for the fiscal year of the agreement and the four subsequent ones, unless changes occur in the relevant factual or legal circumstances.

The roll-back of the APA is applicable up to the last assessable fiscal year when certain conditions are met. More in detail:

- For unilateral APAs, rollback is permitted for fiscal years still subject to tax audits, provided that no changes occurred to the agreed conditions and no tax audits started.

- For non-unilateral APAs, rollback is permitted as of the fiscal year during which the APA request was filed with the Italian Tax Authority. However, rollback is allowed also to previous fiscal years, provided that:
  - the same factual and legal circumstances exist for these periods on the basis of the agreement stipulated with the competent authorities of foreign countries
  - the taxpayer has requested the roll back in the APA request
  - the competent authorities of foreign countries agree to extend the agreement to previous years, and
  - no inspections or tax audits started in relation to these fiscal years.

Transfer Pricing Audits

The Italian Tax Authority schedules the tax audits to be performed and defines the criteria for the selection of taxpayers to be audited. These criteria are as follows:

- **Large taxpayers**: Country-by-Country reporting (DAC 4, BEPS Action no. 13), tax ruling reports (DAC 3 and BEPS Action no. 5), cross-border tax arrangements (DAC 6).
- **Small/medium taxpayers**: benefit from preferential regimes, e-invoicing, grants linked to the Covid-19 pandemic, R&D credits, etc.

Tax audits can be performed by both Agenzia delle Entrate and "Guardia di Finanza" (Italian tax police), while assessment notices can be issued only by Agenzia delle Entrate.

During the transfer pricing audit process, the Italian Tax Authority focuses on the following topics:

- Selection of comparables and positioning of the profit level indicator within the arm's length range
- Intragroup services (effectiveness/benefit test/compliance with the arm's length principle)
- Royalty payments
- Business restructurings
- Permanent establishment issues
- Tax residence of entities
- Intercompany financing.

Transfer Pricing Penalties

The taxpayer who has prepared transfer pricing documentation that complies with the requirements (both formal and substantial) mentioned above, can benefit from the "penalty protection regime".

In Italy there are no specific transfer pricing penalties. Ordinary administrative penalties ranging, from 90 percent to 180 percent of the higher tax assessed, apply.

Local Hot Topics and Recent Updates

In August 2023, a reform of the Italian tax system was launched, to be implemented within two years, which includes several measures in the field of corporate taxation:

- Reduced tax burden for investment-making businesses;
- Revised thresholds for interest expense deductibility;
- Revised rules for offsetting and transferring tax losses, including in tax group regime;
- Revised rules for transferring tax assets as part of non-recurring transactions and benefiting from tax step-up regimes.

Furthermore, the Ministry of Economy and Finance ("MEF") released in September a draft for discussion implementing the EU Directive 2022/2523, which aims to introduce a global minimum taxation system for groups of companies with revenues of 750 million euros or more.

The draft provides for the transposition of the basic recommendations set forth in the mentioned Directive, deferring to secondary legislation for implementation aspects. The decree must be adopted by December 31, 2023, and enter into force on January 1, 2024.

ITALY

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Documentation threshold

Master file	Not applicable
Local file	Not applicable
CbCR	€ 750 million

Submission deadline

Master file	Both Master file and Local File do not have to be submitted, but must have been prepared, signed and marked before sending the corporate income tax return.
Local file	The tax return is due by the end of the 9th month after the closing of the relevant fiscal year.
CbCR	To be submitted within 12 months following the last day of the multinational group's reporting fiscal year

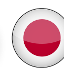
Penalty Provisions

Documentation – late filing provision	Ineligibility for the "penalty protection regime"
Tax return disclosure – late/incomplete/no filing	Late or incomplete Tax Return is subject to a penalty of € 250 The omitted Tax Return is subject to a penalty ranging from € 250 to € 1,000, if no tax is due, or a penalty ranging from 120% to 240% of the tax due. In addition, if the tax due exceeds a threshold of € 50,000, penalties also involve criminal matters..
CbCR – late/incomplete/no filing	Late, incomplete or no filling of CbCR is subject to a penalty ranging from € 10,000 to € 50,000.

CONTACT
Diletta Fuxa
Alma LED
diletta.fuxa@alma-led.com
+39 02 6556721

Giuseppe Ferrisi
Alma LED
giuseppe.ferrisi@alma-led.com
+ 39 02 6556721

JAPAN

RETURN TO CONTENTS PAGE 

Overview

Nagashima Ohno & Tsunematsu, Taxand Japan

Taxand Japan is renowned for its broad coverage of a variety of tax-related matters, ranging from tax planning for various commercial transactions to tax disputes and tax litigation cases arising from differences in opinion with the tax authority.

Taxand Japan has been highly evaluated by domestic and international clients, peers and third party research institutes. Notably, over the past year, our firm received remarkable evaluations as follows:

- Ranked in the top group (Tier 1) in The Legal 500 Asia Pacific 2023
- Ranked in the top group (Band 1) in the 2023 edition of Chambers Asia-Pacific
- Awarded "Japan Tax Disputes Firm of the Year," "Impact Deal of the Year," at International Tax Review's Asia Tax Awards 2022
- Awarded "Law Firm of the Year" for the category of Tax Law by The Best Lawyers in Japan 2022
- Recognized as an "Outstanding" firm in Tax in Japan by asialaw 2022/2023

As a part of its broad coverage of tax-related services, Taxand Japan offers transfer pricing services ranging from planning to disputes and controversy.

General: Transfer Pricing Framework

Transfer pricing legislation is provided in Article 66-4 of the Special Tax Measures Act "STMA" and the provisions of the Cabinet Order and the Ministerial Ordinance provided thereunder (the "TP Legislation"). Consistent with the TP Legislation, transactions between related parties must take place on an arm's-length basis. The transfer pricing rules and arm's length principle are generally in line with the OECD Guidelines.

Accepted Transfer Pricing Methodologies

The OECD Guidelines are not incorporated into Japanese legislation, however the transfer pricing methods described in the TP Legislation are substantially similar and, notably, center on the arm's length principle. There is also no explicit hierarchy of transfer pricing methods, as the "best method" rule requires that a transfer pricing method is selected that provides for most reliable assessment of the arm's length dealing.

In the TP Legislation, the following methods are specifically listed as transfer pricing methods: the Comparable Uncontrolled Price ("CUP") method, the Resale Price ("RP") method, the Cost Plus ("CP") method, the Profit Split ("PS") method (specifically, the Comparable Profit Split method, the Contribution Profit Split method and the Residual Profit Split method), the Transactional Net Margin Method ("TNMM") and the Discount Cash Flows ("DCF") method. Any other method similar to the methods listed above can be applied if such method leads to an arm's length principle.

Transfer Pricing Documentation Requirements

Article 66-4, paragraph 6 of the STMA requires a taxpayer to prepare and maintain a local file for all intra-group company transactions except transactions with a group company with which the taxpayer had less than JPY 5 billion-worth transactions (less than JPY 300 million-worth transactions for transactions involving intangibles) in total in the previous fiscal year. As there is no threshold based on overall revenues for this obligation, this can also apply to small and medium sized companies depending on the size of transactions with its group companies. Information to be kept in the local file includes information on the intra-group transactions and the arm's length price for those transactions.

In addition to the local file obligations generally applicable, the master file and country-by-country reporting obligations are enacted in Articles 66-4-4 and 64-4-5 of the STMA. Under Article 66-4-4 of the STMA, a country-by-country report is required to be submitted for MNE's that exceed the JPY 100 billion annual revenue threshold if the ultimate parent entity or the surrogate parent entity of the MNE's is a resident of Japan or a country which has not implemented the country-by-country reporting system, has no agreement with Japan to exchange information reported in country-by-country reports or is designated by the Japanese tax authorities as a country not expected to provide Japan with information contained in country-by-country reports. Under Article 66-4-5 of the STMA, master file documentation is required to be submitted for any member entity of MNE's exceeding the JPY 100 billion annual revenue threshold that is a resident of Japan or has a permanent establishment in Japan.

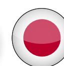
Local Jurisdiction Benchmarks

Benchmarking helps to demonstrate that transfer prices are at arm's length. Comparability criteria to be followed in Japan are considered to be in line with those provided in the OECD TP Guidelines.

Although there is no specific requirement to update the benchmark searches every year, it is recommended to do so in order to make the result of benchmarking reliable. However, in practice, most taxpayers do not undertake a full update of their benchmark searches on an annual basis. It is provided in a guidance issued by the Japanese tax authorities that benchmarks can be updated every three years unless the business conditions relating to the intra-group transactions or the benchmarks are changed.

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

Japan has a program for APAs since the last century. Currently, the Transfer Pricing Administrative Guidelines set out the requirement for seeking an APA, materials that need to be submitted in seeking an APA, and the procedures by which the cases will be handled. It is provided in the



Transfer Pricing Administrative Guidelines that if the taxpayer requesting a unilateral APA is willing to submit the matter to a MAP, the tax authority shall urge the taxpayer to apply for a MAP thereby seeking a BAPA.

In principle, an APA/BAPA has a term in the range of 3 to 5 years and may under certain circumstances be "rolled back" to previous tax years where the statute of limitations remains open.

Transfer Pricing Audits

The Japanese tax authorities can perform audits at random and all companies are subject to audit for any open period. The statute of limitations period for transfer pricing matters is seven years. When the local file is requested in an audit, it is then to be presented within a period designated by the examiner not exceeding forty-five (45) days, that is why in practice it is important to maintain regular documentation.

Transfer Pricing Penalties

Fines up to a maximum of JPY 300,000 can be imposed on the taxpayer for non-compliance with filing obligations for country-by-country reporting or master file.

Local Hot Topics and Recent Updates

In a case in which it was disputed what factor could be used in splitting the residual profit in the application of the Residual Profit Split method, the Tokyo High Court ruled that such factor was not necessarily limited to important intangibles and the factor which was estimated to have contributed to the making of the residual profit to be split, whether relating to important intangibles or not, should be used in splitting the residual split. Prior to the court ruling, there was a tendency to use important intangibles as the factor for splitting the residual profit in the application of the Residual Profit method. However, such tendency may change following the court ruling.

Documentation threshold

Master file	Turnover JPY 100 billion
Local file	N/A
CbCR	Turnover JPY 100 billion

Submission deadline

Master file	Submission within 12 months after end of fiscal year.
Local file	Should be available in the taxpayer's administration upon due date for filling corporation tax
CbCR	Submission within 12 months after end of fiscal year.

Penalty Provisions

Documentation – late filing provision	Fines up to a maximum of JPY300,000 can be imposed on the taxpayer for non-compliance with filing obligations for CbCR reporting or master file.
Tax return disclosure – late/incomplete/no filing	N/A
CbCR – late/incomplete/no filing	Fines up to a maximum of JPY300,000 can be imposed on the taxpayer for non-compliance with filing obligations for CbCR reporting.

CONTACT

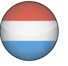
Takashi Saida

Nagashima Ohno & Tsunematsu

takashi_saida@noandt.com

+81-3-6889-7221

LUXEMBOURG

RETURN TO CONTENTS PAGE 

Overview

ATOZ Tax Advisers, Taxand Luxembourg

With over 70 tax practitioners, ATOZ is a high-end, independent advisory firm offering a comprehensive and integrated range of tax and transfer pricing services. Our collective industry expertise encompasses local and global companies in a wide variety of industry sectors, including – but not limited to – investment funds (real estate, private equity, infrastructure, venture capital, debt funds), aviation, banking, capital markets, communications, financial services and insurance.

In the field of transfer pricing, we assist our clients with the development of transfer pricing strategies, the preparation of transfer pricing documentation, regular risk reviews and disputes (local and cross-border).

Our transfer pricing services cover a broad spectrum, such as financing activities, intermediaries, interest rates on a wide range of debt instruments, fund management services, intra-group services, debt/borrowing capacity, valuation of tangible and intangible assets, attribution of profits to a permanent establishment and its head office.

General: Transfer Pricing Framework

Luxembourg tax law does not provide for integrated transfer pricing legislation. Transfer pricing adjustments with the objective to restate arm's length conditions can be made on the basis of different tax provisions and concepts applicable under Luxembourg domestic tax law. The arm's length principle is explicitly stated in Article 56 of the Luxembourg Income Tax Law (hereafter: "LITL"). Article 56 of the LITL is complemented by Article 56bis of the LITL which provides more guidance on the application of the arm's length principle under Luxembourg tax law. More precisely, Article 56bis of the LITL formalises the authoritative nature of the OECD Transfer Pricing Guidelines and replicates some of the key concepts provided in Chapter I (Arm's length principle) of the OECD Transfer Pricing Guidelines.

The law currently is in the process of being amended to introduce new rules specifically for multinational groups.

In addition, a transfer pricing decree on intra-group financing activities contains additional guidance and requirements in this specific context.

Accepted Transfer Pricing Methodologies

The OECD Guidelines are not incorporated in Luxembourg legislation but are an explicit point of reference and guidance.

Therefore, the general hierarchy of transfer pricing methodologies is commonly accepted and no method is *per se* rejected, if its use is justified in the individual case at hand (noting that certain market practices have developed over time for a number of transactions).

The taxpayer is, however, free to choose another method if he can substantiate the appropriateness for the use of such method in light of an arm's length result.

The most commonly used method is the comparable uncontrolled price method, mainly for a wide range of financial transactions and license fees. However, other methods such as the cost-plus method (for low value-adding services) as well as the profit split (e.g. for highly integrated fund management activities) are regularly relevant in practice as well.

Transfer Pricing Documentation Requirements

Taxpayers are not explicitly required to prepare annual documentation (although this may be effectively required depending on the case at hand) and are not required to file transfer pricing documentation with the local tax authority (but to be provided upon request). Transfer pricing documentation should be prepared at the time the transaction is entered into (or even before) in order to reduce the risk of challenge.

While there are no legal *de minimis* thresholds, in practice all material related-party transactions are covered by an appropriate transfer pricing documentation and pragmatic approaches may be chosen for small transactions with immaterial tax risks.

Luxembourg taxpayers may indirectly be obliged to prepare a master or local file, if this is imposed by another jurisdiction (i.e., the jurisdiction of a subsidiary or parent company).

As from tax year 2024, new documentation requirements will also be introduced for Luxembourg group companies of multinational groups that fall within the scope of country-by-country reporting (i.e. with a consolidated turnover of at least EUR 750 million).

Luxembourg companies forming part of such multinational groups will have to prepare a local file and, under certain circumstances, also a master file. For the master file (based on the current draft legislation), the Luxembourg group company has to have a net turnover amounting to at least EUR 100 million or a balance sheet total of at least EUR 400 million at the balance sheet date of a given financial year.

The master and local file requirements broadly correspond to BEPS Action 13, with some exceptions, deviations and additional local requirements.

Local Jurisdiction Benchmarks

Given the absence of Luxembourg-specific benchmarking data, the Luxembourg tax authorities generally accept pan-European benchmarks, provided that they meet OECD-compliant search strategy standards. Multiple-year data are not commonly used. The use of interquartile ranges in terms of benchmarking is generally feasible with a preference for measures of central tendency. A yearly update is not explicitly required and in practice, most taxpayers do not update their benchmark searches on an annual basis. In cases where a business activity does not undergo significant changes, a search can be updated every 3 years.

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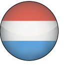

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

Despite the legal possibility to do so, the number of APA in Luxembourg is extremely limited in practice.

Transfer Pricing Audits

Within the statute of limitation, the Luxembourg tax authorities can perform audits at their discretion. Matters of interest seem to be focused on financial transactions. The Luxembourg tax authorities do not conduct audits in great numbers compared to the number of taxpayers. However, since a couple of years, tax inspectors are highly likely to review transfer pricing aspects in more detail and request detailed documentation.

Transfer Pricing Penalties

There is no specific penalty for the non-preparation of transfer pricing documentation, but the non-availability of such documentation upon request of the tax authorities significantly increases the risk of adjustments.

Local Hot Topics and Recent Updates

The introduction of master and local file requirements for certain multinational groups as from the fiscal year 2024 marks a milestone in the development of Luxembourg transfer pricing rules.

In line with long-standing views from practitioners, recent court cases have shown that the delayed preparation of transfer pricing documentation long after the transaction date (e.g. only upon request by the tax authorities some years later during a tax audit or review of the tax returns) significantly increases the risk that the result of such belated transfer pricing studies will be rejected/challenged as a matter of principle (and due to a lack of credibility of such delayed documentation when the benchmark analysis happens to confirm the transfer price that has been charged in a given undocumented transaction).

Documentation threshold

Master file	(i) EUR 750m consolidated group turnover + (ii) EUR 100m standalone turnover or EUR 400m balance sheet total
Local file	EUR 750m consolidated group turnover
CbCR	EUR 750m consolidated group turnover

Submission deadline

Master file	Not yet specified in the draft law
Local file	Not yet specified in the draft law
CbCR	12 months after the final day of the reporting fiscal year of the MNE group

Penalty Provisions

Documentation – late filing provision	Not Applicable
Tax return disclosure – late/incomplete/no filing	Up to 10 percent of the tax due and a fine up to EUR 25,000
CbCR – late/incomplete/no filing	Up to EUR 250,000

CONTACT

Oliver R Hoor
ATOZ Tax Advisers
Oliver.Hoor@atoz.lu
+352 26 940 646

Fanny Addouda
ATOZ Tax Advisers
Fanny.Addouda@atoz-services.lu
+352 26 9467 714

Overview

Tricor Taxand, Taxand Malaysia

Taxand Malaysia focuses on providing an extensive range of transfer pricing ("TP") compliance and advisory services, which encompasses the following areas:

- Planning and structuring (conceptualisation and implementation of TP policies, review of TP structures, tax-efficient supply chain structuring of transactions, review and advice on intra-group services and agreements, risk assessment and mitigation, tax planning benchmarks, cost sharing, licensing and intangibles)
- Compliance (global benchmarking solutions, functional and industry analysis, economic analysis, documentation compliance, Local File and Master File documentation, Country-by-Country Reporting)
- Controversy management (audit assistance/ representation before tax authorities, alternate dispute resolution and mutual agreement procedures)

General : Transfer Pricing Framework

The TP legislation and regulations in Malaysia, as well as the 2012 Malaysian Transfer Pricing Guidelines [which have been updated from time-to-time since its issuance] ("TP Guidelines"), are based on the governing standard for TP (i.e. the arm's length principle), as set out under the Organization for Economic Co-operation and Development Transfer Pricing Guidelines ("OECD Guidelines").

Even though certain parts of the TP Guidelines have been adopted directly from the OECD Guidelines, there may be areas which differ to ensure adherence to the Income Tax Act, 1967 ("ITA") and Inland Revenue Board of Malaysia ("IRB") procedures as well as domestic circumstances. "Domestic circumstances" are cited in the TP Guidelines. However, examples of "domestic circumstances" are not provided within the TP Guidelines themselves. Nonetheless, in practice, a potential example is the Malaysian tax authorities' stance on the determination of the arm's length return for controlled transactions, which differs from the OECD Guidelines as TP adjustments are typically made to the median point. This is notwithstanding the fact that the company's financial results may be within the arm's length range of results (but lower than median point). Please refer to the Local Jurisdiction Benchmarks section for further details.

TP in Malaysia is regulated by the TP provisions under Section 140A of the ITA, and the Income Tax (Transfer Pricing) Rules 2023 ("TP Rules 2023"). As for the TP Guidelines, the guidelines provide taxpayers with detailed guidance on the application of the arm's length principle, and the extent of documentation required to be maintained by taxpayers which engage in controlled transactions.

Under Section 140A(5A) of the ITA, "control" is defined as a shareholding of 20% or more and one of the following:

i) Providing necessary proprietary rights (e.g. patents, non-patented technological know-how, trademarks or copyrights) for the business operations;

ii) Having influence over business activities e.g. purchases, sales, receipt or provision of services, pricing and other conditions relating to the supply; OR

iii) Having powers to appoint one or more directors/members of the board of directors.

Accepted Transfer Pricing Methodologies

In line with the OECD Guidelines, the TP Rules 2023 and TP Guidelines make reference to the selection of the appropriate TP method in order to determine the arm's length price for a controlled transaction.

Taxpayers are therefore allowed to apply any of the 5 prescribed TP methods or any other method allowed by the Director-General of IRB which provides the highest degree of comparability between the transactions. Hence, there is no explicit hierarchy for the selection of TP methods. However, taxpayers are required to provide explanations and reasons that the method selected (and profit level indicator) are appropriate.

The most frequently used methods are the TNMM and CUP method. However, it is often difficult to apply the CUP method in practice, as taxpayers are expected to ensure the application of the CUP method on all controlled transactions entered into (instead of a sampling basis).

In addition, for the CUP method to be reliably applied to commodity transactions, the economically relevant characteristics of the controlled and uncontrolled transactions or the uncontrolled arrangements represented by the quoted price need to be comparable. Among others, economically relevant characteristics encompass the physical features and quality of the commodity, contractual terms of the controlled transaction, such as volumes traded, period of the arrangements, credit terms, timing and terms of delivery, transportation, insurance and foreign currency terms. A particularly relevant factor for commodity transactions determined by reference to the quoted price is the pricing date, i.e. specific time and date selected by the parties to determine the price for commodity transactions.

TP Documentation Requirements

In Malaysia, taxpayers which engage in controlled transactions are required to prepare contemporaneous transfer pricing documentation ("TPD") on an annual basis. The deadline for the completion of contemporaneous TPD is defined under the TP Rules 2023 i.e. prior to the due date for furnishing a return in the basis period for a year of assessment ("YA") in which a controlled transaction is entered into.

As such, the TPD needs to be prepared latest by the corporate income tax filing deadline for the relevant YA (which is typically 7 months after the financial year end), or by the extended tax filing due date granted by the

IRB (if applicable). Taxpayers are not required to file the TPD along with the tax return, but are required to submit the same within 14 days upon request by the IRB.

In line with the OECD Guidelines, taxpayers are required to comply with the three-tiered standardised approach to TPD i.e. Local File, Master File and country-by-country report ("CbCR").

MNE Groups are required to prepare and file CbCR if the following conditions are met:

1) Its constituent entities have cross-border transactions with other constituent entities;
2) Total consolidated group revenue in the financial year preceding the first reporting financial year is at least RM3 billion; and
3) Ultimate holding company of the Group/surrogate holding entity/permanent establishment/any of its constituent entities are companies incorporated in Malaysia.

The requirement for taxpayers to prepare the Master File depends on whether the taxpayer is required to prepare the CbCR.

Under the TP Rules 2023, "Multinational Enterprise Group" (or "MNE Group") refers to a collection of enterprises related through ownership or control which is required to prepare consolidated financial statements for financial reporting purposes under the applicable accounting principles or would be so required if equity interest in any of its enterprises were traded on public securities exchange.

Local Jurisdiction Benchmarks

When the TNMM is selected as the appropriate TP method for the purpose of ascertaining the arm's length nature of controlled transactions, a benchmarking study is typically prepared in order to demonstrate that controlled transactions meet the arm's length standard. The application of the TNMM is generally accepted by the IRB. However, the IRB typically closely scrutinizes the selection of comparables in the set.

In addition, the IRB explicitly states its preference for Malaysian comparables when evaluating a tested party which is incorporated in the country. As stated in the TP Guidelines, the IRB gives priority to the availability of sufficient and verifiable information on both the tested party and comparables. As such, in practice, foreign (i.e. regional/global) comparables should only be considered if it can be demonstrated that the search performed yielded either no local comparables or an insufficient number of local comparables.

Financial data and suitability of the existing comparable set are required to be reviewed and updated annually in order to reliably apply the arm's length principle. As for the update of the benchmarking searches in the databases, taxpayers are allowed to update the search every 3 years, rather than annually, as long as the entity's operational conditions remain unchanged.

The arm's length range has been defined within the TP Rules 2023 as "a range of figures or a single figure falling between the value of the 37.5 percentile to 62.5 percentile", whereby:

i) Where the price of a controlled transaction falls within the arm's length range, the price may be regarded as an arm's length price.
ii) Where the price of a controlled transaction is outside the arm's length range, the arm's length price shall be taken to the median.

Where the price of a controlled transaction falls within the arm's length range, the IRB may adjust the price of the controlled transaction to the median or any other point above median (within the arm's length range i.e. up to the 62.5 percentile) if they are of the view that there are comparability defects which cannot be quantified, identified or adjusted, or that comparable companies have a lesser degree of comparability.

There are currently no clear guidelines on how this assessment of comparability will be carried out by the IRB.

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

The Income Tax (Advance Pricing Arrangement) Rules 2023 ("APA Rules 2023") and Advance Pricing Arrangement Guidelines 2012 ("APA Guidelines") provide detailed guidance to taxpayers in relation to the APA application process and the documentation required for such applications.

The IRB accepts unilateral, bilateral and multilateral APAs, with a proposed covered period of between 3 to 5 YAs. Typically, the entire process of applying for a unilateral APA takes 6 to 12 months to conclude, while an application for a bilateral/multilateral APA may take 1 to 2 years to conclude.

In addition, the IRB considers requests for rollback of a bilateral or multilateral APA if:

a) the proposed TP methodology is relevant to the resolution of the TP issues in the prior years' assessment; and
b) the particular facts and circumstances surrounding the prior years' assessment are substantially the same as that of the covered period, subject to verification on audit.

As stated in the APA Rules 2023, a non-refundable fee is applicable for APA applications depending on the timing of the application i.e. RM5,000 if the application is made within two months after receipt of the IRB notification (on whether the taxpayer may proceed to submit the APA application) OR RM10,000 if the application is made after two months but within six months after receipt of the IRB notification. The APA Rules 2023 also outlines the terms and conditions for the renewal of the APA.

In addition, the APA Guidelines sets out the record keeping requirements in relation to the Annual Compliance Report (which taxpayers are required to submit, upon entering into an APA).

Transfer Pricing Audits

The frequency of tax audits (which also cover TP issues) carried out by the IRB has increased in recent years. In addition, in the past, tax audits typically took place several years after the submission of the company's tax return. This is no longer the case, as the IRB has been initiating audits shortly after the submission of the company's tax return. In short, tax audits are now more regular and are triggered within a shorter period of time.

Loss-making companies with significant controlled transactions are typically scrutinised by the IRB during audits. As such, it is increasingly important for taxpayers to prepare and maintain robust documentation in order to substantiate the losses incurred and document the detailed commercial and/or operational reasons for such losses.

In addition, there is increased scrutiny on intragroup management services, be it from the perspective of the Malaysian entity as the service provider or service recipient. The IRB often seeks detailed explanations from taxpayers on the allocation basis and charging mechanism for the management service fee charged/paid by the Malaysian entity.

Another common area of challenge faced by taxpayers during tax audits is in terms of demonstrating that intragroup financing arrangements meet the arm's length standard and that the appropriate and reasonable steps have been taken in determining the arm's length interest rate, in order to mitigate risks arising from potential challenges from the IRB.

Transfer Pricing Penalties

Under the TP Guidelines, taxpayers who fail to furnish contemporaneous TPD within the 14-day timeframe are subject to a penalty of RM20,000 to RM100,000 per YA and/ or imprisonment for up to 6 months or both. In Malaysia, the statute of limitation to raise additional assessments for TP issues is 7 years.

Prior to 1 January 2021, penalty rates were only applicable if TP adjustments resulted in additional tax payable. Hence, in the past, for companies which are not in a tax payable position (e.g. loss-making companies, companies which are granted tax incentives and not required to pay income tax), there was less priority placed on the preparation of TPD, given that TP adjustments proposed by the IRB would not give rise to additional tax payable.

However, the TP surcharge (of up to 5% of TP adjustments), which came into effect from 1 January 2021 onwards, is computed based on the value of the TP adjustment. The IRB recently clarified that the general rate to be applied in imposing the surcharge under Section 140A of the ITA is 5% on the TP adjustment made and that there will be no scale available (as reference). Hence, a lower surcharge rate will only be offered for voluntary disclosure cases, with further details on the surcharge to be addressed in the amended Transfer Pricing Audit Framework ("TPAF"), which has not been issued to-date. Hence, it is imperative for taxpayers to ensure full compliance to TP provisions in Malaysia, notwithstanding that there may not be an additional tax payable.

Local Hot Topics and Recent Updates

With the introduction of the TP Rules 2023, which was gazetted on 29 May 2023 and comes into effect from YA 2023 onwards, there were several significant changes in terms of compliance requirements for taxpayers.

Apart from the narrower arm's length range of results (as mentioned earlier), the main changes in the TP Rules 2023 are summarized below:

- Re-definition of "contemporaneous" TP documentation – From YA 2023 onwards, the TPD prepared at the point of developing or implementing controlled transactions will no longer be regarded as contemporaneous. In addition, taxpayers are required to date the TPD to indicate the date of completion of the documentation.
- More prescriptive and onerous requirements set out under the TP Rules 2023, including the detailed information relating to the following:
  - a) The MNE Group (similar to information required to be covered in a Master File)
  - b) Taxpayer's business (including functional analysis of all associated persons and pricing policy for each controlled transaction)
  - c) Documents which became the foundation for, support or refer to development of TP analysis
  - d) Indication of non-applicability of information/ documents
  - e) Information, data or other related documents used to determine an arm's length price
- Use of single year financial data only, and where only financial data for the preceding financial year is available, taxpayers are expected to update the benchmarking set upon availability of data for that financial year.

Given the level of additional details, information and documents which need to be prepared by taxpayers from YA 2023 onwards, this will certainly increase the amount of costs, time and internal resources required to prepare the TPD.

Documentation threshold

Master file	No specific threshold for preparation of Master File, but Master File is required for taxpayers that are obliged to prepare the CbCR (i.e. companies which are part of a multinational group where total consolidated group revenue is RM3 billion or more, amongst other conditions as mentioned earlier).
Local file	**Full TPD** For a taxpayer carrying on a business, the TP Guidelines apply wholly to a business with gross income exceeding RM25 million, and total amount of controlled transactions exceeding RM15 million. For a taxpayer providing financial assistance, the guidelines on financial assistance are only applicable if that financial assistance exceeds RM50 million. The TP Guidelines do not apply to transactions involving financial institutions. **Minimum TPD** For a taxpayer which do not meet the prescribed thresholds for full TPD above, the taxpayer may opt to either fully apply all relevant guidance as well as fulfil all TPD requirements in the TP Guidelines OR may opt to comply with TPD requirements under Paragraphs 25.4(a), (d) and (e) of the TP Guidelines only.
CbCR	Consolidated group revenue of RM3 billion or more

Submission deadline

Master file	Within 14 days upon request by the IRB.
Local file	Within 14 days upon request by the IRB.
CbCR	No later than twelve months after the last day of the reporting financial year.

