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# Global transfer pricing ebook

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

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

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

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

## Contents

01	Australia	32	Guinea	64	Netherlands	96	Taiwan
06	Austria	34	Hungary	67	New Zealand	100	Ukraine
09	Belgium	37	India	70	Poland	104	United Kingdom
12	Canada	40	Ireland	73	Portugal	108	United States
15	China	44	Israel	76	Russia	111	Vietnam
18	Cyprus	47	Italy	80	Singapore	113	Zambia
20	Czech Republic	51	Japan	83	Slovak Republic	117	Contacts
23	France	54	Jersey	86	Spain		
26	Germany	57	Korea	90	Sweden		
29	Guernsey	60	Mexico	93	Switzerland		



## Australia

### Regulatory snapshot

<i>When did transfer pricing rules start?</i>	1982.
<i>Level of transfer pricing</i>	Long standing and established regime.
<i>Return disclosure</i>	Yes.
<i>Documentation</i>	Preparation of contemporaneous transfer pricing documentation is not a requirement but is strongly recommended to evidence compliance with the arm's length principle and to demonstrate a reasonably arguable position in the event of a transfer pricing adjustment and, in so doing, access to reduced.
<i>Methods</i>	Most appropriate method approach.
<i>Audit risk</i>	High.
<i>Penalties</i>	High.
<i>Advance Pricing Agreements (APAs)</i>	Available.

- Australia has legislated new transfer pricing rules, the 'Tax Laws Amendment (Countering Tax Avoidance and Multinational Profit Shifting) Bill 2013' (the Bill), which received Royal Assent on 29 June 2013. Schedule 2 of the Bill inserts subdivisions 815-B, 815-C and 815-D into the Income Tax Assessment Act 1997 (ITAA 1997); and subdivision 284-E into schedule 1 of the Taxation Administration Act 1953 (TAA 1953), (hereinafter collectively referred to as the 'new transfer pricing rules'). The Bill is directed to repeal division 13 of part III of the Income Tax Assessment Act 1936 and will have an effect from the first income year commencing on or after 29 June 2013.
- The new transfer pricing rules modernise Australia's domestic transfer pricing guidelines and better align the rules with the international transfer pricing standards set out in the Organisation for Economic Cooperation and Development (OECD) guidelines for multinational enterprises and tax administrations.
- Particularly, the new transfer pricing rules are applicable to all cross-border transactions, including transactions between independent parties. In addition, the new transfer pricing rules allow the Australian tax office (ATO) to reconstruct transactions and arrangements (ie power to disregard the actual transactions), and substitute arm's length transactions in some cases.



- The new transfer pricing rules align the transfer pricing regime to the self-assessment taxation system operative in Australia, placing the responsibility on the company's public officer for determining the company's overall tax position arising from all cross-border dealings.
- The taxpayer bears the burden of proof to satisfy the ATO and the courts that a company's transfer pricing arrangements are at arm's length.
- Preparation of contemporaneous transfer pricing documentation is not a requirement but is strongly recommended to evidence compliance with the arm's length principle and demonstrate a 'Reasonably Arguable Position' (RAP) in the event of a transfer pricing adjustment and, in so doing, access to reduced penalties.
- Taxpayers with aggregate amounts of the international related party transactions greater than \$2 million need to disclose the details of the related party transactions, including type of transaction, magnitude of transaction and level of documentation to support the arm's length nature of the transaction, in section A of the International Dealing Schedule (IDS) attached with their annual income tax returns.
- Australia applies the 'most appropriate method approach' for the selection of transfer pricing method(s).
- Acceptable transfer pricing methods include comparable uncontrolled price (CUP), resale price, cost plus, transactional net margin and profit split.
- The main focus of transfer pricing inquiries and audits by the ATO are services, business restructuring, low-profit and/or loss-making entities, hybrid financing arrangements, thin capitalisation and intellectual property.
- Tax penalty rates ranges from 10% to 50% on the additional tax, depending on individual assessment of each circumstance. RAP allows companies access to reduced penalties in the event of a transfer pricing adjustment.
- Unilateral, bilateral and multilateral APAs are available to taxpayers in three different types of program, ie simplified, standard and complex.

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

The new transfer pricing rules relocate the domestic transfer pricing rules to subdivisions 815-B, 815-C and 815-D of ITAA 1997 to ensure a single set of transfer pricing rules apply for both treaty and non-treaty countries. The new transfer pricing rules are designed to better align Australia's domestic rules with the internationally consistent transfer pricing approaches set out by the OECD.

Consistent with the approaches under division 13, the new rules in subdivision 815-B, 815-C and 815-D apply the arm's length principle to relevant dealings between both associated and non-associated entities.

In addition, subdivision 284-E of TAA 1953 also sets out special rules about unarguable positions for cross-border transfer pricing and outline the transfer pricing documentation requirements for a taxpayer to have RAP.

## Effective date of commencement of transfer pricing regulations

Transfer pricing regulations have been effective since 1982 in Australia. New transfer pricing rules are effective from the first income year commencing on or after 29 June 2013, with retrospective application of up to seven years (except for 'consequential adjustments').

## Rulings, laws and guidelines

Australia is a member of the OECD and follows their guidelines<sup>1</sup> in relation to transfer pricing. The principles of the guidelines are reflected in guidance that has been provided by the ATO.

The ATO has issued various taxation rulings concerning transfer pricing, which interpret the application of the statutory rules; and provide guidance on issues not specifically covered by statute, without a legally binding effect. The taxation rulings that relate to transfer pricing include:

- TR 1994/14 - basic concepts underlying division 13
- TR 1997/20 - arm's length transfer pricing methodologies for international dealings
- TR 1998/11 - documentation and practical issues associated with setting and reviewing transfer prices
- TR 1998/16 - penalty tax guidelines
- TR 1999/1 - international transfer pricing for intra-group services
- TR 2001/11 - operation of Australia's permanent establishment attribution rules
- TR 2003/1 - thin capitalisation, applying the arm's length debt test
- TR 2004/1 - cost contribution arrangements
- TR 2007/1 - effects of determinations made under division 13, including consequential adjustments (replaces TR 1999/8)
- TR 2010/7 - interaction of the thin capitalisation provisions and the transfer pricing provisions
- TR 2011/1 - application of the transfer pricing provisions to business restructuring.

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

The ATO is in the process of redrafting some of above taxation rulings to incorporate guidance relating to the new transfer pricing rules. There has been no communication regarding the expected completion times for the public release of this guidance.

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

Preparation of contemporaneous transfer pricing documentation is not a requirement but is strongly recommended to evidence compliance with the arm's length principle and demonstrate a RAP in the event of a transfer pricing adjustment and, in so doing, access to reduced penalties.

TR 1998/11 recommends contemporaneous documentation to evidence compliance with the arm's length principle; to fulfil the statutory requirements to keep records; to reduce the risk of tax audits and adjustments; and to reduce/mitigate penalties in the event of an audit adjustment. TR 1998/11 outlines the ATO's recommended four step approach to transfer pricing documentation which provides a basis for reviewing and documenting transfer pricing for international dealings between related parties:

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

### What are the deadlines for documentation preparation?

Transfer pricing documentation is considered to be 'contemporaneous' if prepared by the due date for filing the annual income tax return.

### In which language should documentation be filed?

Transfer pricing documentation should be prepared in English.

### How long is it necessary to keep transfer pricing documentation?

The new transfer pricing rules introduce a seven year time limit on when the ATO can make transfer pricing amendments, with the exception on 'consequential adjustments'. This rule replaces the previous unlimited time period for making transfer pricing amendments.

### Are intercompany agreements recommended?

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

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

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

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

## Which transfer pricing methods are acceptable?

All transfer pricing methods are acceptable, ie CUP, resale price, cost plus, profit split (eg, contribution analysis or residual analysis) and transactional net margin.

## Is there a priority among the acceptable methods?

Similar to the OECD guidelines, the most appropriate method rule applies. However, depending on the availability of reliable comparable data, traditional methods are preferred in the practice to transactional profit methods. In addition, the new transfer pricing rules allow for the use of ‘a combination of methods’ to identify the arm’s length conditions that operate between entities dealing cross-border.

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

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

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

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

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

Subdivision 284-E of TAA 1953 sets out special rules about unarguable positions for cross-border transfer pricing and outline the transfer pricing documentation requirements for taxpayer to have a RAP. In order to demonstrate that a position is ‘reasonably arguable’, taxpayer must prepare and maintain documentation to support the arm’s length nature of its related party dealings.

Tax penalties may be increased by 20% where:

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

Tax penalty may be reduced:

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

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

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

The new transfer pricing rules introduce thresholds for administrative penalties arising from the arm’s length principle upon satisfying certain criteria. Specifically, a ‘reasonably arguable threshold’ was introduced in relation to transfer pricing adjustments.

## Are there exemptions to transfer pricing rules in your country?

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

## Are advance pricing agreement (APA) options available?

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

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

## Tax audit areas

Transfer pricing remains a high risk area. In May 2009, the ATO announced a major transfer pricing project, referred to as the 'Strategic Compliance Initiative'. The Strategic Compliance Initiative project was designed to protect Australia's tax base.

The main focus areas of the initiative include:

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

To date, the ATO's focus areas listed above remain the same. In addition, the ATO's Base Erosion and Profit Shifting (BEPS) team has commenced a new compliance initiative known as the 'International Structuring and Profit Shifting project', to undertake an approximately 120 tax risk reviews in Australia. The focus of these reviews is tax issues associated with:

- funding
- thin capitalisation
- valuations
- controlled foreign companies
- taxation of financial arrangements
- transfer pricing.

To support this initiative, a core team of 30 ATO international tax and transfer pricing professionals was recruited to support the public groups and international division in the ATO. Further, the initiative is partly funded by the \$109 million the ATO received this year to target business restructures.

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## Austria

### Regulatory snapshot

<i>When did transfer pricing rules start?</i>	2010.
<i>Level of transfer pricing</i>	Established regime.
<i>Return disclosure</i>	No.
<i>Documentation</i>	Compulsory.
<i>Methods</i>	Best method approach.
<i>Audit risk</i>	High.
<i>Penalties</i>	Low.
<i>Advance Pricing Agreements (APAs)</i>	Available.

- In October 2010, the Austrian Ministry of Finance issued specific transfer pricing guidelines as a decree (interpretation of law), which is binding on the Austrian tax authorities (including tax auditors) but nonbinding on taxpayers and the courts.
- The Austrian transfer pricing guidelines are in line with the Organisation for Economic Co-operation and Development (OECD) transfer pricing guidelines.
- Austria does not have specific statutory documentation requirement, but it is recommended that the documentation follow the OECD guidelines.
- Austria applies the ‘best method approach’ for conducting transfer pricing analysis; in cases when more than one method can be applied in an equally reliable manner, the traditional transaction methods are preferable to the transactions profit methods.
- Acceptable transfer pricing methods include comparable uncontrolled price (CUP), resale price, cost plus, transactional net margin and profit split.
- Transfer pricing adjustments are possible within five to ten years from tax year-end, depending on specific circumstances (in case of a correction of balance sheet it might be even longer).
- There are no specific transfer pricing penalties; interest may be imposed on late payment of any additional corporate income tax liability caused by a transfer pricing adjustment.
- APAs are available to taxpayers.



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

The Austrian Ministry of Finance issued transfer pricing guidelines, which follow the OECD guidelines. Transfer pricing guidelines apply to all related party transactions without a threshold in which an entity subject to Austrian corporate income tax is involved.

## Effective date of commencement of transfer pricing regulations

Transfer pricing guidelines are effective since October 2010 in Austria. They are nonbinding on taxpayers. But according to the Austrian tax authorities they only summarise already existing transfer pricing rules in different tax acts, which are binding on taxpayers.

## Rulings, laws and guidelines

Legally binding articles of the Austrian tax law (section 6, paragraph 6 of the income tax act and section 8 paragraph 1 and 2 of the corporate income tax act) determine the arm's length principle. Since the Austrian transfer pricing guidelines were issued, they give insight into the position of the tax authorities without a legally binding effect.

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

Taxpayers are obliged to prepare transfer pricing documentation and to keep it in their accounting records. The transfer pricing documentation should describe how transfer prices have been determined and include information which enables the tax authorities to evaluate the arm's length nature of the transactions.

## What are the deadlines for documentation preparation?

As Austria imposes no specific statutory documentation requirements, there is no deadline for the preparation or submission of documentation. But the tax authorities expect that the transfer pricing documentation is available at the time when the tax audit starts. However, if the documentation is not available upon request of the tax authorities, in general the taxpayer has at least four weeks to prepare or complete such documentation.

## In which language should documentation be filed?

Generally, documentation should be prepared in German. However, a tax auditor may accept documentation in English, depending on his or her language ability. According to the Austrian Ministry of Finance the tax authorities have to accept a Masterfile in English, but the Country File need to be prepared in German.

## How long is it necessary to keep transfer pricing documentation?

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

## Are intercompany agreements recommended?

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

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

No, there is no need to disclose the transfer pricing method applied or to disclose the principle of calculation of arm's length prices in Austria.

## Which transfer pricing methods are acceptable?

Acceptable transfer pricing methods in Austria are CUP, resale price, cost plus, transactional net margin, profit split.

## Is there a priority among the acceptable methods?

Austria applies the 'best method approach' for conducting transfer pricing analysis; in cases when more than one method can be applied in an equally reliable manner, the traditional transaction methods are preferable to the transactions profit methods.

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

Transfer pricing adjustments are possible within five to ten years from the tax year-end, depending on specific circumstances. In cases of a correction of balance sheet it might be even longer (eg tax amortisation of intellectual property transferred from related parties).

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

There are no specific transfer pricing penalties. But there are penalties for an intentional act to manipulate transfer prices under the circumstance of an incorrect income tax return. In cases of a pure intentional act, the tax may be increased with a maximum of 200% of the tax due, plus interest. The statute of limitation for fiscal criminal offences is, in principle, five years. It has to be stated that the statute of limitation for taxes is completely different from the statute of limitation for criminal offences. It is unlikely to be punished through tax penalties if there is a proper transfer pricing documentation in place.

## Are there exemptions to Transfer Pricing rules in your country?

There are no exemptions to transfer pricing rules in Austria.

## Are advance pricing agreement (APA) options available?

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

## Tax audit areas

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

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# Belgium

## Regulatory snapshot

<i>When did transfer pricing rules start?</i>	1964.
<i>Level of transfer pricing</i>	Established regime.
<i>Return disclosure</i>	No.
<i>Documentation</i>	Not compulsory.
<i>Methods</i>	Best method approach.
<i>Audit risk</i>	High.
<i>Penalties</i>	Low.
<i>Advance Pricing Agreements (APAs)</i>	Available.

- Long standing transfer pricing rules within the income tax code were activated under circular letters dated 28 June 1999 and 14 November 2006.
- Taxpayers with intercompany transactions must not disclose the transactions.
- Transfer pricing documentation is not compulsory but strongly advisable to avoid in-depth tax audits. The transfer pricing documentation should describe how transfer prices have been determined and include information which enables the tax authorities to evaluate the arm's length nature of the transactions.
- It is recommended that taxpayers document their intercompany transactions through intercompany agreements.
- Transfer pricing documentation should be kept for at least seven years.
- In general, Belgium follows the Organisation for Economic Co-operation and Development (OECD) guidelines and will apply a 'best method approach' when conducting a transfer pricing analysis.
- Acceptable transfer pricing methods include comparable uncontrolled price (CUP), resale minus price, cost plus, transactional net margin, profit split and other methods that comply with the arm's length principle.



- Transfer pricing audits by specialist tax inspectors can be targeted at any intragroup transaction, even if it resulted in an artificial increase of the Belgian taxpayer's revenue.
- Transfer pricing audits are not only confined to multinationals but also spreading to smaller international groups.
- Other than administrative cash fines, deemed profit adjustments are applied for not complying with the transfer pricing principles. Transfer pricing audit adjustments can be subject to a tax increase mostly varying between 10% and 50%.
- Advance pricing agreements are available to any taxpayer with intercompany transactions. An effective advance pricing agreement can cover five years.

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

The arm's length principle is enacted in different articles of the Belgian income tax code. In general, Belgium follows OECD guidelines. Advance rulings are available to any taxpayer with intercompany transactions. An effective ruling can cover five years. A number of rulings dealing with transfer pricing have been published on an anonymous basis.

The Belgian income tax code does not refer to specific TP rules. In general, Belgium follows OECD guidelines.

### Effective date of commencement of transfer pricing regulations

Long standing transfer pricing rules within the Belgian income tax code were activated under circular letters dated 28 June 1999 and 14 November 2006.

### Rulings, laws and guidelines

Besides legally binding articles of the Belgian income tax code, only a limited number of circular letters have been issued by the tax authorities. Regarding some transfer pricing aspects, the opinion of the tax authorities can be found in rulings dealing with transfer pricing that have been published.

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

Transfer pricing documentation is not compulsory but strongly advisable to avoid in-depth tax audits. The transfer pricing documentation should describe how transfer prices have been determined and include information which enables the tax authorities to evaluate the arm's length nature of the transactions.

### What are the deadlines for documentation preparation?

It is strongly recommended to prepare the documentation before the intragroup transactions take place.

### In which language should documentation be filed?

Country specific documentation relating to Belgium should normally be drafted in the official language in force in the Belgian region where the registered seat of the company is located (Dutch in the Flemish region, French in the Walloon region and Dutch or French in the Brussels region).

If the masterfile is in another language, the tax authorities act with moderation and will normally not require a translation if it has been drafted in English.

### How long is it necessary to keep transfer pricing documentation?

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

### Are intercompany agreements recommended?

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

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

Taxpayers with intercompany transactions must not disclose the transactions.

### Which transfer pricing methods are acceptable?

In general, Belgium will apply a 'best method approach' when conducting a transfer pricing analysis. Acceptable transfer pricing methods include CUP, resale minus price, cost plus, transactional net margin, profit split and other methods that comply with the arm's length principle.

### Is there a priority among the acceptable methods?

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

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

Transfer pricing adjustments can be assessed three years from the tax year-end which is extended to seven years in case of indications of fraud. In certain (international) cases, this period can be extended to 24 months after the tax authorities have received relevant information from other foreign jurisdictions.

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

Other than administrative cash fines, deemed profit adjustments are applied for not complying with the transfer pricing principles. Transfer pricing audit adjustments can be subject to a tax increase mostly varying between 10% and 50%.

