

UHY GLOBAL TRANSFER PRICING GUIDE 2023



The tax rates and rules indicated in this guide are those in effect as of 2023. Every effort has been made to ensure the facts in this booklet are correct at the time of going to press, however, no responsibility can be accepted for loss occasioned to any person acting or refraining from acting as a result of any material in this publication. UHY is an international network of legally independent accounting and consultancy firms whose administrative entity is Urbach Hacker Young International Limited, a UK company. UHY is the brand name for the UHY international network. Services to clients are provided by member firms

WELCOME

We are pleased to republish our 2023 edition of the UHY Global Transfer Pricing Guide, a country-by-country collaboration built on our individual member firms' comprehensive input. UHY's international network spans nearly 100 countries across more than 340 business centres. The guide is an indispensable reference tool for finance and tax specialists within multinational companies, or those considering cross-border ventures, in what is an increasingly complex area of tax planning and compliance.

Transfer pricing is growing in importance throughout the global economy, as countries strive to maximise their own revenue. In doing so, their tax authorities seek to more closely examine how companies trading in their domain are using internal pricing policies to allow profits to flow in and out of different entities, enabling profit shifts, in and out of their respective tax nets.

We recognise that this activity - and tax authority examination - is increasing quickly in scale and scope. As a result, our member firms are building resources to match this growing trend, investing in developing transfer pricing expertise to help our clients maintain best practice and achieve optimum outcomes - without fear of fiscal audits or risking tax penalties. In this guide you will find the relevant rules and legislation per country, including pricing methods, documentation requirements and penalties.

Across the UHY network we are able to provide a responsive and competitive alternative to Big Four or similar tax advisory offerings. It is important that your advisor has not only the experience and software tools to provide the best level of service in this complex area, but also the flexibility to consider dynamic impacts on your group's business as a result of strategic change, or of global events such as recession or a public health pandemic. Moving financial risk to, or from, business entities in different countries within your trading group can have a dramatic effect on the appropriate pricing mechanism you require.

Our advisors will help to ensure your transfer pricing approach will bring optimal returns, with robust policies in place, and the necessary documenting of trade terms and business operations that will satisfy any level of tax authority scrutiny and compliance.

We hope you find this UHY Global Transfer Pricing Guide useful but remember it is just a guide - there is no substitute for bespoke advice. When it is time to review, develop or implement your transfer pricing strategy, you can contact any of our tax experts listed here, who will be pleased to help.



Andrew Snowdon
Chairman,
UHY International Tax Group

The UHY Global Transfer Pricing Guide is intended for general guidance only. This edition was first published in 2023 and details were correct at the time of publication. As countries evolve their tax rules over time, details may change. This guide therefore cannot provide definitive guidance on which to base decisions. When specific information is required on a country, direct reference should be made to the laws, regulations and tax treaties of that country. Our UHY member firms will be pleased to assist - see this guide for advisor contact details or visit www.uhy.com for a list of UHY member firm offices worldwide.

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ANGOLA



TAX AUTHORITY

The tax authority administering transfer pricing law is the Angola Ministry of Finance (MinFin)/National Directorate of Taxes - Autoridade Geral Tributária (AGT).

TAX LAW

The current tax law on Transfer Pricing in Angola is the Presidential Decree 147/13 – “Statute of Large Taxpayers” - released in October 1st 2013 and entering into force five days after the publication. Transfer pricing documentation is required in Angola for those taxpayers on the Major Taxpayers List, according to Order no. 599/14, published in the National Gazette on 24 March 2014. Also, all financial, oil and gas, diamond and telecommunication companies are subject to transfer pricing obligations in Angola. Taxpayers included in the above mentioned large taxpayer list, and whose total revenue exceeds AOA 7,000 million in a certain tax cycle, will have to deliver a mandatory transfer pricing file to the tax authorities for that cycle by June 30 of the following year.

REGULATIONS & RULINGS

The framework for the application of the arm’s length principle is established both in the Industrial Code (article 55) and the Statute of Large Taxpayers (article 11), with the definition of the types of dependencies that will result in special relations for transfer pricing purposes.