Penalty Provisions

Documentation – late filing provision	RM20,000 to RM100,000 per YA / imprisonment for for a term not exceeding 6 months / both
Tax return disclosure – late/incomplete/no filing	**Failure (without reasonable excuse) to furnish an Income Tax Return Form** - RM200 to RM20,000 / imprisonment for a term not exceeding 6 months / both **Incorrect tax return by omitting or understating any income** - RM1,000 to RM10,000 and 200% of tax undercharged **Incorrect information in matters affecting the tax liability of a taxpayer or any other person** - RM1,000 to RM10,000 and 200% of tax undercharged **Fails (without reasonable excuse) to comply with an order to keep proper records and documentation** - RM300 to RM10,000 / imprisonment for a term not exceeding 1 year / both *Please note that the above penalties are not exhaustive and there are other penalties in place for other instances of non-compliance.
CbCR – late/ incomplete/no filing	Fine of not less than RM20,000 and not more than RM100,000 / imprisonment for a term not exceeding 6 months / both. Fine not exceeding RM1,000,000 / imprisonment for a term not exceeding two years / both [under the Labuan Regulations].

CONTACT

Sarah Chew

Tricor Taxand

Sarah.Chew@my.tricorglobal.com

+603 2783 8105

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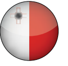

Overview

Avanzia Taxand, Taxand Malta

Avanzia Taxand is a licensed corporate services provider and a tax firm providing an array of services to multinationals, private equity and high net worth individuals "HNWI".

Taxand Malta's team may assist in various aspects of transfer pricing services including:

- Compliance – preparation of certain compliance documentation such as local file documentation,
- Reporting – assistance in local filings including Country-by-Country reporting "CbCR" requirements,
- Analysis – providing due diligence services or health checks, and assessment of risk areas to help management with their strategy and risk mitigation,
- Planning – establishing intercompany financial arrangements,
- Disputes and controversy – assistance in transfer pricing audits or investigations as well as preventing or resolving tax disputes by concluding APAs.

General : Transfer Pricing Framework

Malta is relatively new to transfer pricing since subsidiary legislation implementing formal Transfer Pricing Rules "TR Rules" were published in November 2022. The TP Rules will be effective from 1 January 2024 and apply to cross-border related party arrangements entered into on or after such date, including any arrangements entered into before that date which would have been materially changed thereafter.

The TP Rules will apply to arrangements between related parties or associated entities defined as having 50% or more common direct or indirect participation rights in multinational groups in scope for CbCR, or 75% in the case of multinationals excluded from such reporting. SMEs as defined by the EU State Aid Regulations fall outside the scope.

Accepted Transfer Pricing Methodologies

Further guidance is expected on the preferred transfer pricing methodologies since the TP Rules published so far only make reference to the arm's length principle. It is expected that methodologies accepted by the OECD Guidelines will also be acceptable to the Maltese tax authorities.

Transfer Pricing Documentation Requirements

Similar to the above, the transfer pricing documentation requirements are expected to be included in the official guidelines, which are yet to be published.

Local Jurisdiction Benchmarks

The TP Rules do not contain benchmarks or benchmarking requirements, but the guiding principle is the arm's length principle. It is yet to be seen whether the official guidelines will adopt the OECD TP Guidelines in conducting financial updates on an annual basis. This seems unlikely, especially in those cases where a business activity does not undergo any significant changes.

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

The TP Rules provide for the issuance of unilateral transfer pricing arrangements (referred to as unilateral transfer pricing rulings) as well as bilateral or multilateral APAs against a fee of €3,000 for APAs and a fee of €5,000 for a BAPA or a multilateral APA. An APA or BAPA is valid for a period of 5 years but a directly interested party must notify the tax authorities of any relevant material changes within 30 days from the latter of the date of its occurence or the date from when such party becomes aware thereof. Also, a unilateral transfer pricing ruling shall have no effect as from the date on which the Maltese tax authorities notify the directly interested party that a relevant material change (as defined in the TP Rules) has taken place.

APAs and BAPAs may be renewed provided the application for renewal is made during the 6 months preceding the expiry and against a fee of €1,000 in the case of APAs and a fee of €2,000 for a BAPA or a multilateral APA.

A request for an APA may be made in connection with the tax treatment of a cross-border arrangement commencing on or after the date that the request was made. However, if the relevant arrangement has already commenced, the scope of the request may be extended to transactions, agreements and dealings that took place within 3 years and that form part of that arrangement.

The tax authorities may withhold the issuing of an APA where the interested party is not up-to-date in its filing obligations with respect to tax returns.

Transfer Pricing Audits

The TP Rules do not contain any specific provisions with respect to transfer pricing audits but these may be carried out by virtue of the powers contained in the income tax legislation.

Transfer Pricing Penalties

The TP Rules do not contain any specific provisions for transfer pricing penalties.

Local Hot Topics and Recent Updates

Given that the TP Rules are new and not yet in force, there are no local hot topics or recent updates. However, taxpayers eagerly await the publication of the guidelines since the TP Rules contain very little or no information especially with respect to transfer pricing methodologies and relevant documentation obligations.

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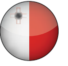

Documentation threshold

Master file	De-minimis threshold for total related party cross-border transactions of €6 million and €20 million revenue and capital respectively measured in the preceding financial year.
Local file	De-minimis threshold for total related party cross-border transactions of €6 million and €20 million revenue and capital respectively measured in the preceding financial year.
CbCR	Turnover €750 million

Submission deadline

Master file	Not Appliable
Local file	Not Applicable
CbCR	CbCR is to be made within 12 months from the last day of the fiscal year of the MNE Group. CbCR notifications by members of the MNE group is to be made by no later than the last day for filing of a tax return of that Constituent Entity for the preceding fiscal year (usually nine months from year-end).

Penalty Provisions

Documentation – late filing provision	Not Appliable
Tax return disclosure – late/incomplete/no filing	Fines up to a maximum of €1,500 may be imposed.
CbCR – late/incomplete/no filing	CbCR not reported within the deadline - €200 and €100 for every day during which the default existed with a maximum penalty of €20,000. Failure to submit notification by a member of MNE (who is not responsible for the CbCR submission) - penalty of €200 and €50 for every day during which the default existed with a maximum penalty €5,000. Penalty for minor errors – €200 + €50 per day with a maximum penalty of €5,000. Penalty for significant non-compliance – €50,000. Penalty for failure to comply with a request of information from the CfR - €100 for every day during which the default existed with a maximum penalty of €30,000.

CONTACT

Walter Cutajar
Avanzia Taxand
Walter.Cutajar@avanzia.com.mt
+ 356 2730 0045

Antonella Galea
Avanzia Taxand
Antonella.Galea@avanzia.com.mt;
+ 356 2730 0045

Maryanne Inguanez
Avanzia Taxand
Maryanne.Inguanez@avanzia.com.mt
+ 356 2730 0045

MAURITIUS

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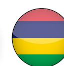

Overview

IQ-EQ, Taxand Mauritius

IQ-EQ Mauritius, part of IQ-EQ Group, one of the leading global investor services group, is a member of the Taxand network since 2009. Taxand Mauritius is a full fledge tax practice providing predominantly tax advisory, compliance and litigation services.

General : Transfer Pricing Framework

In Mauritius, there is no formal transfer pricing legislation. There is however an arm's length test under the Income Tax Act.

Accepted Transfer Pricing Methodologies

Since Mauritius does not have formal transfer pricing, the OECD guidelines are not incorporated into the Mauritius legislations. The cost plus and CUP methods are the most commonly used.

Transfer Pricing Documentation Requirements

There is no prescribed documentation required. However in case of an audit from the tax authority, the tax payer should have supporting documents to defend the arm's length price. Mauritius has implemented Country-by-Country "CbCR" Reporting. Multinational Enterprises having group turnover of EUR 750 million and above need to file CbC Reports/Notifications.

Local Jurisdiction Benchmarks

As there are no formal transfer pricing legislations in Mauritius, there is no specific requirement for benchmarking. However, as the onus to defend the transfer price is on the taxpayer, benchmarking analysis is highly recommended to demonstrate the prices used in case of a challenge from the Mauritius Revenue Authority "MRA".

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

The MRA issues Tax Ruling upon applications made by the tax payer. The Tax Ruling Committee at the MRA is chaired at the end of each month. Full facts need to be submitted to the MRA and a fee of USD 225 is payable at the time of the application. The Committee will ask for agreements and any other supporting documents. Depending on the complexity of the ruling, the Commitee may take between 3 to 9 months to issue a ruling.

Transfer Pricing Audits

Transfer pricing audit is common in Mauritius. The MRA regularly investigates into inter-company transactions, specially on inter-company loans. The statute of limitation in Mauritius is the current and the 3 preceding years of assessments.

The MRA may select companies on a random basis or target companies which answer Yes to the question on the tax return as to whether they have related party transactions to ensure that these transactions have been conducted on an arm's length basis.

Transfer Pricing Penalties

There is no specific penalty for non compliance with transfer pricing. However, where the MRA adjusts the tax payable, there is an assessing penalty of up to 50% of the amount assessed together with a 5% late payment penalty and interest of 0.5% per month until the amount is settled.

Local Hot Topics and Recent Updates

Mauritius has undergone major tax reforms to comply with the international standards of the OECD and the EU. The previous tax regime whereby only GBC1 companies would benefit from the Deemed Foreign Tax Credit of 80% on all their foreign source income was considered a harmful tax practice and has been abolished.

With effect from 1 January 2019, Mauritius has instead introduced an 80% partial exemption regime on specified income streams. The partial exemption is only available if, amongst others, a company carries its Core Income Generating Activities ("CIGA") in Mauritius and meets the required substance as prescribed in respect to these income streams.

The partial exemption applies to the grandfathered companies as from 1 July 2021.

GBC1 companies that obtained their licences prior to 16 October 2017 were grandfathered and are deemed to be converted into GBL companies on 1 July 2021. These companies need to ensure that they meet the substance requirements of the Global Business License "GBL".

The Financial Servies Comission ("FSC") stopped issuing GBC2 Licence post 30 June 2021. Companies could either convert into GBL or apply for an authorization to become an Authorised Company.

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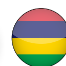

Documentation threshold

Master file	Not Applicable
Local file	Not Applicable
CbCR	Euro 750 million

Submission deadline

Master file	Not Applicable
Local file	Not Applicable
CbCR	12 months after accounting year end

Penalty Provisions

Documentation – late filing provision	Not Applicable
Tax return disclosure – late/incomplete/no filing	Late filing penalty capped at USD 445 p.a.
CbCR – late/incomplete/no filing	USD 110

CONTACT
Feroz Hematally
IQ-EQ
Feroz.Hematally@iqeq.com
+230 213 9936

Faraaz Jauffur
IQ-EQ
Faraaz.Jauffur@iqeq.com
+230 405 0226

MEXICO

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Overview

Mijares, Angoitia, Cortés y Fuentes, S.C., Taxand Mexico

We offer general Transfer Pricing "TP" planning and structuring services in cross-border transactions, as well as the review of TP documentation and drafting of intercompany agreements. We also offer tax litigation services with regards to TP matters, and negotiation and implementation of Advance Pricing Agreements "APA" and Mutual Agreement Procedures.

General: Transfer Pricing Framework

Mexican resident taxpayers who execute transactions with related parties are required to calculate their gross income and authorized deductions using the prices, considerations, and profit margins that would have been used by independent parties in comparable transactions (i.e., the arm's length principle is applied). For such purposes, they shall keep the supporting documentation to demonstrate compliance with the arm's length principle.

Chapter II of Title VI of the Mexican Income Tax Law "MITL" contains the relevant TP provisions. Additionally, the OECD Guidelines can be used to interpret such provisions to the extent that they are consistent with the provisions of the MITL and the tax treaties entered into by Mexico.

Mandatory TP documentation generally follows BEPS Action 13's guidelines and includes the preparation of TP studies as well as the submission of a Local File, a Master File, and Country by Country Reporting "CbCR", observing certain preferred methods and formalities set forth in the MITL. The TP documentation habitually contains a description of all related party transactions, benchmark analysis, and the disclosure of the comparable transactions used in the analysis.

In addition to the documentation in compliance with BEPS Action 13 described above, taxpayers must also file an informative return disclosing transactions executed with related parties no later than May 15 of the following fiscal year to which the informative return corresponds.

Accepted Transfer Pricing Methodologies

Mexican resident taxpayers shall apply first the CUP method and may only use the other methods when the CUP method is inappropriate for determining if transactions were conducted at arm's length and, in such cases, RP and CP methods are preferred over the remaining methods.

The MITL does not recognize cost sharing or cost contribution agreements, therefore, such agreements are usually challenged when implemented given the formalistic approach required by the tax authorities for tax documentation.

In the case of the Mexican toll manufacturing industry, commonly known as maquiladoras, Mexican resident companies that operate under the Program for Manufacturing, Maquiladora and Exportation Services Industry ("Mexican Maquiladoras") are deemed to comply with the arm's length principle when certain safe harbors are met. It will be deemed that the services rendered by Mexican Maquiladoras to their non-Mexican resident principals are at arm's length when their taxable profits equal to the greater of either (i) 6.9% of the total asset value used in the toll manufacturing operation in a given fiscal year, or (ii) 6.5% of the total operating costs and expenses incurred by the Mexican Maquiladora.

Transfer Pricing Documentation Requirements

Mexican resident taxpayers entering into transactions with related parties are required to submit Local File and Master File documentation if they fall under any of the following assumptions:

a) Publicly traded companies;

b) if the taxable income for income tax purposes of the previous fiscal year is equal to or greater than MXN $974.6 million (approximately USD $55.37 million);

c) companies belonging to a tax group under Mexican rules;

d) State-owned companies of the Federal Public Administration; and

e) related parties of a publicly traded company or a company with taxable income for income tax purposes in the previous fiscal year is equal to or greater than MXN $1,779 million (approximately USD $101.07 million).

CbCR is only required to be submitted by:

1) Mexican resident controlling multi-national companies, as defined in the MITL, which are not in turn subsidiaries of a non-Mexican company and have earnings exceeding MXN $12,000 million (approximately USD $681.81 million); and

2) Companies appointed by a non-Mexican resident controlling multi-national company as responsible for filing the CbCR of its multi-national group.

Local File documentation must be submitted no later than May 15 of the following fiscal year to which the report corresponds. The Master File documentation and CbCR must be filed no later than December 31 of the following fiscal year to which the report corresponds.

Local Jurisdiction Benchmarks

Benchmark analysis is required to comply with the arm's length principle. There is preference for local comparable transactions. However, they are generally unavailable, and therefore, regional and global comparable transactions are mostly used in practice.

Depending on the type of transaction and industry sectors, different transfer pricing methods are preferred. However, in general, the TNM method is most used, rather than the CUP, RP or CP methods, given the sensitivity to available information for benchmarking.

As of 2022, information regarding comparable transactions corresponding to the year under analysis shall be considered, and only when the business cycles cover more than one year, information corresponding to two or more years, either before or after, may be considered.

In Mexico, internal CUPs are acceptable. Conversely, PS and RPS methods are constantly scrutinized and challenged by the Mexican tax authorities.

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

It is possible to obtain rulings issued by the Mexican tax authorities with the effects of an APA or a BAPA. General requirements include submitting information, data and documentation regarding methodology used for determining prices or consideration amounts in transactions with related parties.

A ruling with the effects of an APA or a BAPA consists of a methodology proposal filed by the taxpayer with aims to be confirmed by the tax authorities. Therefore, there is no negotiation between the taxpayer and the tax authorities to reach an arm's length result, and as such, a proposed methodology may only be confirmed or denied by the tax authorities. If confirmed, a ruling is valid for the fiscal year in which it is granted, the previous fiscal year and the following three fiscal years.

A BAPA may be granted for a longer term, typically up to five years, if provided for under a double taxation treaty entered into by Mexico.

Filing fees of requests for rulings with the effects of an APA or a BAPA are applicable and amount to MXN $275,906 (approximately USD $15,676). Upon a request, Mexican tax authorities are required to issue a ruling within three months of the date in which the request is filed. As previously stated, it is the tax authority's discretional ability to issue a positive or a negative ruling. Negative rulings may be challenged in court.

Transfer Pricing Audits

The Mexican tax authorities tend to audit TP matters commonly on manufacturing activities and financial services, specifically challenging the comparable transactions that are used for benchmarking analyses.

Further, the Mexican tax authorities tend to question the valuation methods used or intangible assets and benchmarking related to royalty payments and technical assistance fees. Likewise, the functional analysis related to these matters is carefully reviewed from a substance perspective (i.e., whether the functions were effectively carried out).

Recently, it has also become common for the tax authorities to question commonly used stock valuation methods, such as the discounted cashflow method, giving preference to the equity value of the relevant company, adjusting such equity for inflation.

Transfer Pricing Penalties

The Mexican tax authorities may impose penalties to those taxpayers that are required to submit TP documentation and fail to do such submissions or submit TP documentation with mistakes, inconsistencies or in a different manner than the indicated in the applicable tax provisions.

Likewise, such tax authorities may adjust taxable income and authorized deductions when they deviate from the arm's length principle. In this case, any taxes omitted from such adjustments shall be covered with inflation and surcharges levied at a 1.47% monthly rate. Furthermore, penalties equal to 55% to 75% of the historical omitted taxes may be levied.

Local Hot Topics and Recent Updates

Until 2022, Mexican Maquiladoras were able to secure rulings for their manufacturing transactions with USA resident related parties, with the effect of an APA by determining their profit margin under the Qualified Maquiladora Approach that was negotiated between the Mexican tax authorities and the USA tax authorities through a Memorandum of Understanding. Such procedure was referred to as the fast-track procedure. This APA was available as an alternative to the existing safe harbors set forth in the MITL and to APAs requested pursuant to another proposed methodology.

Derived from the tax reform that entered into force on January 1, 2022, APAs, and therefore also APA's under the fast-track procedures, are no longer available to the Mexican Maquiladora regime. Notwithstanding, any request for a ruling filed before 2022 may still be eligible for the fast-track procedure, and therefore, it may be valid for the fiscal year in which it has been requested, and for the following years according to the terms of the authorizations.

Finally, the tax reform that entered into force on January 1, 2022, requires the TP analysis to consider comparable transactions corresponding to the year under analysis and only when the business cycles or commercial acceptance cover more than such year, it is allowed to consider comparable transactions corresponding to previous or following years.

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Documentation threshold

Master file	MXN $974.6 million (approximately USD $55.37 million)
Local file	MXN $974.6 million (approximately USD $55.37 million)
CbCR	MXN $12,000 million (approximately USD $681.81 million)

Submission deadline

Master file	December 31 of the following fiscal year to which the report corresponds.
Local file	May 15 of the following fiscal year to which the report corresponds.
CbCR	December 31 of the following fiscal year to which the report corresponds.

Penalty Provisions

Documentation – late filing provision	No penalties apply as long as compliance is spontaneous.
Tax return disclosure – late/incomplete/no filing	Penalties between MXN $199,630 (approximately USD $11,342) and MXN $284,220 (approximately USD $16,148).
CbCR – late/incomplete/no filing	Penalties between MXN $199,630 (approximately USD $11,342) and MXN $284,220 (approximately USD $16,148).

CONTACT

Luis Monroy

Mijares, Angoitia, Cortés y Fuentes

lmonroy@macf.com.mx

+52 55 5201 7466

NETHERLANDS

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Overview

Taxand Netherlands

Taxand Netherlands is a tax advisory firm based in Amsterdam and offering a full range of tax services focusing on multinationals and private equity.

Taxand Netherlands' team can assist in every aspect of transfer pricing services ranging from (1) compliance and reporting to (2) analysis, planning and strategy and (3) disputes and controversy:

- With compliance and reporting we cover preparing benchmarks and transfer pricing master file and local file documentation, from full-fledged to tailor made. We can assist on global or local filings and putting your numbers into context. Furthermore, we can assist with Country-by-Country reporting.
- With analysis, planning and strategy we cover TP model design, value chain optimization, business restructuring, full-service assistance in setting up the TP strategy and policy or just a sanity check or second review and sustainability analysis.
- With disputes and controversy, we cover assistance in transfer pricing audits, Mutual Agreements Procedures, arbitration and preventing or resolving tax disputes by concluding unilateral, bilateral or multilateral APAs.

General : Transfer Pricing Framework

The arm's-length principle and the general documentation requirements are laid down in article 8b of the Corporate Income Tax Act ("CITA"). Multinational enterprises ("MNE's") with a consolidated revenue exceeding EUR 50 million in the preceding year should prepare more elaborate TP documentation in the form of a master file and local file in line with article 29b CITA.

MNE's with a consolidated revenue exceeding EUR 750 million in the preceding year should also comply with the country-by-country reporting rules as laid down in article 29b CITA. Following the update of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations ("OECD Guidelines") in January 2022, an update of the Dutch Transfer Pricing Decree ("TP Decree") was published on 1 July 2022. The biggest changes in the TP Decree are the guidance on financial transactions as per Chapter X of the OECD Guidelines. The Dutch transfer pricing rules and arm's length principle are generally in line with the OECD Guidelines.

Accepted Transfer Pricing Methodologies

The OECD Guidelines are not incorporated in Dutch legislation, however based on the TP Decree, the OECD Guidelines are considered as internationally accepted guidance providing explanation and clarification of the (application of the) arm's length principle. In line with the OECD Guidelines, the Dutch tax authorities (hereafter: "DTA") must begin a transfer pricing examination from the perspective of the method selected by the taxpayer. The taxpayer, however, must be able to substantiate why the chosen method is appropriate in view of the relevant facts and circumstances.

Although not explicitly mentioned, the CUP method is generally the preferred method by the DTA but because comparable uncontrolled transactions are difficult to find, in practice, TNMM method is the most used transfer pricing method.

The taxpayer is allowed to apply any other method as long as it can be demonstrated that it leads to an arm's length outcome.

Transfer Pricing Documentation Requirements

Article 8b paragraph 3 of the CITA requires taxpayers to document and substantiate all intercompany transactions to support the arm's length nature. As no threshold applies to this obligation, this also applies to small and medium sized companies. The provision requires Dutch taxpayers to document the transactions entered into with "related entities" which includes both cross-border and domestic transactions.

In accordance with Article 29g CITA, Dutch law requires MNE's that meet or exceed the threshold of EUR 50 million of consolidated group revenues in the preceding year, to prepare a master file and a local file in accordance with BEPS Action 13. The master file and local file documentation needs to be available in the Dutch taxpayer's administration at the due date of filing of the corporate income tax ("CIT") return for the respective year. The master file and local file need to be updated annually. Every local Dutch entity (or permanent establishment) needs to prepare a entity specific local file. For Dutch entities joint in the same fiscal unity for CIT purposes it is generally accepted to prepare one local file covering all entities part of the same fiscal unity.

MNE's that meet or exceed the EUR 750 million annual revenue (in the preceding year) threshold also need to comply with the country-by-country ("CbC") reporting rules as mentioned in article 29c - 29e CITA. Dutch taxpayers therefore need to file a country-by-country report if the ultimate parent entity or the surrogate parent entity is tax-resident in the Netherlands. The report needs to be filed within 12 months exceeding the reporting year. All Dutch taxpayers part of a MNE that meets or exceeds the EUR 750 million threshold and where the CbC report is filed outside the Netherlands need to submit a CbC notification before year end of the respective reporting year.

Local Jurisdiction Benchmarks

Depending on the applied TP method benchmarking studies can support the arm's length nature of an intercompany transaction. The DTA accepts pan-European benchmark studies and allows all profit level indicators as described in the OECD guidelines. Benchmark studies need to meet specific comparable search strategy standards as set by the DTA.

The DTA generally refers to multiple year data and the interquartile range in terms of benchmarking. In line with the OECD Guidelines, a benchmark study needs to be prepared every three years. Although not obligated a financial update of the benchmark study data is preferred in the two years in between.

To set or support royalty percentages as a payments for the use of intellectual property a benchmark study can be performed however, in practice these studies are not accepted or highly scrutinized by the DTA. Instead, a Value Chain Analysis ("VCA") can be performed and is preferred by the DTA.

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

Since 1 July 2019, a revised Decree on international tax rulings entered into force in the Netherlands. This Decree also contains regulations for APAs and BAPAs (and even Multillateral APA's). The requirements for both are the same, namely, a ruling will no longer be granted if:

- there is no 'economic nexus' in the Netherlands;
- the main purpose of the transactions is to avoid taxes in the Netherlands or abroad; or
- the party or an (in)direct shareholder with which transactions take place is on the EU list of non-cooperative jurisdictions or on the Dutch blacklist.

The Dutch tax authority endeavors to complete BAPA cases within two years, which is in line with the minimum standard as described in BEPS Action 14.

An APA under the Dutch ruling practice can cover for instance the topics of the classification and remuneration of (intercompany) transactions and/or the profit allocation for permanent establishments can be established. Depending on the complexity of the case an APA can be concluded within 2-6 months. As more strict requirements have been implemented and different departments of the DTA need to be involved for the (B)APA procedure the lead time can take longer.

No application fees are in order.

Transfer Pricing Audits

The Dutch tax authorities can perform audits at random. TP audits are at the top of the list of the DTA. They define matters of interest on an annual or regular basis, which are used in the selection process. The Dutch tax authorities do not conduct audits on periodical basis. However, following the introduction of the new TP Decree in 2022, tax inspectors are highly likely to audit taxpayers and apply the rules set forth in the TP Decree. There seems to be more attention for financial transactions.

Transfer Pricing Penalties

Fines up to a maximum of EUR 900,000 can be imposed on the taxpayer for non-compliance with notification and filing obligations for country-by-country reporting. A tax inspector must consult the technical coordinator of formal law before imposing a fine. In practice, we have not encountered any fines that were imposed in this respect.

Local Hot Topics and Recent Updates

TP is at the top of the list of the DTA for inspections/audits. Hot topics in this respect are financial transactions, VCA and Service charges.

Financial transactions: As new guidance has been published on financial transactions the market (DTA as well as MNE's) has put more focus on these intercompany transactions. The DTA has gained more experience on these transactions and therefore they are challenged more and more. Focus is put on more support and more extensive analysis of parties involved in the financial transactions, cash pools (remuneration of cash pool leader and participants / reclassification of cash pool positions) and guarantees. Functions performed and risks taken are more relevant. With this the DTA are stepping away from the safe harbor rule (equity at risk 1% loan volume or 2 million) albeit this rule is not officially abolished. If not functions are performed and no or limited risks are run a rumination related to costs instead of interest margin is felt more appropriate.

Value Chain Analysis: The VCA is becoming a more common approach to substantiate and/or to support the arm's length nature of more complex transactions/business/TP models or individual transactions involving license fee payments for which a benchmark study is generally not accepted in the Netherlands. The VCA provides tax authorities with a more in-depth view of the company as well as the value that should be attributed to parts of the tax payers business. By applying the VCA tax authorities get a two or more-sided approach which is nowadays a must.

Intercompany service: Within many MNE's services are performed between or on behalf of affiliates. As these services are often not well supported, they are considered an easy target for the DTA. Items to take into consideration for services are cost allocations, benefit analysis as well as the mark up to be applied.

NETHERLANDS

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Documentation threshold

Master file	Consolidated group turnover EUR 50 million
Local file	Consolidated group turnover EUR 50 million
CbCR	Consolidated group turnover EUR 750 million

Submission deadline

Master file	Should be available in the taxpayer's administration upon due date filling corporate income tax.
Local file	Should be available in the taxpayer's administration upon due date filling corporate income tax.
CbCR report	Submission within 12 months after end of reporting year.
CBCR notification	Before year end of the reporting year.

Penalty Provisions

Documentation – late filing provision	Administrative fines up to a maximum of EUR 5,514 can be imposed.
Tax return disclosure – late/incomplete/no filing	Administrative fines up to a maximum of EUR 5,514 can be imposed.
CbCR – late/incomplete/no filing	Fines up to a maximum of EUR 900,000 can be imposed on the taxpayer for non-compliance with notification and filing obligations for CbCR reporting.

CONTACT
Jimmie van der Zwaan
Taxand Netherlands
Jimmie.vanderZwaan@taxand.nl
+ 31 20 435 64 22

NORWAY

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Overview

Selmer Law firm, Taxand Norway

Selmer is a full service law firm based in Oslo and Stavanger, Norway. We offer a full range of tax advisory and litigation services, covering in practice all business sectors.

Selmer's team can assist in every aspect of transfer pricing services, including compliance and reporting, analysis, tax planning and strategy and disputes.

General: Transfer Pricing Framework

Norway has implemented the OECD TP Guidelines as Norwegian law and, accordingly, also the arm's-length principle. Thus, the transfer pricing rules and arm's length principle are generally in line with the OECD Guidelines.

The legal framework is outlined in the Income Tax Act ("ITA").

Accepted Transfer Pricing Methodologies

In general, Norway follows the OECD TP guidelines as to which transfer pricing methodologies are accepted and preferred.

The taxpayer must be able to substantiate why the chosen method is considered appropriate, based on the relevant facts and circumstances.

In principle, the CUP method is the preferred method by the DTA but because comparable uncontrolled transactions are difficult to find, in practice, the cost plus method (typically for group services) and the TNMM method are the most popular transfer pricing methods.

Transfer Pricing Documentation Requirements

The NTA requires taxpayers to be able to substantiate all related party / intercompany transactions in transfer pricing documentation. There is no threshold to this obligation, and the requirement must be seen as a general requirement for all controlled transactions. The requirements are:

- Duty to disclose; The disclosure and reporting of controlled transactions are made in a form delivered as part of the annual tax return. This obligation applies for all businesses, except if the controlled transactions of the taxpayer in aggregate is less than 10 million NOK and at year end the total receivables/debt between related parties is less than 25 million NOK.
- Duty to document; Taxpayers subject to the disclosure requirement shall also prepare TP documentation, unless the business has less than 250 employees, and either sales income less than 400 million NOK or a total balance (in its accounts) less than 350 million NOK (all values on a consolidated basis).

The documentation should be in the form of a group master file and local file in accordance with the OECD TPG. The documentation must be delivered to the NTA within 45 days after written notice.

The documentation generally should include information on the related party/group structure, the business carried out, the legal and management structure, the intra group transactions, and the choice of TP methodology used. There is no fixed requirement as to prepare a benchmark of the transactions involved, but this is often used to substantiate the chosen mark-up/margin.

Local Jurisdiction Benchmarks

In Norway, a benchmark analysis is not mandatory. However, if a benchmark analysis is not prepared the taxpayer may have substantial problems documenting and substantiating the margin/mark-up used and the NTA will be in a better position to amend the taxpayer's pricing and increase the taxpayer's taxable income.

It is therefore generally recommended that a benchmark analysis is carried out, at least if the amounts involved are material.

The NTA accepts both local and pan-European benchmarks, provided that they meet comparable search strategy standards. The NTA generally refers to multiple year data and the interquartile range in terms of benchmarking. Most taxpayers update their benchmark searches every 1-3 years, depending also on if the business activity has undergone significant changes or not.

Benchmark analyses prepared in accordance with generally accepted standards are normally accepted by the tax authorities, but we also see cases where the benchmark studies are challenged.