### Are there exemptions to transfer pricing rules in your country?

No, transfer pricing audits by specialised tax inspectors can be targeted at any intragroup transaction even if it resulted in an artificial increase of the Belgian taxpayer's revenue. We noticed that transfer pricing audits are not only confined to multinationals but also spreading to smaller international groups.

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## Canada

### Regulatory snapshot

<i>When did transfer pricing rules start?</i>	1997.
<i>Level of transfer pricing</i>	Established regime.
<i>Return disclosure</i>	Yes.
<i>Documentation</i>	Provides penalty protection.
<i>Methods</i>	Most appropriate method detailed in the OECD guidelines.
<i>Audit risk</i>	High.
<i>Penalties</i>	High.
<i>Advance Pricing Agreements (APAs)</i>	Available.

- The Canada Revenue Agency (CRA) administers tax law in Canada. Canadian transfer pricing law is legislated in ‘Section 247 of the Income Tax Act’ (the act). Section 247 of the act focuses exclusively on transactions that occur between the taxpayer and a non-resident party with whom the taxpayer does not deal at arm’s length.
- Section 247 requires Canadian taxpayers to price intercompany transactions as though the resident taxpayer and the related non-resident were at arm’s length during the tax year. This is consistent with the arm’s length principle advocated in the OECD guidelines.
- In the tax filing, taxpayers with intercompany transactions must disclose the types of transactions and whether the documentation requirements have been met if all transaction and intercompany balance values exceed CAN\$1 million.
- Acceptable TP methods include comparable uncontrolled price (CUP), resale price, cost plus, profit split and transactional net margin.
- The penalty for mispricing is 10% (non-deductible) of the net income or capital adjustment if the value of this adjustment exceeds the lesser of 10% of the taxpayer’s gross revenues and CAN\$5 million. The penalty is applied only where it is concluded that ‘reasonable effort’ to determine and use arm’s length prices was not made prior to the filing of the tax return.



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

The act represents Canada's transfer pricing legislation and covers definitions, the calculation of transfer pricing adjustments, penalties, contemporaneous documentation requirements and timing.

Administrative guidance relating to definitions, methods, penalties, cost sharing arrangements, confidentiality of third-party information, and the advance pricing agreement (APA) and competent authority processes are provided in information circulars.

## Effective date of commencement of transfer pricing regulations

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

## Rulings, laws and guidelines

Other guidance:

- International transfer pricing – IC 87-2R
- Competent Authority process – IC 71-17R5
- APA programme – IC 94-4R
- Small business APA programme – IC 94-4RSR
- Income tax transfer pricing and customs – IC06-1
- Transfer pricing memorandum (TPM) series – ongoing [<http://www.cra-arc.gc.ca/tx/nrrsdnts/cmmn/trns/menu-eng.html>]

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

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

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

- the property or services to which the transaction relates
- the terms and conditions of the transaction and their relationship, if any, to the terms and conditions of each other transaction entered into between the participants in the transaction
- the identity of the participants in the transaction and their relationship to each other at the time the transaction was entered into

- the functions performed, the property used or contributed and the risks assumed, in respect of the transaction, by the participants in the transaction
- the data and methods considered and the analysis performed to determine the transfer prices or the allocations of profits or losses or contributions to costs, as the case may be, in respect of the transaction
- the assumptions, strategies and policies, if any, that influenced the determination of the transfer prices or the allocations of profits or losses or contributions to costs, as the case may be, in respect of the transaction.

## What are the deadlines for documentation preparation?

Documentation must be prepared or obtained before the tax filing due date. For corporations, the deadline to submit 'contemporaneous documentation' is six months from the year end. For partnerships, the deadline for the 'Partnership Information Return' is five months from year end. A taxpayer can submit transfer pricing documentation after the deadlines; however, late documentation may not provide penalty protection pursuant to subsection 247(3) and (4).

## In which language should documentation be filed?

Transfer pricing documentation can be provided in English or French.

## How long is it necessary to keep transfer pricing documentation?

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

## Are intercompany agreements recommended?

Yes, but not required.

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

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

## Which transfer pricing methods are acceptable?

Taxpayers are free to choose any OECD recognised transfer pricing method (CUP, resale price, cost plus, profit split and the transaction net margin method or 'other' method), providing the method results in arm's length pricing for the transaction.

## Is there a priority among the acceptable methods?

There is no hierarchy of transfer pricing methods according to the Act. However, according to the CRA certain methods provide more reliable results than others where there are varying levels of comparability between the identified controlled and uncontrolled transactions and for this reason transactional methods are preferred. IC 87-2R paragraph 49 states that 'the reliability of any method is also affected by the availability of data and the degree of accuracy with which any necessary adjustments can be made to achieve comparability'. TPM 14, paragraph 16 states that 'the CRA agrees that the focus of determining the method to use should be the method that will provide the most direct view of arm's length behaviour and pricing'.

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

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

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

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

## Are there exemptions to transfer pricing rules in your country?

None.

## Are advance pricing agreement (APA) options available?

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

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

## Tax audit areas

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

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

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## China

### Regulatory snapshot

<i>When did transfer pricing rules start?</i>	1998.
<i>Level of transfer pricing</i>	Established regime.
<i>Return disclosure</i>	Yes.
<i>Documentation</i>	Compulsory with threshold.
<i>Methods</i>	Best method approach.
<i>Audit risk</i>	High.
<i>Penalties</i>	Low.
<i>Advance Pricing Agreements (APAs)</i>	Available.

- The transfer pricing legislation of China started in 1998, and the latest revamp took place in January 2009, under circular 2.
- Taxpayers with intercompany dealings are required to disclose transactional details through completing the annual income tax filing package.
- Contemporaneous transfer pricing documentation is compulsory with threshold, and is collected and reviewed under full-scale basis by tax authorities across the country.
- China applies the ‘best method approach’ for conducting transfer pricing analysis, and the acceptable methods include comparable uncontrolled price (CUP), resale price, cost plus, transactional net margin, and profit split.
- Transfer pricing audits can be targeted at any transaction, regardless of type or amount, if it results in the reduction of China’s tax revenue. The statutory of limitation is ten years for a transfer pricing audit.
- Frontier concepts such as location saving, local market premium and local marketing intangibles are frequently pursued in transfer pricing audits, sometimes under an aggressive approach.
- Single-functioned manufacturer, distributor or service provider can be directly subject to a transfer pricing audit, provided the entity incurs loss under intercompany dealings. Also, threshold exemption for transfer pricing documentation cannot be enjoyed by this type of entity.
- APAs are available to taxpayers with a nominal threshold, and bilateral APAs have replaced unilateral APAs as the mainstream in China.



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

China has quite a comprehensive legislation framework for transfer pricing, a framework that largely follows the essence of OECD guidelines.

This being said, the Chinese transfer pricing rulings have some obvious distinctions regarding the application of arm's length range, capital intensity adjustment and cost sharing arrangement for example.

China is one of the key contributors to the 'UN transfer pricing manual', and thus a strong advocator of a global transfer pricing regime that also takes into consideration the interests of developing countries. In this context, unilateral or unconventional interpretation (in the eyes of OECD nations) of certain transfer pricing concepts can be witnessed in the law as well as in practice within China.

## Effective date of commencement of transfer pricing regulations

The first transfer pricing legislation of China dates back to 1998, and the latest mega ruling came into effect on 1 January 2008.

## Rulings, laws and guidelines

Circular no. 2 (Guoshuifa [2009] no. 2) and circular no. 363 (Guoshuihan [2009] No. 363) are the two most prominent transfer pricing rulings in China.

A dozen of other rulings also regulate China transfer pricing, directly or indirectly.

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

Contemporaneous transfer pricing documentation is compulsory for taxpayers who meet any of the following criteria:

- annual amount of intercompany buy-sell transactions has reached or exceeded RMB 200 million (approximately USD 33 million or Euro 25 million)
- annual total amount of non-buy-sell intercompany transactions has reached or exceeded RMB 40 million (approximately USD 6.5 million or Euro 5 million)
- single-functioned manufacturer, distributor or contract research and development provider incurring loss under intercompany business.

A standard documentation package shall include one report and two forms:

- *Report*: organisational structure; business and operation (including industry analysis, functional analysis, financial analysis and other business details); intercompany transactions; selection of transfer pricing method and benchmarking analysis.
- *Forms*: function analysis form; segmented financial analysis form.

Other information of lesser importance is also required and can be provided as an appendix.

## What are the deadlines for documentation preparation?

31 May of the subsequent year.

## In which language should documentation be filed?

Chinese.

## How long is it necessary to keep transfer pricing documentation?

Ten years.

## Are intercompany agreements recommended?

Intercompany agreements are necessary since they are requested to be attached in the contemporaneous documentation as an appendix.

Also, intercompany agreements for non-buy-sell transactions (such as service fee and royalty) must be registered with different authorities for cash remittance from China.

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

Yes, there is an annual filing package with nine forms dedicated to transfer pricing disclosure.

### Which transfer pricing methods are acceptable?

CUP, resale price, cost plus, transactional net margin method and profit split.

### Is there a priority among the acceptable methods?

No, China uses the best method approach.

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

Ten years.

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

Contemporaneous basic lending rate published by China central bank, plus a surcharge of 5%. The surcharge can be waived, provided bona fide documentation can be provided for the period of assessment.

### Are there exemptions to Transfer Pricing rules in your country?

No.

### Are advance pricing agreement (APA) options available?

Unilateral, bilateral and multilateral APAs are available.

### Tax audit areas

Various tax audits are common in China, and transfer pricing has always been one of the key focuses of tax audits.

Transfer pricing audits can be triggered by any transaction, regardless of type or amount, if it results in reduction of China's tax revenue. Therefore, companies with consecutive loss, low profitability or fluctuating profitability are more prone to be targeted.

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# Cyprus

## Regulatory snapshot

<i>When did transfer pricing rules start?</i>	No detailed transfer pricing rules.
<i>Level of transfer pricing</i>	Not applicable.
<i>Return disclosure</i>	No.
<i>Documentation</i>	Not applicable.
<i>Methods</i>	Not applicable.
<i>Audit risk</i>	Not applicable.
<i>Penalties</i>	Not applicable.
<i>Advance Pricing Agreements (APAs)</i>	Not applicable.

The Cyprus tax legislation does not provide detailed rules with regards to transfer pricing transactions, as they exist in other countries. Section 33 of Income Tax Law (number 118(I)/2002) refers to this matter and provides that arm’s length principles have to be followed when transactions are made between related parties.

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

There are no detailed transfer pricing rules in Cyprus.

### Effective date of commencement of transfer pricing regulations

Not applicable.



### Rulings, laws and guidelines

Tax ruling can be obtained from the tax office, however for transfer pricing transactions they do not provide specific guidelines in terms of the amounts or rates to be charged.

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

No specific transfer pricing documentation is required to be kept. The law does require companies to keep documentation for all transactions that they undertake, otherwise the expense will not be an allowable expense for corporation tax purposes.

### What are the deadlines for documentation preparation?

Preparation of documentation should be made within 30 days of the date of the transaction.

### In which language should documentation be filed?

The official language used by the tax office is Greek, they also accept documentation in English.

### How long is it necessary to keep transfer pricing documentation?

From 1 January 2013, documentation supporting tax returns, books and records shall be kept for a period of six years from the end of the tax year to which it relates.

### Are intercompany agreements recommended?

Agreements are recommended to cover intercompany transactions.

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

The tax returns need to be signed by the auditor/tax consultant of the company, who reconfirms to the tax authorities that the specific tax return is in line with the circulars issued by the income tax authorities.

### Which transfer pricing methods are acceptable?

Not applicable.

### Is there a priority among the acceptable methods?

Not applicable.

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

Not applicable.

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

Not applicable.

### Are there exemptions to Transfer Pricing rules in your country?

Not applicable.

### Are advance pricing agreement (APA ) options available?

Not applicable.

### Tax audit areas

All transactions/agreements between related parties are usually examined.

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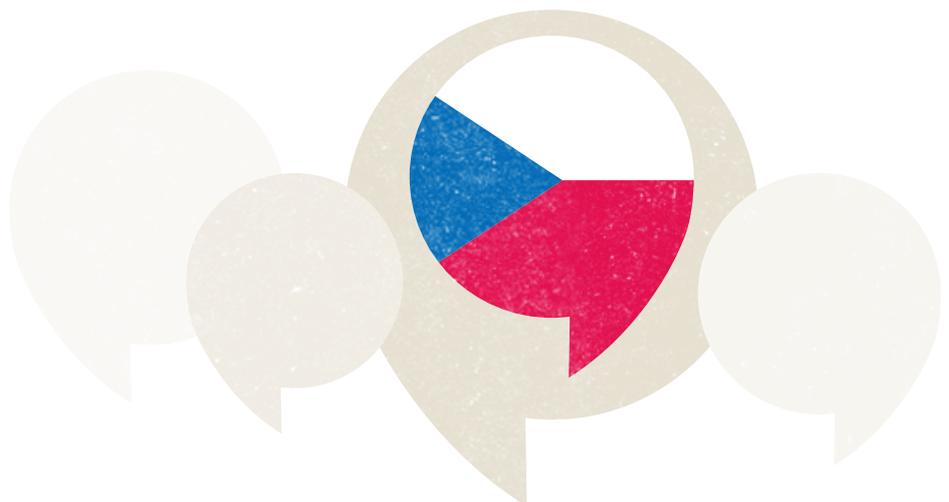


# Czech Republic

## Regulatory snapshot

<i>When did transfer pricing rules start?</i>	2004.
<i>Level of transfer pricing</i>	Developing regime.
<i>Return disclosure</i>	No.
<i>Documentation</i>	Not compulsory.
<i>Methods</i>	Best method approach.
<i>Audit risk</i>	High.
<i>Penalties</i>	High.
<i>Advance Pricing Agreements (APAs)</i>	Applicable.

- The idea of transfer pricing is mentioned in the income tax act, but the first bigger step is brought by the ‘Ministry of finance guideline D-258’. This communication by the Ministry of Finance is in respect of international standards application in taxation of transactions between associated enterprises – transfer pricing, published 13 January 2004.
- It is a current topic in the Czech Republic. A new specialized tax office focusing on transfer pricing audits was established, but the legislation is still not so clear.
- The transactions between related parties have to be briefly mentioned in annual reports, but not in the income tax return.
- The companies have no duty to prepare the transfer pricing documentation, although it is recommended and an advantage during a transfer pricing audit.
- The Czech Republic applies the ‘best method approach’ for conducting transfer pricing analysis and acceptable methods are comparable uncontrolled price (CUP), resale price, cost plus, transactional net margin, profit split and other methods that comply with the arm’s length principle.
- Transfer pricing audits can be targeted at any transaction.
- Once the prices are not accepted by the tax authority, the differences are taxed (with penalties).
- The taxpayers could file the APA request (binding ruling) to be sure that their transfer pricing policy is correct.



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

The related parties and arm's length principle are defined in the article 23, paragraph seven of the Czech Income Taxes Act (586/1992 Coll.). In general, the Czech Republic follows OECD guidelines. The ministry of finance has issued guidelines with recommendations on how to prepare documentation etc. (based on OECD guidelines rules).

## Effective date of commencement of transfer pricing regulations

Transfer pricing regulations are effective since 2004 in the Czech Republic.

## Rulings, laws and guidelines

The transfer pricing rules are not solved in the income taxes act in detail. Most of the important information is in the ministry of finance guidelines:

- Guideline D-332, issued by the ministry of finance of the Czech Republic, ref. no.: 39/86 829/2009-393, Financial Bulletin 6/2010 dated 1 December 2010, summarises the transfer pricing legislation and defines the application of principles listed in the OECD guideline for conditions in the Czech Republic. It ensures unified approach to the taxation of transfers between associated enterprises for both tax administrators and tax subjects.
- Guideline D-333, issued by the ministry of finance of the Czech Republic, ref. no.: 39/86 838/2009-393, Financial Bulletin 6/2010, dated 1 December 2010, defines the procedure and requirements of the application for a binding ruling.
- Guideline D-334, issued by the ministry of finance of the Czech Republic, ref. no.: 39/86 849/2009-393, Financial Bulletin 6/2010, dated 1 December 2010, publishes standards that are important when documenting the appropriateness of set transfer prices, so they would comply with both Czech legislation and the OECD guidelines.
- Guideline D-10, issued by the general financial directorate of the Czech Republic, ref. no.: 37488/12-3131-13228, dated 13 November 13 2012, published on the web sites of the general financial directorate of the Czech Republic, to apply uniform tax legislation during an evaluation of low value adding intercompany services.

These guidelines regard to general guidance on the application of the OECD guidelines.

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

Taxpayers have no duty to prepare transfer pricing documentation. The preparation of documentation is only recommended and the decision of each taxpayer, if they prefer to prepare documentation or defend the price method in a different way. The transfer pricing documentation is helpful and appreciated by the tax authority during the tax audit.

The transfer pricing documentation should describe how transfer prices have been determined and include information which enable the tax authorities to evaluate the arm's length nature of the transactions. The guideline D-334, provides the following examples for the content of such documentation: business description, organisational structure, functional (including risk) analysis, industry analysis, contractual terms and conditions of the transactions, financial performance, information on the intercompany transactions, substantiation of transfer pricing method and prices actually charged. The guideline D-10 determines that for low value adding services will not be in the full range required by the tax authority in the transfer pricing documentation.

## What are the deadlines for documentation preparation?

There are no deadlines. The transfer pricing documentation is presented as evidence during a transfer pricing audit.

## In which language should documentation be filed?

The transfer pricing documentation does not have to be filed; if prepared, Czech language would be required by the tax office.

## How long is it necessary to keep transfer pricing documentation?

The transfer pricing documentation should be kept for at least ten years (the same period as for the accounting records).

## Are intercompany agreements recommended?

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

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

In case where taxpayers have foreign related parties, they have to check the box in the income tax return, but no details about specific transactions need to be mentioned.

### Which transfer pricing methods are acceptable?

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

### Is there a priority among the acceptable methods?

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

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

Transfer pricing adjustments can be assessed for three years following the deadline for filing the tax return. In case of opening an already closed period (tax audit, additional tax return submitted by tax payer, etc.) this period for additional assessment is extended by one year, to ten years at a maximum.