The taxpaying companies included in the Major Taxpayers List are required to submit a transfer pricing file. The special relations that should be described in the file take place when one entity has the power to control directly or indirectly the decisions of the other, namely:

- When managers or directors of a company or their close family members hold direct or indirect participation of more than 10% of another company (including vote rights);
- When the majority of board members, managers or directors (or close family members) are the same in both companies;
- When entities are bind by a

contract of subordination

- When domain, group or reciprocal participations relations exist between the entities, or any other similar relations as foreseen in commercial law;
- When trade relations between the parties exceed 80% of total operations;
- When one entity finances the other in more than 80% of its credits.

INTERPRETATION OF ARM’S LENGTH PRINCIPLE (ALP)

The interpretation of the arm’s length principle in Angola is that tax authorities may enforce corrections to tax returns whenever the conditions of transactions between two entities with special relations differ from those that would be set between independent entities in a way that taxable profits are influenced.

PRICING METHODS PRIORITY

The established pricing methods mentioned in the law are:

- The comparable uncontrolled price method;
- The resale price method;
- The cost plus method.

All methods are accepted. The law does not mention any priorities between these methods.

TRANSFER PRICING PENALTIES

Not complying with transfer pricing obligations may lead a company to being forbidden from performing capital or trading operations that require the intervention of the National Bank of Angola, meaning that the company will be blocked in fundamental parts of its day-to-day activities. In case of late submission/ omission of the transfer pricing documentation the taxpayer is subject to a penalty between

200 US dollars (USD) and USD1,000. If the taxpayer refuses to deliver the transfer pricing file, a fine from USD 1,500 to USD 30,000 is applicable. If transfer pricing adjustments are enforced an up-to 35% penalty on additional tax will be applied. Compensatory interest is accrued at a one percent monthly rate for late payment.

REDUCTION IN PENALTIES

Several reductions on general tax penalties are foreseen in the law, and may be applicable according to different circumstances.

DOCUMENTATION REQUIREMENTS

The taxpaying companies to whom this law applies (Large Taxpayers) are required to prepare a transfer pricing file that should include information on special relations and prices agreed with related entities in commercial and financial operations. The file should have the following structure:

- Summary;
- Macro-economic framework;
- Presentation of the entity;
- Functional analysis of the entity;
- Identification of related-party activities;
- Economical analysis of related-party activities.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

The transfer pricing file should be submitted before a 6 months deadline, after the closing of the each financial year.

That means the 2022 file should be submitted before June 30th 2023. The voluntary submission is mandatory. Therefore taxpayers should deliver the file at their respective tax office (representing the National Directory of Taxes). If further related information/ documentation is requested the taxpayer should submit within 10 working days.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

Identification of related-parties and activities with them is required in the transfer pricing file to be submitted.

STATUTE OF LIMITATIONS

The current statute of limitations applicable to transfer pricing in Angola is five years from the last day of the tax year-end.

ADVANCE PRICING AGREEMENTS (APAS)

The transfer pricing law in Angola does not mention advance pricing agreements.



ANGOLA continued

BURDEN OF PROOF

The burden of proof for transfer pricing transactions in Angola belongs to the taxpayer. Tax authorities may adjust prices and conditions in operations between related parties based in their conclusions on eventual non-compliance with transfer pricing regulations

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

The OECD guidelines have not been adopted as Angola. Angola is not a member of OECD. There is uncertainty on whether OECD Guidelines will be adopted in the future or followed in practice. Although the Angolan transfer pricing regime requirements do not follow OECD Guidelines, the transfer pricing contents are similar to those of Chapter V OECD.

CONTACTS FOR ANGOLA

Armando Paredes
UHY A Paredes e Associados-Angola
Auditores e Consultores, SA
aparedes@uhyangola.com
+244 222 447 486

ARGENTINA



TAX AUTHORITY

Agencia Federal de Ingresos Públicos (AFIP). English: Federal Public Revenue Agency. Website: www.afip.gov.ar

TAX LAW

Articles 9,16,17,18,19,20, 126 and 127 of the Federal Law # 27.430
Regulatory Decree # 829/19.

REGULATIONS & RULINGS

General Resolution # 4717/2020 is the specific regulation on Transfer Pricing, issued by the AFIP.

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

Generally, this follows OECD Guidelines with certain domestic departures. The tested party must be the Argentinean one. The arm's length standard is defined as what third parties would have agreed on in the same transactions under similar conditions.

PRICING METHODS PRIORITY

International Price (in transparent markets) is regarded as the best method for tangible goods imports and exports of commodities, or the most appropriate method between:

- Comparable uncontrolled price (CUP)
- Resale price (RPM)
- Cost plus (CP)
- Profit split (PSM)
- Transactional net margin (TNMM)
- Transaction or spot price at load date (for commodities exports using certain intermediaries)
- Other methods (not specified).