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

In Norway there is no legal framework for APA's, but APA's are used more and more over the last 4-5 years, and may be entered into in accordance with the relevant tax treaty and the MAP procedures.

An APA will normally not be granted if the main purpose of the transaction is to avoid taxes in Norway or abroad.

Transfer Pricing Audits

In Norway, transfer pricing is a focus area of the NTA and the NTA performs TP audits on a regular basis. The NTA defines matters of interest on an annual or regular basis. Taxpayers with significant cross border controlled transactions should expect a TP tax audit. The TP audits may cover practically all areas, including financial transactions.

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Transfer Pricing Penalties

In Norway penalty tax may be levied with a rate of up to 60% of the tax that should have been paid had the taxpayer filed correct information. The base requirement for imposing penalty tax is that the taxpayer has provided the NTA with insufficicient or wrongful information, and penalty tax is not levied due only to lack of documentation. A requirement is that the lack of documentation had or could have led to reduced taxable income.

In cases where the taxpayer has been negligent, only the maximum penalty tax is 30%. In cases with gross negligence or willful tax fraud the rates are up to 60%. There is no maximum nominal amount.

Local Hot Topics and Recent Updates

In Norway it seems that the NTA over the last few years have had a strong focus on financial transactions and the application of arm-length interest rates.

Documentation threshold

Master file	MNOK 400 (or balance MNOK 350)
Local file	MNOK 400 (or balance MNOK 350)
CbCR	6 500 000 000 NOK (appr. MEuro 600)

Submission deadline

Master file	45 days from request from NTA
Local file	45 days from request from NTA
CbCR	Within 12 months after end of tax year

Penalty Provisions

Documentation – late filing provision	N/A - Norway applies penalty tax if taxable income is increased and the taxpayer negligently has provided wrongful or incomplete information.
Tax return disclosure – late/incomplete/no filing	N/A – see above
CbCR – late/incomplete/no filing	N/A – see above

CONTACT
Sverre Hveding
Selmer
s.hveding@selmer.no
+47 975 27 975

POLAND

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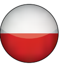

Overview

Crido Taxand S.A., Taxand Poland

Crido Taxand is a tax advisory firm based in Warsaw and Cracow, offering the full scope of tax advisory and compliance services.

Our Transfer Pricing ("TP") Team is one of the largest and most experienced TP teams in Poland; we have a team of over 40 experts including 3 partners and 8 managers.

We are one of the most recognized transfer pricing teams in Poland. Our TP Team has also been recognized as the 'Poland Transfer Pricing Firm of the Year' at the ITR European Tax Awards for multiple years, 2016-2023, which is a result of our complex, innovative and often ground-breaking projects entrusted to us by our dedicated clients.

We offer full scope of transfer pricing services: designing TP models and policies, creating TP strategies, full range of TP analyses, valuations and benchmarking studies for all types of transactions, including financial and IP valuations, TP compliance, TP reporting, assistance in TP audits, litigation, APA and MAP procedures.

General: Transfer Pricing Framework

The Polish transfer pricing regulations generally follow the OECD Transfer Pricing Guidelines' ("OECD TPG") approach, adopting the arm's length principle, three-tier documentation, TP adjustments, and APA and MAP procedures. However, in some areas more detailed information in the TP documentation or more reporting obligations might be required.

OECD TPG are not part of the Polish law, however they are used as an explanatory instrument. In practice, when discussing transfer pricing cases with tax authorities, specifically the APAs with Polish competent authorities, OECD TPG are often used as supportive to the local regulations.

Not only foreign, but also domestic, transactions are subject to TP obligations.

Related parties are:

a) parties when one exerts considerable influence on another,

b) parties upon which a third party exerts considerable influence,

c) a partnership and its partners, or

d) a taxpayer and its foreign permanent establishment.

Exerting significant influence is understood as:

1) holding directly or indirectly at least 25 percent of shares in capital, or in voting rights in control or in decision-making bodies, or shares in profits or property or expectancy thereof,

2) actual ability of a person to influence taking key economic decisions by an entity, or

3) familial links up to a second degree.

Accepted Transfer Pricing Methodologies

All five transfer pricing methods from the OECD TPG are accepted. There is no preference of any method and the most appropriate to the transaction should be applied. Where it is impossible to apply one of the five standard methods, another method shall be applied, including the customary valuation techniques.

Transfer Pricing Documentation Requirements

Generally, the OECD TPG three-tier TP documentation approach is transposed to the TP regulations in Poland.

Country-by-country reporting (CbC)

Polish parent companies (or subsidiaries appointed by the parent company) of groups with an annual turnover of or over EUR 750 million must file the CbC form wihtin 12 months after the year-end. The CbC report must be also filed to Tax Authorities by the local subsidiary when the reporting entity resides in a country without the CbC obligations or without effective tax information exchange with Poland.

Additionally, Polish subsidiaries of reporting groups must file an annual CbC notification, before year-end, covering identification of the reporting entity and their residence jurisdiction.

Masterfile documentation

For capital groups with consolidated group revenues of, or exceeding, PLN 200 million in the previous year a Masterfile documentation is required.

Masterfile is in line with OECD TPG standards and there is a possibility to use the Masterfile prepared by another group entity. An English version is allowed. Masterfile documentation must be prepared by the end of 12th month after the year-end.

Local File documentation

For intercompany transactions exceeding certain materiality thresholds (PLN 10 million for goods and financial transactions, PLN 2 million for services and other transactions), a Local File documentation is required. The Local File documentation follows the OECD TPG standard, must be prepared in Polish, and be available by the end of the 10th month after the year-end.

The Local File documentation must always include a transfer pricing analysis with a benchmarking study or a compliance analysis, where a benchmarking study is impossible to procure.

TP documentation simplifications and exemptions

Micro and small enterprises are not obliged to include a transfer pricing analysis in their TP Local File documentation.

Domestic transactions between two companies reporting taxable income (not loss) are exempt from preparing the TP documentation.

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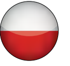

There are two safe harbours allowed under Polish TP regulations – 1) for low value-adding services and 2) for small financing transactions (loans or bonds). TP regulations list specific conditions to be met in order to apply the safe harbours. If safe harbour is applied, no TP analysis or TP Local File is necessary.

TP reporting

Each company that is preparing the TP documentation must report transfer prices to Tax Authorities through their respective Tax Office. Reporting is done electronically, with a dedicated TPR-C form, by the end of 11th month after the year-end. TPR-C form must be signed with a qualified electronical signature by a person authorized to represent the legal entity.

Local Jurisdiction Benchmarks

Transfer pricing analysis is an obligatory element of a TP documentation. When it comes to comparable data, generally global or Pan-European benchmarking studies might be accepted if these are the most appropriate for the documented transaction. There is a slight preference towards local comparables, which should at least be included in the search strategy. Both internal and external comparables are accepted. If a benchmarking study based on comparables cannot be prepared, for instance due to lack of appropriate data, a TP compliance analysis can be prepared. This analysis describes in a more general manner, or with other market data, the terms of the transactions to evidence that they were set at arm's length.

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

Unilateral, bilateral or multilateral APAs are all allowed in Poland. In fact they are the only measures to prevent transfer pricing disputes on the arm's length nature of the pricing of a transaction.

APAs can be concluded for up to five years and at the end of this period the agreement can be renewed. APAs are concluded through a negotiation process with the National Fiscal Administration – the Polish competent authorities for APAs.

Concluding an APA is subject to an administrative fee to be paid in advance of submitting the APA application. The fee varies depending on the type of the APA:

- up to PLN 100 thousand for a unilateral APA, and
- up to PLN 200 thousand for a bilateral or multilateral APA

It may take a few years to conclude the APA, depending on the merit of the transaction and if it is a uni-, bi- or multilateral procedure. The APA provisions state 6 month for uni-, 12 months for bi- and 18 months for multilateral APAs.

Transfer Pricing Audits

Polish tax authorities can perform audits randomly, as a separate process or jointly with a general corporate income tax audit. Following the introduction of the TP reporting with TPR-C form in 2019, Polish tax authorities have access to much detailed data about intragroup transactions, their pricing and comparability analyses results. Therefore, TP audits are becoming more and more targeted. Also, certain tax inspection offices specialize in conducting the TP audits, having the ability to target taxpayers for the audit countrywide, even outside of their local jurisdiction.

Transfer Pricing Penalties

If transfer prices are questioned by tax authorities, an additional tax liability may be charged, which amounts to 10% of total amount of unduly reported or overstated tax loss and not fully or partially reported tax income to the extent resulting from the decision. The legislation stipulates also a possibility of doubling the penal liability (20%) if the basis for determining additional tax liability exceeds PLN 15 million (for the part exceeding this amount) or the taxpayer fails to submit TP documentation for a given transaction (unless it is completed within the deadline specified by the tax authority, no longer than 14 days) and even tripling (30%) if the amount exceeds PLN 15 million and at the same time the taxpayer fails to submit TP documentation (unless it is completed within the deadline specified by the tax authority, no longer than 14 days). The additional tax liability will be increased by the interest on arrears.

For non-filing, late-filing or wrong-filing of the TPR-C reports to the tax office and the TP documentation to the tax authorities (upon their request), there are also fiscal penalties for board members of the company. The size of the penalty fine will depend on multiple factors, it may be up to 720 daily rates (they are based i.e. on the persons income), which may amount up to approx. PLN 30 million.

Local Hot Topics and Recent Updates

Since TPR-C reporting is happening in Poland since 2019, tax authorities start targeting taxpayers for TP audits based on the information reported in those forms. Hot topics include: confirmation of arm's length nature of any flows (service charges, interest rates, intangible royalties) that are subject to withholding tax in Poland. Financial transactions are on a constant agenda of the tax inspectors, the same as multiple-year loss making companies.

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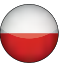

Documentation threshold

Master file	PLN 200 million of the group consolidated revenue in the year before the documented year
Local file	PLN 10 million for goods and financing PLN 2 million for services and other transactions PLN 2.5 million and PLN 0.5 million for the respective transactions with tax havens
CbCR	EUR 750 million

Submission deadline

Master file	12 months after the reportable year-end
Local file	10 months after the reportable year-end
CbCR	12 months after the reportable year-end

Penalty Provisions

Documentation – late filing provision	Personal-fiscal penalties for the board members up to approx. PLN 30 million
Tax return disclosure – late/incomplete/no filing	Penalty up to PLN 30 million for incorrect data or failure to submit the TPR-C return. Penalty up to PLN 10 million for late submission of the TPR-C return.
CbCR – late/incomplete/no filing	Penalty up to PLN 1 million for late submission, incorrect data or failure to submit CBC-R report or the CBC notification
Non-compliance with the arm's length principle	Personal-fiscal penalties for the board members up to approx. PLN 30 million for late submission or incorrect transfer pricing statement. For the company - additional tax liability of 10%, 20% or 30% tax rate on reassessed taxable income, increased by penalty interest for tax arrears

CONTACT
Anna Wcislo
Crido
anna.wcislo@crido.pl
+ 48 604 259 126

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Overview

Garrigues Portugal, S. L. P. - Sucursal, Taxand Portugal

Garrigues Portugal, a law firm headquartered in Spain, with offices in Portugal (Lisboa and Porto), offers a full range of tax and legal advisory services at local, regional and global level. Garrigues Portugal counts with a specialized and experienced transfer pricing "TP" team providing a full-service offer, e.g. advisory services ranging from mere documentation to engaging analysis, strategic planning and addressing disputes and controversies or valuations, as follows:

- Preparation of TP documentation (Master File / Local File / Country-by-Country Reporting "CbCR"); Assisting on the tax returns related with TP policies and transactions; Drafting and review of intercompany agreements (TP aspects)
- Review and design of TP policies, economic analysis / TP benchmarks (e.g., prices, margins, interest rates, royalty rates, valuations); Model intragroup transactions and supply chain
- Preparation and negotiation with the tax authorities of advance pricing agreements "APAs"; Assistance in relation to mutual agreement procedures "MAPs"
- Assisting in TP inspection procedures and litigation.

General: Transfer Pricing Framework

Article 63(1) of Corporate Income Tax Code "CITC" and article 1 of Ministerial Order no. 268/2021, of 26th of November "Ministerial Order no. 268/2021" foresee the arm's length standard by requiring for corporate tax purposes that the terms and conditions practiced, accepted and agreed between related parties in their commercial, financial, restructuring dealings and profit/loss allocations follow those that would have been expected in similar transactions between unrelated parties. The OECD Transfer Pricing Guidelines "OECD Guidelines" are referred in the Portuguese Transfer Pricing legislation "Portuguese TP legislation" as a source of recommended guidance in the application of the arm's length principle, given its complex application and the need to avoid double taxation and litigation.

TP documentation obligations are also in force.

Accepted Transfer Pricing Methodologies

The TP methods stipulated in Portuguese TP legislation - Article 63(3) of CITC and Article 6(1) of Ministerial Order no. 268/2021 - are aligned with those outlined in the OECD Guidelines and can be categorized into two groups: traditional methods and profit-based methods. The Comparable Uncontrolled Price "CUP", Resale Price and Cost-Plus methods are considered traditional methods, while the Transactional Net Margin Method and Profit Split Method fall under the profit-based category. In addition, the Portuguese TP legislation provides the possibility to adopt other generally accepted methods, techniques or models for the economic valuation of assets, whenever the previously mentioned methods cannot be used due to the unique or singular nature of the transactions or the lack of reliable comparable information.

In line with the OECD Guidelines, the Portuguese TP legislation has eliminated any specific reference to a hierarchy in their application, adopting the best method rule. The selection of the most appropriate method depends on the specific characteristics of the transaction under analysis and requires that the selected TP method ensures a reliable assessment of the arm's length principle.

Transfer Pricing Documentation Requirements

Article 17 of Ministerial Order no. 268/2021 states that the obligation to prepare the TP documentation (comprised by both Master File and Local File) applies to any taxpayer registering annual revenues equal to or higher than EUR 10,000,000 during fiscal year to be documented. There is a reporting exemption for controlled transactions in amounts of less than EUR 100,000 (per transaction, per counterparty) and, in globality, of EUR 500,000. These exemptions do not cover controlled transactions carried out with taxpayers resident outside the Portuguese territory and subject to a more favourable tax regime.

Despite being exempt from preparing TP documentation, since the total revenues are lower than the threshold of EUR 10,000,000, the Portuguese taxpayers should be in position to prove the compliance with the arm's length principle regarding the transactions carried out with related entities in case of a potential tax inspection conducted by Portuguese Tax Authorities "PTA".

The Portuguese TP legislation currently in force requires more and more detailed information, when compared with the OECD Guidelines, to be included both in the Master File and Local File, stating in Appendix I of the Ministerial Order no. 268/2021 an exhaustive list of elements which are mandatory to include.

Taxpayers qualified as Small and Medium Enterprises "SME" are allowed to prepare simplified TP documentation.

The TP documentation must be prepared in Portuguese.

Controlled transactions and amounts must be reported in Annex H of the so-called Simplified Business Information "IES", together with other TP relevant information (e.g., the taxpayer should indicate if TP documentation was prepared).

Large Taxpayers are obliged to submit their TP documentation to PTA no later than the 15th day of the 7th month following the fiscal year end. The same deadline applies to the filing of the "IES". For taxpayers not falling under this category, the submission of TP documentation is compulsory upon PTA's request. The usual administrative deadline for submitting the documentation is 10 days.

CbCR and CbCR notification rules, generally in line with the OECD Guidelines, are also in force. CbCR must be submitted by the ultimate parent entity of the Group until the end of the 12th month after the end of the fiscal year to which it refers. The CbCR notification must be submitted by the Portuguese constituent entities until the end of the 5th month after the closing of the fiscal year to which the CbCR refers.

Local Jurisdiction Benchmarks

There is a tendency to prefer domestic comparables specially in those cases where the controlled transactions under evaluation would involve terms and conditions significantly connected with specific/exclusive characteristics of the domestic market. If necessary, Iberian or European comparables may be used.

The use of both internal and external comparables is accepted.

The criteria used by the taxpayer when preparing benchmarks together with the point of the range used as reference are often scrutinized by PTA in tax inspections.

Domestic legislation allows the use of an arm's length range and statistical measures for its determination. The use of the median as reference value in the context of potential adjustments resulting from a tax inspection is stated in the legislation.

When applying a TP method, and if the terms and conditions of the tested transaction are not fully comparable in any of the relevant aspects required for an arm's length test, comparability adjustments must be performed in order to eliminate the effect of the existing differences. The Portuguese TP legislation is generally in line with the OECD Guidelines regarding comparability adjustments.

The benchmarking searches may remain valid for three years (with a compulsory yearly update of the financials), provided that the facts and circumstances surrounding the transactions have not materially changed.

Another important note to point out is the independence threshold specified in the Portuguese legislation.

In addition, there is a preference for the weighted average three-year approach for benchmark analysis.

Finally, if the TP technical studies are prepared by a third-party expert, a Declaration of Responsibility regarding the methods, information and techniques must be issued.

Advance Pricing Agreement "APA"

Since 2008, Portugal implemented an APA programme that follows the principles set forth by the OECD Guidelines. Taxpayers may apply for a unilateral, bilateral or multilateral APA in Portuguese jurisdiction. The rules on the procedures related with the conclusion of APA are foreseen in Article 138 of CITC and Ministerial Order no. 267/2021, of 26th November which transposes some of the work developed by OECD, recommending and endorsing the use of the OECD Guidelines.

The procedure to request an APA comprises two phases:

- Pre-filing phase, which entails a preliminary evaluation of the initial taxpayer proposal and may involve joint meetings with PTA, and
- Proposal phase, which entails the submission, analysis and negotiation of the APA proposal, that in any case should be presented at least 6 months before the beginning of the applicable tax year.

As regards the time frame to finalize the critical second phase, the law provides that unilateral agreements should be concluded within a maximum of 180 days, whilst a 360-day period applies to bilateral/multilateral APAs.

An APA may not exceed a 4-year period and under certain conditions, rollback provisions are possible.

Upon the implementation of an APA, taxpayers are required to file an annual report on the execution of the agreement, in addition to the general obligation to comply with local TP documentation rules. Failure to comply with this requirement may render the APA invalid.

An APA is subject to a filing fee depending on the taxpayer´s average turnover (reduced by 50% for renewals and by 25% for SME taxpayers).

Transfer Pricing Audits

PTA may adjust prices set in controlled transactions whenever consider that such transactions do not comply with the arm's length principle. The burden of proof for those adjustments rests with PTA as long as the TP documentation requirements are sufficiently met. In Portugal, the statute of limitation on TP assessments is 4 years.

Recent practice and case law unveiled that financial transactions (including cash pooling mechanisms and intercompany guarantees), intangible assets transactions (with special relevance of the Hard To Value Intangibles "HTVI"), intra-group services, recurrent loss-making companies with significant cross-border intercompany transactions, contradictions between the disclosed TP information between the several TP sources and restructuring transactions are most frequent subjects of tax disputes. As referred, benchmarks' criteria are frequently challenged, as well as comparability features, functional analysis/profiles, TP methods selection and application, use of internal versus external comparables, among others.

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Transfer Pricing Penalties

Failure to prepare / submit TP documentation, IES, CbCR report or CbCR notification is subject to a penalty of EUR 500 to EUR 10,000, per fiscal year, per taxpayer, with an additional 5% of the penalty amount for each day of delay.

Failing to comply with the publishment of CbCR information is subject to a penalty of EUR 1,500 to EUR 30,000, applicable to fiscal years starting on or after 22nd June 2024.

Any inaccuracies in the information provided in the documents referred to above will be subject to a penalty of EUR 375 to EUR 22,500, per fiscal year, per taxpayer.

If the taxpayer has stated in the IES that the transfer pricing documentation has been prepared but refuses to submit it upon request of PTA, the applicable penalty can reach EUR 150,000, per fiscal year, per taxpayer.

Local Hot Topics and Recent Updates

Ministerial Order no. 268/2021 introduced significant amendments to Portuguese TP regulations by revising the previously applicable Ministerial Order no. 1446-C/2001, which had been in effect for 20 years. These new provisions aimed to align Portuguese TP regulations with the OECD Guidelines, for example, encompassing the full adoption of the three-tiered OECD documentation approach.

More recently, on 23rd August, Decree-Law no. 73/2023 transposed into Portuguese jurisdiction the public CbCR requirements as outlined in Directive (EU) 2021/2101 of the European Parliament and of the Council from November 2021. This new law, applicable to fiscal years starting on or after 22nd June 2024, introduces fresh provisions concerning the public disclosure of corporate tax information for multinational companies operating in Portugal. In compliance with some specific requirements, CbCR must be made accessible on the parent company's website (or the website of the subsidiary or branch, if the parent company is not based in the EU) in both an official language and one of the official languages of the EU.

Case law

The number of cases related to transfer pricing has surged, both in judicial and in arbitration, with rather interesting rulings. For instance, a trend has emerged in terms of TP case law according to which the burden of proof has become a critical factor, with taxpayers possessing well-structured and technically sound documentation having a higher probability of success in legal disputes, whereas those without such documentation face lower odds. Additionally, the burden of proof itself has been severally disputed in arbitration.

More recently the arbitral court has been issuing decisions regarding the legal strength of the OECD Guidelines in the Portuguese jurisdiction in TP adjustments.

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Documentation threshold

Master file	Annual revenues equal to or higher than EUR 10 million
Local file	Annual revenues equal to or higher than EUR 10 million
CbCR	Consolidated revenues equal to or higher than EUR 750 million

Submission deadline

Master file	Should be available and, only for Large Taxpayers, delivered to PTA, within 15th day of the 7th month after the fiscal year end
Local file	Should be available and, only for Large Taxpayers, delivered to the PTA, within 15th day of the 7th month after the fiscal year end
CbCR	Submission within 12 months after the fiscal year end

Penalty Provisions

Documentation – late filing provision Tax return disclosure – late / incomplete / no filing CbCR – late / incomplete / no filing / no publishment	Failure to prepare / submit TP documentation, IES, CbCR report or CbCR notification is subject to a penalty of EUR 500 to EUR 10,000, per fiscal year, per taxpayer, with an additional 5% of the penalty amount for each day of delay. Failing to comply with the publishment of CbCR information is subject to a penalty of EUR 1,500 to EUR 30,000, applicable to fiscal years starting on or after 22nd June 2024. Any inaccuracies in the information provided in the documents referred to above will be subject to a penalty of EUR 375 to EUR 22,500, per fiscal year, per taxpayer. If the taxpayer has stated in the IES that the transfer pricing documentation has been prepared but refuses to submit it upon request of PTA, the applicable penalty can reach EUR 150,000, per fiscal year, per taxpayer.

CONTACT

Mariana Martins Silva

Garrigues

mariana.martins.silva@garrigues.com

+351 213 821 200

ROMANIA

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Overview

Taxhouse, Taxand Romania

Taxhouse is a tax advisory firm based in Romania, and is the local member of Taxand Global, offering a comprehensive and integrated range of tax consultancy and related compliance services in domestic corporate and international direct tax, indirect tax, transfer pricing, tax representation, tax litigation, etc.

Our transfer pricing related services include:

- Design and prepare transfer pricing policies at group or company level;
- Review supply chain transactions and advise on transfer pricing matters, in direct correlation with the indirect tax consequences;
- Preparation of transfer pricing files (master file, country file), Country by Country reports and notifications;
- Review of existing transfer pricing policies and documentation or guidance in preparing the required files;
- Drafting and negotiation of Advance Pricing Agreements (APA); and
- Dispute resolution services: representation and assistance during fiscal audits, assistance during the administrative appeal stage and judicial expertise services, MAP procedures.

General: Transfer Pricing Framework

The Romanian transfer pricing legislation follows the OECD Transfer Pricing Guidelines ("OECD TPG") and requires that transactions between related parties be carried out at arm's length. The rules apply to both domestic and non-domestic transactions. The obligation to comply with the arm's length principle and the general documentation requirements are provided by the Romanian Fiscal Code and Order no. 442/2016 issued by the President of the National Agency for Tax Administration ("Order 442/2016").

Order 442/2016 establishes: (i) thresholds for each category of taxpayer for the value of intra-group transactions above which taxpayers may be required to prepare transfer pricing documentation demonstrating that the intra-group transactions have been carried out at market value, and (ii) the rules on the content of the transfer pricing documentation file, as well as the procedure for adjusting/estimating transfer prices.

If the intra-group transactions are not set at arm's length, the Romanian tax authorities ("RTA") have the right to adjust the taxpayer's income and expenses to reflect the market conditions. Such adjustments could lead to additional corporate income tax liabilities and related late payment interest and penalties.

Accepted Transfer Pricing Methodologies

The Romanian TP legislation follows the OECD TPG in applying the arm's length principle and contains specific regulations regarding the transfer pricing methods provided by OECD TPG (i.e., comparable uncontrolled price method, resale price method, cost plus method, profit split method, transactional net margin method). Also, there is a direct provision related to "any other method" provided by OECD TPG.

There is no hierarchy in choosing one specific method, as the generally accepted standard is to choose the most appropriate method, as described in the OECD TPG. The taxpayer, however, must be able to substantiate why the chosen method is appropriate in light of the relevant facts and circumstances.

In practice, the CUP method is the preferred method by the RTA. However, as comparable uncontrolled transactions are usually difficult to find, TNMM method is the most popular transfer pricing method.

Transfer Pricing Documentation Requirements

The Romanian TP legislation follows the OECD TPG and provides specific regulations on the content of the TP file, which is comprised of: (i) a group section (containing information regarding the group as a whole) and (ii) a taxpayer section (containing information regarding the taxpayer and each related party transaction).

Reporting requirements

- Large taxpayers, identified as such by the Romanian tax authorities, based on specified criteria, are obliged to have their TP documentation ready by the time of submission of the annual corporate income tax return. This date is currently the 25th of June of the year following the reporting one. Compliance requirements exist should their intra-group transactions exceed certain annual thresholds: EUR 200,000 for interest on financial services, EUR 250,000 for services and EUR 350,000 for acquisition or sale of tangible or intangible assets. The TP file is not to be submitted to the tax authorities, but it can be requested at any point, not only during a tax audit, and the deadline for provision is within 10 calendar days.
- Large taxpayers that do not meet the above thresholds, as well as medium or small taxpayers, are obliged to prepare the TP documentation if they carry out transactions with related parties exceeding the following annual thresholds: EUR 50,000 for interest on financial services, EUR 50,000 for services, and EUR 100,000 for acquisition or sale of tangible or intangible assets. Different from the rule mentioned above for large taxpayers, the RTA have the right to request the TP file only during a tax inspection and to grant the taxpayer 30 to 60 calendar days to prepare and submit the file. This term may be extended upon request of the taxpayer and the approval of the tax authorities with another 30 calendar days.

The **CbCR requirements** apply to MNE groups having consolidated income reported in the last fiscal year prior to the reporting period equal to or exceeding EUR 750 million. An entity with tax residence in Romania is required to file a CbCR with respect to its reporting fiscal year if the entity is: (i) the ultimate parent entity of the MNE group, (ii) the surrogate parent entity, being appointed by the MNE group as a sole substitute for the ultimate parent entity or (iii) a constituent entity of the MNE group, having the obligation under certain conditions of filing the CbCR in Romania on behalf of such MNE group (e.g., the CbCR for the MNE group is submitted in a non-EU jurisdiction). The filing term of the CbCR is within 12 months since the last day of the reporting fiscal year of the MNE Group.

The Romanian resident entity that does not fulfill the criteria mentioned above (i.e. not being the final parent entity or the surrogate parent entity or the designated constituent entity), but is part of a MNE Group that has consolidated group revenue over EUR 750 million during the fiscal year preceding the reporting fiscal year, has the obligation to notify the relevant Romanian authorities with regard to the identity and residence of the reporting entity until the last day of the reporting fiscal year of the MNE Group at the latest, but not later than the submission deadline of the tax statement of the respective constituent entity for the previous year.

Local Jurisdiction Benchmarks

The generally accepted standard in Romania is to choose the most appropriate method, in line with the OECD TPG. In practice, the CUP method is the preferred method by the RTA. However, as comparable uncontrolled transactions are usually difficult to find, TNMM method is the most popular transfer pricing method.

The Romanian transfer pricing legislation provides the following specific rules in respect of benchmarking studies:

- Territorial search requirements: the search has to be carried out first on the Romanian territory and if no/insufficient comparable companies are found, the search is to be extended to EU/pan-European/ international territory;
- Independence requirements:
  - Only companies where shareholders – legal entities have a stake of less than 25% are accepted;
  - Companies where (i) the individual shareholder which owns more than 25% in that company is also known to have, as per the information included in public databases, shareholdings and/or management positions in other companies and (ii) any person that (presumably) has control (given its position) in that company is also known to have, as per the information included in the databases, management positions/ shareholdings in other companies as well, are rejected.

The OECD TPG provides the framework for tax administrations to accept for a benchmark to be performed once every three years with financials updated on an annual basis provided that the operating conditions, including market conditions, remain unchanged. This is a fact which has to be documented in the transfer pricing file. There are no specific Romanian rules in this respect. In practice, the preference of the RTA is to have a benchmark performed every year.

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

Taxpayers engaged in transactions with related parties have the possibility to apply for an APA. The Romanian legislation regulating the APAs is Law no. 207/2015 regarding the Fiscal Procedural Code and the Order of the President of the Romanian Tax Administration no. 3735/2015 regarding the approval for issuing or amending an APA, as well as the content of the application for issuing or amending an APA.

Unilateral, bilateral and multilateral APAs can be issued as per the Romanian law. APAs are issued for a period of up to five years, with possibility of extension in case of long-term contracts. The terms for issuing APAs are 12 months for unilateral APAs and 18 months for bilateral and multilateral. Currently, the Romanian legislation is not allowing roll-back for APAs issued.

The fees charged by the RTA for the APA procedure are as follows:

- 20.000 Euro for issuing an APA and 15.000 Euro for modifying it, in case of large taxpayers.
- 10.000 Euro for issuing an APA and 6.000 Euro for modifying it, in case of small and medium size taxpayers.

Also, if the consolidated value of transactions covered in APA exceeds the equivalent of 4.000.000 Euro or if the taxpayer is classified as "large taxpayer" within the period of validity covered in APA, the issuing fee becomes 20.000 Euro.

We note that in practice, the RTA have issued a very limited number of APAs and the process is very time consuming and bureaucratic on account of the limited resources involved by the RTA in this process.

Transfer Pricing Audits

The RTA may perform TP audits at random or based on a risk analysis. The following transfer pricing risks could trigger a tax audit:

- operating losses/small profit margins/significant fluctuations in profitability;
- significant share of intra-group transactions in total transactions;
- transactions with entities located in tax havens;
- a longer period not audited by the RTA; and
- VAT refund claims made by taxpayers.