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

There are no specific penalties which would apply for transfer pricing. Generally, if the difference between prices agreed between related parties and arm's length prices is ascertained, and the difference is not documented to the tax office in a satisfactory manner, the tax office may amend the tax base accordingly. Such amendment of tax basis may lead to additionally assessed tax. The penalty for additionally assessed tax amounts to 20% of the ascertained difference. For late payment, the late payment interest of repo rate of the Czech National Bank (currently 0.05 % p.a.) + 14% applies.

### Are there exemptions to transfer pricing rules in your country?

There are no special exemptions to transfer pricing rules in the Czech Republic.

### Are advance pricing agreement (APA) options available?

The tax payers could file the APA request with tax authority. This request must comply with mandatory requirements, which are similar to recommended content of the transfer pricing documentation. The tax authority has to make a decision and if it is positive, the approach is guaranteed to the tax payer for three years.

### Tax audit areas

Transfer pricing is a high risk area. A new specialised tax office focusing on transfer pricing audits has been established recently and new experts are being prepared for specific transfer pricing audits.

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# France

## Regulatory snapshot

<i>When did transfer pricing rules start?</i>	1937 revised in 2010 and 2013.
<i>Level of transfer pricing</i>	Long standing/ revised regime.
<i>Return disclosure</i>	Yes.
<i>Documentation</i>	Compulsory with threshold.
<i>Methods</i>	Best method approach (with a preference for comparable uncontrolled price (CUP) method).
<i>Audit risk</i>	High.
<i>Penalties</i>	High.
<i>Advance Pricing Agreements (APAs)</i>	Applicable.

- The core transfer pricing rules were promulgated in 1937, ie article 57 of the French tax code.
- Transfer pricing documentation requirements are different for small/medium size enterprises (SMEs) and large companies (MNEs), for example:
  - SMEs: transfer pricing documentation must be provided to French tax authorities within three month upon request in the course of a tax audit (article L13B of the French tax procedure code (FTPC)). There is no mandatory predefined format.
  - MNEs: large enterprise are submitted to two different requirements:
    - full documentation: detailed and predefined format/content. To be provided within one month upon request by a tax inspector in the course of a tax audit (article L13 AA of the FTPC)
    - contemporaneous simplified documentation: to be sent to the French tax authority within six months after the filling of corporate income tax returns (article 223 quinquies B of the French tax code).
- France applies ‘best method approach’ for conducting transfer pricing analysis but in practice the CUP method is preferred when available.
- Acceptable transfer pricing methods include CUP, resale price, cost plus, transactional net margin, profit split and other methods that comply with the arm’s length principle.
- Penalties for not complying with transfer pricing documentation requirements might stand at 5% of the amounts reassessed (tax bases).
- APAs are available to taxpayers.



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

The arm's length principle is enshrined in the article 57 of the French tax code. Transfer pricing documentation requirements are enacted in articles L13 B and L13 AA of the FTPC as well as in article 223 quinquies B of the French tax code. Transfer pricing regulations apply to all related party transactions without a threshold in which an entity subject to French corporate income tax is involved.

The French tax authority endorse the OECD guidelines as well as European Union (EU) recommendations.

## Effective date of commencement of transfer pricing regulations

Transfer pricing regulations are effective since 1937 in France but, in practice, are extensively used by the French tax authority since the late 1990s.

## Rulings, laws and guidelines

Besides legally binding articles of the French tax law, several guidelines provide insight into the position of the French tax authority without a legally binding effect, ie valuation methods (companies and IPs), transfer pricing for small enterprises.

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

The level of required information varies depending on the tax law article relevant to the taxpayer.

Regarding the full documentation requirement, ie article L13 AA of the French tax code, the French tax authority endorse the EU format:

- masterfile and local file
- industry analysis
- description of the group
- disclosure of foreign tax rulings
- description of business reorganisations/restructurings
- detailed descriptions of intercompany transactions
- detailed Functional analysis
- economic analysis establishing how the arm's length principle is met
- financial analysis.

## What are the deadlines for documentation preparation?

Depending on which requirement the taxpayer is subject to:

- article L13 B of the FTPC: three month upon request in the course of a tax audit
- article L13 AA of the FTPC: one month (a one month extension might be granted to taxpayers) upon request in the course of a tax audit
- article 223 quinquies of the French tax code: for MNEs subject to the above mentioned article L 13 AA a simplified contemporaneous documentation must be sent to the French tax authority within six month following the filling of the corporate income tax return.

## In which language should documentation be filed?

Transfer pricing documentation must be filed in French, but in practice most of tax auditors accept English versions (except for the simplified contemporaneous documentation).

## How long is it necessary to keep transfer pricing documentation?

As long as FYs are not statute barred and can be subject to a tax audit, ie three years in the absence of carried forward losses.

## Are intercompany agreements recommended?

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

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

In addition to article 223 quinquies, service fees paid to offshore companies must be disclosed.

## Which transfer pricing methods are acceptable?

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

### Is there a priority among the acceptable methods?

In practice the tax authorities prefer the CUP method when available.

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

Transfer pricing adjustments can be assessed three years from the tax year-end. If there are carried forward losses, the tax authorities can climb back up to the origin of the carried forward loss.

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

Penalties for non-compliance with documentation requirements can stand at 5% of the amounts reassessed (tax bases) with a minimum of €10,000 per year. There is no relief.

### Are there exemptions to Transfer Pricing rules in your country?

There are no exemptions

### Are advance pricing agreement (APA ) options available?

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

### Tax audit areas

Transfer pricing is a high risk area. Transfer pricing is a key issue in any tax audit. The French tax authority especially focus on the following areas: business restructurings, IP transactions, loss making routine functions, transactions with tax havens, transactions with permanent establishments, head office activities, and captives and financial transactions.

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# Germany

## Regulatory snapshot

<i>When did transfer pricing rules start?</i>	2003.
<i>Level of transfer pricing</i>	Established regime.
<i>Return disclosure</i>	No.
<i>Documentation</i>	Compulsory with threshold.
<i>Methods</i>	Best method approach.
<i>Audit risk</i>	High.
<i>Penalties</i>	High.
<i>Advance Pricing Agreements (APAs)</i>	Applicable.

- The basic rules for Transfer Pricing (TP) in Germany were announced in the early 1980s. These rules were expanded by several important supplemented rules, which were promulgated in May 2003 (documentation requirements) and August 2008 (transfer of business) with an effective date from 1 January 2003 and 1 January 2008 respectively.
- TP documentation is compulsory within de minimis threshold.
- Germany applies the ‘best method approach’ for conducting TP analysis.
- Acceptable TP methods include comparable uncontrolled price (CUP), resale-minus, cost plus, transactional net margin (TNM), profit split and other methods that comply with the arm’s length principle.
- TP documentation has to be provided during an on-going tax field audit and only on request of the tax inspector in charge. There is no need to submit the TP documentation together with the annual tax returns.
- If the taxpayer does not submit the required documentation in a timely manner, there will be severe consequences. In case of a violation of the obligation to cooperate, the tax authorities are entitled to increase the tax basis based on their own estimations. In addition to this, the tax authority provides for a penalty of 5% to 10% of the additional estimated income. If there is a delay in submitting usable documentation, a penalty of at least €100 for each day beyond the day of the deadline becomes due with a maximum penalty of €1,000,000.
- Advance pricing agreements (APAs) are available to every taxpayer. An effective APA can cover three to five years.



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

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

## Effective date of commencement of transfer pricing regulations

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

## Rulings, laws and guidelines

The basic rules for transfer pricing in Germany are provided in 'article 1' of the foreign tax act and 'section 90 paragraph three' of the German general tax code. In 2013 Germany has adopted the 'single entity approach' for cross border transactions with affiliated permanent establishments of a multi-national entity in the German tax law. Besides legally binding articles of the German tax law, several decrees provide insight into the position of the tax authorities without a legally binding effect. These decrees refer to general guidance on the profit allocation to related companies (BMF IV C 5 – S 1341 – 4/83), intercompany services (BMF IV B 4 – S 1341 – 14/99), business restructuring (BMF IV B 4 – S 1341 – 08/10003); APAs (BMF IV B 4 – S 1341 – 38/06) and guidance with respect to the administrative principle procedures (BMF IV B 4 – S 1341 – 1/05).

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

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

## Is there a threshold for preparing transfer pricing documentation?

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

## What are the deadlines for documentation preparation?

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

## In which language should documentation be filed?

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

## How long is it necessary to keep transfer pricing documentation?

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

## Are intercompany agreements recommended?

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

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

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

## Which transfer pricing methods are acceptable?

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

## Is there a priority among the acceptable methods?

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

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

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

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

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

## Are advance pricing agreement (APA) options available?

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

## Tax audit areas

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

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# Guernsey

## Regulatory snapshot

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

- Guernsey has not introduced formal transfer pricing rules into its domestic tax legislation however under certain double tax treaties there is provision to apply generally accepted transfer pricing principles.
- There is no formal requirement to disclose intercompany transactions separately.
- Guernsey uses domestic law in that all expenses must have been incurred wholly and exclusively for the purposes of trade to apply transfer pricing methodology.
- Although there is no formal requirement for transfer pricing documentation, in reality evidence will be required to justify that the expense has been incurred wholly and exclusively for the purposes of the trade. The option on how to accurately calculate this expense would fall with the claimant and any method that complies with the arms length principle would be acceptable.
- No additional charges are levied should there be a dispute concerning whether a transaction is properly calculated within the tax computations of the entity on the understanding that the disclosure was made originally in good faith.



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

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

## Effective date of commencement of transfer pricing regulations

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

## Rulings, laws and guidelines

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

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

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

## What are the deadlines for documentation preparation?

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

## In which language should documentation be filed?

English

## How long is it necessary to keep transfer pricing documentation?

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

## Are intercompany agreements recommended?

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

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

No separate or formal disclosures are required.

## Which transfer pricing methods are acceptable?

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

## Is there a priority among the acceptable methods?

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

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

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

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

There are no specific transfer pricing penalties or rates.

## Are there exemptions to Transfer Pricing rules in your country?

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

## Are advance pricing agreement (APA) options available?

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

## Tax audit areas

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

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# Guinea

## Regulatory snapshot

<i>When did transfer pricing rules start?</i>	2014.
<i>Level of transfer pricing</i>	Developing regime.
<i>Return disclosure</i>	No.
<i>Documentation</i>	Compulsory with threshold.
<i>Methods</i>	Other.
<i>Audit risk</i>	High.
<i>Penalties</i>	Low.
<i>Advance Pricing Agreements (APAs)</i>	Not available.

- € The concept of Transfer Pricing (TP) was initially integrated in the core tax law under the 2012 Financial Act but the core provisions related to the documentation were promulgated through the 2014 Financial Act.
- € TP documentation is compulsory with threshold.
- € For companies which are not concerned by the TP documentation, it is recommended to still keep documentation in case of a tax audit.
- € Since TP rules are new, there is not yet administrative doctrine which indicates guidelines for companies subjected to keep the documentation.
- € There are no specific penalties for non-compliance with keeping TP documentation.

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

There are no guidelines in Guinea. The introduction of TP rules in the tax code has been done in two steps: first the 2012 financial act introduced the concept of the 'arm's length principle' (tax code, article 117) and second the 2014 one introduced the obligation for companies (with threshold) to keep an internal documentation. The 'transfer pricing' terms are used since the last financial act.



## Effective date of commencement of transfer pricing regulations

The arm's length rule began in 2012 and keeping documentation is required from 2014.

## Rulings, laws and guidelines

For the time being, there are no guidelines except the reference to the arm's length principles. There is no administrative document giving the position of the tax authorities, but it may change in the coming months. As Guinean law is often inspired by French law, the next guidelines may be similar with the OECD ones.

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

TP documentation is required for following companies: those with turnover of more than GNF 175 billion (approximately USD 25 million) and those held or which hold a company with same thresholds. However the law strongly recommends other companies to do the same.

## What are the deadlines for documentation preparation?

The documentation should be available when the company has transactions with foreign companies of the group. There is no additional time conceded if the documentation is not available during the tax audit but there is also no penalty for this.

## In which language should documentation be filed?

The TP documentation should be filed in French. It can be held in English or other languages but companies should also keep translation copies.

## How long is it necessary to keep transfer pricing documentation?

Although the lack of guidelines, it is recommended to keep the TP documentation for at least five years.

## Are intercompany agreements recommended?

There is no guideline on this but it is recommended.

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

There is no obligation to disclose all intercompany transactions in the tax return. However, some of them should be reintegrated and this is concerning under-capitalised companies. A company is considered under-capitalised when remittances received from the corporations group are 1.5 times higher than the amount of equity.

## Which transfer pricing methods are acceptable?

Not applicable yet.

## Is there a priority among the acceptable methods?

Not applicable yet.

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

As the limitation for tax audit is three years up to December of the third year, the TP documentation in case of any adjustment should be kept for at least three years, however we would recommend keeping it for at least five years.

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

Penalties do not apply specifically for non-compliance with documentation requirements but the corporate income tax due may be increased with 100% plus interest.

## Are there exemptions to Transfer Pricing rules in your country?

Except for companies with thresholds mentioned above, there is no obligation for other companies to keep documentation but only a recommendation.

## Are advance pricing agreement (APA) options available?

Not applicable yet.

## Tax audit areas

The tax authority mainly focuses on intercompany accounts and transactions with the parent company.

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# Hungary

## Regulatory snapshot

<i>When did transfer pricing rules start?</i>	1992.
<i>Level of transfer pricing</i>	Developing regime.
<i>Return disclosure</i>	Yes.
<i>Documentation</i>	Compulsory.
<i>Methods</i>	Best method approach.
<i>Audit risk</i>	High.
<i>Penalties</i>	High.
<i>Advance Pricing Agreements (APAs)</i>	Applicable.

- The core transfer pricing rules were promulgated in 1992.
- Taxpayers have the right to choose whether they use the combined documentation (master file plus country specific file) or the separate country specific documentation. For low added value services there is a possibility to prepare simplified documentation.
- Hungary applies the ‘best method approach’ for conducting transfer pricing analysis.
- Acceptable transfer pricing methods include comparable uncontrolled price (CUP), resale price, cost plus, transactional net margin, profit split and other methods that comply with the arm’s length principle.
- Other than administrative cash fines, profit adjustment is applied for not complying with the arm’s length price.
- Unilateral, bilateral and multilateral APAs are available. An effective APA can cover three to five years.

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

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

### Effective date of commencement of transfer pricing regulations

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



## Rulings, laws and guidelines

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

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

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

## What are the deadlines for documentation preparation?

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

## In which language should documentation be filed?

Transfer pricing documentation can be filed either in Hungarian or any other foreign language. If the documentation is in a foreign language, the tax authorities have the right to ask for a Hungarian translation at the taxpayer's expense. If the transfer pricing documentation is prepared in English, German or French, there is no need for Hungarian translation.

## How long is it necessary to keep transfer pricing documentation?

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

## Are intercompany agreements recommended?

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

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

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

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

## Which transfer pricing methods are acceptable?

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

## Is there a priority among the acceptable methods?

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

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

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

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

Those taxpayers, who fail to comply with the obligation of keeping of records related to the determination of the arm's length price, may be sanctioned by a default penalty of two million HUF per each documentation for the first time and four million HUF per each documentation, if the infringement of the obligation is committed repeatedly. In case of repeated non-compliance with the requirements of making of the same documentation, the amount of the penalty may be extended up to the four times the penalty amount imposed at the first time, but pursuant to the law, if the obligation is met, the imposed penalty may be reduced. If more than two years elapsed between two subsequent non-compliances with the requirements, then such a case shall not be considered as a repeated infringement of law, ie the higher penalty rate consequences will not apply. The tax authorities also adjust the tax base of the taxpayer with the difference of the market level and the transfer price and also levy a default penalty, which is the 50% of the tax lack and they charge late interest penalty.

## Are there exemptions to Transfer Pricing rules in your country?

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

## Are advance pricing agreement (APA) options available?

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

The fee of APA is:

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

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

## Tax audit areas

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

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# India

## Regulatory snapshot

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

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

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

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

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



## Effective date of commencement of transfer pricing regulations

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

## Rulings, laws and guidelines

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

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

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

### Principal documentation

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

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

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

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

## What are the deadlines for documentation preparation?

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

## In which language should documentation be filed?

Transfer pricing documentation needs to be filed in English.

## How long is it necessary to keep transfer pricing documentation?

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

## Are intercompany agreements recommended?

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

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

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

## Which transfer pricing methods are acceptable?

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

Recently, the Central Board of Direct Taxes (CBDT) clarified the other method by saying "for determination of the arms' length price in relation to an international transaction shall be any method which takes into account the price which has been charged or paid, or would have been charged or paid, for the same or similar uncontrolled transaction, with or between non-associated enterprises, under similar

circumstances, considering all the relevant facts”. The other method or the sixth method is effective from 1 April 2012 ie from FY 11-12 onwards.

### Is there a priority among the acceptable methods?

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

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

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

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

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

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

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

### Are there exemptions to Transfer Pricing rules in your country?

No there are no exemptions to transfer pricing rules.

### Are advance pricing agreement (APA) options available?

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

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

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

### Tax audit areas

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

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## Ireland

### Regulatory snapshot

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

- As part of 2010 Finance Act, Ireland introduced transfer pricing legislation in respect of trading transactions, which endorses the OECD guidelines for multinational enterprises and tax administrations and adopts the arm’s length principle.
- The rules regarding transfer pricing in Ireland are outlined in Sections 835A to 835H of the Taxes Consolidation Act 1997 (TCA) (the new rules apply to accounting periods beginning on or after 1 January 2011). Only new arrangements entered into on, or after 1 July 2010 are affected. Contracts or arrangements in place before that time are not affected where the terms of the agreement are ‘grandfathered’, ie agreed before 1 July 2010.
- The legislation obliges a person/company involved in a transaction, which is within the scope of the transfer pricing legislation, to have records/documentation available that may reasonably be required for the purposes of determining whether the income of that person/company has been computed at arm’s length.
- There are exemptions from these rules for small and medium entities (SMEs) where a company has fewer than 250 employees and either turnover of less than €50million or assets of less than €43million on a group basis.



- There is no separate statutory regime for transfer pricing penalties. However, normal penalties which apply to the Irish self-assessment regime may apply.
- There is no priority among the acceptable methods as long as the result is at arm's length. To establish an arm's length price, the OECD guidelines will be referenced.
- Ireland does not have a formal APA procedure for Irish companies to agree prices with the Irish tax authorities for international related party transactions.

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

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

### Effective date of commencement of transfer pricing regulations

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

### Rulings, laws and guidelines

The rules regarding transfer pricing in Ireland are outlined in Sections 835A to 835H of the TCA.