For export of commodities a contract registration is required. The non-compliance of such registration entails that goods will be valued for tax purposes as the price at the time of shipment.

AFIP prefers the transactional methods over profit-based methods, but the approach very much depends on the type of transactions and their particular conditions. Recently other methods are permitted to value valuable assets, intangible property, transfer of shares of non-public companies, etc.

TRANSFER PRICING PENALTIES

There are automatic fines for untimely reporting of transfer pricing returns, amounting to around USD 100 per return. Also, fines of up to USD 270 relating to formal requests from the Tax Office.

There are more severe penalties in case of tax evasion.

If the taxpayer is non-compliant with the filing of the Country-by-Country report, penalties could be up to USD 4,100.

REDUCTION IN PENALTIES

When the taxpayer does not have a record of being non-compliant and the return is duly filed when required, a reduction in penalties may apply.

DOCUMENTATION REQUIREMENTS

Taxpayers are required to comply with certain documentation and information requirements to evidence that prices, considerations and profit margins meet the arm's length principle (ALP).

As a general rule, a transfer pricing study is required when intercompany transactions in a given year are above ARS 3 million, or there are individual transactions by over ARS 300,000.

Taxpayers are required to submit the following to the Argentine tax authority (AFIP):

Documentation concerning transactions with related, deemed related and tax haven parties:

- Transfer pricing report, including certain data from a transfer pricing study signed by an independent CPA
- Financial statements
- Master File report and Country-by-Country report when a certain threshold is passed.

Taxpayers are also required to maintain as supporting documentation:

- An annual transfer pricing study for transactions with related, deemed related and tax haven parties
- Documentation and paperwork of tangible goods imports and exports between independent parties.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

The deadline for submitting transfer pricing documentation is within a period of six months after the year end. It should be signed and filed electronically with the Tax Office.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

The arm's length principle (ALP) test is mandatory for cross-border related-party transactions, including common control or management situations, certain intermediaries (in commodities exports transactions), functionally related parties (e.g.: main creditors or debtors) and tax haven entities.

The Argentinean entity must be the tested party.

STATUTE OF LIMITATIONS

Around seven years following a given tax year.

Transfer pricing documentation must be kept for seven years on top of the statute of limitation.

ADVANCE PRICING AGREEMENTS (APAS)

Recently APAS have been allowed by the Argentine legislation. However, no procedures are yet in place.

BURDEN OF PROOF

The burden of proof lies in hands of the taxpayer until the transfer pricing documentation is submitted to the Tax Office, after which the burden of proof shifts to the Tax Office.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

Broadly speaking, local statute follows the OECD Guidelines (Argentina is not member of the OECD). However, the local taxpayer must be the tested party.

CONTACTS FOR ARGENTINA

Roberto Macho
UHY Macho & Asociados
rmacho@uhy-macho.com
+54 11 4815 8866

Tomas Merlos
UHY Macho & Asociados
tmerlos@uhy-macho.com
+54 11 4815 8866

AUSTRALIA



TAX AUTHORITY

Australian Taxation Office (ATO).
Website: www.ato.gov.au

TAX LAW

Income Tax Assessment Act 1997, Subdivisions 815-B, 815-C and 815-D contain the general operative provisions.

Taxation Administration Act 1953, Subdivision 284-E contain the record keeping requirement provisions.

Specific Double Tax Agreements may also be relevant.

REGULATIONS & RULINGS

The ATO has issued a number of public rulings on transfer pricing issues. These rulings can be obtained from the ATO website (under the Legal Database) at www.ato.gov.au/law/#Law.

The ATO has also issued a Practical Compliance Guideline (PCG 2017/2) which deals with the simplified transfer pricing record keeping options which may be available to some taxpayers. This can be obtained from the ATO website (under the category Public Rulings, Determinations and Bulletins) at www.ato.gov.au/law/#Law.

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

Dealt with in ATO rulings, particularly Taxation Rulings TR 94/14, TR 97/20, TR 98/11, and TR 2014/6.

The arm's length principle uses the behaviour of independent parties as a guide or benchmark to determine, in international dealings between related parties, the pricing of goods and services and how income and expenses are allocated. This involves comparing what a business has done and what an independent party would have done in the same or similar circumstances.

This principle is supported by all OECD countries.