Transfer Pricing Penalties

Non-presentation / incomplete presentation of the TP file within the deadline provided by the law is sanctioned with a fine ranging between RON[1] 12,000 and RON 14,000 for large and medium size taxpayers, respectively between RON 2,000 and RON 3,500 for small size taxpayers. Separately, adjustment of tax base plus late payment interest and penalties may be applicable.

For failing to file a CbC report, the penalty ranges from RON 70,000 to RON 100,000. For late filing of a CbC report or for incomplete/incorrect data in a CbC report, the penalty ranges from RON 30,000 to RON 50,000.

Local Hot Topics and Recent Updates

In September 2022, Romania became the first EU member state to publish legislation transposing the Directive 2021/2101/EU on public Country-by-Country reporting ("EU Public CbCR Directive") and to choose to implement the reporting early, as the rules entered into force on 1 January 2023. The provisions of EU Public CbCR Directive have been implemented by Order no. 2048/2022 issued by the Ministry of Public Finance. Also, recent amendments have been introduced by Order 1730/2023 which provides further clarifications to the existing rules which are applicable as from 1 January 2023.

The first publication will take place within 12 months from the date of the balance sheet of the first financial year and will need to be made available for five years. The first publication will take place no later than 31 December 2024, for a financial year that ends on 31 December 2023.

The reporting obligations are applicable to: (i) Romanian ultimate parent entities of MNE Groups with a total global consolidated revenue exceeding EUR 750 million for each of the last two consecutive financial years, (ii) medium and large Romanian subsidiaries that are controlled by an ultimate parent company that is not governed by an EU Member State law, (iii) branches set up in Romania by entities that are not governed by the law of an EU member state and whose ultimate parent entity is also not subject to the law of an EU Member State.

No specific non-compliance penalties have been introduced to date in the Romanian legislation. It is expected that such penalties will be introduced through an update to the Romanian accountancy law.

1 The current EUR/RON exchange rate is 4,9746

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Documentation threshold

Master file	N/A
Local file	Annual thresholds for large taxpayers: EUR 200,000 in the case of interest for financial services, EUR 250,000 in the case of services and EUR 350,000 in the case of acquisitions or sales of tangible or intangible assets. Annual thresholds for other taxpayers (including large taxpayers whose intra-group transactions do not meet the above thresholds): EUR 50,000 in the case of interest for financial services, EUR 50,000 in the case of services, EUR 100,000 in the case of acquisitions or sales of tangible or intangible assets
CbCR	EUR 750 million

Submission deadline

Master file	N/A
Local file	For large taxpayers: the TP file is not submitted to the tax authorities, but it can be requested at any point (not only during a tax audit) and the deadline for provision is of 10 calendar days. Other taxpayers (including large taxpayers whose intra-group transactions do not meet the above thresholds): the RTA have the right to request the TP file only during a tax inspection and to grant the taxpayer 30 to 60 calendar days to prepare and submit the file. The term may be extended with another 30 calendar days.
CbCR	12 months since the last day of the reporting fiscal year of the MNE Group

Penalty Provisions

Documentation – late filing provision	RON 12,000 and RON 14,000 for large and medium size taxpayers, respectively between RON 2,000 and RON 3,500 for small size taxpayers
Tax return disclosure – late/incomplete/no filing	N/A
CbCR – late/incomplete/no filing	For failing to file a CbC report, the penalty ranges from RON 70,000 to RON 100,000. For late filing of a CbC report or for incomplete/incorrect data in a CbC report, the penalty ranges from RON 30,000 to RON 50,000.

CONTACT
Tania Stefanita
Taxhouse
tania.stefanita@taxhouse.ro
+40 21 316 06 45 / 46 / 47

Angela Rosca
Taxhouse
angela.rosca@taxhouse.ro
+40 21 316 06 45 / 46 / 47

SERBIA

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Overview

LeitnerLeitner Serbia, Taxand Serbia

LeitnerLeitner Serbia is a tax advisory firm based in Srbija. Together with local experts, we offer tax consulting, auditing and accounting services to international and large local companies.

LeitnerLeitner Serbia offers a wide range of services in the field of transfer pricing, such as TP conceptual design, global documentation concepts, IP structuring and reorganizations, benchmarking services, tax audit defence, litigation and arbitration proceedings etc.. That is, LeitnerLeitner Serbia provides full range of services of transfer pricing including Local TP file preparation, benchmarking analysis, TP risk assessment, preparation of intercompany agreement, advisory in specific intercompany transactions. Detailed service list is presented as follows:

- Preparation of transfer pricing reports; With compliance and reporting we cover preparing transfer pricing master file and local file documentation, from full-fledged to tailor made;
- Creation of benchmark analyzes and other data analyzes from relevant databases;
- Advising on the formation of prices in transactions with related parties; value chain optimization, business restructuring, full-service assistance in setting up the TP strategy and policy;
- Preparation of intercompany contracts; Establishing global intercompany financial arrangements and support for debt instruments;
- Transfer of intangible assets and intercompany services.

General : Transfer Pricing Framework

Transfer pricing in Serbia is covered by following legislation:

- Corporate Income Tax Law "CIT Law";
- Rulebook on transfer pricing and methods that are applied according to the arm's length principle in determinations of transaction prices between related parties "Rulebook";
- Rulebook on interest rates that are considered to be in accordance with the arm's length principle "Rulebook on interest rates".

The Ministry of Finance regulates transfer pricing area on the basis of documentation published by the OECD and other international organisations, so we may say that transfer pricing in Serbia is mostly aligned with the OECD Guidelines. However, in Serbian Rulebook on transfer pricing there are some specific differences in comparison to the OECD Guidelines.

Accepted Transfer Pricing Methodologies

Serbia is not an OECD member. However, Serbian transfer pricing provisions and documentation requirements are generally based on the BEPS Regulations, including OECD Guidelines.

In accordance with the CIT Law and the Rulebook, the taxpayer is obliged to select the most appropriate method for determining the arm's length prices for the analysis of transactions with related entities, i.e. the method that is the most appropriate bearing in mind circumstances of each individual transaction. The following methods can be applied:

- Comparable Uncontrolled Price Method;
- Resale Price Method
- Cost plus method;
- Transactional Net Margin Method;
- Profit Split Method;
- Any other method for determining the arm's length price, under condition that the application of the aforementioned methods is not possible, or that the other method is more appropriate than the aforementioned methods.

Serbia applies the 'the most appropriate method approach' for conducting transfer pricing analysis. Combinations of the several methods can be implemented. There is no hierarchy.

Transfer Pricing Documentation Requirements

A Serbian entity which enters into transactions with the related parties is obliged to prepare transfer pricing report. In addition, if a Serbian entity enters in transactions with companies from tax havens, it is obliged to prepare transfer pricing report and provide evidence that these transactions are in line with the arm's length' principle.

Master file and local file as TP approach is not acceptable in Serbia. TP documentation in Serbia is a combination of these two, with mandatory content proclaimed by CIT Law, prepared in Serbian language only.

The content and the form of transfer pricing documentation is regulated by the Rulebook, stating that the documentation is submitted in the form of report or in the form of abbreviated report.

Full transfer pricing report is needed for following types of transactions:

- Financial transactions (such as loans and credits), regardless of their value. However, if a Serbian entity receives interest free loan from related party, transfer pricing analysis is not mandatory.
- Commercial transactions (sale/purchase of goods, services, property etc.) with related party, provided that total annual value of transactions with that party is higher than 8.000.000 RSD (approximately 68.000 EUR).

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Transfer pricing report contains mandatory elements that are:

- Analysis of the group and the taxpayer
- Industry analysis
- Functional analysis
- Selection of transfer pricing method
- Conclusions reached
- Appendices

In case total annual value of commercial transactions with related party is lower than 8.000.000 RSD (approximately 68.000), tax payer is obliged to present these transactions, but there is no obligation to further analyse them from transfer pricing perspective.

Abbreviated report should be submitted for all transactions with related entities and it should contain information regarding each transaction, particularly:

- transaction description
- transaction value
- related entity with whom transaction has been realized

Taxpayers are obliged to prepare and submit transfer pricing report every fiscal year. Analysis presented in the transfer pricing report have to be updated every year, in order to be based on the last publicly available information. the transfer pricing report is filed along with the tax return and the tax balance within 180 days from the end of fiscal period.

Serbia has also introduced Country by Country Reporting "CbCR" regulations which are effective for fiscal years starting on or after 1 January 2020. Namely, (only) those resident taxpayers who are considered to be the ultimate parent entities of international groups of related legal entities will be obliged to submit to the relevant tax authority the annual report on controlled transactions of the international group of related legal entities. An international group of related legal entities is a group of entities that are related by ownership or control in terms of IAS or IFRS, and whose total consolidated revenue, reported in the consolidated financial statements for the period preceding the reporting period, is at least EUR 750 million.

Local Jurisdiction Benchmarks

Benchmarking analysis must be prepared for each fiscal year i.e. a financial update is to be conducted every year. Comparable independent companies from Serbia have priority over foreign comparable entities. In case there are no comparable companies in Serbia, geographic search may be extended to similar markets (Balkan states, Eastern Europe, European Union etc.).

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

Not Applicable

Transfer Pricing Audits

Transfer pricing specific or targeted tax audits by the Serbian tax authorities are not conducted regularly. Once audited periods are not considered irrevocably closed. Usually, 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 related to corporate income tax.

The likelihood of transfer pricing methodology being challenged is medium. Currently, tax authorities have a limited level of practice with transfer pricing methodology. But, recently, the training of tax inspectors has been intensified and it is expected that they will soon start with regular control of transfer pricing reports.

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.

Transfer Pricing Penalties

For non-disclosure of transfer pricing transactions as well as documentation, penalties may range from RSD 100,000 up to RSD 2,000,000 (EUR 800 – EUR 16,500). Additional penalties of up to 30 percent of the understated tax liabilities may be determined by the Tax authorities based on their assessment of the transfer pricing. The additional penalties may not be less than RSD 200,000 (EUR 1,700).

Local Hot Topics and Recent Updates

Interest rates can be assessed using an interest rate prescribed as arm's length by the Ministry of Finance. Ministry of Finance publishes the Rulebook on interest rates every year, which are considered to be in line with the arm's length principle. Alternatively, taxpayers can determine arm's length interest rates on their own based on the separate benchmark analysis.

Although Serbia is not OECD member state, our country started implementing BEPS measures. The National Assembly ratified the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting. In addition, Serbia is a member of The OECD/G20 Inclusive Framework on BEPS, is expected to propose new taxation rules for digital economy. Therefore, transfer pricing regulation in Serbia will follow presented BEPS measures and initiatives.

SERBIA

Documentation threshold

Master file	Not Applicable
Local file	Not Applicable
CbCR	TEUR 750.000

Submission deadline

Master file	Not Applicable
Local file	180 days from the end of the business year
CbCR	12 months from the end of the business year

Penalty Provisions

Documentation – late filing provision	RSD 100,000 up to RSD 2,000,000 (EUR 800 – EUR 16,500)
Tax return disclosure – late/incomplete/no filing	RSD 100,000 up to RSD 2,000,000 (EUR 800 – EUR 16,500)
CbCR – late/incomplete/no filing	RSD 100,000 up to RSD 2,000,000 (EUR 800 – EUR 16,500)

CONTACT
Jelena Knežević
LeitnerLeitner Serbia
Jelena.Knezevic@leitnerleitner.com
+381 11 6555-111

SLOVAKIA

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Overview

BMB Partners, Taxand Slovakia

Established in 1996, BMB Partners has been a high-end tax advisory firm in Slovakia for more than 25 years. BMB Partners is an independent tax boutique offering a comprehensive and integrated range of tax consultancy and compliance services.

The BMB Partners team provides a wide range of transfer pricing services for multinational clients, in particular:

- Transfer pricing consultations and advisory
- Preparation and/or updates of transfer pricing documentation in Slovak, German and/or English languages (global and/or local file)
- Preparation of benchmark studies for various industry and service sectors
- Assistance in filing APA and BAPA applications, representation of clients during pre-filing meetings and negotiations with tax authorities
- Assistance and representation of clients during transfer pricing audits
- Assistance in MAPs

General: Transfer Pricing Framework

Transfer pricing regulations are an integral part of the Slovak Income Tax Act (Act No. 595/2003 Coll.). The arm's length principle is applicable and is defined directly in the Income Tax Act (Section 18). The law defines also a material-controlled transaction – transaction the value of which (revenue or expense) exceeds EUR 10,000. In the case of loans between related parties, the transaction is considered to be material if the principal amount exceeds EUR 50,000.

The OECD Guidelines have been officially translated into Slovak and published. The Slovak Income Tax Act (Section 18) contains a direct reference to OECD Guidelines and their methodology. Thus, OECD Guidelines are widely applied and generally accepted as an interpretation tool by both taxpayers and tax administration.

The currently applicable rules and criteria concerning the duty to prepare transfer pricing documentation are set out in the Guidance of the Ministry of Finance of the Slovak Republic No. MF/020061/2022-724 on the contents of the documentation under section 17(7) and section 18(1) of the Act No. 595/2003 Coll. on Income Tax, as amended (hereafter "SK TPD Guidance"). Whether a particular entity is obliged to keep transfer pricing documentation and in what scope (full-scope, basic and simplified) depends on a number of criteria. These include turnover, value of particular controlled transactions, whether an APA application has been filed, whether losses are generated.

Accepted Transfer Pricing Methodologies

The OECD principles are applicable and the OECD methods have been taken over and incorporated into Slovak Income Tax Act. Traditional transaction methods (Comparable uncontrolled price method, Resale price method, Cost plus method) as well as Transactional profit methods (Transactional net margin method, Transactional profit split method) and their combinations are allowed. There is no hierarchy of methods, but the method which is most suitable in the given circumstances has to be applied and argumentation has to be provided why the particular method has been selected.

Transfer Pricing Documentation Requirements

The Master File & Local File obligation exists. However, as Slovakia is mainly a capital importing country, the most typical scenario is that headquarters are located abroad and subsidiaries in Slovakia. Accordingly, Slovak companies mostly need to prepare a Local File, as the Master File is generally provided by the parent company.

In Slovakia, the criteria specifying when companies are obliged to keep transfer pricing documentation and in which scope are very complex. Please see the specification below:

- Full-scope documentation is obligatory for:
  - taxpayers conducting a cross-border material-controlled transaction or a group of cross-border controlled transactions, and preparing the individual financial statements under International Financial Reporting Standards;
  - taxpayers conducting a cross-border controlled transaction or a group of cross-border controlled transactions, if the value of such a controlled transaction or a group of controlled transactions for the relevant tax period exceeds EUR 10 million;
  - taxpayers conducting a cross-border material-controlled transaction or a group of cross-border controlled transactions with a related party resident in a non-contractual state;
  - taxpayers conducting a controlled transaction or a group of controlled transactions which are covered by an APA application;
  - taxpayers conducting a controlled transaction or a group of controlled transactions which are covered by a tax base adjustment request, except for the adjustment of the income tax base related to inland controlled transactions;
  - taxpayers conducting a controlled transaction or a group of controlled transactions which are covered by MAP application for the tax period; and
  - taxpayers conducting a cross-border material-controlled transaction or a group of cross-border controlled transactions and applying a tax relief in the relevant tax period.

- Basic documentation is obligatory for:
  - taxpayers conducting a cross-border material-controlled transaction or a group of cross-border controlled transactions, if the total revenues from operating and financing activities of the taxpayer for the relevant tax period exceed EUR 8 million;
  - taxpayers conducting a cross-border controlled transaction or a group of cross-border transactions, if the value of such a controlled transaction or a group of controlled transactions for the relevant tax period exceeds EUR 1 million;
  - taxpayers conducting an inland material-controlled transaction or a group of material-controlled transactions, and applying a tax relief in the relevant period; and
  - taxpayers conducting a controlled transaction or a group of controlled transactions with a related party residing in a non-contractual state.
- Simplified documentation is obligatory for:
  - taxpayers conducting a material-controlled transaction or a group of controlled transactions who generated a tax loss or utilized a tax loss; and
  - taxpayers conducting a controlled transaction or a group of controlled transactions and applying a tax relief in the relevant tax period.

Taxpayers that do not meet the criteria for any of the documentation types will file just a duly completed income tax return for the relevant tax period. Taxpayers do not have to prepare documentation in relation to transactions which do not have an impact on the tax base of the taxpayer.

Entities obliged to keep full-scope and basic documentation have the duty to prepare both Master file and Local File. Requirement for simplified documentation is met by completing a standard template (3 pages).

The documentation is not automatically filed with tax authorities, which means there is no precise date when it should be prepared. The taxpayer keeps the documentation and submits it only upon request of the tax administrator. The tax administrator may request the submission of the documentation either during a tax audit or, without opening a tax audit, by sending a request to the taxpayer to submit the documentation. In the latter case, the taxpayer has to submit the documentation within a 15-day-deadline after the submission request is delivered. For this reason, it is recommended to prepare the documentation after the conclusion of the fiscal year so that it is ready if the tax administrator requests it. It cannot be reasonably expected to prepare it within the 15-day-deadline after receiving the submission request.

Pursuant to the recent legislative changes, the documentation may be submitted to the tax administrator also in a language other than Slovak. However, if requested by the tax administrator, the taxpayer is obliged to provide a translation into Slovak within a 15-day-deadline.

Local Jurisdiction Benchmarks

Benchmarks are a useful and efficient tool to prove that the transfer prices used by the taxpayer are in line with the arm's length principle. According to the SK TPD Guidance, a benchmark (a comparability analysis) is an essential part of the full-scope documentation. Entities not obliged to keep full-scope documentation are not required to submit a benchmark. However, it is advisable to prepare a benchmark anyway, as it is useful for the taxpayer to define its tax position. If the taxpayer submits a benchmark, the burden of proof is shifted to the tax administrator, and if the tax administrator does not agree with the benchmark, it has to prove the benchmark is not correct. Benchmarks submitted by taxpayers to the tax authorities are closely reviewed and it is not uncommon that the tax administrator prepares its own benchmark (even if a benchmark is submitted by the taxpayer), and if the results deviate from the figures presented by the taxpayer as market values, it is up to the taxpayer to defend its position. The tax administrator may still accept the figures presented by the taxpayer if the taxpayer provides valid argumentation. At this point, valid negotiation and argumentation is extremely important. If the taxpayer fails to defend its position, the tax administrator calculates the difference in tax (tax adjustment) and the taxpayer has to pay the outstanding amount plus late interest.

Benchmarks are mostly based on regional comparison, as Slovakia is a small country and there might not be enough comparable entities within the country for an exclusively local comparison. When selecting the comparable region, it is advisable to select countries similar in both geography and economic position to Slovakia (e.g., EU, Europe, Central and Eastern Europe), so that the results are truly comparable. Otherwise, it might prove very difficult to defend the results.

Internal CUPs are very difficult to find, but not impossible. As a direct method, internal CUP is even preferred by the tax administrator. If internal CUP method is applied by a taxpayer, the tax administrator closely inspects whether the conditions are truly comparable.

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

In Slovakia, it is possible to apply for both unilateral APA and BAPA, and numerous taxpayers decide to take this step to gain legal certainty. The request for unilateral APA/BAPA has to be filed no later than 60 days prior to the beginning of the first year to which the APA should apply. APAs may be approved for a period of up to 5 years. If the taxpayer files a new APA request no later than 60 days before the lapse of the first APA and proves that the conditions have not changed,

the tax administrator may approve another APA for a period of further up to 5 years.

The conditions for a BAPA are analogous. Roll-back is possible for a BAPA if both contracting states agree.
If no agreement on BAPA with the other state is reached, the Slovak administrator may still approve a unilateral APA.

The law specifically defines the information which has to be provided in the APA request.

The standard fee for a unilateral APA amounts to EUR 10,000 and for a BAPA to EUR 30,000. The fee is due at the time the request is filed. Both fees are reduced by 50% if the taxpayer is ranked as "highly reliable" within the Tax Reliability Index rating. This rating monitors the history of the taxpayer (whether the tax returns and other filings were filed on time, whether taxes were paid on time and in the correct amount etc.).

The duration of the process depends on individual circumstances. If there are no disputed issues, an APA may be approved within a few months. According to our experience, most unilateral APAs are issued within the period of 4 – 6 months. On the other hand, the average time to negotiate a BAPA is 42 months (according to EU statistics for 2021 published in August 2023). According to these statistics, there were 16 applicable unilateral APAs and 2 applicable bi- or multilateral APAs in Slovakia as at the end of 2021. More recent statistics are not available yet.

Transfer Pricing Audits

In recent years, the Slovak tax administration started focusing on transfer pricing audits. The statute of limitation for cross-border transactions, and thus also for cross-border transfer pricing issues, is considerably long: 10 years after the lapse of the tax period in which the tax return was due, which means 11 years after the year in which the transaction was conducted. Transfer pricing audits are often performed by the tax administrator within the last 2-3 years of the limitation period, which results in rather big late interest charges if findings are identified.

During transfer pricing audits, the tax administrator focuses mainly on losses or extremely low profit margins/mark-ups.

During transfer pricing audits, the tax administrator often prepares its own benchmark (even if a benchmark is submitted by the taxpayer), and if the results deviate from the figures presented by the taxpayer as market values, it is up to the taxpayer to defend its position. The tax administrator may still accept the figures presented by the taxpayer if the taxpayer provides valid argumentation. At this point, valid negotiation and argumentation is extremely important. If the taxpayer fails to defend its position, the tax administrator calculates the difference in tax and the taxpayer has to pay the outstanding amount plus penalty (late interest).

Transfer Pricing Penalties

Since 2017, the sanctions (late interest charges) for the failure to comply with the arm's length principle in transactions with related parties have increased. The stricter sanctions are applicable to taxpayers that intentionally decrease the tax base or increase the tax loss through transfer prices. In such a case, the sanction is not the standard 3 x ECB base interest rate p.a. of the adjustment (additionally assessed tax) generally imposed by the tax administrator during tax audits, but double the amount. The maximum sanction is 100 % of the additionally assessed tax.

In addition to late interest, penalties may be imposed for other transfer pricing related offences, e.g., the failure to submit transfer pricing documentation or the submission of faulty transfer pricing documentation. These administrative offences are subject to a penalty of up to EUR 3,000.

Local Hot Topics and Recent Updates

Pursuant to the recent legislative changes, a new rule regarding transfer pricing adjustments came into effect since 2023. If the taxpayer does not comply with the arm's length principle (i.e., when his values are outside the range of independent comparable values), the adjustment by the tax administrator shall be based on the median resulting from the benchmark (independent comparable values). If the taxpayer proves that, considering the particular circumstances, another value within the interquartile range than median is more suitable, the tax base shall be adjusted to this value. The law amendment copies the previous practice, as the adjustments of the tax administrator were based on the value of the median in the past, too.

Experts argue that this new provision is actually not in line with the OECD Guidelines, which specify that the whole range of independent comparable values (interquartile range) is in line with the arm's length principle and should therefore be accepted by the tax administrator without the need to defend the value with special arguments and circumstances. It will therefore be interesting to see the future development in this field, especially whether the tax administrator will enforce this provision during tax audits and how willing it will be to accept the argumentation of the taxpayer.

The latest update of the SK TPD Guidance has been applicable since 2023 and has introduced the following changes:

- amendments to rules for TP documentation of a permanent establishment, including the requirement for capital attribution;
- extended requirements for economic information on the activities of both the group and the entity, and linking financial information and pricing to results from accounting books;
- simplification of documentation requirements for micro-taxpayers.

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Documentation threshold

Master file	N/A (complex rules explained in part Transfer Pricing Documentation Requirements)
Local file	N/A (complex rules explained in part Transfer Pricing Documentation Requirements)
CbCR	group revenue over EUR 750 million/year

Submission deadline

Master file	During the transfer pricing audit, or, outside the audit within 15 days after the receipt of the request of the tax administrator
Local file	During the transfer pricing audit, or, outside the audit within 15 days after the receipt of the request of the tax administrator
CbCR	For CbCR: 12 months after the lapse of the relevant fiscal year (according to the fiscal year of the parent company) For Notification on which foreign entity within the group files the CbCR: same as tax return filing deadline (standard deadline 3 months after the lapse of the tax period)

Penalty Provisions

Documentation – late filing provision	from EUR 60 up to EUR 3,000 (at the discretion of the tax administrator, depending on the severity, duration and possible consequences)
Tax return disclosure – late/incomplete/no filing	from EUR 60 up to EUR 16,000 (at the discretion of the tax administrator, depending on the severity, duration and possible consequences)
CbCR – late/incomplete/no filing	up to EUR 10,000 (for non-filing of CbCR), repeatedly up to EUR 3,000 (for non-filing of the Notification on which foreign entity within the group files the CbCR), repeatedly

CONTACT
Judita Kuchtova
BMB Partners
judita.kuchtova@bmb.sk
+421 2 212 99 000

Renata Blahova
BMB Partners
renata.blahova@bmb.sk
+421 2 212 99 000

SLOVENIA

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Overview

LeitnerLeitner d.o.o., Taxand Slovenia

Our experienced team consists of transfer pricing specialists who can assist you with all aspects of your domestic and foreign transfer pricing obligations and documentation requirements, and with the planning and implementation of international supply chains.

Our services include among others:

- Update of existing/conceptualization and implementation of BEPS-compliant transfer pricing systems and tax-optimized supply chains, including transfer pricing documentation,
- Management of bilateral and multilateral arbitration and mutual agreement procedures (MAP).
- Defense of existing intragroup transfer pricing mechanisms and transfer pricing systems in appeal proceedings.
- Request for rulings, and initiation of advance pricing agreements (APAs).

General: Transfer Pricing Framework

The arm's length principle is laid down in the Corporate Income Tax Act (the "CITA"). Transfer prices ("TP") among tax residents and tax non-residents are regulated in Article 16 of the CITA. TP among tax resident entities are regulated in Article 17 of the CITA. The general liability to document TP is stipulated in Article 18 of the CITA, whereby some further details are determined in the procedural tax law. Article 19 of the CITA specially regulates payment of interest among related entities. As of the date of preparing this guide, thin capitalization rules must be considered in addition (Article 32 of the CITA). The substantive part of TP is further regulated in Rules on TP. The essential components of transfer pricing documentation ("TPD") are regulated in the Tax Procedure Act (hereafter: "TPA"), namely in Article 382. TP rules and use of the arm's length principle are generally in line with the OECD TP Guidelines.

Accepted Transfer Pricing Methodologies

The OECD principles are not formally implemented to the Slovenian tax law, albeit they are generally recognized as an explanation tool by the Financial Authority (the "FA") and judicial practice. Nevertheless, we notice in tax audits that OECD TP Guidelines are used very selectively. Especially with respect to guidance on low value-added services (pts. 7.49 -7 .65 of the OECD TP Guidelines 2017), whereby the FA recognizes it in its brochure on TP, however in practice, the auditors insist on regular treatment of those services as well. Additionally, to a very limited extent, the Rules on TP stem also from the OECD TP Guidelines, however it shall be noted that they were not updated since 2012 to match more recent updates to the OECD TP Guideline.

The CITA follows the classic split between traditional and transactional TP methods and accepts the 5 OECD pricing methods.

According to the the Rules on TP, determination of the comparable market price shall be executed by using the most appropriate method, considering circumstances of the case. The CUP method, however, has the advantage before all other methods. Nevertheless, CUP method is rarely efficiently used in practice for lack of comparables.

Transfer Pricing Documentation Requirements

The mandatory and minimum content of the TPD is provided in Article 382 of the TPA. The general liablitly of a taxpayer is to ensure the masterfile and country-specific documentation ("local file").

According to Article 382 paragraph 1, the masterfile may be unified for the entire group of related entities and shall include at least: a description of the taxpayer, its global organisational structure and type of affiliation (such as capital, contractual, personal), its TP system, a general description of its business and business strategies, general economic and other factors as well as competitive environment. The local file shall include at least information detailing transactions with related parties (description, type, value, terms and conditions). The information should include the performance of a comparability analysis of the transactions, which will reflect: characteristics of assets and services, the functional analysis performed (tasks performed in relation to the assets or services invested and risks assumed), the contractual terms, economic and other conditions affecting the transactions, business strategies, other influences relevant to the execution of the transaction, information on the method(s) used to determine the TP and their determination in accordance with comparable market prices, other documentation demonstrating that TP are consistent with comparable market prices.

Multinational enterprises must prepare a Country by Country Report ("CbCR") if the consolidated group turnover amounts to € 750 million or more in the previous tax year. However, CbCR is not formally deemed a part of TPD.

There are no further legally provided details applicable to TPD according to the local tax law. To a very limited extend, there are some further informal guidelines provided by the FA in its TP brochure and brochure on TP Audits. Moreover, the FA generally accepts the OECD TP Guidelines. The taxpayer shall prepare the TPD regularly, however it shall be prepared no later than until the CIT tax return submission is due, which is three months after the financial year. For cross-border transactions, TPD is mandatory, while for domestic transactions, documentation must be only prepared upon request of the tax authorities within the tax control framework. It is important to note that some aggreggate data have to be submitted already along with the CIT tax return. To the contrary, the TPD as such does not have to be submitted to the FA. It must be available at the taxpayer and presented to the tax auditors on their request. In an event of audit,

if the taxpayer is not able to present its TPD immediately, the tax auditor determines a deadline in which the TPD shall be made avaiable for audit. This deadline shall not be shorter than 30 days, but also not longer than 90 days.

According to the applicable tax law, there is no threshold below which the transaction does not fall under TP rules. There are also no particular thresholds regarding the TPD provided. Nevertheless, it is common in practice that taxpayers set their relevance thresholds themselves, as it is common under foreign legislations.

Local Jurisdiction Benchmarks

Neither CITA nor Rules on TP provide expressly that benchmarks are required. Nevertheless, benchmarks are in practice the essential component of the comparability analysis and are recognized by the FA as an adequate tool to execute it. FA's TP brochure lists the most common databases (i.e., Amadeus, Orbis and Gvin). The FA mostly uses Amadeus, which is thus unofficially recognized as the preferred source of information. In TP audits, the FA will often challenge the benchmarks and request additional information on their execution. In line with the OECD TP Guidelines, a financial update is to be conducted every year. In practice, however, most taxpayers do not update their benchmark searches on an annual basis. In cases when a business activity does not undergo significant changes, a search can be updated every 3 years, which is deemed a market standard.

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

Under Article 14.a of the TPA, the taxpayer may request conclusion of a unilateral, bilateral or multilateral APA.

The general conditions to APA conclusion are set in Article 14.b of the TPA and are the following:

- a pre-application interview between the FA and the taxpayer, in which both agree on the appropriateness of entering into an APA;
- the taxpayer's cooperation throughout the APA process; the transaction subject to the APA must have an economic substance and a serious purpose to be carried out;
- the agreement of the taxpayer and the FA on the content of the APA; and
- the transaction that is the subject of the agreement must be conducted for a reasonable period of time after the conclusion of the APA or not be a transaction that is about to expire after the conclusion of the APA agreement.