The principles in the OECD guidelines for multinational enterprises and tax administrations must be followed when analysing whether a transaction has been entered into at arm's length.

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

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

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

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

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

## What are the deadlines for documentation preparation?

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

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

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

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

## In which language should documentation be filed?

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

## How long is it necessary to keep transfer pricing documentation?

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

## Are intercompany agreements recommended?

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

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

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

## Which transfer pricing methods are acceptable?

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

## Is there a priority among the acceptable methods?

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

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

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

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

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

## Are there exemptions to Transfer Pricing rules in your country?

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

## Are advance pricing agreement (APA) options available?

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

## Tax audit areas

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

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# Israel

## Regulatory snapshot

<i>When did transfer pricing rules start?</i>	November 2006.
<i>Level of transfer pricing</i>	Developing regime.
<i>Return disclosure</i>	Yes.
<i>Documentation</i>	Compulsory.
<i>Methods</i>	Combined method of hierarchy and most appropriate method.
<i>Audit risk</i>	High.
<i>Penalties</i>	General penalties applicable.
<i>Advance Pricing Agreements (APAs)</i>	Available.

- Israel's Transfer Pricing (TP) rules were promulgated under article 85A of the Israeli Income Tax Ordinance – 1961 (income tax ordinance) and the Income Tax Regulations (Determining Market Conditions) – 2006 (regulations), with an effective date commencing 1 November 2006.
- Taxpayers with international related party transactions must disclose the transaction details through the Declaration of International Transactions (Form 1385), during the annual tax return filing process, and declare that the international related party transaction was carried out at arm's length.
- Certain contemporaneous TP documentation is compulsory (certain exemptions are available for one time transactions).
- The regulations set a hierarchy of TP methods for conducting TP analysis.
- Acceptable TP methods include comparable uncontrolled price (CUP), resale price, cost plus, transactional net margin, profit split and unspecified methods that comply with the arm's length principle.
- TP audit can be targeted at any transaction if it results in the reduction of Israel's tax revenue.
- Other than general penalties that are stipulated by the income tax ordinance, deemed profit adjustment is applied for not complying with the comparable arm's length range.
- Related party definition is available in article 85A to the income tax ordinance, including inter alia a holding threshold of 50% and above.



- APAs are available to taxpayers.
- The income tax ordinance was amended in respect of the application of TP legislation on related party lending transactions. Following this amendment, the provisions of article 85A do not apply to certain lending transactions (with capital characteristics) that meet detailed criteria.

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

The arm's length standard and transfer pricing documentation requirements are enacted in article 85A of the income tax ordinance and the regulations. The Israeli regulations are based on both US transfer pricing regulations and the Organisation for Economic Co-operation and Development (OECD) transfer pricing guidelines.

In general, the regulations apply to all related party international transactions in which an entity subject to Israeli income tax is involved, without a quantitative threshold.

### Effective date of commencement of transfer pricing regulations

Israel's TP rules are effective from November 2006.

### Rulings, laws and guidelines

Besides legally binding articles in the income tax ordinance and the regulations, the Israeli tax authority provided insight into its position in respect of transfer pricing, which among others referred to: general guidance on transfer pricing in Israel (circular 3/2008); changes in the business model of an enterprise operating in the field of technology (professional guidance dated July 8, 2010) and application of article 85A to certain related party lending transactions (which followed an amendment of article 85A).

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

A taxpayer who is a party to a related party international transaction must file form 1385 and declare that the international related party transaction is carried out at arm's length. According to the instructions related to section 4 of form 1385, the taxpayer should include the total amount of the transaction and the transfer pricing method that was selected. Form 1385 constitutes an appendix to the taxpayer's annual tax return. In addition, according to the regulations, a taxpayer who is a party to a relevant international transaction to which 'regulation no. 4' of the regulations (which deals with one time transactions) does not apply, shall submit to the tax assessing officer within 60 days of a request, a detailed report which includes:

- inter alia: particulars of the taxpayer
- parties to the international transaction
- contractual terms of the transaction
- area of activity of the taxpayer and the developments therein
- the economic environment in which the taxpayer operates and the risks to which it is exposed
- use of intangible assets
- similar transactions
- the comparative method selected and the comparative characteristics on the basis of which the range was determined
- presentation of the arm's length range.

### What are the deadlines for documentation preparation?

Form 1385 should be submitted on an annual basis as an appendix to the taxpayer's tax return. In addition, according to the regulations, a taxpayer who is a party to an international transaction to which regulation no. 4 (which deals with one time transactions) does not apply, should submit to the tax assessing officer a detailed report, within 60 days of a request.

### In which language should documentation be filed?

In practice, transfer pricing documentation can be filed either in Hebrew or in English at the Israeli tax authorities, unless specifically requested otherwise by the tax assessing officer. Form 1385 is submitted in Hebrew.

### How long is it necessary to keep transfer pricing documentation?

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

### Are intercompany agreements recommended?

It is recommended that taxpayers document their related party transactions through agreements.

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

In the event that a taxpayer carried out an international transaction with a related party in a relevant tax year, the taxpayer is required to submit form 1385 as an appendix to the tax return (submitted on an annual basis). The specific transaction needs to be detailed in form 1385 and the taxpayer should declare that the relevant related party transaction was carried out at arm's length.

### Which transfer pricing methods are acceptable?

The acceptable methods are: CUP, cost plus, resale price, transactional net margin, profit split method and unspecified methods that comply with the arm's length principle. The regulations are combined from a hierarchy of methods and most appropriate method.

### Is there a priority among the acceptable methods?

According to the regulations, the CUP method is preferred over other acceptable methods. In the event that the CUP method cannot be applied, the taxpayer should apply one of the other methods specified above, that is the most appropriate method for application under the circumstances. In the event that it is not possible to apply any of the above methods, the taxpayer can apply an unspecified method that is more suitable to apply under the circumstances.

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

TP adjustments can be assessed three years from the tax year-end plus any extensions provided by the Israeli tax authorities.

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

General penalties apply. In addition, if the related party charges deviate from the arm's length range, the price of the related party international transaction should be reported on the basis of the value found in the 50th percentile of the arm's length range of values.

### Are there exemptions to Transfer Pricing rules in your country?

Certain documentation exemptions are available for a one-time international transaction that was approved by the tax assessing officer as a one-time transaction.

### Are advance pricing agreement (APA) options available?

APAs are available.

### Tax audit areas

Transfer pricing is a high risk area and a key issue in any tax audit.

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# Italy

## Regulatory snapshot

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

- The transfer pricing (TP) rules in force in Italy are the following:
  - article 110, paragraph 7 of the Italian tax code (Presidential decree no. 917/1986)
  - article 9, paragraph 3 of the Italian tax code (Presidential decree no. 917/1986)
  - article 1, paragraph 2 of legislative decree no. 471/1997
  - article 8 of law decree no. 269/2003
  - measure of the Italian revenue office director dated 29 September 2010. The measure makes reference both to EU code of conduct and to OECD guidelines 2010 on TP documentation for associated enterprises in the EU, approved by resolution 2006/c176/01 of 27 June 2006 from the EU council and government representatives of member states
  - 58/E. The letter makes direct reference to the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, approved by the OECD Council on 22 July 2010
  - Stability Law 2014 - Law n.147 dated 27 December 2013.
- TP documentation is not mandatory for taxpayers. The measure adopted by the Italian tax authorities’ director provides information about the type of documentation requested (ie master file or country file) and about its structure.
- TP documentation is drawn up to provide evidence of the arm’s length nature of a taxpayer’s TP policy. Furthermore, by drafting the TP documentation, taxpayers can take advantage of penalty protections in case of tax assessment.



- TP documentation must be filed electronically with the tax authorities, in Italian, within ten days after the tax authorities' request.
- TP documentation must be drafted on a yearly basis but for SMEs<sup>1</sup>, which are entitled not to update the benchmark analysis for the two taxable periods following the one the documentation relates to, in case the comparability analysis do not incur substantial changes during the above taxable periods.
- TP documentation must disclose all the intercompany transactions, without any threshold.
- Italy applies the 'best method approach' for conducting TP analysis. Taxpayers are free to choose any OECD recognised TP method, as long as the method results in an arm's length pricing of the transaction.
- TP is a high risk area, since it is a key issue in any tax audit. According to article 1 of legislative decree no. 471/1997, the applicable administrative penalties range from 100% to 200% of the higher tax or credit difference assessed. As said above, an appropriate TP documentation could lead to the non-applicability of penalties. The recent Stability Law extended the scope of application of the aforesaid TP rules to IRAP (regional tax on production activities).
- Unilateral and bilateral APAs are available.

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

The arm's length principle is contained in article 110, paragraph 7, of the Italian tax code, while TP documentation requirements about its structure and contents are contained in the measure of the Italian revenue office. In general, Italy follows the OECD guidelines as far as the different transfer pricing methods are concerned.

## Effective date of commencement of transfer pricing regulations

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

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

## Rulings, laws and guidelines

- article 110, paragraph 7 of the Italian tax code (presidential decree no. 917/1986)
- article 9, paragraph 3 of the Italian tax code (presidential decree no. 917/1986)
- article 1, paragraph 2-ter of legislative decree no. 471/1997
- article 8 of law decree no. 269/2003
- measure of the Italian revenue office director dated 29 September 2010. The measure makes reference both to EU code of conduct and to OECD guidelines 2010 on TP documentation for associated enterprises in the European Union (EU), approved by resolution 2006/c176/01 of 27 June 2006 from the EU council and government representatives of member states
- circular letter dated 5 December 2010 n. 58/E. The letter makes direct reference to the OECD TP guidelines for multinational enterprises and tax administrations, approved by the OECD council on 22 July 2010
- Stability Law 2014 - Law n. 147 dated 27 December 2013.

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

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

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

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

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

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

## What are the deadlines for documentation preparation?

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

## In which language should documentation be filed?

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

## How long is it necessary to keep transfer pricing documentation?

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

## Are intercompany agreements recommended?

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

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

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

## Which transfer pricing methods are acceptable?

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

## Is there a priority among the acceptable methods?

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

For the sake of completeness, please note that the recent case-law on transfer prices mirrors an interpretation of outdated rules which are no longer in line with the developments occurred over the past few years.

As far as the selection of the most appropriate transfer pricing method, it is necessary to consider that according to most judgments, the CUP method is the method to be selected by law and it should be adopted whenever possible; consequently, the application of any other method should be strongly and effectively supported.

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

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

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

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

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

The recent Stability Law has extended the scope of application of TP rules to IRAP (regional tax on production activities).

## Are there exemptions to Transfer Pricing rules in your country?

N/A

## Are advance pricing agreement (APA) options available?

Unilateral and bilateral APAs are available.

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

## Tax audit areas

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

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# Japan

## Regulatory snapshot

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

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

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

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

### Effective date of commencement of transfer pricing regulations

Transfer pricing regulations have been effective in Japan since 1986.

### Rulings, laws and guidelines

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



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

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

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

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

Documents associated with the intercompany transactions:

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

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

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

- in cases when adjustments were made to comparable transactions, documents containing the adjustment method and reasons for adjustments.

### What are the deadlines for documentation preparation?

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

### In which language should documentation be filed?

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

### How long is it necessary to keep transfer pricing documentation?

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

### Are intercompany agreements recommended?

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

### Which transfer pricing methods are acceptable?

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

### Is there a priority among the acceptable methods?

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

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

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

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

General corporate tax penalties are applicable to transfer pricing assessments. There are two types of penalties such as underpayment penalty tax and delinquency tax.

In case of tax underpayment, a flat 10% is payable on the first JPY 500,000 of the unpaid amount and 15% on any additional unpaid amount thereafter. This increases to 35% in cases of fraud.

Delinquency tax accrues from the date following the date of the assessment notice until the date the additional tax is paid. For the first three months following the date of the assessment notice (ie, the one month period from the date of the assessment notice until the due date of tax payment and two months following the due date of tax payment), the rate of delinquency tax is 4% per year plus the official discount rate as of 30 November of the prior fiscal year. For further delinquency tax accruing after the period mentioned above, the rate increases to 14.6% per year.

Both Penalties for tax underpayment and delinquency are non-deductible for corporation tax purposes. There are no additional transfer pricing-specific penalties, but taxpayers failing to submit documents requested by the NTA in a timely manner may be subject to presumptive taxation or be disadvantaged by the use of 'secret comparables'.

## Are there exemptions to Transfer Pricing rules in your country?

Not specified.

## Are advance pricing agreement (APA) options available?

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

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

## Tax audit areas

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

Transfer pricing audits usually begin directly through questions asked by transfer pricing examiners, and can be resulted from questions that arise during general corporate tax audits. Before formally undertaking a transfer pricing audit, examiners typically undertake informal inquiries to determine whether a taxpayer is an appropriate target, and if so, the examiners will require the taxpayer to submit further information and will arrange meetings as needed. Taxpayers failing to submit requested information in a timely manner will face risks under Japan's 'presumptive taxation' rules. The rules can be disadvantageous to taxpayers as they afford examiners broad discretion to make tax assessments, including the ability to apply secret comparables, and to make income adjustments or apply a transfer pricing method without consultation or input from taxpayer.

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# Jersey

## Regulatory snapshot

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

- Jersey has not introduced formal transfer pricing rules into its domestic tax legislation however under certain double tax treaties, there is provision to apply generally accepted transfer pricing principles.
- There is no formal requirement to disclose intercompany transactions separately.
- Jersey uses domestic law in that all expenses must have been incurred wholly and exclusively for the purposes of trade to apply transfer pricing methodology.
- Although there is no formal requirement for transfer pricing documentation, in reality evidence will be required to justify that the expense has been incurred wholly and exclusively for the purposes of the trade. The option on how to accurately calculate this expense would fall with the claimant and any method that complies with the arms length principle would be acceptable.
- No additional charges are levied, should there be a dispute concerning whether a transaction is properly calculated within the tax computations of the entity on the understanding that the disclosure was made originally in good faith.



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

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

## Effective date of commencement of transfer pricing regulations

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

## Rulings, laws and guidelines

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

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

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

## What are the deadlines for documentation preparation?

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

## In which language should documentation be filed?

English.

## How long is it necessary to keep transfer pricing documentation?

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

## Are intercompany agreements recommended?

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

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

No separate or formal disclosures are required.

## Which transfer pricing methods are acceptable?

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

## Is there a priority among the acceptable methods?

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

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

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

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

There are no specific transfer pricing penalties or rates.

## Are there exemptions to Transfer Pricing rules in your country?

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

## Are advance pricing agreement (APA) options available?

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

## Tax audit areas

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

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# Korea

## Regulatory snapshot

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

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



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

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

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

## Effective date of commencement of transfer pricing regulations

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

## Rulings, laws and guidelines

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

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

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

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

## What are the deadlines for documentation preparation?

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

## In which language should documentation be filed?

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

## How long is it necessary to keep transfer pricing documentation?

TP documents should be kept for at least five years.

## Are intercompany agreements recommended?

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

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

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

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

### Which transfer pricing methods are acceptable?

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

### Is there a priority among the acceptable methods?

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

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

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

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

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

### Are there exemptions to Transfer Pricing rules in your country?

Not applicable.

### Are advance pricing agreement (APA) options available?

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

### Tax audit areas

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

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# Mexico

## Regulatory snapshot

<i>When did transfer pricing rules start?</i>	1997.
<i>Level of transfer pricing</i>	Established regime.
<i>Return disclosure</i>	Yes.
<i>Documentation</i>	Compulsory.
<i>Methods</i>	Priority of methods.
<i>Audit risk</i>	Medium.
<i>Penalties</i>	High.
<i>Advance Pricing Agreements (APAs)</i>	Available.

- When Mexico joined the OECD in 1994, it was invited to regulate transfer pricing in its local law. In 1995, the Mexican transfer pricing regulations were first adopted focused on foreign Maquiladora activities. In 1997, the Mexican congress passed several tax amendments in the income tax law including transfer pricing, those reforms extended the scope of transfer pricing to all foreign intercompany transactions and established the obligation to keep contemporaneous documentation that supports the arm’s length nature of such transactions.
- Taxpayers with intercompany transactions must disclose detailed information on controlled transactions with foreign entities, via ‘Appendix 9’ of the multiple annual informative return, which is submitted along with their annual tax return. Transactions covered by the Maquila program are exempt from this obligation while companies that file a statutory tax reports (Dictamen Fiscal) are able to comply until its submission.
- Contemporaneous transfer pricing documentation is compulsory for taxpayers, who must keep but not deliver the information to the tax authority unless it is requested.



- Mexico applies the priority of methods approach, in which, the comparable uncontrolled price (CUP) is the preferred method, followed by the cost plus (CP) and the resale price (RP) (transaction-based methods). The profit-based methods: profit split (PS), residual profit split (RPS) and the transactional operating profit margin (TOPM) will apply when the transaction-based methods are not applicable.
- Tax authorities have the power of reviewing controlled transactions to determine whether they were carried out on an arm's length basis. Penalties go from an income adjustment determined by the tax authority, the non-deduction of payments made to foreign affiliates and a penalty that goes from 55% to 75% of the resulting tax on the adjustment.
- Article 34-A of the federal fiscal code states the availability of unilateral and bilateral APAs. The term on APAs encompasses the issuing year, one year back and three years forward.
- Domestic intercompany transactions are also subject to transfer pricing rules.

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

Mexican regulations contained in the MITL refer to the OECD guidelines as a guide for the interpretation of the rules, as long as they do not act against the Mexican income tax law (MITL) or international tax treaties.

### Effective date of commencement of transfer pricing regulation

Transfer pricing regulations are effective since 1 January 1997 for income tax law and 1 January 2008 for flat tax purposes.

### Ruling, laws and guidelines

- Income tax law: articles 86 (sections XII, XIII and XV), 215, 216, 216-Bis
- Income tax law regulations: article 276
- Flat tax law: articles 3 (section VI) and 18 (section III)
- Federal fiscal code: articles 34-A, 81 (section XVII), 82 (section XVII), 83 (section XV) and 84 (section III).