PRICING METHODS PRIORITY

No prescribed priorities.
The ATO preferred approach is first to apply 'traditional' transactional

methods: comparable uncontrolled price (CUP); resale price (RPM); cost plus (CP).

If these are not acceptable, then 'profit methods', i.e. profit split (PSM) or transactional net margin (TNMM), can be used.

TRANSFER PRICING PENALTIES

The base penalty is typically 25% of tax avoided. However, this can be increased to 50% where it is asserted that the dominant purpose of the incorrect pricing was tax avoidance.

Penalties can also be increased for repeat offenders or where the ATO are hindered in their investigations.

Increased administrative penalties can apply to Significant Global Entities, being an entity that is part of a group with a global annual income of AUD 1 billion or more per annum.

REDUCTION IN PENALTIES

Penalties may be reduced to 10%, or 25% respectively, where the taxpayer has a 'reasonably arguable position' for the pricing methodology applied.

No penalty is typically imposed where the tax avoided is less than AUD 100,00 or 1% of the income tax payable by the entity for the year of income.

DOCUMENTATION REQUIREMENTS

Taxation Ruling TR 2014/8 Income tax: transfer pricing documentation and Subdivision 284-E of the Income Tax Assessment Act 1997 provide further detail on documentation to demonstrate compliance with the arm's length principle.

Other than in the limited circumstances where simplified record keeping options are available, records must be contemporaneous and demonstrate matters such as the arm's length conditions, the actual conditions, the comparable circumstances, the particulars of the method used and its effect in the particular circumstances for each and every related party transaction.

For income years from 1 January 2016,

Significant Global Entities (being an entity that is part of a group with a global annual income of AUD 1 billion or more per annum) are required to provide Country-by-Country (CbC) statements annually to the Australian Taxation Office within 12 months after the end of the financial year. The CbC statement includes a Master File and a Local File in accordance with OECD guidelines.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

Transfer Pricing Documentation must be prepared by the time by which the entity lodges its income tax return for the income year relevant to the related party transaction.

While the transfer pricing documentation is not lodged with the ATO, annual reporting through the tax return requires disclosure of transactions and parties in a summary form through the International Dealings Schedule (IDS).

Where CbC reporting is required, it must be lodged within 12 months of the end of the year of income of the entity.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

International related party dealings are disclosed by all taxpayers on the International Dealings Schedule (IDS) of the income tax return.

CbC reporting must be lodged by Significant Global Entities (being an entity that is part of a group with a global annual income of AUD 1 billion or more per annum).

STATUTE OF LIMITATIONS

Generally, four years from date of assessment. There is no time limit in cases of fraud or evasion.

ADVANCE PRICING AGREEMENTS (APAS)

APAs can be made with the ATO and bilaterally with foreign tax authorities. APAs cannot be retrospective.

APAs are valid for three to five years, with an option to extend.



AUSTRALIA continued

BURDEN OF PROOF

The taxpayer must establish that dealings with related parties are on an arm's length principle (ALP) basis.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

No significant differences.

CONTACTS FOR AUSTRALIA

Michael Coughtrey
UHY Haines Norton (Sydney)
mcoughtrey@uhyhnsyd.com.au
+ 61 2 9256 6600

Lauren Steinheuer
UHY Haines Norton (Brisbane)
l.steinheuer@uhyhnseq.com.au
+ 61 7 3210 5500

Craig Coleman
UHY Haines Norton (Perth)
craigc@uhyhnperth.com.au
+ 61 8 9322 6280

Selwyn Cohen
Cohen Fasciani (Melbourne)
selwyn@cfca.com.au
+ 61 3 8926 2633

AUSTRIA



TAX AUTHORITY

The Federal Ministry of Finance has five main authorities: the Austrian tax office, the tax office for large companies, the Austrian customs office, the anti-fraud office and the inspection service for payroll taxes and contributions. Website: bmf.gv.at

TAX LAW

Austrian Income Tax Act (§ 6 EStG);
Austrian Corporation Tax Act (§ 8 KStG)
Austrian Federal Tax Code (BAO)
EU-Meldepflichtgesetz
(Implementation
of EU-Richtlinie 2018/822 (DAC 6))

REGULATIONS & RULINGS

Austrian Transfer Pricing
Documentation Act (Implementation
of EU Directive 2016/881). Austrian
Transfer Pricing Documentation Act
Implementing Ordinance. Austrian
Guidelines 2021 (last version from 07
October 2021)
and the OECD Guidelines

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

The Austrian Income Tax Act contains the arm's length principle dealing with transfers of assets (tangible or intangible) or services into and out of the country. The Austrian Corporation Tax Act provides that hidden profit distributions do not reduce the taxable profit of the corporation; and provides that hidden contributions by a shareholder do not increase the taxable income of the corporation.