The fee to conclude an APA amounts to € 15,000. For extension of the APA, the fee is set at € 7,500. If APA is not concluded for reasons outside the scope of a taxpayer, the taxpayer is reimbursed a lump-sum amount of € 5,000.

There is no prescribed deadline for APA conclusion. In practice, it takes more than one year to conclude an APA. Because of high prices and lengthy procedures, APAs are not very popular in the Slovenian tax practice.

Transfer Pricing Audits

TP is gaining more and more attention of the FA. The latter also invests in educating its officials and in employing more staff on the area. Consequently, we experience an increase of TP Audits in the recent years along with increasing complexity of the procedures.

The FA is particularly interested in the following topics: thin capitalization and interest rates, PE profit distribution, royalty payments, adjustments based on credit/debit notes (year-end adjustments), services to associated entities, adequatenes of the comparability analysis. These are also areas that proved to be the most problematic in practice, since these are the areas on which the FA finds the most irregularities.

Transfer Pricing Penalties

A penalty of € 1,200 to 15,000 (€ 3,200 to 30,000 for medium and large sized companies) and of € 400 to 4,000 for the company person in charge can be imposed if the taxpayer does not submit TPD as provided by the applicable TPA.

In addition to the adjustment of the income tax base, penalties are imposed for inadequate tax compliance and non-deduction of the withholding tax in case of constructive dividend. As the TP are not in line with the arm's lenght principle, the income tax return is not correct resulting in further liability.

Local Hot Topics and Recent Updates

Although the TP area is fairly stable at the moment, there are proposals of other legislative changes in place, which will, once in force, also impact the TP area. The most important is the proposal of the Minimum Tax Act, which shall implement the Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the European Union. Additionally, the Interest Limitation Rules and permanent establishment rules are proposed to be amended with the CITA amendment. Both novelties are envisaged to apply for tax periods as of 1. January 2024, however, these measures are still in the legislative process.

SLOVENIA

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Documentation threshold

Master file	Not Applicable
Local file	Not Applicable
CbCR	Turnover € 750 million

Submission deadline

Master file	Should be available in the taxpayer's administration upon due date filling corporate income tax.
Local file	Should be available in the taxpayer's administration upon due date filling corporate income tax return.
CbCR	Submission within 12 months after end tax year. Notification together with the within 11 months.

Penalty Provisions

Documentation – late filing provision	Fines up to a maximum of € 30,000 can be imposed on the taxpayer.
Tax return disclosure – late/incomplete/no filing	Fines up to a maximum of € 30,000 can be imposed on the taxpayer.
CbCR – late/incomplete/no filing	Fines up to a maximum of € 30,000 can be imposed on the taxpayer.

CONTACT
Blaz Pate
LeitnerLeitner
Blaz.Pate@leitnerleitner.com
+386 1 563 67-50

Tatjana Svažič
LeitnerLeitner
Tatjana.Svazic@leitnerleitner.com
+386 1 563 67-50

SOUTH AFRICA

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Overview

ENS, Taxand South Africa

In line with the trend in most developing countries, transfer pricing has in the last years become a key focus area for the South African Revenue Service ("SARS"). ENS' transfer pricing team has, however, been involved in the area of transfer pricing since the initial introduction of the transfer pricing rules in South Africa in 1995.

ENS' transfer pricing team has extensive experience in all areas of transfer pricing, inlcuding transfer pricing advisory (i.e., detailed value chain analyses, characterisation of entities, economic analyses and drafting of transfer pricing policies, also taking into account areas such as corporate tax, indirect taxes and customs, intellectual property law and exchange controls), transfer pricing documentation, and transfer pricing dispute resolution (i.e., assisting clients in respect of their interactions with SARS and other tax authorities, from the initial risk assessment process to potential litigation).

General : Transfer Pricing Framework

Section 31 of the Income Tax Act No.58 of 1962 ("ITA") contains the main legislative provisions relating to the South African transfer pricing rules.

The South African transfer pricing rules will apply, broadly speaking, to any transaction, operation, scheme, agreement or understanding where:

a) that transaction constitutes an "affected transaction" as defined; and

b) results or will result in any tax benefit being derived by a person that is a party to the affected transaction.

The term "affected transaction" is defined in section 31(1) of the ITA and includes, inter alia, any transaction, operation, scheme, agreement or understanding which has been directly or indirectly entered into or effected between or for the benefit of either or both, inter alia, a resident and a non-resident which are connected persons or associated enterprises in respect to each other and where any of the terms or conditions agreed upon are not of an arm's length nature.

Section 31 of the ITA does not apply to transactions between a South African permanent establishment and its non-resident head office or vice versa. Instead, the transfer pricing principles find application through the applicable double taxation agreement in that the SARS follows the OECD's guidance on the attribution of profits to a permanent establishment. On this basis, SARS will apply the arm's length principles to determine the arm's length attribution of profits between the permanent establishment and its head-office.

Where any non-arm's length term or condition of an affected transaction results or will result in any tax benefit being derived by a person that is party to that affected transaction, section 31(2) of the ITA places an obligation on each party to the affected transaction which derives a tax benefit, to calculate its taxable income or tax payable as if that transaction, operation, scheme, agreement or understanding had been entered into on the terms and conditions that would have existed, had those persons been independent persons dealing at arm's length.

Provision is also made for a secondary adjustment on the basis that any "adjustment amount" (i.e. the difference between the tax payable calculated in accordance with the arm's length principle and otherwise) will, in the case of an affected transaction between a resident company and inter alia, any other person that is not a resident, be deemed to be a dividend in specie paid by the resident company to that other person. In the case of an affected transaction between a resident individual and inter alia, any other person that is not a resident, the adjustment amount is deemed to be a donation made by that resident to that other person.

Accepted Transfer Pricing Methodologies

Although South Africa is not a member country of the OECD, it became one of five Key Partners (along with Brazil, China, India and Indonesia) to the OECD in 2007. South Africa is also a member of the OECD Base Erosion and Profit Shifting "BEPS" Committee.

South Africa closely follows the guidance contained in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations "OECD Guidelines" in respect of transfer pricing matters in the absence of specific South African guidance and SARS also endorses the standard OECD transfer pricing methods.

As a general rule, the most reliable method will be the one that requires fewer and more reliable adjustments to be made. Taxpayers will not be required to undertake an intricate analysis of all the methodologies, but should have a sound basis for using the selected methodology.

Transfer Pricing Documentation Requirements

South Africa implemented the OECD's "three-tiered" approach to transfer pricing documentation, consisting of a country-by-country report "CbCR", a master file and local file.

In terms of a public notice published by SARS, a Reporting Entity, as defined in the context of CbCR, that is a resident, will be required to submit information relating to all three tiers of documentation (i.e. CbCR , master file and local file).

In addition, a person, that is a resident, whose aggregate potentially affected transactions (essentially cross-border transactions with a connected person) for the year of assessment exceed or are reasonably expected to exceed ZAR100 million, will be required to submit the information relating to:

- the master file, where the ultimate holding company (the ultimate holding company is defined as a resident person which consolidates the taxpayer for accounting purposes, or would be required to do so if it were listed) in respect of the Group is a resident, or where a master file that substantially conforms with Annex I to Chapter V of the OECD Guidelines is prepared by any other entity within the Group; and
- the local file.

The necessary returns must be submitted within 12 months of the end of the taxpayer's financial year.

In addition to the submission of transfer pricing returns, South Africa has additional record keeping requirements specific to transfer pricing "South African Record Keeping Requirements".

The South African Record Keeping Requirements provide for two levels of record keeping:

- Records in respect of structure and operations – applicable to taxpayers whose potentially affected transactions for a year of assessment exceed, or are reasonably expected to exceed ZAR100 million in aggregate.
- Records in respect of transactions – applicable to a taxpayer who has entered into a potentially affected transaction where such transaction exceeds or is reasonably expected to exceed ZAR5 million in value.

Taxpayers which do not meet the ZAR100 million threshold are nevertheless required to keep such records as will allow them to ensure, and allow SARS to be satisfied, that their potentially affected transactions were concluded at arm's length.

These records are not intended to be submitted as a matter of course but are required to be retained in case of an audit.

Independent of whether a taxpayer has met the above mentioned ZAR100 million threshold, the corporate income tax return further requires the disclosure of certain transfer pricing-related information. In particular, taxpayers are required to disclose whether they have entered into any potentially affected transactions during the year of assessment. Taxpayers which have entered into such transactions are further required to answer whether they have prepared documentation which supports the arm's length nature of such transactions. According to the SARS Comprehensive Guide to the Income Tax Return for Companies, taxpayers answering this question in the affirmative must have such documentation available for immediate submission to SARS, if requested.

Local Jurisdiction Benchmarks

South Africa follows the guidance in the OECD Guidelines to determine an arm's length remuneration.

Where it is possible to locate comparable uncontrolled transactions, the CUP method is the most direct and reliable way to apply the arm's length principle and consequently, in such cases, the CUP method is preferable over all other methods. SARS accepts both internal and external comparables.

Information on South African companies is only readily available in the form of published financial accounts of public companies. More detailed information on public companies and information on private companies is generally not publicly available. South African comparables are consequently not easily available.

Accordingly, SARS has stated (in its Practice Note 7 which provides guidance on the application of the transfer pricing rules in South Africa), that it accepts the use of foreign financial databases but may require that adjustments to the data are carried through for use in the South African market. While in the past SARS was relying heavily on European companies for comparability, its approach has recently been widened to include other geographic areas, depending on the specific circumstances of the transaction and the industry in which the tested party operates.

Although SARS accepts both gross margin and net margin based benchmarks, SARS has become increasingly critical of taxpayers benchmarks and will critically review the search strategy as well as the final set of comparative companies.

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

It is not currently possible to obtain an advance pricing agreement ("APA") in South Africa.

SARS has, however, published draft legislation and a proposed model ("APA Framework") for establishing an APA programme in South Africa in the Draft Tax Administration Laws Amendment Bill, 2023 released on 31 July 2023.

Key features of the APA Framework in its current format include, inter alia:

- the scope of APAs is limited to affected transactions as defined in section 31 of the ITA and does not include, for example, transactions between a South African permanent establishment and its non-resident head office or vice versa;
- It is intended that the APA programme will only apply to affected transactions of a complex nature and above a minimum value, still to be determined;

- The APA programme covers both the determination of the most appropriate transfer pricing method and the arm's length price and all OECD accepted methods of determining the price may be used;
- Only bilateral APAs are currently provided for and there is no indication whether unilateral or multilateral APAs will be considered in the South African context;
- The maximum period of time for the application of an APA is five (5) years with an option to extend for a further three (3) years provided that the facts and circumstances have not changed materially from the original application for an APA;
- The APA holder will have to prepare and submit and annual compliance report to SARS.

Fees are envisaged for all the steps in the process but are still to be determined by SARS by way of public notice.

Transfer Pricing Audits

A small specialist unit within SARS conducts transfer pricing audits. Although SARS is committed to building the capacity of this unit, transfer pricing audits typically take a long time to finalise.

Transfer pricing audits are often triggered by taxpayers' responses to the transfer pricing specific questions included in the Income Tax Return for Companies.

SARS's approach typically starts with a detailed functional analysis, including functional analysis interviews.

Key focus areas for transfer pricing audits include, inter alia, both inbound and outbound distribution arrangements, as well as transfer pricing models that include a limited risk entity, such as contract manufacturing and limited risk distributor arrangements.

SARS selects taxpayers for audit from all industries in South Africa, but appears to focus on the commodities, financial services, retail and automotive sectors.

Transfer Pricing Penalties

In addition to the primary and secondary adjustment, where the application of non-arm's length terms has resulted in any prejudice to SARS or the fiscus, the taxpayer may be liable for understatement penalties in terms of section 222 of the TAA.

Understatement penalties are determined as a percentage of the difference between the understated amount of tax and the amount that should properly have been chargeable to tax. The percentage depends on the "behaviour" involved in the understatement and ranges between 10 percent, for a first case of "substantial understatement" to 200 percent for a repeat case of "intentional tax evasion".

In terms of sections 89bis and 89quat of the ITA, interest is payable on underpaid amounts of tax at a rate which is prescribed from time to time.

South African taxpayers with an obligation to file the CbC report and/or a master and/or local file to SARS, that fail to comply, could also be subject to so-called "administrative non-compliance penalties".

Administrative non-compliance penalties comprise fixed amount penalties as well as percentage-based penalties as per sections 210(1) and 211 of the TAA. The penalty amount that will be charged depends on a taxpayer's taxable income and can range from ZAR250 up to ZAR16 000 a month for each month that the non-compliance continues.

Local Hot Topics and Recent Updates

The recent publication by SARS of the proposed APA Framework has been welcomed by taxpayers and tax professionals alike as a big step towards enhanced tax certainty in South Africa. However, the actual implementation date is still uncertain, and success of such a regime will to a large degree depend on question whether SARS will be able to build up sufficient capacity in the APA unit.

In January 2023, SARS published a final version of an interpretation note to provide guidance on the transfer pricing aspects of intra-group financing arrangements ("IN127"). IN127 is largely based on the latest guidance of the OECD included in Chapter X of the OECD Guidelines.

As a result, we expect an increased focus from SARS on intra-group finance arrangements and, in particular, inbound loans.

Documentation threshold

Master file	ZAR100 million
Local file	ZAR100 million
CbCR	Consolidated group revenue exceeding ZAR10 billion

Submission deadline

Master file	12 months from financial year end
Local file	12 months from financial year end
CbCR	12 months from financial year end

Penalty Provisions

Documentation – late filing provision (Master File and Local File)	Administrative non-compliance penalties that can range from ZAR250 up to ZAR16 000 a month for each month that the non-compliance continues in terms of section 211 of the TAA
Tax return disclosure – late/no filing	Administrative non-compliance penalties that can range from ZAR250 up to ZAR16 000 a month for each month that the non-compliance continues in terms of section 211 of the TAA
Tax return disclosures – incomplete filing	Understatement penalties that can range from 10 percent, for a first case of "substantial understatement" to 200 percent for a repeat case of "intentional tax evasion" in terms of section 222 of the TAA
CbCR – late/incomplete/no filing	Administrative non-compliance penalties that can range from ZAR250 up to ZAR16 000 a month for each month that the non-compliance continues in terms of section 211 of the TAA

CONTACT
Jens Brodbeck
ENS
jbrodbeck@ENSafrica.com
+27 83 442 7401

SOUTH KOREA

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Overview

Yulchon LLC, **Taxand Korea**

Yulchon's Transfer Pricing Team provides top-tier one-stop service for leading Korean and foreign multinational enterprises (the "MNEs") in relation to all types of transfer pricing issues, including the following:

- Establishment of global transfer pricing policies
- Preparation of transfer pricing documentation (including local file, master file, and country-by-country report)
- Tax risk assessments and tax audit defense
- Tax due diligence
- Assistance with APA (Advance Pricing Agreement) and MAP (Mutual Agreement Procedure) applications
- Assistance with tax appeals and tax litigation

International Tax Review selected Yulchon as the "*South Korea Transfer Pricing Firm of the Year*," and various other international organizations have recognized Yulchon's transfer pricing expertise and capabilities.

General : Transfer Pricing Framework

The transfer pricing legislation is governed by the Act on Adjustment of International Taxes (the "AAIT"), which is commonly known as the Law for Coordination of International Tax Affairs in practice. The AAIT, the Enforcement Decree of the AAIT, and the Enforcement Rule of the AAIT do not specifically contain a reference to the OECD Guidelines, but the AAIT is mostly consistent with the OECD Guidelines, which are used as a reference in making and implementing transfer pricing related policies and amendments.

The AAIT specifies the arm's length principle to be applied to overseas intercompany transactions and also requires transfer pricing documentation for certain types of MNEs.

Accepted Transfer Pricing Methodologies

The AAIT generally follows the OECD principles that it enlists the same 5 transfer pricing methods, which include the (1) Comparable Uncontrolled Price Method, (2) Resale Price Method, (3) Cost Plus Method, (4) Profit Split Method, and (5) Transactional Net Margin Method.

Without a hierarchy of methods, the most appropriate and reliable method should be adopted among the five transfer pricing methods above considering all relevant factors and circumstances. Only where such five transfer pricing methods cannot be applied, other reasonable method (alternative method) can be selected and applied.

Transfer Pricing Documentation Requirements

Based on the currently effective AAIT, MNEs with (i) the total amount of overseas intercompany transactions exceeding KRW 50 billion and (ii) the sales revenue exceeding KRW 100 billion are required to prepare and submit a Master File and Local File within 12 months from the fiscal year-end.

In addition, ultimate parent companies of MNEs with the sales revenue on the consolidated financial statement in the immediately preceding tax year exceeding KRW 1 trillion, etc. are required to prepare and submit a Country-by-Country Report (the "CbCR") within 12 months from the fiscal year-end. A reporting entity's CbCR notification form must be filed no later than 6 months of the fiscal year end of the Korean entity.

Other taxpayers engaged in overseas intercompany transactions below the threshold for the Master File and Local File are still required to maintain reasonable transfer pricing documentation (the "Contemporaneous Transfer Pricing Documentation") by the due date of filing the corporate tax return and submit it within 30 days upon the NTS's request.

Local Jurisdiction Benchmarks

Based on the AAIT, benchmarks are required to compute a relevant arm's length price (range) for covered intercompany transactions.

Depending on selection of the tested party, regional / global or local comparables can be utilized. In case that the tested party is a Korean entity, local comparables using the local database, namely the KIS-Line / KIS-Value, are usually used and requested by the Korean tax authority, the National Tax Service (the "NTS").

During tax audits, the NTS challenges the appropriateness of taxpayers' benchmarks such as applied screening criteria, etc., and in particular, the NTS mostly likely raises an issue of using regional / global benchmarks when the tested party is a Korean entity. The NTS, however, does not use secret comparables for transfer pricing assessment purposes.

Similar to other countries, the Transactional Net Margin Method is a commonly applied method with various profit level indicators such as operating margin and full cost plus markup.

If a taxpayer may prove appropriateness of internal CUPs, such information can be utilized to defend its transfer prices.

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

Based on the AAIT, both unilateral APA (the "UAPA") and bilateral APA (the "BAPA") applications are possible, and general APA process is same as other jurisdictions as follows:

- [Step 1] Pre-filing Meeting
- [Step 2] Application and Commencement
- [Step 3] Examination and Negotiation
- [Step 4] Closing
- [Step 5] Follow-up Management

There are no specific qualification requirements for the APA applications, and there is no APA application filing fee in Korea.

Based on the NTS' most recent 2022 APA Annual Report, the average time to conclusion for all years was 21 months for UAPAs and 31 months for BAPAs. Of the 666 APAs, which were concluded by 2022, 462 (69%) cases covered a period of 5 years, and the terms of 328 (49%) cases were concluded with a roll-back, of which 103 cases covered a 3-year rollback. In addition, the 666 concluded APAs by 2022 consist of 219 UAPAs and 447 BAPAs.

Transfer Pricing Audits

The NTS conducts tax audits at random, and all MNEs are subject to tax audit for any open period. The ordinary statute of limitations period is 5 years in Korea. Under current guidance, when an MNE is audited, the transfer pricing documentation reports are to be requested as one of the initially requested information. Tax auditors usually review all transfer pricing related topics (e.g., all overseas intercompany transactions with all related parties).

Transfer Pricing Penalties

There are no specific transfer pricing penalties for under-reporting and late payment of tax, but general penalties apply for transfer pricing assessments, which include (i) the penalty for under-reporting, 10% of the assessed tax amount (60% for fraudulent cross-border transactions) and (ii) the penalty for late payment, which is interest charge in nature, at 8.03% per annum.

If a taxpayer has reasonably prepared and submitted a Local File and Master File or a Contemporaneous Transfer Pricing Documentation in good-faith, the under-reporting penalty tax may be waived.

Local Hot Topics and Recent Updates

The NTS has recently conducted more aggressive tax audits challenging various transfer pricing issues, and some of the notable developments are as follows.

- General view and approach: certain industries or MNEs likely benefitted during COVID-19 often targeted and mere filing of an APA application (before conclusion) still subject to a full transfer pricing review during tax audit
- Significant factual findings based on substance-over-form rule: persistent request of substantial transfer pricing information from foreign affiliates and extensive functional interviews and information request from key personnel
- Reconstruction of a taxpayer's transfer pricing policy: various simulation with scenario analysis to result in transfer pricing assessments such as changing the selected transfer pricing method, profit level indicator, and/or tested party.

SOUTH KOREA

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Documentation threshold

Master file	(i) the total amount of overseas intercompany transactions exceeding KRW 50 billion and (ii) the sales revenue exceeding KRW 100 billion
Local file	(i) the total amount of overseas intercompany transactions exceeding KRW 50 billion and (ii) the sales revenue exceeding KRW 100 billion
CbCR	the sales revenue on the consolidated financial statement in the immediately preceding tax year exceeding KRW 1 trillion

Submission deadline

Master file	within 12 months from the fiscal year-end (within 6 months from the fiscal year-end based on the most recent tax amendment proposal)
Local file	within 12 months from the fiscal year-end within 6 months from the fiscal year-end based on the most recent tax amendment proposal)
CbCR	within 12 months from the fiscal year-end

Penalty Provisions

Documentation – late filing provision	an administrative fine of KRW 30 million depending on each type of documentation, which can be increased to less than KRW 200 million depending on the period of non-compliance with the NTS' request
Tax return disclosure – late/incomplete/no filing	an administrative fine of KRW 5 million ~ 70 million depending on the type of tax return forms, which can be increased to less than KRW 200 million depending on the period of non-compliance with the NTS' request
CbCR – late/incomplete/no filing	an administrative fine of KRW 30 million, which can be increased to less than KRW 200 million depending on the period of non-compliance with the NTS' request

CONTACT

Kyu Dong Kim
Yulchon
kdkim@yulchon.com
+82 10 8731 9718

Tae Hyoung Kim
Yulchon
taehyoungkim@yulchon.com
+82 10 7135 8739

SPAIN

Overview

Garrigues,Taxand Spain

Garrigues,Taxand Spain, is an international firm that provides tax and legal advisory services at local, regional and global level, covering every angle of business law. Its strength lies in its team of over 2,100 people working across multiple disciplines to deliver comprehensive client solutions, and in its shared values in the 3 countries it represents within Taxand: unparalleled service quality, ethical commitment and an innovative approach that helps Garrigues stay one step ahead of market needs.

Garrigues provides a full range of transfer pricing services, which can be summarised as follows:

- Design and implementation of transfer pricing policies, business reorganizations and value chain analysis;
- Advice during transfer pricing audits;
- Assistance in negotiating Advanced Pricing Agreement ("APA"s) with the Spanish Tax Authorities, either unilateral or bilateral;
- Assistance in Mutual Agreement Procedures ("MAP"s) for the resolution of double taxation situations deriving from adjustments of related party transactions;
- Advice to multinational corporations on how to fulfill their formal obligations concerning documentation and information of related-party transactions in Spain (e.g., Master and local file, 232 Form and country-by-country report,); and
- Valuation of companies or assets for tax purposes.

General: Transfer Pricing Framework

The arm's length principle can be found under Spanish regulations in the "Ley del Impuesto de Sociedades", which is the Spanish Corporate Income Tax Law ("CITL") 27/2014.

Article 18 of the law contains a series of rules regarding the obligation to value related party transactions at arm`s length, stating, in particular, that these type of transactions *"shall be valued at their market value", considering this as that which "would have been agreed upon by independent persons or entities".*

Spain is a member of the OECD. The preamble to the CITL specifically declares that the interpretation of the Spanish transfer pricing provisions must be done in accordance with the OECD Transfer Pricing Guidelines and with the EU Joint Transfer Pricing Forum recommendations, insofar as they do not contradict what is expressly established in the CITL or in its implementing legislation.

Accepted Transfer Pricing Methodologies

Spanish transfer pricing regulations define the methodologies that are to be used to analyze related party transactions. These are the following:

- Comparable Uncontrolled Price Method.
- Cost-Plus Method.
- Resale Price Method.
- Profit Split Method.
- Transactional Net Margin Method.

The CITL also allows the application of other generally accepted pricing methods where it is not possible to apply the aforementioned methodologies, as long as they are consistent with the arm`s length principle.

There is no specific priority of methods. The most appropriate method must be chosen, considering the characteristics of the transactions and the availability of reliable information.

Transfer Pricing Documentation Requirements

The Corporate Income Tax Regulation ("CITR"), contained in Royal Decree 634/2015, establishes the formal information and documentation obligations, namely: transfer pricing documentation, a tax return disclosure and country-by-country reporting.

The transfer pricing documentation requirements are drawn from the principles contained in Chapter V of the OECD Transfer Pricing Guidelines, divided into two parts, each of which is structured into blocks of information:

- Documentation relating to the group to which the taxpayer belongs (Masterfile), required for entities belonging to groups having a net turnover exceeding EUR45 million, which is structured according to the following sections:
  - Information on the group's structure and organization.
  - Information on the group's activities.
  - Information relating to the group's intangible property.
  - Information on financial activity.
  - Group's financial and tax position.

- Documentation on the taxpayer *(Localfile)*, required for entities performing related party transactions exceeding a quantitative threshold (EUR 250.000 per related-party whole aggregation of operations), and which is structured according to the following sections:

  – Information on the taxpayer.

  – Information on the controlled transactions.

  – Taxpayer's economic and financial information.

  There are certain related-party transactions for which the documentation is not required, such as the ones below the quantitative threshold mentioned above or transactions carried out between entities in the same consolidated tax group, among others.

  Furthermore, there is an option for a simplified documentation system, which can be exercised by related persons or entities with net revenues below EUR 45 million, and an even more simplified documentation system in the case of entities whose net revenues are below EUR 10 million.

The tax return disclosure is embodied in Form 232, which is the information return in respect of related-party transactions and transactions and situations linked to countries or territories categorized as tax havens.

It is required to be filed by corporate income tax taxpayers and non-resident income tax taxpayers who operate through a permanent establishment, and entities under the pass-through regime formed abroad and with a presence in Spain, which perform (i) related-party transactions exceeding certain quantitative thresholds or in cases in which the reduction for revenues from certain intangible assets is applicable; or (ii) transactions and situations linked to countries or territories categorized as tax havens.

Form 232 must be filed electronically, in the month following 10 months after the end of the tax period to which the information to be supplied relates. In other words, for taxpayers whose tax period ends on 31 December, the deadline for filing Form 232 is 30 November of the following year.

Finally, the country-by-country reporting obligation applies to all Spanish resident entities that are considered to be parent companies of a group and are not a subsidiary of another company when the combined net revenues of all the persons or entities belonging to the group, during the 12 months preceding the start of the tax period, amount to at least EUR 750 million, and, exceptionally, to subsidiaries or permanent establishments owned directly or indirectly by a non-Spanish resident entity that is not also a subsidiary of another entity under circumstances such as that there is no similar CbC reporting requirement with respect to the non-resident entity, among others.

This information must be submitted within the 12 months following the end of the tax period.

Local Jurisdiction Benchmarks

Spanish law and regulations do not make any reference to foreign comparables. However, the use of pan-European comparables is a common practice in cases where not enough Spanish comparables are available and benchmarked transactions are carried out in this geographic area.

In line with the recommendations of the OECD Guidelines, taxpayers usually perform new searches every three years, refreshing the financial information of the comparable entities on a yearly basis in cases where significant changes do not take place.

Advance Pricing Agreement/Bilateral Advance Pricing Agreement "BAPA" Overview

In Spain, taxpayers can apply for APAs or BAPAs before the Department of Financial and Tax Inspection of the Spanish Tax Agency.

Even if the taxpayer has the possibility (not obligation) to approach informally the Spanish competent authority on a pre-filing phase, the procedure starts with a formal application, for which no fees are due, that must contain a proposed price based on the arm's length principle, a description of the proposed method and an analysis justifying that the manner in which it is applied.

The Spanish competent authority will examine the proposal together with the documentation submitted, and may require the taxpayer to produce additional data, reports, background facts and documentary support, as well as further explanations or clarifications.

According to regulations, the procedure must be completed within a 6-month period, but, in practice, it takes at least from 18 to 24 months to complete the process.

An APA is valid for four tax periods subsequent to the date on which it is approved and may also apply to transactions in the current tax period at the date of approval. The APA can also be applicable to transactions in all earlier tax periods, insofar as the tax authorities' right to determine the tax debt by issuing an assessment is not statute barred. The period of validity of an approved APA can be extended, provided a request is filed not less than 6 months prior to the expiry of the initial term of the APA. If there is a significant change in the economic circumstances that existed when the APA was approved, it can be modified.

Transfer Pricing Audits

The Spanish Tax Authorities conduct tax audit at random and all companies are subject to audit for any open period. The ordinary statute of limitations period is four years.

The burden of proof is on the taxpayer, by way of the transfer pricing documentation that needs to be prepared according to the requirements of the regulations. In practice, this documentation is being requested and deeply scrutinized in almost every tax audit.

Transfer Pricing Penalties

The legislation provides for specific penalties on transfer pricing assessments if: (i) the taxpayer does not prepare the transfer pricing documentation or prepares it in an incomplete manner or with false data; or (ii) the arm's length value derived from the transfer pricing documentation does not correspond with the one declared by the taxpayer in its tax return.

Such penalties will be different depending on whether or not an adjustment is applicable.

If a valuation adjustment is applicable, the penalty will be equal to 15% of the difference between the agreed value and the market value.

In the absence of a valuation adjustment, the penalty will consist of a fixed fine of EUR 1,000 for each item of data and EUR 10,000 for each set of omitted or false data relating to each one of the documentation obligations established by the CIT Regulations for the group or for each entity in its capacity as a taxpayer. The maximum limit for this penalty is the lower of 10% of the aggregate amount of the transactions subject to CIT, personal income tax or non-resident income tax and performed in the tax period, or 1% of net revenues.

Local Hot Topics and Recent Updates

Transfer pricing is being deeply scrutinized by the Spanish Tax Authorities. In fact, it has dedicated over the years a specific section within its Tax and Customs Control Plan, being the last one, for 2023, focused on enhancing oversight and enforcement of transfer pricing regulations within multinational group operations.

The plan encompasses more rigorous audits in key areas such as corporate restructurings, the valuation of intangible assets, and intragroup transactions. Special attention is also being given to the deductibility of items that can significantly impact the taxable base, such as royalties arising from the transfer of intangibles and intragroup services, as well as financial operations involving related parties and the persistence of recurrent tax losses.

As part of this special focus, the Spanish Tax Authorities have developed the so-called "360º strategy", that entails a comprehensive approach to addressing all aspects of transfer pricing compliance and enforcement. It encompasses enhanced coordination, digitalization, and international cooperation to ensure proper taxation in related-party transactions. The strategy aims to prevent erosion of the tax base by educating taxpayers, using advanced technology for data analysis, and fostering transparency in tax relations. This holistic approach seeks to create a more efficient and equitable transfer pricing framework.