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

Article 86 of the MITL states the obligation to keep the contemporaneous documentation to support the arm's length nature of foreign and domestic intercompany transactions. However, there is no legal requirement to submit it to the tax authority. Documentation shall include:

- the names or legal names, addresses, and residencies for tax purposes of the related parties with whom they enter into transactions, as well as supporting documentation demonstrating the direct and/or indirect interest among the related parties
- information on the functions or activities performed, assets used, and risks assumed by the taxpayer for each type of transaction
- information and supporting documentation on transactions with related parties and the amounts thereof, for each related party and for each type of transaction, in accordance with the classification and with the data set forth in article 215 of the MITL
- the method applied in accordance with article 216 of the law, including the information and the supporting documentation on comparable enterprises or transactions, for each type of transaction.

### What are the deadlines for documentation preparation?

The submission of the documentation is mandatory upon the request from the tax authority. However, certain information regarding foreign intercompany transactions is required for 31 March, due to the obligation of filing the 'Appendix 9' of the annual informative return. Also, taxpayers who file a Statutory Tax Report Filing System (Sipred), in order to meet this obligation, shall include information regarding foreign and domestic intercompany transactions. Thus, despite there not being a deadline to submit the documentation, taxpayers must have it available to fulfill other obligations.

### In which language should documentation be filed?

Transfer pricing documentation should be available in Spanish. In the case in which the initial documentation is in a different language, a certified translation will be required within 15 business days.

## How long is it necessary to keep transfer pricing documentation?

Taxpayers are responsible for keeping contemporaneous documentation for a term of five years from the disclosure of its annual income tax return or the last amended return.

## Are intercompany agreements recommended?

Yes, it is recommended that taxpayers document their foreign and domestic intercompany transactions through intercompany agreements.

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

Taxpayers who carry out transactions with foreign related parties are required to disclose detailed information of such transactions, via 'Appendix 9' of the multiple annual informative return, which is submitted along with their annual tax return. This Appendix shall include:

- the name or legal name, address, tax identification and country of residence (for tax purposes) of the related parties with whom the taxpayer has entered into transactions
- the type of transaction and its corresponding amount
- the transfer pricing method applied for each transaction
- type and percentage of profit or loss obtained for each transaction (gross or operating)
- tax fields regarding cumulative, deductible, accrued, exigible, paid and exempt amounts of such transactions.

## Which transfer pricing methods are acceptable?

Comparable uncontrolled price (CUP), the cost plus (CP) and the resale price (RP) methods; profit split (PS), residual profit split (RPS) and the transactional operating profit margin (TOPM).

## Is there a priority among the acceptable methods?

Yes, in Mexico, the CUP is the preferred method, followed by the CP and RP. The PS, RPS and TOPM methods will apply when the transaction-based methods are not applicable or are not reliable.

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

Five years from the disclosure of the annual income tax return by the taxpayer, or the last amended return.

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

The tax authority has the power to review controlled transactions to determine whether they were carried out at an arm's length basis, if they were not, the following may take place:

- the taxpayer could be subject to an income adjustment determined by the tax authority. The resulting tax of such adjustment would have to be paid adjusted by inflation plus interests and penalties
- payments made to foreign affiliates by Mexican companies could be considered as non-deductible (totally or partially)
- there would be a penalty that goes from 55% to 75% of the resulting tax on the adjustment, updated by inflation.

If the taxpayer complies with the documentation requirements there will be a set-off of 50% and if the adjustment is on a tax loss to decrease it, the penalty will be of 15% to 20% of the difference.

## Are there exemptions to Transfer Pricing rules in your country?

Yes, taxpayers that conduct entrepreneurial activities, whose income in the immediately preceding fiscal year did not exceed \$13,000,000.00 or \$3,000,000.00 for the provision of professional services, will not be required to comply with the obligation to produce supporting documentation with regard to its foreign and domestic intercompany transactions.

This exception does not reach the counterpart of the exempted party and only entails the income tax law, not the flat tax law. In addition, there is no exception to the requirement of conducting the transactions at arm's length.

## Are advance pricing agreement (APA) options available?

Yes, article 34-A of the federal fiscal code states the availability of unilateral and bilateral APAs. The term of an APA encompasses the issuing year, one year back and three years forward.

## Tax audit areas

The activities of audit, managing of APAs and enforcing the transfer pricing rules are carried out by the Tax Administration Service (SAT), through its transfer pricing audit central administration.

Transfer pricing audits have increased during the last years and currently they are tending to focus on business restructuring, management fees, technical assistance, intercompany loans, sale of shares as well as domestic transactions.

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# The Netherlands

## Regulatory snapshot

<i>When did transfer pricing rules start?</i>	2013.
<i>Return disclosure</i>	No.
<i>Documentation</i>	Compulsory.
<i>Methods</i>	No priority between methods.
<i>Audit risk</i>	High.
<i>Penalties</i>	When having no documentation.
<i>Advance Pricing Agreements (APAs)</i>	Applicable.

- the core Transfer Pricing (TP) rules is promulgated under the Decree of 14 November 2013, IFZ 2013/184m
- taxpayers with intercompany transactions must prepare transfer pricing documentation
- thresholds: OECD definition (direct or indirect participation in management, control or capital)
- documentation is generally expected to be complete when the taxpayer enters into a transaction. If the transfer pricing documentation is not available upon the request of the tax authority, taxpayers are granted a request of at least four weeks to prepare the documentation. This period may be extended up to three months, depending on the complexity of the intercompany transactions in which the taxpayer is engaged
- there is no priority amongst transfer pricing methods. Transfer pricing methods however have to be motivated and to result into an arm's length outcome
- acceptable TP methods include: comparable uncontrolled price (CUP), resale price, cost plus, transactional net margin, profit split and other methods that comply with the arm's length principle
- TP audits are selected based on risk assessments by the Dutch revenue, changes and drops in income, business reorganisations, Intellectual Property (IP) transactions, loans, transactions with tax havens; captives, profit allocation to permanent establishments and centralised purchase companies
- in the absence of sufficient documentation, the penalty is that the burden of proof will shift from the Dutch tax authorities to the taxpayer to demonstrate that the transfer prices are at arm's length



- transfer pricing adjustments can be subject to penalties, levy interest, withholding tax and double taxation
- unilateral, bilateral, multilateral, and combined APA/ATRs are available to all taxpayers. An effective APA can cover four years.

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

The arm's length principle and transfer pricing documentation requirements are enacted in article 8b of the Dutch corporate income tax act. In general, the Netherlands follows OECD guidelines<sup>1</sup>. Various decrees<sup>2</sup> have been issued to explain the policy and to provide guidance. Transfer pricing regulations apply to all related party transactions without a threshold in which an entity subject to Dutch corporate income tax is involved.

## Effective date of commencement of transfer pricing regulations

Transfer pricing regulations are effective since 2002 in the Netherlands.

## Rulings, laws and guidelines

Besides legally binding articles of the Dutch tax law, several decrees provide insight into the position of the tax authorities without a legally binding effect. These decrees regard to general guidance on the application of the OECD guidelines, addressing the arm's length principle, documentation obligation, intercompany services (shareholder activities and mixed activities)<sup>3</sup>, contract research and development, valuation of intangibles, financial guarantees, financial transactions<sup>4</sup>, and combat of profit shifting<sup>5</sup> (IFZ2013/184M); advance pricing agreements (IFZ2004/124M); financing companies (IFZ2004/126M and IFZ2004/127M); mutual agreement procedures (IFZ2008/248M); and attribution of profits to permanent establishments (IFZ2010/457M).

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

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

## What are the deadlines for documentation preparation?

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

## In which language should documentation be filed?

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

1 OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, 1995 and subsequent updates. The 2013 update says that the guidelines have 'in principle' direct working.

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

3 The decree provides further clarification regarding intragroup services that do not add commercial or economic value to the recipient, and for which no consideration therefore should be paid.

4 The decree clarifies that any intercompany debt position should start from a general assessment of how to characterize the transaction - that is, whether it should be characterised as debt. Terms and conditions, in addition to specific indicators such as the creditworthiness of the debtor, are paramount to the analysis.

5 Transactions involving intangibles, centralized procurement activities, and captive insurance companies.

### How long is it necessary to keep transfer pricing documentation?

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

### Are intercompany agreements recommended?

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

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

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

### Which transfer pricing methods are acceptable?

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

### Is there a priority among the acceptable methods?

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

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

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

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

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

### Are advance pricing agreement (APA) options available?

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

### Tax audit areas

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

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# New Zealand

## Regulatory snapshot

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

- A comprehensive transfer pricing (TP) regime was introduced by legislation in 1995, with an effective date from the 1996/97 income year.
- The inland revenue subsequently released transfer pricing guidelines in October 2000, which cover the application of New Zealand's TP rules and a general overview of the framework.
- Limited high level intercompany and cross border transaction disclosures are required by an entity as part of the annual income tax return completion.
- There is no statutory requirement for taxpayers to prepare transfer pricing documentation, however the burden of proof to demonstrate that consideration is consistent with the arm's length principle is on the taxpayer. Penalties will apply if no documentation is prepared and a tax shortfall is determined.
- New Zealand's TP rules are based on the arm's length principle, and follow the OECD guideline principles
- The arm's length price is calculated using the method that produces the most reliable method (or a combination of the methods) which include: the comparable uncontrolled price (CUP), resale price, cost plus, profit split and comparable profits.
- High level risk reviews may be undertaken by the issuing of TP questionnaires to taxpayers, requiring disclosure of things like financial performance, groups financial performance, cross-border association party transactions etc.



- Specified penalties may be applied in addition to adjustments arising from transfer pricing issues and can range from 20% up to 150% of the tax shortfall. Determination of the penalties focuses on culpability and can also reflect the level of co-operation by the taxpayer. Interest will also be charged on any tax shortfall.
- APA's are available to taxpayers and can either be bilateral or unilateral APA's. An effective APA can cover three to five years and may be renewed on an on-going basis.

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

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

### Effective date of commencement of transfer pricing regulations

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

### Rulings, laws and guidelines

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

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

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

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

### What are the deadlines for documentation preparation?

Not applicable.

### In which language should documentation be filed?

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

### How long is it necessary to keep transfer pricing documentation?

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

### Are intercompany agreements recommended?

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

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

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

### Which transfer pricing methods are acceptable?

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

### Is there a priority among the acceptable methods?

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

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

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

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

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

### Are there exemptions to Transfer Pricing rules in your country?

Not applicable.

### Are advance pricing agreement (APA) options available?

Unilateral and bilateral APAs are available.

### Tax audit areas

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

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## Poland

### Regulatory snapshot

<i>When did transfer pricing rules start?</i>	January 2001.
<i>Level of transfer pricing</i>	Developing regime.
<i>Return disclosure</i>	Yes.
<i>Documentation</i>	Compulsory with threshold
<i>Methods</i>	Most appropriate method approach.
<i>Audit risk</i>	Low.
<i>Penalties</i>	High.
<i>Advance Pricing Agreements (APAs)</i>	Available.

- The core Transfer Pricing (TP) rules were implemented in January 2001.
- Contemporaneous TP documentation is compulsory with the minimum threshold.
- Poland applies the ‘most appropriate method approach’ for selecting the transfer pricing method. Acceptable TP methods include comparable uncontrolled price (CUP), resale price, cost plus, transactional net margin, profit split and other methods that comply with the arm’s length principle.
- TP audit can be targeted at any transaction if it results in reduction of Poland’s tax revenue, but recently is more focused on Intellectual Property (IP) and financial services transactions.
- TP audit may lead not only to profit adjustments but also an application of a penalty corporate income tax (CIT) rate of 50% – in cases where the taxpayer does not submit the TP documentation on the demand of the tax authorities (in comparison with the 19% CIT rate if there is TP documentation). Late payment interest on the additional tax due will also apply.
- APAs are available to taxpayers, but the number of obligations referring to the range of information which entities have to prepare in order to draw up an APA makes this procedure very expensive and time consuming. As a consequence, in recent years less than 30 APA’s were obtained.



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

The arm's length principle and transfer pricing documentation requirements are enacted in article 9a and 11 of the Polish CIT Act. Similar regulations are also introduced into the Personal Income Tax Act. According to Polish law, transactions between related entities shall be carried out in accordance with the arm's length principle which would be accepted by non-related entities. Polish legislation partially implemented the Organisation for Economic Co-operation and Development (OECD) guidelines in this scope.

## Effective date of commencement of transfer pricing regulations

Transfer pricing regulations have been effective since 2001 in Poland.

## Rulings, laws and guidelines

Besides legally binding articles of the Polish tax law there is one decree: 'The Regulation of the Minister of Finances' of 17 June 2012 covering the manner and procedure of determining income of taxpayers by price estimates in transactions conducted by taxpayers (Journal of Laws of 2013, No. 768). The decree generally determines the terms of applying individual transfer pricing methods, conditions of stipulating the comparability of the transactions between related parties, rules concerning business restructurings, definitions of low value-adding services and shareholder costs.

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

The obligation of preparing transfer pricing documentation applies to a transaction or transactions between related entities, in which the total amount resulting from the contract or the total amount actually paid in the tax year has exceeded the equivalent of:

- 100,000 EUR – if the value of transaction is less than 20% of the initial capital
- 30,000 EUR – in case of performance of services, selling or leasing intangible assets
- 50,000 EUR – in other cases.

Additionally, the taxpayers are obliged to prepare TP documentation if it concludes transaction with the entity having its seat in a tax haven (only in case of transactions where the value exceed the equivalent of 20,000 EUR in a fiscal year).

According to article 9a of the CIT Act, TP documentation should include following information (elements):

- description of the functions performed by the transaction parties (including what assets will be used and the risks born)
- determination of all predicted costs, connected with transaction, as well as the form and term of payment
- methods and ways of calculating the profits and determining the price of the subject transaction
- determination of the economic strategy and other actions in its course, if the value of the transaction has influenced by economic strategy established by entities
- indication of other factors if, in order to determine the value of the subject transaction those factors were taken into consideration by parties taking part in the transaction
- determination of expected benefits connected with the receiving of services (if the transaction concerns intangible services).

## What are the deadlines for documentation preparation?

Polish TP regulations do not determine the deadlines for preparing TP documentation. Generally it is recommended for taxpayers to prepare TP documentation systematically during the fiscal year, in which the transaction is concluded.

A taxpayer is obliged to submit the transfer pricing documentation within seven days of a tax authorities' request.

## In which language should documentation be filed?

TP documentation must be filed in Polish.

## How long is it necessary to keep transfer pricing documentation?

The TP documentation should be kept by the taxpayer for a period of five years.

## Are intercompany agreements recommended?

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

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

Polish corporate income taxpayers need to declare annually in their annual tax returns, whether they are obliged to prepare transfer pricing documentation (yes/no answer in the form). The specific transactions do not need to be detailed in the CIT return.

## Which transfer pricing methods are acceptable?

Polish tax law provides for traditional methods including, CUP, resale price, reasonable margin (cost plus), as well as transactional profit methods, profit split and transactional net margin method.

Polish tax law implemented the OECD guidelines in the scope of applicability of the transfer pricing methods.

## Is there a priority among the acceptable methods?

No. Similar to the OECD guidelines, the most appropriate method rule applies.

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

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

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

If the tax inspector makes an assessment of the taxable income/tax deductible costs and there is no documentation in place for the transactions subject to the assessment, the difference between the profit established by the tax authority and that declared by the taxpayer will be taxed at a 50% CIT rate (in comparison with the 19% CIT rate if there is a documentation) and late payment interest on the additional tax due will also be applied.

## Are there exemptions to Transfer Pricing rules in your country?

Transactions concluded between related parties that are members of a tax group are exempt (the group of related parties for which the common tax base is calculated on the purpose of stipulating the value of CIT to be paid; the terms of establishing tax groups are strictly determined in the domestic CIT Act).

Also companies undertaking transactions under approved APAs do not need to prepare TP documentation. Some entities working in special legal forms (general partnership) do not need to prepare TP documentation (however, this is to be changed).

## Are advance pricing agreement (APA) options available?

The Minister of Finance in Poland may issue, on request of the taxpayer, a decision as to whether it finds a given method of determining the transfer price between related parties acceptable. Under the law, the decision will be binding upon the tax authorities in the case of other tax procedures (such as tax audits and tax-legal proceedings).

The APA regulations set out three different types of APA: unilateral agreement, bilateral agreement and multilateral agreement.

Currently, the period for which the APA in Poland is valid is five years. The APA may be extended for another five years under the condition that the criteria used to evaluate such an agreement has not changed and the entity applies to prolong the agreement six months before it expires.

The Ministry of Finance imposes a charge for the APA application. This charge is equal to 1% of the value of the transaction that is subject to the APA application (minimum PLN 5,000, maximum PLN 200,000)

Entities which decide to draw up an APA have to prepare wide documentation containing detailed information about concluded transactions with affiliated parties, especially method of calculation transaction's value, information about costs connected with the transaction etc. Entities bear additional costs for professional consultants who know how to prepare appropriate documents.

Once an APA is established, the taxpayer's transaction with the related entity may be viewed as almost completely secure.

Obligations referring to the range of information that entities have to prepare in order to draw up APA makes this procedure very expensive and time consuming. As a consequence, in recent years (from 2006 to 2012) less than 30 APA's were obtained. This form of ensuring TP security is not popular in Poland.

## Tax audit areas

TP is an average risk area and is not a key issue in any tax audit. The Polish tax authorities especially focus on the following areas: loss making companies, IP transactions (transfer of IP, royalties), head office activities, financial transactions (loans, guarantees) and transactions concluded with foreign entities.

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# Portugal

## Regulatory snapshot

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

- Transfer pricing in Portugal was introduced in 1998 and at that time was one of the Europe’s most aggressive legislations, covering a wide range definition of related parties and being applicable not only to international transactions but also to domestic transactions.
- Originally, transfer pricing dealt only with imposing arm’s length prices for goods and services provided under international agreement between related parties. Today, it’s a much wider concept and many of the European transfer pricing laws are now introducing a larger scope in order to also cover domestic transactions.
- Transfer pricing laws generally prescribe that related party transactions be undertaken to a commercially justifiable arm’s length basis in order to not to shift taxable profit from one jurisdiction/company to another. The rules potentially apply to the movement of all goods and services, including the use in tangible assets.
- Generally, Portuguese law follows the OECD models and guidelines.
- Advanced Pricing Agreements (APAs) are a mechanism foreseen in the Portuguese transfer pricing legislation.
- Tax authorities have formed a specific audit department to deal with transfer pricing issues, but these questions can also be raised by any tax inspector. In view of that, it is essential that Portuguese businesses are prepared for any challenges by tax authorities.