SPAIN

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Documentation threshold

Master file	Net turnover of the group > EUR 45 million
Local file	Related party transactions > EUR 250.000
CbCR	Group turnover > EUR 750 million

Submission deadline

Master file	At the disposal of the tax authorities from the end of the voluntary period for the declaration or settlement of taxes.
Local file	At the disposal of the tax authorities from the end of the voluntary period for the declaration or settlement of taxes.
CbCR	During the 12 months following the closing date of the financial year of the parent entity.

Penalty Provisions

Documentation – late filing provision	N/A
Tax return disclosure – late/incomplete/no filing	Fixed fine for each piece of information or set of information missing or incorrect, or a fine consisting on a percentage over the amount of the transactions, as the case may be.
CbCR – late/incomplete/no filing	Fixed fine for each piece of information or set of information missing or incorrect, or a fine consisting on a percentage over the amount of the transactions, as the case may be.

CONTACT
Eduardo Abad Valdenebro
Garrigues
eduardo.abad@garrigues.com
+34 91 514 5200

Mario Ortega Calle
Garrigues
mario.ortega.calle@garrigues.com
+34 91 514 5200

SWEDEN

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Overview

Skeppsbron Skatt AB, **Taxand Sweden**

Thanks to our extensive experience of all aspects of transfer pricing, combined with our ability to see the big picture from a business as well as a tax perspective, Skeppsbron Skatt serve clients in most sectors. Such sectors include manufacturing, finance, retail, IT, food, commodities, energy, pharmaceuticals and life sciences and offer comprehensive practicable advice on i.a.

- Restructurings
- IP deals
- Tax disputes
- Advance Pricing Agreements "APA" and Mutual Agreement Procedures "MAP"
- Transfer pricing policies and documentation.

General: Transfer Pricing Framework

The arm's length principle is incorporated into Swedish domestic law (Chapter 14, section 19 of the Income Tax Act, "ITA"). The arm's length principle is also incorporated into Sweden's double tax agreements, which are in turn based on Article 9 of the OECD's Model Tax Convention. The Swedish transfer pricing regulations are normally interpreted based on the principles laid down in the OECD Guidelines. This is not explicitly stated in the Swedish legislation but is based on statements made by the Swedish Supreme Administrative Court (RÅ 1991 ref. 107). It should be noted that the Swedish Tax Agency "STA" generally believe that new versions of the OECD Guidelines are applicable retroactively and viewed as clarifications of the arm's length principle.

Accepted Transfer Pricing Methodologies

The OECD Guidelines is implemented by decisions from the Swedish Supreme Administrative Court. Consequently, the methods described in the OECD Guidelines are all accepted. The method used must, however, reflect the functional, risk and asset profile of the parties in the transaction. The applied method should be deemed appropriate from an arm's length perspective.

In summary, the most appropriate pricing method providing the most reliable measure of an arm's length result in each case should be selected on a transaction-by-transaction basis. It is further accepted to apply other methods as long as it can be demonstrated that it results in arm's length pricing.

The most common methods are the transactional net margin method "TNMM" for routine entities and the comparable uncontrolled price method "CUP" especially for financial transactions and license fees. The use of the profit split method "PSM" is still rather uncommon although it is becoming increasingly adopted by taxpayers.

Transfer Pricing Documentation Requirements

Sweden has implemented transfer pricing documentation (master and local file) requirements in line with the OECD Guidelines. An unlimited taxable company that carries out transactions with a limited taxable company abroad within the same group must provide transfer pricing documentation. Transactions between Swedish entities are exempt from documentation; however, the transactions should still be priced at arm's length. This is particularly important in case the Swedish entities lack group contribution rights or if the entities have restrictions on tax losses carried forward.

To be exempted from the transfer pricing documentation requirements, such companies must, in the year that precedes the tax year, have fewer than 250 employees and either an annual turnover of no more than SEK 450 million or a balance sheet total of no more than SEK 400 million.

According to Swedish law, it is not required to document immaterial transactions in a local file. The materiality of the transactions is based on the size and operations of the local entity. Large transactions or transactions key to the core operations are considered material. There is, however, an exemption related to the total value of the transactions. If the transactions with a foreign controlled entity are less than SEK 5 million during the financial year, the transaction is per definition considered immaterial. The transaction should however still be priced in accordance with the arm's length principle. For intangible assets, the exemption is only applicable if the intangible assets do not pertain to the company's core business.

The documentation shall consist of two parts, a master file and local file. It may be prepared in Swedish, Danish, Norwegian or English. The master file must be prepared no later than the time when the parent company in the group must submit its income tax return. The local file must be prepared no later than the time when the Swedish company must submit its income tax return.

The transfer pricing documentation is to be submitted to the STA upon request. There is no timeframe specified by the law for how long the company may have to submit the master- and local file. Consequently, the timeframe is decided by the STA on a case-by-case basis depending on how long the company needs. Normal practice for the STA is, however, to request the documentation within 30 days.

The transfer pricing documentation must be kept available for seven years after the end of the calendar year in which the fiscal year ended.

Sweden has also enacted the country-by-country reporting "CBCR" rules in line with the OECD Guidelines. The rules apply to groups with revenues exceeding SEK 7 billion. The CbCR must be submitted within 12 months of the end of the relevant fiscal year. CbCR notifications should be submitted to the STA by all Swedish entities of a group liable to prepare the CbCR by the end of the relevant fiscal year.

Local Jurisdiction Benchmarks

Sweden follows the guidance described in the OECD Guidelines regarding comparability analysis. There is generally no specific preference for domestic comparables over foreign comparables, however the comparables should be independent and have a clear comparability. The STA usually refers to multiple year data and the interquartile range in terms of benchmarking. In line with the OECD Guidelines, the benchmark should be updated every three years, unless no substantial changes have occurred that prompts an update. A financial update should be conducted every year as best practise. However, the STA would not necessarily question a benchmark for which no financial update has been made.

Advance Pricing Agreement/Bilateral Advance Pricing Agreement "BAPA" Overview

APA procedures in Sweden are initiated by the taxpayer by sending a written application to the competent authority which is part of the STA. Apart from Swedish companies, foreign companies with permanent establishments in Sweden are also allowed to apply for an APA. The taxpayer is generally given the possibility to meet the STA to discuss the APA prior to submitting the application, should the taxpayer want to. An APA application may only cover complex issues and major transactions. A question is not considered complex if the application of the arm's length principle in the current situation is not unclear.

Bilateral and multilateral APAs are accepted in Sweden and the arrangements are entered through a mutual agreement procedure regime in the applicable tax treaty (article 25, mutual agreement procedure, OECD:s Model Tax Convention on Income and on Capital). As such, APAs are only available if there is a tax treaty in force between Sweden and the foreign tax jurisdiction. Unilateral APAs are not accepted in Sweden.

The fee for an APA is SEK 150,000 per country for the first application. The fee is somewhat reduced for renewals.

The APA procedure is generally relatively time-consuming as the competent authority has limited resources and demands high level of detail before they feel comfortable forming an opinion on the issue.

Transfer Pricing Audits

During the most recent years, the STA seems to have focused audits on companies involved in a re-structuring and/or transfer of intellectual property. Additionally, companies with branches or permanent establishments have also been subject to scrutiny. Finally and most importantly, loss-making entities/groups are always of particular interest to the STA.

Transfer Pricing Penalties

There are no specific penalties related to not preparing transfer pricing documentation. In case the STA considers that the pricing applied is incorrect, penalties of maximum 40% on the additional tax levied may be applied. Having compliant transfer pricing documentation in place may reduce potential penalties by half if certain criteria are met. Potential penalties can also be fully reduced if an open statement has been made in the tax return or if the transfer pricing issue is deemed very complex.

Local Hot Topics and Recent Updates

The recent interest rate increases by the central bank in Sweden and by central banks abroad have led to an increased focus on intra-group financial transactions. In Sweden, the central bank interest rate has been zero or even minus from late 2014 to mid-2022. This has however shifted as the interest rate has increased from the bottom peak -0.5% last recorded in 2019 to 4% in 2023.

As access to cash has been widely available and relatively cheap during the last decade many companies have financed their subsidiaries with loans. Depending on the interest rates applied within the group several issues may arise due to the increased interest rate on the market. Subsidiaries with a floating interest rate might struggle to pay the interest rates whilst in situations where a fixed interest rate has been applied on the intra-group loan, the parent company might face higher external interest costs compared to the level of intra-group interest income received.

Additionally, it is important to carefully plan the level of debt within the group to ensure that the Swedish interest deduction rules are efficiently applied.

Planning and pricing intra-group loans has thus become increasingly important at the same time as new guidance from the OECD (published in 2020) on financial transactions needs to be considered. Similar to many other jurisdictions, it is expected that controversy related to financial transactions will heavy increase in Sweden in the upcoming years.

SWEDEN

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Documentation threshold

Master file	250 employees or either a turnover of at least SEK 450 million or a balance sheet of at least SEK 400 million.
Local file	250 employees or either a turnover of at least SEK 450 million or a balance sheet of at least SEK 400 million.
CbCR	Revenue SEK 7 billion.

Submission deadline

Master file	No later than the time when the parent company in the group must submit its income tax return.
Local file	No later than the time when the Swedish company must submit its income tax return.
CbCR	Within twelve months after the end of the financial year. It is the financial year of the group's parent company that determines the time period.

Penalty Provisions

Documentation – late filing provision	No penalty.
Tax return disclosure – late/incomplete/no filing	Late filing fee is SEK 6,250 (could be charged up to three times).
CbCR – late/incomplete/no filing	No penalty.

CONTACT

Mikael Jacobsen
Skeppsbron Skatt
mikael.jacobsen@skeppsbronskatt.se
+46736409178

Ingrid Faxing
Skeppsbron Skatt
ingrid.faxing@skeppsbronskatt.se
+46736409143

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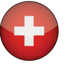


Overview

Tax Partner AG, Taxand Switzerland

Tax Partner AG is focused on Swiss and international tax law and is recognised as a leading independent tax boutique. The firm currently features 11 partners and counsel and a total of approximately 50 tax experts consisting of attorneys, legal experts and economists. The firm advises multinational and national corporate clients as well as individuals in all tax areas. A central focus lies on tax controversy and dispute resolution, including transfer pricing issues. Tax Partner AG also provides support regarding transfer pricing studies and the preparation of transfer pricing documentation. Other key areas include M&A, restructuring, real estate transactions, financial products, VAT and customs. Tax Partner AG is independent and collaborates with various leading tax law firms globally. In 2005 the firm was a co-founder of Taxand.

Transfer Pricing offering:

- Transfer Pricing design, value-chain analysis and optimizations.
- Restructurings and valuations.
- Transfer Pricing implementation.
- Unilateral tax rulings.
- Benchmarking studies.
- Documentation.
- Support in tax audits.
- Tax disputes, including to obtain unilateral and bilateral APAs and MAP agreements.
- Due diligence re transfer pricing set-ups.

Tax Partner AG
Talstrasse 80
8001 Zurich
Switzerland

Tel: +41 44 215 77 77
Email: taxpartnerinfo@taxpartner.ch
Web: www.taxpartner.ch

Transfer Pricing Framework

In Switzerland, transfer pricing issues arise mainly in connection with federal and cantonal corporate income taxes and federal withholding tax. However, transfer pricing issues might also arise in connection with VAT.

With respect to corporate income tax, it should be noted that cantons have the authority not only to assess the cantonal and municipal taxes but also the federal corporate income taxes. This means that the cantons can issue advance rulings (so-called tax rulings) not only with regard to cantonal and municipal taxes but also regarding federal income taxes. However, the Federal Tax Administration (FTA) still exercises an important supervisory function over the cantons and can also intervene in individual cases. In practice, the FTA is becoming increasingly involved in discussions, especially in large transfer pricing cases.

While in the area of corporate income tax there is a parallel competence of the federal government and the cantons, the federal government has the exclusive competence to levy withholding tax, stamp duties and VAT. In the area of withholding tax, the FTA established a competence centre for transfer pricing in 2019. It is, hence, no surprise that in practice, for withholding tax purposes, transfer prices are increasingly being critically scrutinised during tax audits. This concerns, in particular, the relocation of functions abroad and controlled transactions between Swiss companies and related companies domiciled in tax havens or low-tax countries.

As far as legislation in the field of transfer pricing is concerned, it should be noted that there **are no specific regulations on the determination and documentation of transfer prices, neither at the federal level nor at the cantonal level**.

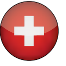
Switzerland has accepted the initial version and all updates of the OECD's Transfer Pricing Guidelines ("TPG") without reservation, including the latest update in 2022. Thus, there is **full consensus in Swiss tax law practice that the OECD's TPG are an important interpretative tool** for the application of the at arm's length principle in Swiss tax law.

In exercising its supervisory role over the cantonal tax administrations, the FTA instructed the cantonal tax administrations in 1997 and 2004 with a circular letter to directly apply the OECD's TPG. The Federal Supreme Court (FSC) tends to apply a static approach regarding the version of the OECD's TPG. Hence, the arm's length principle and the methods to determine the relevant transfer prices will be assessed according to the OECD's TPG as they were published at the time the transaction in question was settled.

Accepted Transfer Pricing Methodologies

The FTA instructed the cantonal tax administrations by a circular letter of 1997, which was renewed in 2004, to directly apply the OECD's TPG.

As Switzerland adheres to the OECD's TPG and **has not established specific transfer pricing rules**, the current regime and its development are, in general, reflected by the OECD's TPG. However, the arm's length principle was already acknowledged before the first OECD's TPG were published. Hence, in the matter of Bellatrix SA, the FSC confirmed in 1981 that for withholding tax purposes, the arm's length



principle is applicable with regard to transactions concerning the company's shareholders.

Swiss domestic tax laws or practices do not provide specific transfer pricing methods. Nevertheless, as Switzerland adheres to the OECD's TPG, all the usual transfer pricing methods are admissible ("most appropriate method" approach).

In accordance with the OECD's TPG, Switzerland does not have a specific hierarchy of the methods described in the GuidelinesTPG. **The most appropriate method should be used**. However, the three traditional methods – i.e., the comparable uncontrolled price (CUP) method, the resale price method and the cost plus method – are still preferred by the tax administrations.

Transfer Pricing Documentation Requirements

Swiss tax laws do not define specific documentation requirements with respect to transfer pricing. However, taxpayers must provide all documents necessary in order to enable the tax administration to conduct a proper assessment of the taxable base. This legal obligation is based on the principle that the taxpayer and the tax administration jointly determine the relevant facts to ensure a complete and correct assessment as far as corporate income tax is concerned. As a consequence, despite the lack of specific documentation rules, taxpayers are strongly advised to have full and state-of-the-art transfer pricing documentation at hand that can be disclosed if requested by the tax administration. This also includes intercompany agreements with respect to the controlled transactions. Such documentation will also be helpful in the defence of potential tax evasion charges. Such documentation should also include sound and updated benchmarking studies.

If no appropriate transfer pricing documentation can be presented and the taxable base subsequently cannot be properly determined, the tax administration might need to estimate the transfer prices. Even though that estimate has to be dutiful and based on experience, such estimates are rarely in favour of the taxpayer. Although such an estimate is not to be considered as a penalty, it still has to be taken into consideration as a potential negative impact. The reason for that is that the courts will reject such an estimate only if the taxpayer can demonstrate that the transfer prices set by the tax administration are obviously flawed or arbitrary.

Concerning transfer pricing documentation, Switzerland legally only requires to preparepreparing a CbCR. **There is no legal obligation to prepare a master or local file.**

However, in view of a potential challenge of the transfer prices by the tax authorities, it is nonetheless **advisable** to have master and local files at hand.

Local Jurisdiction Benchmarks

Benchmarking studies carried out in accordance with the principles set out in Chapter III of the OECD TPG are generally accepted by the Swiss tax authorities. Pan-European comparables are generally accepted by the Swiss tax authorities.

The Tax audit practice shows that internal CUPs are preferred where available and sufficiently comparable. According to jurisprudence of the highest Swiss court, the Federal Supreme Court, the cost plus method may be preferred to an CUP, especially for those services that are considered low value-adding (FSC, Case No. 2C_548/2020, 2C_551/2020).

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

Switzerland has a long-standing practice regarding the issuance of unilateral rulings. This practice also includes the issuance of unilateral transfer pricing rulings.

In Switzerland, **advance pricing agreements (APAs) are available**. APAs have become a favoured option for Swiss-based international groups with complex or high-volume transactions. In practice, the procedure starts with a presentation of the facts and a formal request to the State Secretariat for International Finance (Staatssekretariat für internationale Finanzfragen, or SIF), the competent authority in Switzerland.

In 2020, 85 APA proceedings were opened, and 55 of the 304 pending APA proceedings have been closed. The SIF has published guidance on APAs.

In principle, the APA programme is open for all taxpayers that engage in cross-border intra-group transactions.

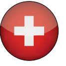
Under current practice, APA procedures are **free of charge**.

In practice, an APA will cover three to five years. However, Switzerland does not have specific time limitations that an APA may or may not cover. Rather, the time period to be covered by an APA has to be decided depending on the characteristics of the case at hand and is subject to negotiations. Hence, the duration is typically a trade-off between an administrative-economical reasoning and the uncertainty concerning future developments of the transactions that are the subject of the APA.

Transfer Pricing Audits

Transfer pricing issues can generally be raised by the tax administration in the course of ordinary tax assessments or in the course of audits. **Tax audits are not regularly performed**.

With regard to transfer pricing controversy process, it has to be differentiated whether a cantonal tax administration or the FTA raised the issue of transfer pricing. While the cantonal tax administrations raise this issue in the context of corporate income tax, the FTA may also challenge transfer pricing also with regard to withholding tax, stamp duty or VAT.



As will be shown, taxpayers may challenge the results of a tax assessment or from an audit in an administrative objection proceeding before bringing the case to court. As regards the selection of the courts, the taxpayer does not have options since the competent courts are determined by law.

Transfer pricing adjustments affecting corporate income tax have to be discussed with the cantonal tax administrations, as hey are the competent authorities to assess and levy corporate income tax at cantonal and federal level. If the tax administration has already issued an assessment or a decision, a formal objection can be lodged with the tax administration itself within 30 days. The tax administration will then have to evaluate the material objections and render a new decision.

The tax administration's second decision can be appealed before court, again within a 30-day deadline. Generally, each canton provides two judicial instances, whereas; though, typically, smaller cantons only established one judicial instance.

Once the highest cantonal court has rendered its decision, an appeal with the FSC can be lodged, also within 30 days.

In contrast to the cantonal instances, the FSC will only deal with questions concerning the correct application of the law, which includes the application of the OECD's TPG as soft law. Issues concerning the facts will only be dealt with if the facts were arbitrarily established. In the context of transfer pricing, it is worth noting that the choice of the transfer pricing method and its correct application of the same is a question of law, whereas the result is considered as a factual question. Hence, regarding the determination of the at arm's length remuneration, the FSC can only intervene if the remuneration appears arbitrary.

In contrast to the cantonal tax administrations, the FTA can raise transfer pricing issues in connection with withholding tax, stamp duty and VAT. As at the cantonal level, the taxpayer can object against a negative decision of the FTA before appealing to the court.

As such a decision affects taxes being levied by a federal administrative authority, the appeal has to be lodged with the Swiss Federal Administrative Court – within 30 days. This court's decision can then be appealed with the FSC.

Transfer Pricing Penalties

Switzerland **does not impose penalties that apply specifically in the transfer pricing context, except for violations of the CbCR requirements**.

However, violations of the arm's length principle can under certain circumstances be qualified as unlawful tax evasion (or tax fraud) and as such be subject to penalties. An unlawful tax evasion might be assumed if basic principles of transfer pricing were grossly neglected and, thus, the violation of the arm's length principle was not only recognisable for the company or the persons in charge respectively but downright obvious.

In such cases, it can be assumed that the transfer prices were deliberately set in violation of the arm's length principle.

In the case of tax evasion (or tax fraud), penalties may be imposed for all taxes involved. For instance, a transfer price-induced adjustment by the tax administration concerning corporate income tax may trigger respective consequences regarding withholding tax or VAT. In the case of corporate income tax, the penalties are determined based on the unlawfully evaded tax amount, whereas the potential penalty ranges from one third of the evaded tax to three times that amount. However, in general, the fine is equal to the amount of the evaded tax.

If the tax has not yet been definitively assessed, there may be a case of attempted tax evasion, which reduces the penalty to one third. Important to note is that for the purposes of corporate income tax the fine is imposed on the company. Regarding withholding tax and VAT, however, the fine is directly imposed on the person(s) responsible for the violation. At least in these cases, the fine is not determined based on the amount of tax evaded, but according to a fixed fine range.

Federal and cantonal Swiss tax laws provide for a one-time voluntary disclosure, which leads to a complete penalty relief if specific statutory conditions are met. Outside the voluntary disclosure procedures, penalties charged are lower in the case of ordinary negligence and higher in the case of gross negligence. Collaboration with the tax administration in the course of a tax criminal investigation will usually result in a lower penalty. With regard to the question of culpability, the importance of state-of-the-art transfer pricing documentation should be emphasised. If a company does have such documentation, it will be difficult for the tax administrations to substantiate culpability. However, as indicated above, many disputes can be prevented or settled by negotiations with the tax authorities during a tax assessment or tax audit process (by filing formal complaints).

Local Hot Topics and Recent Updates

Until recently, core transfer pricing issues were rarely touched by tax administrations, but as a result of the BEPS project, transfer pricing is increasingly part of routine tax audits. In recent years, the transfer pricing team of the Swiss tax authorities has been growing in size and taxpayers have been confronted more frequently with detailed questions on transfer pricing issues (e.g., requests for detailed transfer pricing documentation and explanations on comparables). The focus is on the transfer of functions, the transfer of intellectual property rights, financial and trading transactions and asset management services. In particular, transactions with foreign companies in low-tax jurisdictions are attracting the attention of the tax authorities.

SWITZERLAND

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Documentation threshold

Master file	N/A but recommended
Local file	N/A but recommended
CbCR	CHF 900 M

Submission deadline

Master file	N/A
Local file	N/A
CbCR	31 December after FY

Penalty Provisions

Documentation – late filing provision	N/A
Tax return disclosure – late/incomplete/no filing	Assessment by discretion by authorities
CbCR – late/incomplete/no filing	CHF 200 per day of late filing, up to CHF 50k

CONTACT

Prof Dr René Matteotti
Tax Partner AG
rene.matteotti@taxpartner.ch
+41 44 215 77 61

Hendrik Blankenstein
Tax Partner AG
hendrik.blankenstein@taxpartner.ch
+41 44 215 77 54

Caterina Colling Russo
Tax Partner AG
caterina.collingrusso@taxpartner.ch
+41 44 215 77 56

Monika Bieri
Tax Partner AG
monika.bieri@taxpartner.ch
+41 44 215 77 34

UNITED KINGDOM

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Overview

Alvarez and Marsal Tax LLP, Taxand UK

Alvarez and Marsal Tax LLP has a dedicated and rapidly growing team of transfer pricing specialists. The team delivers the full range of transfer pricing services on a bespoke basis from start to finish.

Taxand UK's transfer pricing services include: designing global transfer pricing policies in line with clients' broader corporate goals, supply chain, and international regulatory standards; preparing supporting benchmarking studies and compliant transfer pricing documentation; reviewing intercompany financing to determine the arm's length debt capacity and interest rates; performing transfer pricing risk reviews for due diligence purposes; and supporting clients through tax audits and negotiation of Advanced Pricing Agreements ("APA") and Mutual Agreement Procedures ("MAP").

Transfer Pricing Framework

Transfer pricing legislation in the UK is contained in section 146 et seq of Part 4 of the Tax (International and Other Provisions) Act 2010 ("TIOPA 2010"). The legislation requires an adjustment to the UK taxpayer's income or corporation tax computation where:

- A provision is made or imposed in a transaction, or a series of transactions, between related parties;
- The provision departs from the arm's length standard – i.e., where a transaction has been conducted on terms and conditions other than that which would have been entered into by independent third parties; and
- A UK tax advantage is conferred on one or more of the parties.

Two or more parties are related where one party participates, directly or indirectly, in the management, control or capital of the other party or where a third party has such a relationship with each of the parties. For these purposes, common control of the board is sufficient.

There are two amendments to this general approach.

- Joint ventures which do not have a controlling part, can fall within scope where a 40% test is satisfied.
- For financing transactions, the connection is extended by section 161 and section 162 TIOPA 2010 where persons have 'acted together' in the provision of finance – this can bring in transactions with otherwise independent finance providers.

UK transfer pricing legislation requires consistency with Article 9 of the OECD Model Treaty and, at the time of writing, the 2022 version of the OECD Guidelines.

Small and medium sized enterprises ("SMEs") are exempt from making transfer pricing self assessments in their corporation tax returns, unless they elect to do so. The SME exemption applies to companies who have fewer than 250 employees, and with a turnover of less than €50m and/or a balance sheet total less than €43m. HMRC can still make a transfer pricing related enquiry on medium-sized companies. The exemption does not apply to transactions with a non-treaty territory.

In addition, the UK largely aligns with OECD guidance with regards to the recognition, treatment and application of transfer pricing rules to permanent establishments ("PE"), as well as AOA guidance on the attribution of profits to permanent establishments, detailed in Articles 5 and 7 of the OECD's Model Tax Convention.

The UK also have a Diverted Profits Tax ("DPT"), which applies in two circumstances:

- where there is a group with a UK entity or PE with arrangements between connected parties which lack economic substance and which exploit tax mismatches; or
- where a non-UK resident company carries on activities in the UK relating to supply of goods and services or other property where that activity is designed to avoid the creation of a UK PE.

DPT started applying to profits arising on or after 1 April 2015, unless the company is a SME. It is separate to corporation tax, however, in circumstances where a transfer pricing adjustment has been made in a company's corporate tax return, a DPT charge can be removed.

The general DPT rate increased from 25% to 31% in April 2023. The DPT rate on ring-fence profits in the oil sector is 55%.

Taxpayers who are potentially in scope of the tax are required to notify HMRC within three months of the end of the respective accounting period.

Profit Diversion Compliance Facility ("PDCF") was introduced by HMRC in January 2019 as a voluntary facility for taxpayers not already under an enquiry to disclose any potential profit-diverting arrangements and structures that could be captured under DPT rules and make any appropriate adjustments.

Accepted Transfer Pricing Methodologies

Prescribed methods

UK legislation does not prescribe specific methods, but HMRC will accept the methods outlined in the OECD Guidelines. Taxpayers should demonstrate why a particular transfer pricing method has been chosen.

Priority of methods

Although no absolute hierarchy exists within the OECD Guidelines, HMRC's guidance states that the CUP method is the most effective way of assessing the arm's length price.

Transfer Pricing Documentation Requirements

Transfer pricing documentation is required to be prepared contemporaneously by the filing of the corporation tax return and submitted within 30 days of HMRC's request.

For those within the scope of transfer pricing requirements, the latest UK developments include HMRC prescribing a format in line with Annex I and Annex II to Chapter V of the OECD Guidelines for large multinational groups with a taxable presence in the UK, which have global revenues of at least 750 million euros. This new requirement applies to accounting periods commencing on or after 1 April 2023.

There is a de minimis threshold of £1 million per category of controlled transactions (i.e. a grouping of similar transaction types that can be reliably priced on the same basis, for each single UK entity). Transactions with volumes below the de minimis threshold can be excluded from the documentation, but this does not apply if one or more of the below items are applicable to the controlled transactions:

- Profit split;
- Transfer or licence of intangible assets;
- Hard to Value Intangibles;
- Transfer, use, or right to use key or strategic assets that are required for the entity to carry on its business;
- Global or regional strategic or leadership services;
- Cost Sharing Agreements or Cost Contribution Agreements;
- Business restructuring, including where functions, assets or risks have been moved into or out of the UK during the relevant period; or
- Commencement or cessation of transactions in the relevant period

HMRC have explicitly stated and strongly recommend that non-large taxpayers should prepare also transfer pricing documentation in line with the OECD format.

In addition to the new transfer pricing documentation rules mentioned above, there are currently discussions with regards to a Summary Audit Trail ("SAT"), which will require businesses to complete a questionnaire detailing the main actions undertaken in preparing the local file. The SAT is currently being drafted by HMRC, and a public consultation document is expected to be released by the end of 2023.

Local Jurisdiction Benchmarks

HMRC's guidance outlines that the best source of comparables can be internal comparables. A taxpayer should be able to demonstrate that these comparables have been considered (even where they are not available) before assessing externally available comparables, with reasonably accurate adjustments made where appropriate.

For external comparables, HMRC guidance states the importance of looking to the market serviced by the tested party when searching for comparables.

In terms of frequency, fresh benchmarking studies should be prepared 'regularly'. A fresh benchmarking study is not required annually if operating conditions or functional profiles remain the same. If the business descriptions, functional analysis, and/or description of comparables have not changed significantly, the comparables may be rolled forward into the following period, with updates to financial data.

APA/Bilateral Advance Pricing Agreement "BAPA" Overview

Part 5 TIOPA 2010 (sections 218 to 230) contains guidance on APAs. Section 220 TIOPA 2010 gives effect to an APA by requiring the agreement supersede any other possible Part 4 TIOPA 2010 constructions that might be reached in respect of the transactions for the duration of the APA.

HMRC closely follows the OECD APA guidance contained in 'Guidelines for Conducting Advance Pricing Arrangements under the Mutual Agreement Procedure'. The key features of the UK programme can be summarised as follows:

- APAs are available between connected enterprises as well as for provisions within the same enterprise affected by transfer pricing;
- applications are sought before the end of the first accounts period intended to be covered by the APA;
- APAs are typically for 3 to 5 years;
- bilateral (or multilateral) APAs will be considered between two or more tax administrations;
- HMRC does not charge entry or expenses fees for the conclusion of an APA;
- HMRC reserve the right to turn down applications for APAs which do not fulfil certain criteria (e.g., if the provision is insufficiently complex); and
- an APA may be requested where there is already a tax enquiry for previous years; and
- similarly, where appropriate, retrospection of the APA may be considered for years prior to the commencement year.

The average time to reach APA agreement was 58.3 months in the 2021 to 2022 tax year.

The OECD has a UK transfer pricing country profile which contains information with regards to the UK's dispute resolution profile. For the period 2021/2022, HMRC have agreed 20 APAs.

The UK also has an Advance Thin Capitalisation Agreement ("ATCA") regime, to provide taxpayers with certainty on transfer pricing related to complex financing arrangements.

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Transfer Pricing Audits

Burden of proof

Burden of proof under the self-assessment system for the accuracy of information in tax returns lies with the taxpayer. Taxpayers with related party transactions should be able to confirm that the transfer prices have been determined in accordance with the arm's length principle.

Statute of limitation

Schedule 18(24) to Finance Act 1998 states a normal reassessment period of 12 months upon timely filing of the UK tax return. After the normal reassessment period has lapsed, schedule 18(41) allows for HMRC to raise a discovery assessment. A discovery assessment can be made:

- 4 years from the end of a taxpayers accounting period where the case is not due to careless or deliberate behaviour;
- 6 years from the end of the taxpayers accounting period in the event of careless behaviour; and
- 20 years from the end of the taxpayer's accounting period in the event of deliberate behaviour.

It should be noted that failure to operate compliant policies and prepare documentation could indicate deliberate behaviour.

Desk and field audits

HMRC operate a risk rating process to determine how much resource to deploy. A low risk group might have a regular dialogue with their HMRC Customer Compliance Manager and share information outside of formal audit powers. In the event that HMRC considers a taxpayer's transfer pricing documentation insufficient and fails to support the applied transfer pricing policies for the Group, HMRC will open an audit.

The purpose of a civil transfer pricing enquiry (as opposed to a criminal investigation) is to verify the accuracy of the taxpayer's self-assessed income in their disclosed tax returns. The enquiry will consider compliance with legislation, verification of the taxpayer's calculations; review supporting data, and will often involve HMRC performing their own functional interviews with the business to gather information first hand.

If HMRC disagrees with the taxpayer's self-assessed income it will make a transfer pricing adjustment to reassess the taxpayer and charge interest on any deficiency in taxes paid.

HMRC continues to make transfer pricing related enquiries. The average age of settled enquiries was 34 months for the 2021 to 2022 tax year.

Transfer Pricing Penalties

There is a penalty of £3,000 for failure to submit transfer pricing documentation within 30 days upon request by HMRC. For information that is submitted late and contains inaccurate information, it will be considered 'careless' by HMRC with penalties potentially amounting up to 30% of lost revenues. Where HMRC consider 'deliberate' inaccuracies have been made, penalties potentially amounting to 70% (for no attempt of concealment) or up to 100% (with concealment) of lost revenues could be imposed. Penalties may be deferred if the company is transparent and helpful in resolving the enquiry or where the company alerts HMRC to the error.

In addition, a Senior Accounting Officer ("SAO") must be appointed if a UK company or group of companies has a turnover greater than £200 million and/or balance sheet total greater £2 billion. Failure to keep the records may be an indication of not establishing and maintaining adequate accounting processes and arrangements. Failure to comply with the duties and responsibilities of an SAO may result in a personal fine of £5,000.

Local Hot Topics and Recent Updates

HMRC v BlackRock

The Upper Tribunal (a tax court) recently ruled in favour of HMRC in HMRC v BlackRock Holdco LLC 5 ("LLC5") in relation to transfer pricing and unallowable purpose. Interest expenses were disallowed on $4 billion of intragroup loan notes in a structure used by BlackRock for an acquisition. The structure included a newly formed Delaware-incorporated but UK tax resident company, LLC 5, which issued loan notes to its parent entity in the BlackRock group totaling $4 billion ("the LLC5 loan notes"). LLC5 then contributed the funds borrowed to a US company to effect the acquisition. There was a UK tax advantage arising from the deduction of interest.

The Upper Tribunal concluded there was no apparent commercial rationale when choosing the UK entity for the acquisition other than for securing a tax advantage, and therefore an "unallowable purpose" test (separate from the transfer pricing rules) would apply to limit deductions.

However, the court also considered the position for transfer pricing, and concluded that the transaction would not have happened between independent parties. In considering that outcome, the court analysed the loan terms which they found did not include the appropriate covenants that should be expected if issued at arm's length.

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Documentation threshold

Master file	Required by law for large taxpayers meeting CbCR thresholds (see below) Recommended for non-large taxpayers SME exemption applies unless taxpayer elected to fall into scope of UK transfer pricing rules
Local file	As above
CbCR	Group revenue of EUR 750 million

Submission deadline

Master file	30 days upon request from HMRC
Local file	30 Days upon request from HMRC
CbCR	To be filed with HMRC within 12 months following the end of the period it relates to.

Penalty Provisions

Documentation – late filing provision	Failure to submit is £3,000. For information that is submitted late and contains inaccurate information up to 30% of lost revenues. For information that is submitted late and contains inaccurate information up to 30% of lost revenues.
Tax return disclosure – late/incomplete/no filing	£100 for initial late filing with a further £100 penalty after 3 months. Then a tax geared penalty after 6 months
CbCR – late/incomplete/no filing	£300 for a late filing with an additional £60 for each day after it is late (until submission). Inaccurate information carries a penalty of £3,000.

CONTACT
Richard Syratt
Alvarez and Marsal Tax
rsyratt@alvarezandmarsal.com
+44 20 7863 4722

Overview

Alvarez & Marsal Tax, LLC, Taxand USA

Taxand USA provides a full suite of transfer pricing advisory services, that includes such diverse activities as intellectual property valuations, supply chain planning, compliance documentation, benchmarking of core functions, and debt capacity and interest rate analyses. Taxand USA's transfer pricing advisory engagements highlight a broad spectrum of analysis, such as:

- Merger integration planning and documentation to combine the global transfer pricing policies of the combined entities,
- Assisting MNEs in tax controversy matters with the U.S. Internal Revenue Service ("IRS"), including to obtain unilateral and bilateral APAs and MAP agreements,
- Conducting planning and valuation analyses for the future development and exploitation of intellectual property,
- Preparing global compliance documentation,
- Providing buy-side and sell-side due diligence services and assessment of risks in anticipation of a company's life-event, and
- Establishing global intercompany financial arrangements and support for debt instruments.

General: Transfer Pricing Framework

Transfer pricing legislation is governed by Section 482 of the US Internal Revenue Code of 1986 ("IRC"), as amended, and the US Treasury Regulations issued thereunder (the "482 Regulations"). Consistent with the 482 Regulations, transactions between related parties must take place on an arm's-length basis. The phrase related party refers to any two or more organizations, trades, or businesses (whether or not incorporated, whether or not organized in the US, and whether or not affiliated) owned or controlled directly or indirectly by the same interests. Although most commonly applied to transactions with foreign affiliates, Section 482 also applies to U.S. domestic transactions among entities under common control.

Accepted Transfer Pricing Methodologies

The OECD Guidelines are not incorporated into U.S. legislation, however the transfer pricing methods described in the 482 Regulations are substantially similar and, notably, center on the arm's length principle. There is also no explicit hierarchy of transfer pricing methods, as the "best method" rule requires that a transfer pricing method is selected that provides for most reliable assessment of the arm's length dealing.

In applying the best method rule, the taxpayer is allowed to apply any other method as long as it can be demonstrated that it leads to an arm's length outcome. The most frequently used method is the Comparable Profits Method ("CPM"), which is commonly applied as a functional equivalent to the TNMM under the OECD Guidelines.

The 482 Regulations provide for specific methods to be applied under certain circumstances, including:

- Use of the Services Cost Method ("SCM") when pricing routine services transactions at cost (see Treas. Reg. 1.482-9);
- For valuation of platform contributions and implementation of a Cost Sharing Arrangement ("CSA") (see Treas. Reg. 1.482-7); and
- With respect to financial transactions (see Treas. Reg. 1.482-2).

Transfer Pricing Documentation Requirements

Transfer pricing documentation guidelines are issued under U.S. Treasury Regulation Section 1.6662-6(d) ("6662 Regulations"). Taxpayers are not specifically required to prepare annual documentation and are not required to file this with the local tax authority. Taxpayers that maintain contemporaneous documentation, that is transfer pricing documentation prepared in advance of the corporate income tax filing deadline for the relevant financial period, are eligible for penalty relief in the event of a net transfer pricing adjustment. These regulations also set out the information requirements for the documentation.

Although the OECD Guidelines are not directly adopted by the 482 Regulations, the documentation requirements are substantially similar. Accordingly, there is no specific requirement to prepare a Master File, but this is commonly done by U.S. headquartered companies to align with the requirements in countries that do more directly follow the OECD Guidelines.

There are no specific thresholds for Section 482 or the 6662 Regulations to apply.

Filing of a country-by-country report on Form 8975 is required for MNE's that exceed the $850 million annual revenue threshold. Filing of a country-by-country report is only required if the ultimate parent entity or the surrogate parent entity is tax-resident in the U.S.

Local Jurisdiction Benchmarks

The 482 Regulations establish comparability criteria to be followed, whether applying the CPM, CUP or another method. When the CPM is selected as the best method, a benchmark is expected in most cases to demonstrate that related party transactions are at arm's length. The IRS prefers North American benchmarks when evaluating a tested party based in the U.S. As the data used must be publicly available and replicable by the IRS, in practice it is most common to use exchange-listed companies for benchmarks. The 482 Regulations allow for use of multiple year data and the interquartile range in terms of benchmarking.

Although a financial refresh is to be conducted every year for full compliance with the documentation requirements to test the results of the intercompany transactions against the comparable data for the tested period, in practice most

taxpayers do not undertake a full update of their benchmark searches on an annual basis. In cases when a business activity does not undergo significant changes, a search can be updated in full every few years.

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

The U.S. has a long history of resolving transfer pricing matters through APA, whether as a unilateral or as a BAPA, and MAP cases. The IRS does have a preference for BAPA, as this generally provides for a stronger case file to have another treaty partner involved with the matter and to remove at least some possibility that the terms of the APA will be challenged by a foreign tax authority in the future. The IRS publishes and regularly updates the Revenue Procedures applicable to APA and MAP cases. The Revenue Procedures set out the requirement to request such a ruling, the procedures by which the cases will be handled, and the amount of user fees to be paid for seeking the respective form of relief.

The typical APA/BAPA has a term of five (5) years and may under certain circumstances be "rolled back" to previous tax years where the statute of limitations remains open. The IRS is also typically open to a longer total APA term, seeking to have a few years of prospective application once the APA is fully negotiated and finalized.

Transfer Pricing Audits

The IRS conducts audit examinations at random and all companies are subject to audit for any open period. The ordinary statute of limitations period is three years. Under current guidance, when an MNE is audited, the transfer pricing reports are to be requested under the first Information Document Request ("IDR"). The transfer pricing documentation is then to be presented within thirty (30) days, and thus also why in practice it is important to maintain regular documentation.

Transfer Pricing Penalties

There is no specific penalty for the non-preparation of transfer pricing documentation, but rather the existence of contemporaneous documentation serves to abate general tax penalties that may result from a transfer pricing adjustment upon an audit by the IRS. The actual computation of any tax penalty is complex and largely depends upon the quantum of the adjustment.

Local Hot Topics and Recent Updates

The IRS continues to actively audit and litigate cases involving intangible property transactions. These tend to focus quite heavily on CSAs and in particular the valuation ascribed to any Platform Contribution Transaction that may be required upon making existing intellectual property available to the CSA for further development (the "PCT" payment). There are a number of recent or pending court cases involving some of the largest U.S. companies and intercompany transactions entered into by them for the development and exploitation of intangible property.

Another area for multinational enterprises to be aware of is the potential for transfer pricing audits at the individual state level. Although tax audits undertaken by the IRS at the federal level garner the most attention, transfer pricing rules are also generally applicable for establishing arm's length profits reported in the U.S. states where a company does business. The U.S. states have been engaging third-party vendors to enhance their technology capabilities to better identify potential audit candidates and to support with benchmarking analyses to support adjustments. This continues to be a developing area of interest for states, as they seek to collect the appropriate taxes in their jurisdiction attributable to the activities undertaken there.

UNITED STATES

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Documentation threshold

Master file	N/A
Local file	N/A
CbCR	USD $850 million

Submission deadline

Master file	N/A – there is no requirement to submit transfer pricing documentation in the ordinary course.
Local file	N/A
CbCR	Included with the corporate income tax filing for the relevant tax year.

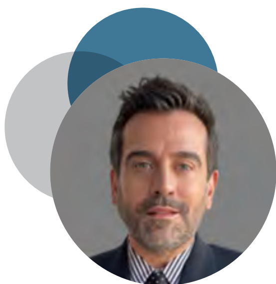
Penalty Provisions

Documentation – late filing provision	N/A
Tax return disclosure – late/incomplete/no filing	Late or non-filing of Form 5471/5472, the international informational return submitted with the CIT, is subject to a fine of $25,000 per Form 5472 (one form to be submitted for each foreign affiliate) and $10,000 per Form 5471.
CbCR – late/incomplete/no filing	This follows the general tax records penalty regime.

CONTACT

Marc Alms
Alvarez and Marsal
malms@alvarezandmarsal.com
+1 631 901 6252

Matt De Felice
Alvarez and Marsal
mdefelice@alvarezandmarsal.com
+1 609 489 1248



Fabrizio Lolliri
Alvarez and Marsal
flolliri@alvarezandmarsal.com
+1 917 744 8809

Dan Peters
Alvarez and Marsal
dpeters@alvarezandmarsal.com
+1 561 386 3712

QUICK REFERENCE: SUMMARY TABLES

ARGENTINA

Documentation threshold

Master file	Transactions with related parties which collectively exceed ARS 3,000,000 (approx. USD 3,571 at the OER) or individually ARS 300,000 (approx. USD 357 at the OER) ("The Thresholds"); and The total consolidated annual income of the MNEs Group exceeds ARS 4,000,000,000 (or USD 4,761 at the OER) in the fiscal year preceding the filing.
Local file	Transactions with related parties or located in low/non-tax jurisdictions when they exceed The Thresholds.
CbCR	Includes those MNEs whose total consolidated annual revenues are more than EUR 750,000,000.

Submission deadline

Master file	Within 12 months after the closing of the tax period.
Local file	Within 6 months after the closing of the tax period.
CbCR	Within 12 months after the closing of the tax period of the ultimate parent entity.

Penalty Provisions

Documentation – late filing provision	Up to ARS 20,000 (approx. USD 24 at OER).
Tax return disclosure – late/ incomplete/no filing	Up to ARS 45,000 (approx. USD 53 at OER) non or incomplete filling. This fine is cumulative with the late filing penalty.
CbCR – late/incomplete/no filing	Up to ARS 200,000 (approx. USD 238 at OER) failing to meet the CbCR obligations. Up to ARS 900,000 (approx. USD 1,071 at OER) for late or incomplete filing of CbCR. Up to ARS 300,000 (approx. USD 357 at OER), or ARS 450,000 (approx. USD 536 at OER) if thresholds are exceeded, for failing to answer FTA requests for additional information regarding CbCR.

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AUSTRALIA

Documentation threshold

Master file	Group revenue of AUD 1 billion or more
Local file	Group revenue of AUD 1 billion or more
CbCR	Group revenue of AUD 1 billion or more

Submission deadline

Master file	Generally 12 months after income year end
Local file	As above
CbCR	As above

Penalty Provisions

Documentation – late filing provision	Up to AUD 782,500 (i.e., for SGEs)
Tax return disclosure – late/incomplete/no filing	Penalty depends on circumstances but may be up to AUD 782,500 plus potential further penalties calculated as a percentage of tax shortfall
CbCR – late/incomplete/no filing	Up to AUD 782,500

AUSTRIA

Documentation threshold

Master file	Entity of MNE group with turnover exceeding EUR 50 million in each of the two preceding years
Local file	Entity of MNE group with turnover exceeding EUR 50 million in each of the two preceding years
CbCR	global consolidated group turnover of at least EUR 750 million in the previous year

Submission deadline

Master file	Only upon request
Local file	Only upon request
CbCR	12 months after the last day of the reporting fiscal year of the MNE group's ultimate parent company

Penalty Provisions

Documentation – late filing provision	no specific penalty provisions applicable
Tax return disclosure – late/incomplete/no filing	Assessment interest: in addition to the current annual rate of interest of the Austrian National Bank, an annual simple interest rate of 2% of the tax due Late filing penalty: 10% of the tax assessed may be charged by the tax office, unless the taxpayer can prove that the late filing was not his fault. If the taxpayer does not file a tax return, despite reminders from the tax authorities, the tax authorities may impose a penalty of up to EUR 5,000.
CbCR – late/incomplete/no filing	A maximum penalty of EUR 50,000 applies and up to EUR 25,000 for gross negligence with the CbC report.

BELGIUM

Documentation threshold

Master file	• Operating and financial income equal to or exceeding EUR 50 million (excluding non-recurring items); or • Balance sheet total equal to or exceeding EUR 1 billion; or • Average annual number of 100 or more FTEs
Local file	Same criteria as for the master file
CbCR	Gross consolidated revenue of at least EUR 750 million

Submission deadline

Master file	Within 12 months of the last day of the reporting period of the MNE group
Local file	Within the deadline for filing the corporate income tax return
CbCR	Within 12 months of the last day of the reporting period of the MNE group

Penalty Provisions

Documentation – late filing provision	Fines up to a maximum of EUR 25,000
Tax return disclosure – late/incomplete/no filing	Fines up to a maximum of EUR 1,250; ad valorem tax increase ranging from 10% to 200%
CbCR – late/incomplete/no filing	Fines up to a maximum of EUR 25,000

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CANADA

Documentation threshold

Master file	Not Applicable
Local file	Not Applicable
CbCR	€ 750M

Submission deadline

Master file	Not Applicable
Local file	Not Applicable
CbCR	12 months from year-end

Penalty Provisions

Documentation – late filing provision	Not Applicable; however, absence/inadequacy of timely contemporaneous documentation exposes taxpayer to penalties if transfer pricing adjustments exceed prescribed threshold
Tax return disclosure – late/incomplete/no filing	Late filing penalty of 5% of taxes owing plus a further 1% per month late (maximum 12 months)
CbCR – late/incomplete/no filing	$500/month to a maximum of 24 months

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CHINA

Documentation threshold

Master file	Related party transactions exceeding RMB 1 billion
Local file	Tangible buy-and-sell related party transactions RMB 200 million; intangible buy-and-sell related party transactions RMB 100 million; all other related party transactions RMB 40 million
CbCR	RMB 5.5 billion

Submission deadline

Master file	Within 12 months after the fiscal year-end
Local file	30 June of the following year
CbCR	31 May of the following year

Penalty Provisions

Documentation – late filing provision	Under RMB 2,000; RMB 2,000 to RMB 10,000 in serious cases
Tax return disclosure – late/incomplete/no filing	RMB 10,000 to RMB 50,000 in serious cases Late payment interest 0.05% per day
CbCR – late/incomplete/no filing	Under RMB 2,000; RMB 2,000 to RMB 10,000 in serious cases

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COLOMBIA

Documentation threshold

Master file	COP$1,908,540,000 – Approx USD$466.000
Local file	COP$1,908,540,000 – Approx USD$466.000
CbCR	COP$3,435,372,000,000 – Approx. USD$838,000,000

Submission deadline

Master file	December of each year
Local file	September of each year
CbCR	December of each year

Penalty Provisions

Documentation – late filing provision	N/A (a more complex rule)
Tax return disclosure – late/incomplete/no filing	N/A (a more complex rule)
CbCR – late/incomplete/no filing	N/A (a more complex rule)

CROATIA

Documentation threshold

Master file	N/A
Local file	N/A
CbCR	€750 million

Submission deadline

Master file	Upon request
Local file	Upon request
CbCR	Within 12 months from the last day of the reporting tax year

Penalty Provisions

Documentation – late filing provision	N/A
Tax return disclosure – late/incomplete/no filing	€260 to 26,540
CbCR – late/incomplete/no filing	N/A

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CYPRUS

Documentation threshold

Master file	Consolidated revenue exceeding EUR 750 million
Local file	Cumulatively, per category (as defined in the SIT) exceeds the arm's length amount of EUR750,000 per tax year.
CbCR	Consolidated revenue exceeding EUR 750 million

Submission deadline

Master file	To be submitted to the CTD upon request within 60 days.
Local file	Local file To be submitted to the CTD upon request within 60 days. Further, the local file should be readied by the deadline for submitting the Income Tax Return for the relevant tax year.
CbCR	Submission to the CTD must occur within 12 months following the conclusion of the MNE group's reporting fiscal year.

Penalty Provisions

Local file and master file	Ranging from EUR 5,000 to EUR 20,000
Tax return disclosure – late/incomplete/no filing	EUR 100 and penalties imposed under ACTL noted above.
CbCR – late/incomplete/no filing	Ranging from EUR 500 to EUR 20,000

CZECH REPUBLIC

Documentation threshold

Master file	N/A
Local file	N/A
CbCR	Turnover € 750 million

Submission deadline

Master file	N/A
Local file	N/A
CbCR	Submission within 12 months after the end tax year

Penalty Provisions

Documentation – late filing provision	N/A
Tax return disclosure – late/incomplete/no filing	Fines up to CZK 300,000 (approx. EUR 12,500).
CbCR – late/incomplete/no filing	Fines up to a maximum of CZK 600,000 (approx. EUR 25,000) for non-compliance with the CbC notification obligations Fines up to a maximum of CZK 1,500,000 (approx. EUR 62,500) for non-compliance with the CbC reporting obligations

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DENMARK

Documentation threshold

Limited documentation requirements (Local File + Master File)	Alone or consolidated group basis has less than 250 employees and either a net worth of less than DKK 125 million (approx. EUR 16.75 million) or a yearly turnover of less than DKK 250 million (approx. EUR 33.5 million)
Full scope documentation requirements (Local File + Master File)	Alone or on a consolidated group basis has more than 250 employees and either a net worth of more than DKK 125 million (approx. EUR 16.75 million) or a yearly turnover of more than DKK 250 million (approx. EUR 33.5 million)
CbCR	Consolidated group turnover over DKK 5.6 billion

Submission deadline

Limited documentation (Local File + Master File)	60 days after the deadline for filing the corporate tax return (30 June if the fiscal year is the calendar year).
Full scope documentation (Local Lile + Master File)	60 days after the deadline for filing the corporate tax return (30 June if the fiscal year is the calendar year).
CbCR report CBCR notification	12 months after the last day of the income year in question.

Penalty Provisions

Documentation – late filing, incomplete or no filing	A fine of DKK 250,000 (approx. EUR 33,500) is imposed
Reduced fine in case of subsequent satisfactory documentation	A fine of DKK 125,000 (approx. EUR 16,740) is imposed
Increased fine in case of an increase in income	An additional fine of 10% of the income increase, will be imposed
CbCR – late/incomplete/no filing	A fine will be imposed. The amount of the fine will be determined on a case-specific assessment.

FINLAND

Documentation threshold

Master file	Documentation obligation can apply if the total value of taxpayers' cross-border related party transactions exceeds EUR 500,000 during the financial year. Please refer to section *Transfer Pricing Documentation Requirements* above for details
Local file	No des minimis threshold based on volume of related party transactions. However, if the total value of cross-border related party transactions between two parties does not exceed EUR 500,000 during the financial year, documentation omitting the functional and comparability analysis as well as method selection is allowed. Please refer to section *Transfer Pricing Documentation Requirements* above for details.
CbCR	CbCR obligation in Finland applies if the group revenue exceeds EUR 750 million in the financial year immediately preceding the reporting year.

Submission deadline

Master file	60 days from request
Local file	60 days from request
CbCR	12 months from the end of reporting year.

Penalty Provisions

Documentation – late filing provision	Up to EUR 25,000
Tax return disclosure – late/incomplete/no filing	Minimum of EUR 150 assuming to impact on taxable income.
CbCR – late/incomplete/no filing	Up to EUR 25,000

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FRANCE

Documentation threshold

Master file	Revenues or gross assets above €400 million for the fiscal year to be documented (taxpayer or shareholder or subsidiary).
Local file	
CbCR	Annual consolidated group revenues above €750 million in the immediately preceding fiscal year.

Submission deadline

Master file	Should be available at the start of the tax audit and provided upon request.
Local file	
CbCR	No later than 12 months after the last day of the reporting fiscal year of the MNE group.

Penalty provisions

Documentation – late filing/late provision	The highest of the following amounts: • 0.5% of the amount of the transactions for which no or partial documentation has been provided. • 5% of the income tax adjustments based on Article 57 of the FTC and relating to the transactions for which no or partial documentation has been provided. • €10,000 per audit fiscal year.
Tax return disclosure - late/ incomplete/no filing	Transfer pricing return (form 2257-SD): • failure to file the 2257-SD form: penalties of €150. • omissions or inaccuracies in the 2257-SD form: penalties of €15 per omission or inaccuracy, with the total penalties not less than €60 and not more than €10,000.
CbCR – late/ incomplete/no filing	Penalties up to €100,000.

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GERMANY

Documentation threshold

Master file	Turnover EUR 100 million of individual entity, i.e. no group perspective
Local file	Remuneration for supply of goods exceeds EUR 6 million and the total remuneration from other services exceeds EUR 600,000 (combined view of all German entities, i.e. no stand-alone perspective)
Enhanced TP Documentation	Any transactions involving non-cooperative tax jurisdictions
CbCR	Turnover EUR 750 million

Submission deadline

Master file	Until 2024: Submission only upon request by German Tax Authorities within 60 days. As of 2025: Submission within 30 days after the receipt of the announcement of the tax audit.
Local file	Until 2024: Submission only upon request by German Tax Authorities within 60 days. As of 2025: Submission within 30 days after the receipt of the announcement of the tax audit.
Enhanced TP Documentation	12 months after the end of the fiscal year
CbCR	Submission within 12 months after end of the tax year

Penalty Provisions

Documentation – late filing provision	Penalties up to EUR 1,000,000
Tax audit – lateness in cooperation	Penalties up to EUR 250,000
Tax return disclosure – late/incomplete/no filing	Penalties up to EUR 25,000
CbCR – late/incomplete/no filing	Penalties up to EUR 10,000

GREECE

Documentation threshold

Master file	Total value of annual intragroup transactions exceeding the amount of € 100,000 for entities with a total annual turnover which is equal or lower than € 5,000,000. For entities with an annual turnover exceeding € 5,000,000, the relevant threshold is increased to € 200,000 of total value of annual intra-group transactions.
Local file	Total value of annual intragroup transactions exceeding the amount of € 100,000 for entities with a total annual turnover which is equal or lower than € 5,000,000. For entities with an annual turnover exceeding € 5,000,000, the relevant threshold is increased to € 200,000 of total value of annual intra-group transactions.
CbCR	Turnover EUR 750 million

Submission deadline

Master file	N/A – there is no requirement to submit transfer pricing documentation in the ordinary course.
Local file	N/A – there is no requirement to submit transfer pricing documentation in the ordinary course.
Summary Information Table	Submission until the deadline for the Corporate Income Tax returns, normally until the last day of the sixth month following the end of the fiscal year
CbCR & CBCR notification	Submission of the CBCR within 12 months after the end of the tax year under review. Notification must be submitted by the end of the reporting fiscal year.

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HUNGARY

Documentation threshold

Master file	HUF 100 million, approx. EUR 249,000.
Local file	HUF 100 million, approx. EUR 249,000.
CbCR	EUR 750 million

Submission deadline

Master file	Submission: within 3 business days upon request of the competent tax authority Preparation deadline: until the deadline for preparing the MF for the ultimate parent company of the group, but not later than the end of the year following the tax year
Local file	Submission: within 3 business days upon request of the competent tax authority Preparation deadline: by the submission of the yearly corporate income tax return, which deadline is 150 days following the tax year
CbCR	Submission and preparation: within 12 months following the end the reporting period

Penalty Provisions

Documentation – late filing provision	up to HUF 5 million (~ EUR 13,000), in recurring cases up to HUF 10 million (~ EUR 26,000) / per transaction per year
Tax return disclosure – late/incomplete/no filing	up to HUF 500,000 (~ EUR 1,300) per return
CbCR – late/incomplete/no filing	up to HUF 20 million (approx. EUR 52,000) – also in the event of a violation of the notification obligation

INDIA

Documentation threshold

Master file	Value of international transaction exceeds INR 500 million (INR 100 in relation to intangibles) and international group turnover exceeds INR 5 billion
Local file	INR 10 million
CbCR	INR 64 billion

Submission deadline

Master file	30th November 2023 for FY 2022-23
Local file	10 days from the date of receipt of a notice from tax authorities calling for the information
CbCR	12 months from the end of reporting accounting year of the UPE

Penalty Provisions

Documentation – late filing provision	2% of value of international transaction for failure to maintain / submit the specified information / documents INR 0.5 million for failure to furnish master file
Tax return disclosure – late/incomplete/no filing	INR 0.1 million for failure to file Form 3CEB 2% of value of international transaction for failure to report transactions in Form no. 3CEB and TP documentation
CbCR – late/incomplete/no filing	INR 5,000 per day for one month, INR 15,000 per day after one month, INR 50,000 per day after the date of service of penalty order

INDONESIA

Documentation threshold

Master File and Local File	Criteria to Prepare Master File and Local File
The Taxpayer has related party transactions with:	The Taxpayer has related party transactions with: a. a gross revenue in the previous fiscal year of more than IDR 50 billion, or b. a related party transaction amount in the previous fiscal year of: - more than IDR 20 billion for tangible goods transactions; or - more than IDR 5 billion for each provision of service, payment of interest, use of intangible goods, or other related party transactions, or c. The related party is domiciled in a country or jurisdiction with a tax rate lower than the prevailing tax rate in Indonesia (the current tax rate in Indonesia is 22%).
CbCR	Criteria to Prepare Country-by-Country Report a. Consolidated group turnover of at least IDR 11 trillion, or b. A Taxpayer who is a member of a Business Group, with a parent entity that is a Foreign Taxpayer, is required to file a Country-by-Country Report if the country or jurisdiction where the parent entity is domiciled: - does not require the filing of Country-by-Country Report, or - does not have any exchange of tax information agreement with Indonesia, or - has an exchange of tax information agreement, but the Indonesian Government does not receive the Country-by-Country Report from the related country/jurisdiction.

Submission deadline

Master file	Should be available in the taxpayer's administration within four months after the end of the fiscal year.
Local file	Should be available in the taxpayer's administration within four months after the end of the fiscal year.
CbCR report	Submission is within 12 months after the end of the fiscal year.
CBCR notification	Submission is within 12 months after the end of the fiscal year.

Penalty Provisions

Documentation – late filing provision	ITO may reject TP Documentation, and ITO may prepare benchmarking and ITO may consider the Taxpayer to not have filed the Corporate Income Tax Return
Tax return disclosure – late/ incomplete/no filing	Administrative sanction of IDR 1 million. The Tax Auditor may conduct a full tax audit and request detailed supporting documents for every transaction.
CbCR – late/ incomplete/no filing	ITO may consider the Taxpayer to not have filed the Corporate Income Tax Return.

ITALY

Documentation threshold

Master file	Not applicable
Local file	Not applicable
CbCR	€ 750 million

Submission deadline

Master file	Both Master file and Local File do not have to be submitted, but must have been prepared, signed and marked before sending the corporate income tax return. The tax return is due by the end of the 9th month after the closing of the relevant fiscal year.
Local file	
CbCR	To be submitted within 12 months following the last day of the multinational group's reporting fiscal year

Penalty Provisions

Documentation – late filing provision	Ineligibility for the "penalty protection regime"
Tax return disclosure – late/incomplete/no filing	Late or incomplete Tax Return is subject to a penalty of € 250 The omitted Tax Return is subject to a penalty ranging from € 250 to € 1,000, if no tax is due, or a penalty ranging from 120% to 240% of the tax due. In addition, if the tax due exceeds a threshold of € 50,000, penalties also involve criminal matters..
CbCR – late/incomplete/no filing	Late, incomplete or no filling of CbCR is subject to a penalty ranging from € 10,000 to € 50,000.