- Under Portuguese transfer pricing regulation, any Portuguese company with a turnover higher than three million euros must prepare a transfer pricing file, including all relevant information in respect of the transfer price method chosen, supported by any documents, reports, studies, contracts, benchmarking, etc.
- But even for companies that are not obliged to have a proper file (because their turnover is less than three million euros) transfer pricing policy is still required and companies must justify their prices. If companies are unable to do so when challenged by the tax authorities they may have their tax situation corrected.
- Portuguese business must also gather enough documentation, evidencing arm's length, whenever there are cost sharing agreements and rendering of intra-group services.
- Major transfer prices methods (such as comparable uncontrolled price (CUP), resale minus, cost plus or profit split) are acceptable under Portuguese regulation, but it is also possible to use a typical method for determining a price as long as it is possible to demonstrate that it is at 'arm's length'.

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

The arm's length principle and transfer pricing documentation requirements are enacted in article 63 of the Portuguese corporate income tax law and in a specific decree (Portaria 1446-C/2001). In general, Portugal follows the OECD Guidelines<sup>1</sup>. Transfer pricing regulations apply to all companies. However, the obligation to have a proper transfer pricing file is only applicable to companies with a turnover higher than €3 million that engage in related party transactions.

### Effective date of commencement of transfer pricing regulations

Transfer pricing regulations have been effective since 1998 in Portugal.

### Rulings, laws and guidelines

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

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

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

### What are the deadlines for documentation preparation?

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

### In which language should documentation be filed?

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

### How long is it necessary to keep transfer pricing documentation?

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

### Are intercompany agreements recommended?

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

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

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

## Which transfer pricing methods are acceptable?

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

## Is there a priority among the acceptable methods?

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

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

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

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

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

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

## Are there exemptions to Transfer Pricing rules in your country?

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

## Are advance pricing agreement (APA) options available?

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

## Tax audit areas

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

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# Russia

## Regulatory snapshot

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

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



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

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

The law provides for the following list of controlled transactions:

- related parties cross-border transactions (no volume threshold is defined)
- foreign trade transactions with commodities with total income exceeding RUR 60 million (approximately USD 2 million) per calendar year
- transactions with companies incorporated or residing in offshore jurisdictions (including non-related parties). A threshold of RUR 60 million (approximately USD 2 million) per calendar year has been established for such transactions
- transactions between related parties carried out via unrelated intermediary companies, provided such intermediary companies do not perform any additional functions, assume any risks and employ any assets
- Domestic transactions between related parties will be subject to control in the following cases:
  - if the amount of such transactions exceeds certain limit (RUR 3 billion for 2012 (approximately USD 100 million), RUR 2 billion for 2013, RUR 1 billion starting 2014)
  - if a party of a transaction is a taxpayer of mineral extraction tax, unified agricultural tax, unified imputed income tax, resident of special economic zone or eligible for 0% profits tax. The law provides for certain minimal thresholds and effective dates for defining such transactions as controlled.

## Effective date of commencement of transfer pricing regulations

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

## Rulings, laws and guidelines

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

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

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

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

The documentation shall include the following information:

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

## What are the deadlines for documentation preparation?

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

## In which language should documentation be filed?

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

## How long is it necessary to keep transfer pricing documentation?

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

## Are intercompany agreements recommended?

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

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

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

## Which transfer pricing methods are acceptable?

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

## Is there a priority among the acceptable methods?

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

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

Transfer prices are audited by tax authorities in the course of a separate TP audit with certain transitional provisions prescribed by the tax code. In particular, an audit for the year 2012 may only be initiated before 30 June 2014, while a 2013 audit may only be initiated before 31 December 2015. After the above provisions expire, a TP audit may cover three years preceding the year when the audit is initiated.

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

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

## Are there exemptions to Transfer Pricing rules in your country?

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

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

## Are advance pricing agreement (APA) options available?

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

## Tax audit areas

Transfer prices are audited by tax authorities in the course of a separate TP audit with certain transitional provisions prescribed by the tax code. In particular, an audit for the year 2012 may only be initiated before 30 June 2014, while a 2013 audit may only be initiated before 31 December 2015. After the above provisions expire, a TP audit may cover three years preceding the year when the audit is initiated. The Russian TP rules provide for the presumption that market prices applied by the company are in line with the market level. Thus, Russian tax authorities still have to prove that prices of controlled transactions do not correspond to the market level.

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# Singapore

## Regulatory snapshot

<i>When did transfer pricing rules start?</i>	2006.
<i>Level of transfer pricing</i>	Developing regime.
<i>Return disclosure</i>	No.
<i>Documentation</i>	Must be available on request by the Inland Revenue Authority of Singapore (IRAS).
<i>Methods</i>	Best method approach.
<i>Audit risk</i>	Medium.
<i>Penalties</i>	No penalty for not keeping documentation. Up to 400% for the tax underpaid and possibility time.
<i>Advance Pricing Agreements (APAs)</i>	Available.

The Inland Revenue Authority of Singapore (IRAS) issued the first set of transfer pricing guidelines in 2006. Thereafter, in 2009, the IRAS issued supplementary guidelines on related party loans and related party services. In the same year, section 34D of the Singapore income tax act, mandating that related party transactions are to be conducted at an arm's length basis was enacted.

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

The arm's length principle is enacted in Section 34D of the Singapore income tax act. It empowers the IRAS to make transfer pricing adjustments in cases where a Singapore taxpayer's transfer pricing practices are not consistent with the arm's length principle. The Singapore transfer pricing guidelines and circulars are generally consistent with the OECD guidelines



## Effective date of commencement of transfer pricing regulations

The first set of transfer pricing guidelines were issued in 2006.

## Rulings, laws and guidelines

To-date, the IRAS has published the following circulars and guidance:

- *Transfer pricing guidelines (published on 23 February 2006)* – this circular outlines the three step approach to apply the arm's length principle in related party transactions, documentations requirement, mutual agreement procedures and advanced pricing arrangements.
- *Transfer pricing consultation circular (published on 30 July 2008)* – this circular outlines the IRAS's consultation program where selected companies (usually company with significant amount of related party transactions with overseas parties) may be asked to complete the transfer pricing questionnaire. This is to enable the IRAS to assess if the company is following the recommendations in the Singapore transfer pricing guidelines.
- *IRAS supplementary circular* – supplementary administrative guidance on advance pricing arrangements (APAs) (published on 20 October 2008) – this circular outlines timelines and format for information to be provided to IRAS in connection with a taxpayer's request for an APA.
- *IRAS supplementary circular* – transfer pricing guidelines for related party loans and related party services (published on 23 February 2009) – this circular provides further guidance on the arm's length principle for related party loan and related party services.

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

The Singapore income tax law and the transfer pricing guidelines do not impose a penalty for a lack or insufficiency of documentation. That said, the IRAS has stated that taxpayers need to prepare and maintain adequate documentation to allow a reasonable assessment of whether their related party transactions are at arm's length. As regards to what constitutes 'adequate documentation', the IRAS has stated that it is up to the taxpayers to balance between the need to demonstrate that the arm's length principle has been complied with and the administrative costs. At the minimum, the documentation should contain details of significant related party transactions and an explanation of how the taxpayer has come to the conclusion that the transactions are at arm's length.

## What are the deadlines for documentation preparation?

There is no deadline for preparation of documentation. However, the onus is on the taxpayer to assess the potential transfer pricing risk and prepare the transfer pricing documentation contemporaneously. There is no submission requirement or deadline. The documentation should be available should the IRAS request it.

## In which language should documentation be filed?

Transfer pricing documentation must be filed in English.

## How long is it necessary to keep transfer pricing documentation?

In line with the statute of limitations for transfer pricing adjustments, transfer pricing documentation should be kept for at least five years from year to which the transfer pricing issue relates.

## Are intercompany agreements recommended?

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

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

There are no specific disclosures required in the tax return. There are no statements or certifications required.

## Which transfer pricing methods are acceptable?

Taxpayers are free to choose any of the methods or a modified version based on the OECD transfer pricing guidelines. The key is to ensure that the method chosen produces the most reliable results, taking into account the quality of the data and the degree of accuracy of the adjustments. As a rule of thumb, the IRAS is of the view that the method that requires the least adjustments will produce the most reliable measure of the arm's length price.

### Is there a priority among the acceptable methods?

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

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

Transfer pricing adjustments can be assessed five years from the year to which the transfer pricing issue relates.

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

There are no specific penalties for transfer pricing adjustments. Based on the general tax provisions relating to the understatement of income, the penalty range is from 100% to 400% of tax underpaid. Where a transfer pricing adjustments are made, these general penalties will most likely apply.

In relation to penalty relief, it can be mitigated if there is reasonable cause for the understatement of income.

### Are there exemptions to transfer pricing rules in your country?

No. Transfer pricing regulations apply to all related party transactions without a threshold. The IRAS has stated that it is up to the taxpayer to balance the need to show that the arm's length principle is complied with and the additional administrative costs.

### Are advance pricing agreement (APA) options available?

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

### Tax audit areas

The IRAS introduced the transfer pricing consultation (TPC) process in 2008. The purpose of the TPC is to assess the taxpayer's level of compliance with Singapore's transfer pricing guidelines and identify areas where IRAS can facilitate and advise on appropriate transfer pricing practices.

The TPC process starts with the IRAS sending out questionnaires to some taxpayers that have been selected based on certain criteria. The questionnaire sets out to determine the taxpayer's functional profile, the extent of transfer pricing documentation maintained by the taxpayer, as well as the nature and level of overseas related party transactions.

Based on the taxpayer's responses to the questionnaire, the IRAS will assess if a field visit to the taxpayer's business operations and a review of the taxpayer's transfer pricing documentations are necessary. Further, the IRAS may offer specific guidance to the taxpayer regarding compliance with arm's length principle.

Against the backdrop of OECD's BEPS report and the 15 separate 'actions', it is expected that the IRAS will step up the TPC process.

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## Slovak Republic

### Regulatory snapshot

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

- The core transfer pricing (TP) rules were laid down in ‘act no. 595/2003 coll.’ on income tax (income tax act) with an effective date of 1 January 2009. Required content of TP documentation is stipulated in guidance no. MF/8288/2009-72 of the Slovak ministry of finance. TP rules generally conform with the OECD guidelines.
- There is no obligation to enclose the TP documentation to the tax return. However, the transactions between the Slovak entity and foreign related parties must be disclosed in the financial statement notes.
- TP documentation is compulsory for transactions between the Slovak entity and foreign related parties. Tax payers should submit TP documentation within 60 days of the Slovak tax authorities request.
- According to the income tax act, accepted TP methods include: fair market price, subsequent sale, increase costs (methods based on a comparison of prices), profit split and net margin (methods based on a comparison of profits). Preferred methods are methods based on a comparison of prices.
- A penalty of €60 - €3,000 may be imposed if the TP documentation is not submitted to the tax authorities within 60 days of the request and the penalty may be imposed repeatedly. Other penalties may be imposed for unpaid or understated tax liability.
- The taxpayer may request approval of the Slovak tax authorities for the selected TP method.



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

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

## Effective date of commencement of transfer pricing regulations

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

## Rulings, laws and guidelines

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

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

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

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

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

## What are the deadlines for documentation preparation?

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

## In which language should documentation be filed?

TP documentation should be filed in Slovak language.

## How long is it necessary to keep transfer pricing documentation?

Not specifically stated in the Slovak income tax act.

## Are intercompany agreements recommended?

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

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

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

## Which transfer pricing methods are acceptable?

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

## Is there a priority among the acceptable methods?

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

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

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

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

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

### Are there exemptions to Transfer Pricing rules in your country?

N/A

### Are advance pricing agreement (APA) options available?

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

### Tax audit areas

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

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## Spain

### Regulatory snapshot

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

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

- Spain is an OECD member so the rules follow its guidelines regarding applicable methods
- the use of external comparables is possible, generally provided by international database suppliers
- if a related party transaction price or margin falls into the inter-quartile range, there is no adjustment on the price and the transaction is deemed to be on an arm's length basis
- potential adjustments are calculated by the difference between the real price and some point (not specified) in the range
- related party transactions are understood to include, among others, those operations between:
  - an entity and its shareholders or partners (5% of the shares)
  - an entity and its administrators or directors
  - two entities belonging to the same group
  - two entities where one holds an indirect interest in the other of at least 25% of the share capital or the net equity.
- transfer pricing analysis must be done for local transactions and not only for foreign transactions
- taxpayers should prepare transfer pricing documentation
- the AEAT (Spanish tax authorities) could request the transfer pricing report. Taxpayers need to address 14 points in their transfer pricing reports, and for every point that the taxpayer omits, a penalty could be applied



- specific legislation on secondary adjustments. In particular, secondary adjustments are seen as automatic once a primary adjustment is proposed in all cases
- prior to 2007, the burden of proof was on the side of the Spanish tax authorities
- in the corporate income tax return, the company must disclose related party transactions
- the threshold for not preparing the transfer pricing documentation amounts is €250,000 for transaction performed with the same related party
- every taxpayer must have its own documentation.

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

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

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

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

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

### Effective date of commencement of transfer pricing regulations

Transfer pricing regulations have been effective since 2006 in Spain.

### Rulings, laws and guidelines

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

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

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

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

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

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

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

- documentation concerning the group to which the taxpayer belongs – This documentation should include among other matters, the following:
  - a general description of the organisational structure of the group
  - the type amounts and flow of the transactions carried out
  - a general description of the functions, benefits and risks for each of the parties that intervene in the transaction.
- documentation relating to the taxpayer – This documentation will include, among other questions, the following:
  - the identity of the taxpayer and the related persons or entities involved in the transaction
  - a comparison analysis leading to the correct application of the transfer pricing methodology
  - an explanation concerning the selection of the chosen transfer pricing methodology
  - the details of the range of valuations arising from that methodology.

### What are the deadlines for documentation preparation?

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

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

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

### In which language should documentation be filed?

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

### How long is it necessary to keep transfer pricing documentation?

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

### Are intercompany agreements recommended?

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

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

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

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

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

### Which transfer pricing methods are acceptable?

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

## Is there a priority among the acceptable methods?

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

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

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

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

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

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

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

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

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

## Are there exemptions to Transfer Pricing rules in your country?

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

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

## Are advance pricing agreement (APA) options available?

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

## Tax audit areas

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

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

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

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# Sweden

## Regulatory snapshot

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

- The Transfer Pricing (TP) rules were elaborated from 1916 and effective from 1928 (arm’s length principal)
- Taxpayers with intercompany transactions must document the transaction details as described by regulations issued by the Swedish Tax Agency (STA), effective from 1 January 2007
- Contemporaneous TP documentation is compulsory with thresholds. The thresholds regard comparability analysis to be included (in the documentation) or not
- Sweden applies the ‘best method approach’ for conducting TP analysis however any method can be used as long as the result is at arm’s length
- Acceptable TP methods include comparable uncontrolled price (CUP), resale price, cost plus, transactional net margin, profit split and other methods that comply with the arm’s length principle
- TP audit can be targeted at any transaction if it results in reduction of Sweden’s tax revenue, and is more prone to IP-valuation, interest rates and recently restructuring issues
- TP audit adjustments are subject to a 40% (maximum) penalty surcharge on the tax levied by the adjustment plus an ‘interest surcharge’ on the tax debt
- Advance Pricing Agreements (APAs) are available to large taxpayers but only if they are mutually agreed between the tax agencies. No unilateral agreement APAs are allowed, only bilateral or multilateral agreements. An APA is usually effective after two years of procedure. The APA is associated with a fee to the STA.



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

The arm's length principle and transfer pricing documentation requirements are enacted in chapter 14, paragraph 19 of the Swedish income tax act. In general, Sweden follows OECD guidelines<sup>1</sup>. Transfer pricing regulations apply to all related parties that shares economic interest. If share capital exceeds 50%, the taxpayer is obliged to document the transactions according to Swedish documentation rules (with certain exceptions).

## Effective date of commencement of transfer pricing regulations

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

## Rulings, laws and guidelines

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

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

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

## What are the deadlines for documentation preparation?

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

## In which language should documentation be filed?

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

## How long is it necessary to keep transfer pricing documentation?

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

## Are intercompany agreements recommended?

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

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

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

## Which transfer pricing methods are acceptable?

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

### Is there a priority among the acceptable methods?

There is no priority among the acceptable methods as long as the result is at arm's length however the best method to each particular case should be applied. The Swedish department of finance has historically preferred traditional transaction methods over transactional profit methods. The STA does not have a specific TP method preference, as long as it leads to arm's length results.

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

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

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

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

### Are there exemptions to Transfer Pricing rules in your country?

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

### Are advance pricing agreement (APA) options available?

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

### Tax audit areas

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

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# Switzerland

## Regulatory snapshot

<i>When did transfer pricing rules start?</i>	No formal Swiss transfer pricing rules, mainly adheres to OECD transfer pricing guidelines.
<i>Level of transfer pricing</i>	Established regime.
<i>Return disclosure</i>	No.
<i>Documentation</i>	Not compulsory, but strongly recommended.
<i>Methods</i>	OECD transfer pricing guidelines.
<i>Audit risk</i>	Low.
<i>Penalties</i>	Low.
<i>Advance Pricing Agreements (APAs)</i>	Available.

Switzerland has no formal transfer pricing legislation or documentation requirements, although all related party transactions with Swiss entities must be carried out on arm's length terms.

In general, Switzerland follows the Organisation for Economic Co-operation and Development (OECD) guidelines (exception for interest rates on loans granted to or from shareholders or related parties).

There are no formal related party disclosure requirements. However, upon request from the Swiss tax authorities (eg tax audit) the taxpayer must provide supporting information, preferably transfer pricing documentation.

As Switzerland adheres to the OECD guidelines, it also applies the respective methods proposed therein.

Currently, transfer pricing is reviewed as part of regular tax audits. If transfer prices have been appropriately set and documented the risk of a reassessment is low. However, the Swiss tax authorities tend to scrutinise transfer pricing arrangements more often.

There are no formal transfer pricing penalties, but general tax penalty rules apply. Transfer pricing adjustments may trigger potential non-refundable Swiss withholding tax and value added tax consequences as well as late interest thereon.

There are no formal APA procedures, however, transfer pricing issues are normally ruled with the Swiss tax authorities (equivalent to unilateral APAs). Bilateral and multilateral APAs are available.



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

There are no formal references to transfer pricing in Swiss tax law, but the domestic tax law provides a legal basis for adjustments to the taxable profit not in line with the arm's length principle. According to article 58 of the Swiss federal tax act and article 24 of the Swiss harmonisation act of Cantonal/communal taxes, expenses which are not commercially justified are added back to the taxable profit (ie profit adjustments for non-arm's length transactions).