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JAPAN

Documentation threshold

Master file	Turnover JPY 100 billion
Local file	N/A
CbCR	Turnover JPY 100 billion

Submission deadline

Master file	Submission within 12 months after end of fiscal year.
Local file	Should be available in the taxpayer's administration upon due date for filling corporation tax
CbCR	Submission within 12 months after end of fiscal year.

Penalty Provisions

Documentation – late filing provision	Fines up to a maximum of JPY300,000 can be imposed on the taxpayer for non-compliance with filing obligations for CbCR reporting or master file.
Tax return disclosure – late/incomplete/no filing	N/A
CbCR – late/incomplete/no filing	Fines up to a maximum of JPY300,000 can be imposed on the taxpayer for non-compliance with filing obligations for CbCR reporting.

LUXEMBOURG

Documentation threshold

Master file	(i) EUR 750m consolidated group turnover + (ii) EUR 100m standalone turnover or EUR 400m balance sheet total
Local file	EUR 750m consolidated group turnover
CbCR	EUR 750m consolidated group turnover

Submission deadline

Master file	Not yet specified in the draft law
Local file	Not yet specified in the draft law
CbCR	12 months after the final day of the reporting fiscal year of the MNE group

Penalty Provisions

Documentation – late filing provision	Not Applicable
Tax return disclosure – late/incomplete/no filing	Up to 10 percent of the tax due and a fine up to EUR 25,000
CbCR – late/incomplete/no filing	Up to EUR 250,000

MALAYSIA

Documentation threshold

Master file	No specific threshold for preparation of Master File, but Master File is required for taxpayers that are obliged to prepare the CbCR (i.e. companies which are part of a multinational group where total consolidated group revenue is RM3 billion or more, amongst other conditions as mentioned earlier).
Local file	**Full TPD** For a taxpayer carrying on a business, the TP Guidelines apply wholly to a business with gross income exceeding RM25 million, and total amount of controlled transactions exceeding RM15 million. For a taxpayer providing financial assistance, the guidelines on financial assistance are only applicable if that financial assistance exceeds RM50 million. The TP Guidelines do not apply to transactions involving financial institutions. **Minimum TPD** For a taxpayer which do not meet the prescribed thresholds for full TPD above, the taxpayer may opt to either fully apply all relevant guidance as well as fulfil all TPD requirements in the TP Guidelines OR may opt to comply with TPD requirements under Paragraphs 25.4(a), (d) and (e) of the TP Guidelines only.
CbCR	Consolidated group revenue of RM3 billion or more

Submission deadline

Master file	Within 14 days upon request by the IRB.
Local file	Within 14 days upon request by the IRB.
CbCR	No later than twelve months after the last day of the reporting financial year.

Penalty Provisions

Documentation – late filing provision	RM20,000 to RM100,000 per YA / imprisonment for for a term not exceeding 6 months / both
Tax return disclosure – late/incomplete/no filing	**Failure (without reasonable excuse) to furnish an Income Tax Return Form** - RM200 to RM20,000 / imprisonment for a term not exceeding 6 months / both **Incorrect tax return by omitting or understating any income** - RM1,000 to RM10,000 and 200% of tax undercharged **Incorrect information in matters affecting the tax liability of a taxpayer or any other person** - RM1,000 to RM10,000 and 200% of tax undercharged **Fails (without reasonable excuse) to comply with an order to keep proper records and documentation** - RM300 to RM10,000 / imprisonment for a term not exceeding 1 year / both *Please note that the above penalties are not exhaustive and there are other penalties in place for other instances of non-compliance.
CbCR – late/ incomplete/no filing	Fine of not less than RM20,000 and not more than RM100,000 / imprisonment for a term not exceeding 6 months / both. Fine not exceeding RM1,000,000 / imprisonment for a term not exceeding two years / both [under the Labuan Regulations].

MALTA

Documentation threshold

Master file	De-minimis threshold for total related party cross-border transactions of €6 million and €20 million revenue and capital respectively measured in the preceding financial year.
Local file	De-minimis threshold for total related party cross-border transactions of €6 million and €20 million revenue and capital respectively measured in the preceding financial year.
CbCR	Turnover €750 million

Submission deadline

Master file	Not Appliable
Local file	Not Applicable
CbCR	CbCR is to be made within 12 months from the last day of the fiscal year of the MNE Group. CbCR notifications by members of the MNE group is to be made by no later than the last day for filing of a tax return of that Constituent Entity for the preceding fiscal year (usually nine months from year-end).

Penalty Provisions

Documentation – late filing provision	Not Appliable
Tax return disclosure – late/incomplete/no filing	Fines up to a maximum of €1,500 may be imposed.
CbCR – late/incomplete/no filing	CbCR not reported within the deadline - €200 and €100 for every day during which the default existed with a maximum penalty of €20,000. Failure to submit notification by a member of MNE (who is not responsible for the CbCR submission) - penalty of €200 and €50 for every day during which the default existed with a maximum penalty €5,000. Penalty for minor errors – €200 + €50 per day with a maximum penalty of €5,000. Penalty for significant non-compliance – €50,000. Penalty for failure to comply with a request of information from the CfR - €100 for every day during which the default existed with a maximum penalty of €30,000.

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MAURITIUS

Documentation threshold

Master file	Not Applicable
Local file	Not Applicable
CbCR	Euro 750 million

Submission deadline

Master file	Not Applicable
Local file	Not Applicable
CbCR	12 months after accounting year end

Penalty Provisions

Documentation – late filing provision	Not Applicable
Tax return disclosure – late/incomplete/no filing	Late filing penalty capped at USD 445 p.a.
CbCR – late/incomplete/no filing	USD 110

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MEXICO

Documentation threshold

Master file	MXN $974.6 million (approximately USD $55.37 million)
Local file	MXN $974.6 million (approximately USD $55.37 million)
CbCR	MXN $12,000 million (approximately USD $681.81 million)

Submission deadline

Master file	December 31 of the following fiscal year to which the report corresponds.
Local file	May 15 of the following fiscal year to which the report corresponds.
CbCR	December 31 of the following fiscal year to which the report corresponds.

Penalty Provisions

Documentation – late filing provision	No penalties apply as long as compliance is spontaneous.
Tax return disclosure – late/incomplete/no filing	Penalties between MXN $199,630 (approximately USD $11,342) and MXN $284,220 (approximately USD $16,148).
CbCR – late/incomplete/no filing	Penalties between MXN $199,630 (approximately USD $11,342) and MXN $284,220 (approximately USD $16,148).

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NETHERLANDS

Documentation threshold

Master file	Consolidated group turnover EUR 50 million
Local file	Consolidated group turnover EUR 50 million
CbCR	Consolidated group turnover EUR 750 million

Submission deadline

Master file	Should be available in the taxpayer's administration upon due date filling corporate income tax.
Local file	Should be available in the taxpayer's administration upon due date filling corporate income tax.
CbCR report	Submission within 12 months after end of reporting year.
CBCR notification	Before year end of the reporting year.

Penalty Provisions

Documentation – late filing provision	Administrative fines up to a maximum of EUR 5,514 can be imposed.
Tax return disclosure – late/incomplete/no filing	Administrative fines up to a maximum of EUR 5,514 can be imposed.
CbCR – late/incomplete/no filing	Fines up to a maximum of EUR 900,000 can be imposed on the taxpayer for non-compliance with notification and filing obligations for CbCR reporting.

NORWAY

Documentation threshold

Master file	MNOK 400 (or balance MNOK 350)
Local file	MNOK 400 (or balance MNOK 350)
CbCR	6 500 000 000 NOK (appr. MEuro 600)

Submission deadline

Master file	45 days from request from NTA
Local file	45 days from request from NTA
CbCR	Within 12 months after end of tax year

Penalty Provisions

Documentation – late filing provision	N/A - Norway applies penalty tax if taxable income is increased and the taxpayer negligently has provided wrongful or incomplete information.
Tax return disclosure – late/incomplete/no filing	N/A – see above
CbCR – late/incomplete/no filing	N/A – see above

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POLAND

Documentation threshold

Master file	PLN 200 million of the group consolidated revenue in the year before the documented year
Local file	PLN 10 million for goods and financing PLN 2 million for services and other transactions PLN 2.5 million and PLN 0.5 million for the respective transactions with tax havens
CbCR	EUR 750 million

Submission deadline

Master file	12 months after the reportable year-end
Local file	10 months after the reportable year-end
CbCR	12 months after the reportable year-end

Penalty Provisions

Documentation – late filing provision	Personal-fiscal penalties for the board members up to approx. PLN 30 million
Tax return disclosure – late/incomplete/no filing	Penalty up to PLN 30 million for incorrect data or failure to submit the TPR-C return. Penalty up to PLN 10 million for late submission of the TPR-C return.
CbCR – late/incomplete/no filing	Penalty up to PLN 1 million for late submission, incorrect data or failure to submit CBC-R report or the CBC notification
Non-compliance with the arm's length principle	Personal-fiscal penalties for the board members up to approx. PLN 30 million for late submission or incorrect transfer pricing statement. For the company - additional tax liability of 10%, 20% or 30% tax rate on reassessed taxable income, increased by penalty interest for tax arrears

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PORTUGAL

Documentation threshold

Master file	Annual revenues equal to or higher than EUR 10 million
Local file	Annual revenues equal to or higher than EUR 10 million
CbCR	Consolidated revenues equal to or higher than EUR 750 million

Submission deadline

Master file	Should be available and, only for Large Taxpayers, delivered to PTA, within 15th day of the 7th month after the fiscal year end
Local file	Should be available and, only for Large Taxpayers, delivered to the PTA, within 15th day of the 7th month after the fiscal year end
CbCR	Submission within 12 months after the fiscal year end

Penalty Provisions

Documentation – late filing provision Tax return disclosure – late / incomplete / no filing CbCR – late / incomplete / no filing / no publishment	Failure to prepare / submit TP documentation, IES, CbCR report or CbCR notification is subject to a penalty of EUR 500 to EUR 10,000, per fiscal year, per taxpayer, with an additional 5% of the penalty amount for each day of delay. Failing to comply with the publishment of CbCR information is subject to a penalty of EUR 1,500 to EUR 30,000, applicable to fiscal years starting on or after 22nd June 2024. Any inaccuracies in the information provided in the documents referred to above will be subject to a penalty of EUR 375 to EUR 22,500, per fiscal year, per taxpayer. If the taxpayer has stated in the IES that the transfer pricing documentation has been prepared but refuses to submit it upon request of PTA, the applicable penalty can reach EUR 150,000, per fiscal year, per taxpayer.

ROMANIA

Documentation threshold

Master file	N/A
Local file	Annual thresholds for large taxpayers: EUR 200,000 in the case of interest for financial services, EUR 250,000 in the case of services and EUR 350,000 in the case of acquisitions or sales of tangible or intangible assets. Annual thresholds for other taxpayers (including large taxpayers whose intra-group transactions do not meet the above thresholds): EUR 50,000 in the case of interest for financial services, EUR 50,000 in the case of services, EUR 100,000 in the case of acquisitions or sales of tangible or intangible assets
CbCR	EUR 750 million

Submission deadline

Master file	N/A
Local file	For large taxpayers: the TP file is not submitted to the tax authorities, but it can be requested at any point (not only during a tax audit) and the deadline for provision is of 10 calendar days. Other taxpayers (including large taxpayers whose intra-group transactions do not meet the above thresholds): the RTA have the right to request the TP file only during a tax inspection and to grant the taxpayer 30 to 60 calendar days to prepare and submit the file. The term may be extended with another 30 calendar days.
CbCR	12 months since the last day of the reporting fiscal year of the MNE Group

Penalty Provisions

Documentation – late filing provision	RON 12,000 and RON 14,000 for large and medium size taxpayers, respectively between RON 2,000 and RON 3,500 for small size taxpayers
Tax return disclosure – late/incomplete/no filing	N/A
CbCR – late/incomplete/no filing	For failing to file a CbC report, the penalty ranges from RON 70,000 to RON 100,000. For late filing of a CbC report or for incomplete/incorrect data in a CbC report, the penalty ranges from RON 30,000 to RON 50,000.

SERBIA

Documentation threshold

Master file	Not Applicable
Local file	Not Applicable
CbCR	TEUR 750.000

Submission deadline

Master file	Not Applicable
Local file	180 days from the end of the business year
CbCR	12 months from the end of the business year

Penalty Provisions

Documentation – late filing provision	RSD 100,000 up to RSD 2,000,000 (EUR 800 – EUR 16,500)
Tax return disclosure – late/incomplete/no filing	RSD 100,000 up to RSD 2,000,000 (EUR 800 – EUR 16,500)
CbCR – late/incomplete/no filing	RSD 100,000 up to RSD 2,000,000 (EUR 800 – EUR 16,500)

SOLVAKIA

Documentation threshold

Master file	N/A (complex rules explained in part Transfer Pricing Documentation Requirements)
Local file	N/A (complex rules explained in part Transfer Pricing Documentation Requirements)
CbCR	group revenue over EUR 750 million/year

Submission deadline

Master file	During the transfer pricing audit, or, outside the audit within 15 days after the receipt of the request of the tax administrator
Local file	During the transfer pricing audit, or, outside the audit within 15 days after the receipt of the request of the tax administrator
CbCR	For CbCR: 12 months after the lapse of the relevant fiscal year (according to the fiscal year of the parent company) For Notification on which foreign entity within the group files the CbCR: same as tax return filing deadline (standard deadline 3 months after the lapse of the tax period)

Penalty Provisions

Documentation – late filing provision	from EUR 60 up to EUR 3,000 (at the discretion of the tax administrator, depending on the severity, duration and possible consequences)
Tax return disclosure – late/incomplete/no filing	from EUR 60 up to EUR 16,000 (at the discretion of the tax administrator, depending on the severity, duration and possible consequences)
CbCR – late/incomplete/no filing	up to EUR 10,000 (for non-filing of CbCR), repeatedly up to EUR 3,000 (for non-filing of the Notification on which foreign entity within the group files the CbCR), repeatedly

SLOVENIA

Documentation threshold

Master file	Not Applicable
Local file	Not Applicable
CbCR	Turnover € 750 million

Submission deadline

Master file	Should be available in the taxpayer's administration upon due date filling corporate income tax.
Local file	Should be available in the taxpayer's administration upon due date filling corporate income tax return.
CbCR	Submission within 12 months after end tax year. Notification together with the within 11 months.

Penalty Provisions

Documentation – late filing provision	Fines up to a maximum of € 30,000 can be imposed on the taxpayer.
Tax return disclosure – late/incomplete/no filing	Fines up to a maximum of € 30,000 can be imposed on the taxpayer.
CbCR – late/incomplete/no filing	Fines up to a maximum of € 30,000 can be imposed on the taxpayer.

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SOUTH AFRICA

Documentation threshold

Master file	ZAR100 million
Local file	ZAR100 million
CbCR	Consolidated group revenue exceeding ZAR10 billion

Submission deadline

Master file	12 months from financial year end
Local file	12 months from financial year end
CbCR	12 months from financial year end

Penalty Provisions

Documentation – late filing provision (Master File and Local File)	Administrative non-compliance penalties that can range from ZAR250 up to ZAR16 000 a month for each month that the non-compliance continues in terms of section 211 of the TAA
Tax return disclosure – late/no filing	Administrative non-compliance penalties that can range from ZAR250 up to ZAR16 000 a month for each month that the non-compliance continues in terms of section 211 of the TAA
Tax return disclosures – incomplete filing	Understatement penalties that can range from 10 percent, for a first case of "substantial understatement" to 200 percent for a repeat case of "intentional tax evasion" in terms of section 222 of the TAA
CbCR – late/incomplete/no filing	Administrative non-compliance penalties that can range from ZAR250 up to ZAR16 000 a month for each month that the non-compliance continues in terms of section 211 of the TAA

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SOUTH KOREA

Documentation threshold

Master file	(i) the total amount of overseas intercompany transactions exceeding KRW 50 billion and (ii) the sales revenue exceeding KRW 100 billion
Local file	(i) the total amount of overseas intercompany transactions exceeding KRW 50 billion and (ii) the sales revenue exceeding KRW 100 billion
CbCR	the sales revenue on the consolidated financial statement in the immediately preceding tax year exceeding KRW 1 trillion

Submission deadline

Master file	within 12 months from the fiscal year-end (within 6 months from the fiscal year-end based on the most recent tax amendment proposal)
Local file	within 12 months from the fiscal year-end within 6 months from the fiscal year-end based on the most recent tax amendment proposal)
CbCR	within 12 months from the fiscal year-end

Penalty Provisions

Documentation – late filing provision	an administrative fine of KRW 30 million depending on each type of documentation, which can be increased to less than KRW 200 million depending on the period of non-compliance with the NTS' request
Tax return disclosure – late/incomplete/no filing	an administrative fine of KRW 5 million ~ 70 million depending on the type of tax return forms, which can be increased to less than KRW 200 million depending on the period of non-compliance with the NTS' request
CbCR – late/incomplete/no filing	an administrative fine of KRW 30 million, which can be increased to less than KRW 200 million depending on the period of non-compliance with the NTS' request

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SPAIN

Documentation threshold

Master file	Net turnover of the group > EUR 45 million
Local file	Related party transactions > EUR 250.000
CbCR	Group turnover > EUR 750 million

Submission deadline

Master file	At the disposal of the tax authorities from the end of the voluntary period for the declaration or settlement of taxes.
Local file	At the disposal of the tax authorities from the end of the voluntary period for the declaration or settlement of taxes.
CbCR	During the 12 months following the closing date of the financial year of the parent entity.

Penalty Provisions

Documentation – late filing provision	N/A
Tax return disclosure – late/incomplete/no filing	Fixed fine for each piece of information or set of information missing or incorrect, or a fine consisting on a percentage over the amount of the transactions, as the case may be.
CbCR – late/incomplete/no filing	Fixed fine for each piece of information or set of information missing or incorrect, or a fine consisting on a percentage over the amount of the transactions, as the case may be.

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SWEDEN

Documentation threshold

Master file	250 employees or either a turnover of at least SEK 450 million or a balance sheet of at least SEK 400 million.
Local file	250 employees or either a turnover of at least SEK 450 million or a balance sheet of at least SEK 400 million.
CbCR	Revenue SEK 7 billion.

Submission deadline

Master file	No later than the time when the parent company in the group must submit its income tax return.
Local file	No later than the time when the Swedish company must submit its income tax return.
CbCR	Within twelve months after the end of the financial year. It is the financial year of the group's parent company that determines the time period.

Penalty Provisions

Documentation – late filing provision	No penalty.
Tax return disclosure – late/incomplete/no filing	Late filing fee is SEK 6,250 (could be charged up to three times).
CbCR – late/incomplete/no filing	No penalty.

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SWITZERLAND

Documentation threshold

Master file	N/A but recommended
Local file	N/A but recommended
CbCR	CHF 900 M

Submission deadline

Master file	N/A
Local file	N/A
CbCR	31 December after FY

Penalty Provisions

Documentation – late filing provision	N/A
Tax return disclosure – late/incomplete/no filing	Assessment by discretion by authorities
CbCR – late/incomplete/no filing	CHF 200 per day of late filing, up to CHF 50k

UNITED KINGDOM

Documentation threshold

Master file	Required by law for large taxpayers meeting CbCR thresholds (see below) Recommended for non-large taxpayers SME exemption applies unless taxpayer elected to fall into scope of UK transfer pricing rules
Local file	As above
CbCR	Group revenue of EUR 750 million

Submission deadline

Master file	30 days upon request from HMRC
Local file	30 Days upon request from HMRC
CbCR	To be filed with HMRC within 12 months following the end of the period it relates to.

Penalty Provisions

Documentation – late filing provision	Failure to submit is £3,000. For information that is submitted late and contains inaccurate information up to 30% of lost revenues. For information that is submitted late and contains inaccurate information up to 30% of lost revenues.
Tax return disclosure – late/incomplete/no filing	£100 for initial late filing with a further £100 penalty after 3 months. Then a tax geared penalty after 6 months
CbCR – late/incomplete/no filing	£300 for a late filing with an additional £60 for each day after it is late (until submission). Inaccurate information carries a penalty of £3,000.

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UNITED STATES

Documentation threshold

Master file	N/A
Local file	N/A
CbCR	USD $850 million

Submission deadline

Master file	N/A – there is no requirement to submit transfer pricing documentation in the ordinary course.
Local file	N/A
CbCR	Included with the corporate income tax filing for the relevant tax year.

Penalty Provisions

Documentation – late filing provision	N/A
Tax return disclosure – late/incomplete/no filing	Late or non-filing of Form 5471/5472, the international informational return submitted with the CIT, is subject to a fine of $25,000 per Form 5472 (one form to be submitted for each foreign affiliate) and $10,000 per Form 5471.
CbCR – late/incomplete/no filing	This follows the general tax records penalty regime.

TAXAND GLOBAL CONTACTS

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ARGENTINA

Ezequiel Lipovetzky
Bruchou & Funes de Rioja
ezequiel.lipovetzky@bruchoufunes.com
+ 54 11 5171-2311

Mariano von Simons
Bruchou & Funes de Rioja
mariano.von.simons@bruchoufunes.com
+ +54 11 5171-2393

AUSTRALIA

Rhys Jewell
Corrs Chambers Westgarth
rhys.jewell@corrs.com.au
+61 3 9672 3455

Kieran Egan
Corrs Chambers Westgarth
kieran.egan@corrs.com.au
+61 2 9210 6275

AUSTRIA

Harald Galla
LeitnerLeitner GmbH
Harald.Galla@leitnerleitner.com
+43 1 71 89 890 532

Alexander Kras
LeitnerLeitner GmbH
Alexander.Kras@leitnerleitner.com
+43 662 847 093 621

Clemens Nowotny
LeitnerLeitner GmbH
Clemens.Nowotny@leitnerleitner.com
+ 43 732 70 903 359

Norbert Schrottmeyer
LeitnerLeitner GmbH
Norbert.Schrottmeyer@leitnerleitner.com
+43 1 71 89 890 580

BELGIUM

Jean-Michel Degée
Arteo
jm.degee@arteo.law
+ 32 2 392 81 00

Xavier Pace
Arteo
x.pace@arteo.law
+ 32 2 392 81 00

Steven Peeters
Arteo
s.peeters@arteo.law
+ 32 2 392 81 00

CANADA

Steve Suarez
Borden Ladner Gervais
SSuarez@blg.com
+ 416 367 6702

CHINA

Eloise Pan
Hendersen
eloise.pan@hendersen.com
+86 21 6447 7878

Eve Xiao
Hendersen
eve.xiao@hendersen.com
+86 21 6447 7878

COLOMBIA

Alvaro Andres Diaz Palacios
Gómez Pinzón
adiaz@gomezpinzon.com
+57 601 5144098

Manuela Orozco
Gómez Pinzón
morozco@gomezpinzon.com
+57 601 5144017

CROATIA

Pavo Djedovic
LeitnerLeitner
Pavo.Djedovic@leitnerleitner.com
+385 91 606 44-00

CYPRUS

Christos A. Theophilou
Taxand Cyprus
ctheophilou@cy.taxand.com
+357 22 875723

CZECH REPUBLIC

Miroslav Král
LeitnerLeitner
miroslav.kral@leitnerleitner.com
+ 420 228 883 917

Hannes Gurtner
LeitnerLeitner
hannes.gurtner@leitnerleitner.com
+43 732 70 93 329

DENMARK

Chelina Rose Larsen
Bech-Bruun
chel@bechbruun.com
+45 72 27 34 99

Thomas Frøbert
Bech-Bruun
thf@bechbruun.com
+45 72 27 34 33

TAXAND GLOBAL CONTACTS

RETURN TO CONTENTS PAGE

FINLAND

Aapo Pessi
Borenius
aapo.pessi@borenius.com
+358 50 918 4773

Einari Karhu
Borenius
einari.karhu@borenius.com
+358 50 377 1036

FRANCE

Fabien Billiaert
Arsene
Fabien.Billiaert@arsene-taxand.com
+ 33 1 70 39 47 82

Vincent Desoubries
Arsene
Vincent.Desoubries@arsene-taxand.com
+ 33 1 70 39 54 90

Benoit Bec
Arsene
Benoit.Bec@arsene-taxand.com
+ 33 1 70 39 47 76

Justine Schoutteten
Arsene
Justine.Schoutteten@arsene-taxand.com
+33 1 70 38 92 52

GERMANY

Dr Sven Eric Baersch
Flick Gocke Schaumburg
sven-eric.baersch@fgs.de
+49 69 71703 0

GREECE

Panagiotis Stamatogiannis
Zepos & Yannopoulos Law
p.stamatogiannis@zeya.com
+30 210 6967 146

HUNGARY

Judit Jancsa-Pék
LeitnerLeitner
Judit.Jancsa-Pek@leitnerleitner.com
+36 1 279 29-30

INDIA

Rohit Jain
Economic Laws Practice
RohitJain@elp-in.com
+91 90046 04350

Mitesh Jain
Economic Laws Practice
MiteshJain@elp-in.com
+91 98202 99298

Nishant Shah
Economic Laws Practice
NishantShah@elp-in.com
+91 93238 01835

Rahul Charkha
Economic Laws Practice
RahulCharkha@elp-in.com
+91 94220 03850

INDONESIA

Permana Adi Saputra
PB Taxand
permana@pbtaxand.com
+62 21 835 6363

ITALY

Diletta Fuxa
Alma LED
diletta.fuxa@alma-led.com
+39 02 6556721

Giuseppe Ferrisi
Alma LED
giuseppe.ferrisi@alma-led.com
+ 39 02 6556721

JAPAN

Takashi Saida
Nagashima Ohno & Tsunematsu
takashi_saida@noandt.com
+81-3-6889-7221

LUXEMBOURG

Oliver R Hoor
ATOZ Tax Advisers
Oliver.Hoor@atoz.lu
+352 26 940 646

Fanny Addouda
ATOZ Tax Advisers
Fanny.Addouda@atoz-services.lu
+352 26 9467 714

TAXAND GLOBAL CONTACTS

RETURN TO CONTENTS PAGE

MALAYSIA

Sarah Chew
Tricor Taxand

Sarah.Chew@my.tricorglobal.com

+603 2783 8105

MALTA

Walter Cutajar
Avanzia Taxand

Walter.Cutajar@avanzia.com.mt

+ 356 2730 0045

Maryanne Inguanez
Avanzia Taxand

Maryanne.Inguanez@avanzia.com.mt

+ 356 2730 0045

Antonella Galea
Avanzia Taxand

Antonella.Galea@avanzia.com.mt;

+ 356 2730 0045

MAURITIUS

Feroz Hematally
IQ-EQ

Feroz.Hematally@iqeq.com

+230 213 9936

Faraaz Jauffur
IQ-EQ

Faraaz.Jauffur@iqeq.com

+230 405 0226

MEXICO

Luis Monroy
Mijares, Angoitia, Cortés y Fuentes

lmonroy@macf.com.mx

+52 55 5201 7466

NETHERLANDS

Jimmie van der Zwaan
Taxand Netherlands

Jimmie.vanderZwaan@taxand.nl

+ 31 20 435 64 22

NORWAY

Sverre Hveding
Selmer

s.hveding@selmer.no

+47 975 27 975

POLAND

Anna Wcislo
Crido

anna.wcislo@crido.pl

+ 48 604 259 126

PORTUGAL

Mariana Martins Silva
Garrigues

mariana.martins.silva@garrigues.com

+351 213 821 200

ROMANIA

Tania Stefanita
Taxhouse

tania.stefanita@taxhouse.ro

+40 21 316 06 45 / 46 / 47

Angela Rosca
Taxhouse

angela.rosca@taxhouse.ro

+40 21 316 06 45 / 46 / 47

SERBIA

Jelena Knežević
LeitnerLeitner Serbia

Jelena.Knezevic@leitnerleitner.com

+381 11 6555-111

SLOVAKIA

Judita Kuchtova
BMB Partners

judita.kuchtova@bmb.sk

+421 2 212 99 000

Renata Blahova
BMB Partners

renata.blahova@bmb.sk

+421 2 212 99 000

SLOVENIA

Blaz Pate
LeitnerLeitner

Blaz.Pate@leitnerleitner.com

+386 1 563 67-50

Tatjana Svažič
LeitnerLeitner

Tatjana.Svazic@leitnerleitner.com

+386 1 563 67-50

SOUTH AFRICA

Jens Brodbeck
ENS

jbrodbeck@ENSafrica.com

+27 83 442 7401

SOUTH KOREA

Kyu Dong Kim
Yulchon

kdkim@yulchon.com

+82 10 8731 9718

Tae Hyoung Kim
Yulchon

taehyoungkim@yulchon.com

+82 10 7135 8739

TAXAND GLOBAL CONTACTS

RETURN TO CONTENTS PAGE

SPAIN

Eduardo Abad Valdenebro
Garrigues
eduardo.abad@garrigues.com
+34 91 514 5200

Mario Ortega Calle
Garrigues
mario.ortega.calle@garrigues.com
+34 91 514 5200

SWEDEN

Mikael Jacobsen
Skeppsbron Skatt
mikael.jacobsen@skeppsbronskatt.se
+46736409178

Ingrid Faxing
Skeppsbron Skatt
ingrid.faxing@skeppsbronskatt.se
+46736409143

SWITZERLAND

Prof Dr René Matteotti
Tax Partner AG
rene.matteotti@taxpartner.ch
+41 44 215 77 61

Caterina Colling Russo
Tax Partner AG
caterina.collingrusso@taxpartner.ch
+41 44 215 77 56

Hendrik Blankenstein
Tax Partner AG
hendrik.blankenstein@taxpartner.ch
+41 44 215 77 54

Monika Bieri
Tax Partner AG
monika.bieri@taxpartner.ch
+41 44 215 77 34

UNITED KINGDOM

Richard Syratt
Alvarez and Marsal Tax
rsyratt@alvarezandmarsal.com
+44 20 7863 4722

UNITED STATES

Marc Alms
Alvarez and Marsal
malms@alvarezandmarsal.com
+1 631 901 6252

Fabrizio Lolliri
Alvarez and Marsal
flolliri@alvarezandmarsal.com
+1 917 744 8809

Matt De Felice
Alvarez and Marsal
mdefelice@alvarezandmarsal.com
+1 609 489 1248

Dan Peters
Alvarez and Marsal
dpeters@alvarezandmarsal.com
+1 561 386 3712

TAXAND

ABOUT TAXAND

Taxand is a global organisation comprising top tier local independent tax advisory firms who together provide high quality, integrated tax advice to clients worldwide.

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