Based on circular letter number four dated back to 19 March 2004 the Swiss tax authorities emphasise that the OECD transfer pricing guidelines are to be followed by multinational companies.

However, as an exception to the OECD guidelines, separate guidelines apply concerning minimum and maximum interest on loans granted to or from shareholders or related parties (ie safe-harbour interest rates).

## Effective date of commencement of transfer pricing regulations

There are no formal Swiss transfer pricing rules, but Switzerland mainly adheres to OECD guidelines.

## Rulings, laws and special guidelines

Transfer pricing issues are normally ruled with the Swiss tax authorities. Such tax rulings are similar to unilateral APAs. Please see below for more details on Swiss tax rulings/APAs.

Besides the general transfer pricing guidelines the Swiss tax authorities published some special guidelines for service companies. Based on the aforementioned circular letter number four, dated back to 19 March 2004 the Swiss tax authorities determined that the profit margin for service companies must be in accordance with the arm's length principle, and thus, each taxpayer must consider an appropriate margin on the basis of comparable uncontrolled transactions.

The Swiss tax authorities imply that the cost plus method is the most appropriate method for service companies to price their services based on functional and risk analysis. In general, a full cost approach is applied (including all direct and indirect costs).

Typically, the profit margin for such services is 5% - 10% which is preferably substantiated by transfer pricing documentation. The taxpayer may prove that the actual margin is lower by appropriate documentation in line with the OECD transfer pricing guidelines. For financial services the cost plus method is accepted in exceptional cases only.

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

There is no formal Swiss transfer pricing documentation requirement.

However, a Swiss taxpayer has to prove its tax-deductible expenses whereas the Swiss tax authority has to prove adjustments increasing the taxable profit. If a taxpayer fails to prepare supporting documents the burden of proof shifts to the taxpayer.

If transfer prices are challenged by the Swiss tax authorities (eg tax audit) the taxpayer must provide supporting documents/information demonstrating sound economic and commercial reasons of related party transactions, and thus, the arm's length nature of transfer prices applied.

For the aforementioned reasons, it is strongly recommended to Swiss tax payers to prepare and maintain OECD compliant transfer pricing documentation, defending all income and expenses from related party transactions well before it is requested by the Swiss tax authorities.

## What are the deadlines for documentation preparation?

For the aforementioned reasons transfer pricing documentation should be prepared before Swiss taxpayers enter into intra-group transactions.

## In which language should documentation be filed?

Transfer pricing documentation can be filed in German, French, Italian or English.

## How long is it necessary to keep transfer pricing documentation?

In line with the Swiss commercial law and the Swiss tax law, transfer pricing documentation should be kept for ten years from the end of the tax year.

## Are intercompany agreements recommended?

It is strongly recommended that Swiss taxpayers document their intercompany transactions through intercompany agreements. Please refer above regarding the burden of proof.

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

Swiss taxpayers do not have to make disclosures about transfer pricing in their tax return. However, the tax authorities may challenge certain transactions and request some further information in the tax assessment process.

## Which transfer pricing methods are acceptable?

As Switzerland adheres to the OECD guidelines it also accepts the respective methods proposed therein.

## Is there a priority among the acceptable methods?

In general, there is no priority among the acceptable methods as long as the result is at arm's length. However, for service companies the Swiss federal tax authorities imply that the cost plus method is the most appropriate method (ie best method approach). Please refer above to the special guidelines for service companies.

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

Transfer pricing adjustments may be made for up to ten years from the end of the respective tax year if new facts or circumstances come to the attention of the Swiss tax authorities.

There are different statute of limitations for Swiss corporate income taxes (ten years), Swiss withholding taxes (five years), Swiss stamp taxes (five years) and Swiss value added taxes (five years).

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

There are no formal transfer pricing penalties, but general tax penalty rules apply. Transfer pricing adjustments may give rise to potential non-refundable Swiss withholding tax and value added tax consequences.

Not only primary transfer pricing adjustments, but also secondary transfer pricing adjustments may trigger potential non-refundable Swiss withholding tax consequences. As such repayments or the issuance of credit notes by the Swiss taxpayer due to adjustments made by foreign tax authorities, if not part of a mutual agreement procedure, may be considered as hidden dividend distributions subject to a 35% Swiss withholding tax respectively, 54% if the withholding tax liability cannot be shifted to the actual beneficiary (ie gross-up). A (partial) refund may be possible based on the respective double tax treaty.

In addition, late interests apply on Swiss withholding tax and value added taxes triggered by transfer pricing adjustments. Tax penalties are applied in case of criminal proceedings.

## Are there exemptions to transfer pricing rules in your country?

All related party transactions must be at arm's length.

## Are advance pricing agreement (APA) options available?

There are no formal APA procedures. However, Switzerland has a long-standing advance ruling practice, and thus, transfer pricing issues are normally ruled with the Swiss tax authorities. Swiss tax rulings are equivalent to unilateral APAs. Bilateral and multilateral APAs are available too and are carried out in accordance with applicable rules for mutual agreement procedures as per the respective double tax treaties.

## Tax audit areas

Transfer prices are reviewed as part of regular tax audits. The Swiss tax authorities have become more aggressive than in the past. They mainly focus on low-risk/low-profit companies of all industries, as well as on structures involving offshore tax jurisdictions. Moreover, intellectual property transactions, intercompany financing as well as business restructurings are being challenged.

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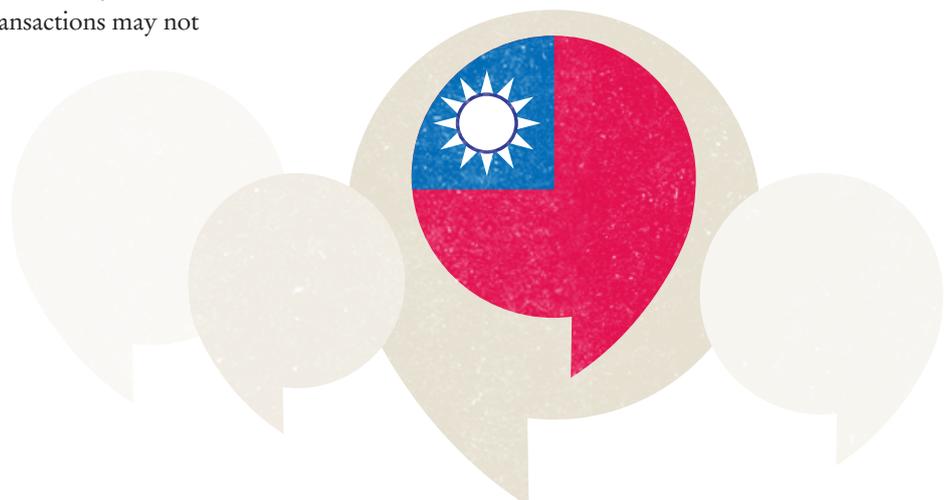


## Taiwan

### Regulatory snapshot

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

- Taiwan’s ‘Regulations Governing Assessment of Profit-seeking Enterprise Income Tax on Non-Arm’s Length Transfer Pricing’ have been effective since 28 December 2004 and are enacted pursuant to the provisions set out in paragraph 5, article 80 of the Income Tax Act.
- Profit-seeking enterprises are required to disclose significant related party transactions in the annual tax returns.
- Transfer Pricing (TP) documentation is compulsory with prescribed thresholds.
- Taiwan applies the ‘best method approach’ for conducting TP analysis.
- Acceptable TP methods include: comparable uncontrolled price (CUP), resale price, cost plus, comparable profit, profit split, comparable uncontrolled transaction, and other arm’s length methods approved by the Ministry of Finance (MOF). However, certain types of transactions may not allow certain method types.
- Profit-seeking entities with annual revenue exceeding TWD 300 million and related party transaction amounts of more than TWD 200 million are required to have TP reports available when filing a corporation income tax return and to present these reports within one month of being prompted by the tax authority.
- Failure to present TP documentation when prompted by the tax authority is subject to a fine ranging from TWD 3,000 to TWD 30,000, dependant upon discretion of the tax office. Corporate income tax misfiling due to not following transfer pricing rules is punishable by a maximum fine of two times the underpayment of the corporation’s income tax liabilities, depending on audit results.



- Advance Pricing Agreement (APA) options are available in Taiwan. Once granted, an APA can be effective for three to five years from the year of application.

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

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

## Effective date of commencement of transfer pricing regulations

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

## Rulings, laws and guidelines

The MOF published the TP audit regulations in 2004, taking into consideration OECD transfer pricing guidelines and related legislation published by other major countries, especially the USA. These regulations are enacted by paragraph 5, article 80 of Taiwan's Income Tax Act.

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

Where significant related party transactions occurred during the year, TP documentation, including a TP report, should be prepared by the taxpayer and be ready for inspection at the time of the corporate income tax return filing.

Business entities meeting one of the following criteria can elect to use alternative supporting documents to justify their transfer price instead of preparing a full TP report:

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

In addition, the MOF tax ruling number 09704555160 established safe harbor rules taking into account OECD TP guidelines. The safe harbor rules allow businesses to submit less cumbersome alternative supporting documents instead of a full TP report when one of the following conditions is met:

- one of the participants in the controlled transactions is a government agency or a state-run enterprise
- none of the participants in the controlled transactions that are located within the Republic of China claim any tax credits, nor do they offset any net operating losses aggregated from the previous five years
- controlled transactions are categorised as either operating revenues or operating expenses and no single type of controlled transaction exceeds a threshold of TWD 10 million per annum. For controlled transactions not categorised as operating revenues or operating expenses, the threshold amount is NTD 5 million per annum
- a profit-seeking entity whose controlled transactions within the Republic of China belong to items of operating revenues or operating expenses does not claim any tax credits or offset any net operating losses aggregated from the past five years, and has a reported gross margin above the mean of other enterprises in the same industry, while reporting no single type of controlled transaction in excess of a NTD 20 million per annum threshold. For controlled transactions not belonging to operating revenues or operating expenses but reporting profit margins above the mean of other enterprises in the same industry, the threshold amount is NTD 10 million
- controlled transactions are categorised as 'Uses of Fund' when the reported income by the fund provider is greater than the amount of funding provided at the Taiwan bank prime rate on 1 January of the same year and the amount of funding is below NTD 300 million, or when the costs or expenses reported by the user are less than the amount of funding used at the Taiwan bank prime rate on 1 January of the same year and the amount of funding used is below NTD 300 million.

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

## What are the deadlines for documentation preparation?

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

## In which language should documentation be filed?

Documentation must be filed in Mandarin.

## How long is it necessary to keep transfer pricing documentation?

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

## Are intercompany agreements recommended?

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

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

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

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

## Enterprises not meeting the disclosure exemption rules above

When a non-exempt business entity's aggregate transactions with all related enterprises exceed TWD 50 million per annum or when aggregate transactions with a single related enterprise exceed TWD 12 million, the transactions are deemed significant and must be disclosed accordingly. In the case of a non-exempt business entity carrying out transactions with related persons instead of related enterprises, aggregate transactions with all related persons exceeding TWD 25 million per annum, or with the same related person exceeding TWD 6 million, are regarded as significant and require disclosure. The definitions of related enterprises and related persons are provided in the TP audit regulations.

The regulations do not require taxpayers to obtain special certification related to the disclosed information.

## Which transfer pricing methods are acceptable?

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

## Is there a priority among the acceptable methods?

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

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

Per article 21 of the 'Tax Collection Act', the general statute of limitations is five years if a return is filed on time, the tax due is paid in full, and there is no intention to defraud the tax office. If the return is not filed on time or there is an intention to defraud the tax office, then the statute of limitations runs for seven years.

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

If the required TP documentation is not presented when prompted by the tax authority, a fine ranging from NTD 3,000 to NTD 30,000 will be assessed at the discretion of the tax office. In addition, article 34 of the TP audit regulations asserts that, starting in tax year 2005, a transfer pricing penalty will be assessed if a taxpayer misreports their income tax as a result of not following the transfer pricing rules when filing their tax return. The penalty will be assessed and calculated based on article 110 of the Taiwan Income Tax Law which allows a maximum penalty of twice the resulting underpayment of income tax liabilities.

## Are there exemptions to Transfer Pricing rules in your country?

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

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

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

- a non-exempt business entity cannot commence its production and business activities unless the other enterprise provide the patent, trademark, copyright, secret formula, proprietary technology or any franchises and such production and business activities account for 50% or more of the total sales of a non-exempt business entity in the same tax year

- a non-exempt business entity's purchasing price and terms of raw materials, components and goods are controlled by the other enterprise, and such purchases account for 50% or more of the total purchases of raw materials, components and goods by the non-exempt business entity in the same tax year
- sales of a non-exempt business entity are controlled by the other enterprise and the underlined sales account for 50% or more of the total sales of the non-exempt business entity in the same tax year.

## Are advance pricing agreement (APA) options available?

Yes, APA options are available in Taiwan. A profit-seeking enterprise meeting all of the following criteria may apply for an APA using prescribed forms before the end of the accounting period in which the transactions occur:

- the applicants aggregate controlled transaction amount has exceeded TWD 1 billion or its controlled transaction amount for the current tax year exceeds TWD 500 million
- no significant tax evasions were committed by the applicant in the past three years
- the applicant properly prepares and submits all documentation required under article 24 of the TP audit regulations, including a TP report
- the applicant meets all other criteria approved by the MOF.

Generally, within one month, a written notice will be delivered to the applicant stating whether the tax authority has accepted the APA application. If the tax authority accepts the application, the applicant should present the required documentation within one month of receipt of the written notice. Applicants who are unable to present the documentation within one month can file for a maximum one-month extension. Once granted, an APA is effective for three to five years from the year of application.

## Tax audit areas

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

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# Ukraine

## Regulatory snapshot

<i>When did transfer pricing rules start?</i>	1 September 2013.
<i>Level of transfer pricing</i>	Established regime.
<i>Return disclosure</i>	Yes.
<i>Documentation</i>	Compulsory with threshold.
<i>Methods</i>	Other.
<i>Audit risk</i>	High.
<i>Penalties</i>	High.
<i>Advance Pricing Agreements (APAs)</i>	Available.

- The law on transfer pricing was passed on 4 July 2013 by the Ukrainian parliament, signed by the Ukrainian president and has been effective from 1 September 2013.
- Taxpayers must submit reports on controlled transactions of the previous year, when the amount these transactions with one counterparty (during the previous year) exceeds UAH 50 million.
- Ukraine applies an approach where the company has to use the comparable uncontrolled price (CUP) method where possible, and in other cases the ‘best method approach’ for conducting transfer pricing analysis.
- Acceptable transfer pricing methods include CUP, resale price, cost plus, transactional net margin (TNM), profit split and the combination of these methods.
- Transfer pricing audits can be targeted at any controlled transaction if the prices weren’t formed by the arm’s length principle. A transfer pricing audit may also be commenced for failures to submit proper and accurate reports and documentation.



- Failure to comply with reporting requirements of the transfer pricing law is subject to a fine of 5% of the value of the transaction which wasn't included in the report. Failure of a large taxpayer to comply with requirements to submit transfer pricing documentation is subject to fine in the amount of 100 minimum salaries. If tax authorities discover transactions carried out not at arm's length, the taxpayer is subject to fine of 25% of tax due on transfer pricing adjustment (50% in case of second violation within 1095 days). Until 1 September 2014 this fine will be applied in amount of UAH 1 regardless to the amount of the adjustment.
- APAs are available to large taxpayers with an annual income exceeding UAH 500 million, or with the total amount of taxes paid during the year exceeding UAH 12 million. They may appeal to the central tax authority for the prices in controlled operations to be reconciled.

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

The Organisation for Economic Co-operation and Development (OECD) guidelines are followed by the Ukrainian tax authorities. The transfer pricing regulations are specified in the law on transfer pricing (amendments to the tax code of Ukraine on transfer pricing No. 408-VII).

A transaction is considered as controlled (ie, subject to transfer pricing requirements) when the aggregate value of transactions conducted with one counterparty during a year exceeds UAH 50 million, and such transaction meets any of the following requirements:

- it is with a related resident taxpayer, if at the beginning of the tax year such resident satisfied one of the following criteria:
  - has declared tax losses in the previous tax period
  - applies a special tax regime
  - pays the income tax and/or VAT at a rate other than the regular rate established by the tax code
  - is not corporate income tax payer and/or VAT payer
- it is with a related non-resident
- it is with an unrelated non-resident registered in a state with corporate income tax rate lower than the Ukrainian one by 5% or more.

### Effective date of commencement of transfer pricing regulations

Transfer pricing regulations are effective since 1 September 2013 in Ukraine.

### Rulings, laws and guidelines

Besides the tax code of Ukraine there are several resolutions from the cabinet of ministers of Ukraine which specify some key transfer pricing points, for example:

- on approval of the list of market prices information sources, for the purpose of transfer pricing of 23 October 2013, No. 866-p
- on approval of the percentage range of prices for certain headings in accordance with Ukrainian commodities classification, for foreign activities for the purpose of transfer pricing of 2 October 2013, No. 749
- on approval of the calculation and application of market price range and market range of return, for the purpose of transfer pricing of 17 October 2013, No. 763
- on approval of the coordination of prices in the controlled foreign operations which result in bilateral or multilateral agreements, for the purposes of transfer pricing of 17 October 2013, No. 764
- on approval of the list of specialised business publications, for the purpose of transfer pricing of 23 October 2013 865-p
- on approving of the list of states (territories) where corporate tax rate is five or more percentage points lower than in Ukraine of 25 December 2013, No. 1042-r.
- the ministry of revenue and duties of Ukraine developed the form and procedure for making reports on controlled operations (decree 669 of 11 November 2013), and general tax consult on the questions of application of tax legislation on transfer pricing of 22 November 2013, No. 699
- the national commission for the financial services markets state regulation approved methods for determining the insurance rate of 28 November 2013, No. 4370.

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

Large taxpayers are obliged to prepare transfer pricing reports for tax authorities, and other entities are required to provide such documentation only on the tax authorities' request.

The transfer pricing documentation should describe how transfer prices have been determined. These reports should be submitted by 1 May, of the following year. The tax authorities can request taxpayer to provide such documentation:

- primary source documentation and other documentation in relation to controlled transactions; justification of prices applied in controlled transactions which should contain the information on related parties
- information on the whole group (group structure, description of activity, transfer pricing policy)
- information on the controlled transaction (price, terms and conditions)

- description of goods/services (physical characteristics, quality, reputation over market, trademarks involved)
- terms and conditions as to settlement for the transaction
- information on related parties' functions
- risks and assets used
- economic analysis as to definition of the price used for controlled transaction.

### What are the deadlines for documentation preparation?

The documentation should be prepared and submitted to the ministry of revenue and duties of Ukraine by 1 May of the following year describing the transactions of the previous year.

### In which language should documentation be filed?

Transfer pricing documentation should be filed in Ukrainian.

### How long is it necessary to keep transfer pricing documentation?

Taxpayers are required to keep documents no less than 1095 days from the transaction on controlled operations date.

### Are intercompany agreements recommended?

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

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

Information about the amount of transfer pricing transactions, has to be prepared by the taxpayer and submitted as a report once a year within tax returns. Besides, in the project of new corporate tax declaration there's an appendix on transfer pricing transactions. No statements or certifications are required.

### Which transfer pricing methods are acceptable?

Taxpayers are free to choose any ministry of revenue and duties recognised transfer pricing method as long as the method results in an arm's length pricing for the transaction. The CUP method is preferable and has to be used where possible. The taxpayers may also combine two or more methods.

### Is there a priority among the acceptable methods?

The taxpayer is free to choose any of the methods. However, the CUP method must be used when possible (which is when there is sufficient information to apply this method).

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

The general statute of limitations for transfer pricing issues is three years following the deadline for submission of the tax return or the actual date of submission of the tax return.

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

Failure to comply with reporting requirements of the transfer pricing law is subject to a fine of 5% of the value of the transaction which wasn't included in the report. Failure of a large taxpayer to comply with requirements to submit transfer pricing documentation is subject to fine in amount of 100 minimum salaries (UAH 114,700 as of 1 September 2013). If tax authorities discover transactions not carried out at an arm's length, the taxpayer is subject to fine of 25% of tax due on the transfer pricing adjustment (50% in case of second violation within 1095 days). Until 1 September 2014 this fine will be applied in amount of UAH 1 regardless to the amount of the adjustment.

### Are there exemptions to transfer pricing rules in your country?

Until 1 January 2018 the law introduced a special safe harbour rule for transactions with specified commodities (eg, grain, fats, ore, oil and gas, chemical substances, ferrous metals).

Companies trading in such commodities may decide:

1. to apply a 5% safe harbour rule to the price of such commodities determined on a recognised trading market
2. not to apply the safe harbour rule and submit transfer pricing documentation confirming the arm's length character of their prices.

## Are advance pricing agreement (APA) options available?

APA agreements are only available for the large taxpayers. They may appeal to the central tax authority for the prices in controlled operations to be reconciled.

## Tax audit areas

Transfer pricing is a key issue in any tax audit. Transfer pricing audits are to be conducted by special dedicated transfer pricing audit teams from the ministry of revenue and duties of Ukraine. The duration of the transfer pricing audit could be up to six months, plus an additional six months in case of necessity to request information from a foreign jurisdiction.

The Ukrainian tax authorities especially focus on the following areas: transactions with the companies which had losses in the previous tax period, transfer of royalties, dividends and interests, transactions with tax havens, transactions with non-residents.

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# United Kingdom

## Regulatory snapshot

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

- The UK has had transfer pricing rules since 1915 and the regulations were incorporated into the UK’s self-assessment regime for accounting periods ending on or after July 1999. The rules can be found at TIOPA<sup>1</sup> 2010 Part 4.
- Small and medium sized enterprises are exempt from transfer pricing requirements, although there are a few exceptions to this general rule. There is also an exemption for some dormant companies.
- HMRC consider transfer pricing documentation to include primary accounting records, tax adjustment records, records of related-party transactions and evidence of an arm’s length result.
- Acceptable transfer pricing methods are based on the OECD guidelines and should provide the most reliable measure of an arm’s length policy.
- Acceptable OECD methods to demonstrate compliance with the arm’s length standard are required.
- Both a fixed penalty and a tax geared penalty could be levied should documentation not be available.
- Where it is deemed that the inter-company transaction does not produce an arm’s length result, an upward adjustment can be made by HMRC.
- Taxpayers can go to Competent Authority under a double tax treaty in perceived cases of double taxation, and where a double taxation agreements exists, MAP can be sought. For forward looking agreements on Transfer Pricing, APAs can be entered into.



<sup>1</sup> Taxation (International and Other Provisions) Act 2010.

- Thin capitalisation is also part of the UK transfer pricing regime. Any interest on debt borrowed from a related party above the level that could be borrowed by an independent party acting in its own interest is non-deductible. For UK-UK debt funding, a corresponding adjustment can be claimed in the lending company.

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

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

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

## Effective date of commencement of transfer pricing regulations

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

## Rulings, laws and guidelines

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

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

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

- primary accounting records;
- tax adjustment records;
- record of transactions with associated businesses; and
- documentation to demonstrate an arm's length result.

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

## What are the deadlines for documentation preparation?

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

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

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

## In which language should documentation be filed?

English.

## How long is it necessary to keep transfer pricing documentation?

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

## Are intercompany agreements recommended?

Yes.

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

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

## Which transfer pricing methods are acceptable?

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

## Is there a priority among the acceptable methods?

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

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

An enquiry into a tax return by HMRC may be made up to 12 months from the due filing date of the tax return, unless the return is filed late in which case the enquiry can be made 12 months after the return is filed. In practice this usually means two years from the end of the accounting reference date, and if no enquiry notice is issued then the tax return may be considered as closed. Any adjustment and further assessment of profits subject to tax will usually be made on completion of the enquiry.

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

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

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

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

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

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

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

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

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

## Are there exemptions to Transfer Pricing rules in your country?

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

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

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

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

## Are advance pricing agreement (APA) options available?

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

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

## Tax audit areas

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

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

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## United States

### Regulatory snapshot

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

- The final Transfer Pricing (TP) regulations were promulgated under Internal Revenue Code (IRC) 482 in July 1994 and are applicable to taxable years beginning after 6 October 1994.
- Taxpayers with intercompany transactions must disclose detailed information on controlled transactions with foreign entities via Forms 5471 and 5472 which are submitted along with their tax returns.
- Contemporaneous documentation is required for penalty protection under Reg. § 1.6662-6.
- The United States apply the best method approach for conducting TP analysis.
- Acceptable TP methods for tangible and intangible property transfers include Comparable Uncontrolled Price (CUP)/ Comparable Uncontrolled Transaction (CUT), resale price, cost plus, comparable profit, profit split and unspecified methods that comply with the arm's length principle.
- Acceptable TP methods for the provision of services include services cost, comparable uncontrolled services price, gross services margin, cost of services plus, comparable profits, profit split, and unspecified methods.
- The penalty on transfer pricing assessment is 20% or 40% of additional tax resulting from adjustments exceeding objective thresholds. Interest is also assessed from the due date of the original filing and the interest payable is determined under US domestic tax rules.
- Multilateral, bilateral and unilateral APAs are available under rev. proc. 2006-9. The APA filing fees are varied based on the size of the business as well as whether the APA is an original or renewed one. An effective APA can cover five years with longer terms being considered as appropriate.



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

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

## Effective date of commencement of transfer pricing regulations

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

## Rulings, laws and guidelines

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

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

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

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

## What are the deadlines for documentation preparation?

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

## In which language should documentation be filed?

TP documentation should be filed in English.

## How long is it necessary to keep transfer pricing documentation?

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

## Are intercompany agreements recommended?

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

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

Yes, taxpayers are required to complete Form 5471 and 5472, providing detailed information on controlled transactions with foreign entities. Additionally, reg. §1.482-7(k)(4) requires a controlled participant to file a cost sharing statement with the IRS within 90 days after the first occurrence of intangible development costs, and to make specified disclosures on its annual tax return. The new IRS schedule of Uncertain Tax Positions (UTP) is required for certain taxpayers beginning with 2010 tax returns.

### Which transfer pricing methods are acceptable?

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

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

Provision of services: services cost method, comparable uncontrolled services price method, gross services margin method, cost of services plus method, comparable profits method, profit split method, and unspecified methods.

### Is there a priority among the acceptable methods?

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

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

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

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

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

### Is there penalty relief?

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

### Are there exemptions to Transfer Pricing rules in your country?

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

### Are advance pricing agreement (APA) options available?

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

### Tax audit areas

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

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# Vietnam

## Regulatory snapshot

<i>When did transfer pricing rules start?</i>	2006.
<i>Level of transfer pricing</i>	Developing regime.
<i>Return disclosure</i>	Yes.
<i>Documentation</i>	Compulsory.
<i>Methods</i>	Best method approach.
<i>Audit risk</i>	High.
<i>Penalties</i>	High.
<i>Advance Pricing Agreements (APAs)</i>	Available.

- The core transfer pricing rules were promulgated under circular 117 in 2005 (effective from 27 January 2006) and revised in 2010 with circular 66.
- Compulsory declarations are not overly burdensome, but preparation of supporting documentation is often overlooked by taxpayers.
- Vietnam applies the ‘best method approach’ for conducting transfer pricing analysis.
- Acceptable transfer pricing methods include comparable uncontrolled price (CUP), resale price, cost plus, comparable profits, profit split and other methods that comply with the arm’s length principle.
- No adjustment is required to non-arm’s length pricing if such an adjustment would reduce the tax payable in Vietnam.

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

The current iteration of transfer pricing regulations are defined in circular 66/2010/TT-BTC from the ministry of finance. The regulations require taxpayers to disclose related party transactions, both domestic and international, on annual disclosures (taxpayers with an FY13 ending after 31 December 2013 are required to file form 03-7/TNDN, whereas those with FY13 ending on or before 31 December 2013 should continue to file form GCN-01/QLT and file form 03-7/TNDN for FY14 onwards). The nature of the transaction, the method used to determine the price, and details of the related party should be disclosed.



As Vietnam is not a member of the Organisation for Economic Co-operation and Development (OECD), regulations are not always consistent with the OECD guidance and interpretation. However, the current regulations are similar to the OECD guidelines in a number of respects. Notably, related party transactions should be performed at arm's length, as per comparative analysis using the best method, and documented contemporaneously. Supporting documentation is generally not required to be submitted with annual transfer pricing returns, though must be submitted to authorities within 30 days of request.

### Effective date of commencement of transfer pricing regulations

Transfer pricing regulations have been effective in Vietnam since 27 January 2006 under circular 117/2005/TT-BTC (subsequently replaced by circular 66/2010/TT-BTC, effective from 6 June 2010).

### Rulings, laws and guidelines

Transfer pricing regulations are embodied in corporate income tax law, tax administration law, their respective guiding documents (decrees, circulars and official letters), and more specifically in the aforementioned transfer pricing circulars. Separate administrative documents are provided regarding the application of APAs and double tax avoidance agreements.

Certain activities are subject to price-control regulations, which, while not strictly related, are likely to impact the practical implementation of transfer pricing regulations for those taxpayers.

It should be noted that official letters, some of which may discuss transfer pricing issues, are raised on a case-by-case basis, and cannot be relied upon as forming part of the body of regulations. However, where the facts of the case are fully available, various official letters may serve as an indicative guide to the tax office's interpretation of the regulations at that time in lieu of practitioners guidance notes or similar which the Vietnamese authorities do not release but are common in other jurisdictions to assist taxpayers in complying.

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

Transactions should be documented contemporaneously. Such documentation must be made available in the Vietnamese language and should include an industry overview for the taxpayer, details of the related party transactions, the method selected and the data used for comparison.

Regulations define minimum data volumes for comparison dependent on the method selected and the integrity of the data. The transfer pricing circulars do not specify a geographical hierarchy for comparative data. However, APA guidance suggests that Vietnamese comparables are preferred where available.

### What are the deadlines for documentation preparation?

Annual declarations should be submitted within 90 days of the end of the financial year. The majority of taxpayers follow the calendar year, though other year-ends may be applied for.

Supporting documentation should be prepared contemporaneously, and provided to the authorities within 30 days of request. Failure to prepare sufficient supporting documentation may leave taxpayers open to administrative penalties, in addition to weakening their position should the authorities deem an adjustment necessary.

### In which language should documentation be filed?

Transfer pricing documentation should be filed in Vietnamese.

### How long is it necessary to keep transfer pricing documentation?

Transfer pricing documentation should be kept for ten years.

### Are intercompany agreements recommended?

It is strongly recommended that taxpayers prepare intercompany agreements to document their transactions. Implementation of Vietnamese regulations is still largely focused on form rather than substance and failure to conduct transactions pursuant to an adequate agreement can have a number of implications, including: expenses being disallowed for deduction when calculating corporate income tax, increased VAT liabilities on mixed-rate goods and services, and difficulties in completing payments to or receiving funds from foreign parties.

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

The appropriate form, dependent on the period in question, should be submitted within 90 days from the end of the period. Vietnam follows a self declaration system (with some exceptions) and taxpayers are responsible for all information submitted.

## Which transfer pricing methods are acceptable?

Taxpayers are free to choose the most appropriate method from the accepted methods as defined within domestic regulations. Such methods include the five core OECD methods and ‘other’ methods. Regulations specify particular circumstances where a certain method may be considered preferable to another.

Regulations do not specify whether or not taxpayers are required to analyse the validity of each method when selecting which method to choose, but doing so is likely to present a stronger case and result in a lower likelihood of being challenged.

## Is there a priority among the acceptable methods?

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

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

Transfer pricing adjustments currently follow generic tax administration regulations, which stipulate a five year window for investigation and a ten year limit for collection – though investigations may be extended in cases where the taxpayer is suspected of committing fraud or serious tax evasion.

A transfer-pricing-specific audit methodology was included in plans for development by 2015, however, as yet no further announcement has been made by the authorities. Other initiatives of the transfer pricing action plan to 2015 have come to fruition, including APA guidance and the development of a specific transfer pricing team at the general department of taxation (GDT) level. Though local tax offices may include transfer pricing within the scope of their investigations, the GDT-level is better equipped to handle complex cases, and as a result more likely to challenge taxpayers’ transfer pricing positions. The GDT’s transfer pricing team follows a risk methodology to investigate certain taxpayers based primarily on industry and historic performance.

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

As per tax administration law: 20% of the under-declared tax for administrative adjustment and up to three times the under-declared tax in cases of evasion or fraud (defined by the regulations as whether or not the taxpayer took steps to hide the under-declaration or otherwise obstruct an adequate disclosure).

Interest is also due on under-payment, typically charged on a daily basis at 0.05% for the first 90 days and 0.07% thereafter.

## Are there exemptions to transfer pricing rules in your country?

There are no exemptions from transfer pricing regulations in Vietnam.

## Are advance pricing agreement (APA ) options available?

Unilateral, bilateral and multilateral APAs have recently been made available, however, the costs of implementation, particularly with regard to advance disclosure requirements will make the programme unattractive for many businesses, and the success of the practical implementation of the guidance remains to be seen.

## Tax audit areas

Transfer pricing has historically been a significant issue in Vietnam. Many enterprises have been named in the media as being suspected of transfer pricing abuses, though until recently only minor adjustments had been made.

Significant emphasis is still placed on businesses declaring successive losses but expanding their scope or scale of operations. Foreign invested entities are subject to closer scrutiny than domestic enterprises.

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# Zambia

## Regulatory snapshot

<i>When did transfer pricing rules start?</i>	April 1999.
<i>Level of transfer pricing</i>	Developing regime.
<i>Return disclosure</i>	Yes.
<i>Documentation</i>	On request based on transaction audit.
<i>Methods</i>	Best method approach/any other method based on the arm's length test.
<i>Audit risk</i>	High.
<i>Penalties</i>	High.
<i>Advance Pricing Agreements (APAs)</i>	Not available in Zambia.

- The core transfer pricing rules were included in the income tax act in April 1999.
- Taxpayers with intercompany transactions must disclose the related party transactions details in the financial statements which are filed together with the self-assessment income tax return.
- There are currently no regulations for filing a Transfer pricing return to the tax authorities.
- Acceptable transfer pricing methods include cost plus, transactional net margin, profit split, resale price, thin capitalisation of 1:3 and any other methods that comply with the arm's length principle.
- Transfer pricing audits can be targeted at any transaction if it results in the reduction of Zambia's tax revenue, the focus has been on multinationals, with an emphasis on the mining companies.
- Penalties for non compliance include a fine, restatement of the amounts and even imprisonment for a term not exceeding 12 months
- Appeal procedures are provided for in the income tax act.



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

These are still being developed. The rules will include general Organisation for Economic Co-operation and Development (OECD) guidelines.

## Effective date of commencement of transfer pricing regulations

Transfer pricing regulations are still being developed, however, the law is already in force and is applied on a transaction by transaction basis.

## Rulings, laws and guidelines

There are no available rulings at the moment.

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

Taxpayers are obliged to prepare transfer pricing documentation and to keep it in their accounting records. The documentation required is specified based on the transaction being reviewed. Tax payers are generally required to maintain proper accounting records.

## What are the deadlines for documentation preparation?

The documentation should be available at the time when the company enters into a transaction. However, if the documentation is not available upon request of the tax authorities, the taxpayer has 30 days to prepare such documentation.

## In which language should documentation be filed?

Transfer pricing documentation can be filed in English at the Zambia revenue authority.

## How long is it necessary to keep transfer pricing documentation?

In general documentation should be kept for at least six years. This may be extended to ten years.

## Are intercompany agreements recommended?

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

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

No specific requirement for disclosure are required on the tax return. Disclosure is required in the financial statements which are filed together with the tax return.

## Which transfer pricing methods are acceptable?

Taxpayers are free to choose any method that results in an arm's length pricing for the transaction.

## Is there a priority among the acceptable methods?

There is no priority among the acceptable methods as long as the result is at arm's length. Acceptable methods are on the basis of the best method approach.

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

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

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

Penalties apply not specifically for non-compliance with transfer pricing requirements, but for an intentional act to manipulate or file an incorrect income tax return. A penalty of 7.5% of the amount in cases of negligence, 35% for a wilful default and 52.5% for fraud (the amount relates to any income omitted, expenses overstated).

### Are there exemptions to transfer pricing rules in your country?

There are no exemptions to transfer pricing rules in Zambia.

### Are advance pricing agreement (APA) options available?

APAs are not available in Zambia.

### Tax audit areas

Transfer pricing is a high risk area. Transfer pricing is a key issue in any tax audit. The Zambian tax authorities focus on thin capitalisation rules and transaction pricing.

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