PRICING METHODS PRIORITY

The selection of a transfer pricing method always aims at finding the most appropriate method for a particular case. If there is the same confidence interval between traditional transaction methods and transactional profit methods, the traditional transaction methods should be preferred. Traditional transaction methods: Comparable uncontrolled price (CUP); resale price (RPM); cost plus (CP) Transactional profit methods: Transactional net margin (TNMM); transactional profit split (TPS).

TRANSFER PRICING PENALTIES

No specific regulations. During a tax inspection, tax audit adjustments may be carried out because of a discrepancy from arm's length principle (ALP).

A penalty is only possible if there is proof of fraudulent intent. In some areas (e.g. documentation), gross negligence is also punished.

REDUCTION IN PENALTIES

Not applicable

DOCUMENTATION REQUIREMENTS

The Austrian tax law requires documentation in support of transfer pricing. Austrian enterprises are obliged to cooperate with the tax offices in matters of foreign concerns. Article 124 of the Bundesabgabenordnung - Federal Tax Code (§ 124 BAO) provides that the person who is obliged under company law to maintain and preserve the company's accounting 'books' has to meet these obligations in the concerns of revenue collection. Relevant records must be made available to allow third-party experts to examine them within a reasonable time to determine whether and to what extent the division of income between the taxpayer and the related party complies with the principle of foreign behaviour.

The Transfer Pricing Documentation Act (VPDG) obliges the documentation of transfer prices and reporting to the tax authorities.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

For a multinational group of companies, a country-specific report is to be prepared if the total turnover in the previous financial year is at least EUR 750 million according to consolidated financial statements. A business unit of a multinational group of companies based in Austria has to create both a Master File and a Local File if sales revenues have exceeded EUR 50 million in the two previous financial years. These obligations do not apply from the following financial year if the sales revenues no longer exceed the relevant amounts in two consecutive financial years. Regardless, a

business unit of a multinational group of companies based in Austria is obliged to submit a Master File at the request of the responsible tax office if the regulations of another state or territory require that a Master File is to be created by a business unit based there. Documentation obligations in addition to this federal law remain unaffected.

The responsible tax office can request the submission of additional documents that are necessary for the determination and examination of the appropriate intra-group transfer pricing. The country-specific report must be submitted to the responsible tax office of the ultimate parent company or the new business unit no later than 12 months after the last day of the financial year in question. The transmission must be carried out electronically via FinanzOnline (<https://finanzonline.bmf.gv.at>). The Federal Minister of Finance is authorised to determine the electronic transmission procedure by ordinance. The Master File and Local File must be submitted to the responsible tax office upon request within 30 days from the date of submission of the corporate income tax return or the tax return for the determination of income.

RETURN DISCLOSURE / RELATED- PARTY DISCLOSURE

Not applicable

STATUTE OF LIMITATIONS

Generally five years; in special cases more than five years.

ADVANCE PRICING AGREEMENTS (APAS)

APAs can be made with the Austrian Tax Authorities and multilaterally between tax authorities of several countries. APAs cannot be made retrospectively.

The written agreement is only binding for the Tax Authority. The request has to be made before realisation of the case and will cost from EUR 1,500 to EUR 20,000 depending on the sales revenue.



AUSTRIA continued

BURDEN OF PROOF

The Austrian Tax Authorities have to prove the use of non-market values, but the company has an increased duty to cooperate in foreign matters.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

There are no principal differences with the OECD Guidelines.

CONTACTS FOR AUSTRIA

Stephan Schlager
UHY-Tax Wirtschaftstreuhand GmbH
office@uhy.at
+43 732 75 05 30

Juliane Schlager-Haider
UHY-Tax Wirtschaftstreuhand GmbH
juliane.schlager@taxoffice.at
+43 6649107991

BANGLADESH



TAX AUTHORITY

National Board of Revenue,
Government of Bangladesh.
Website: <http://www.nbr.gov.bd/>

TAX LAW

Income Tax Ordinance 1984
Income Tax Rules 1984
Finance Act (FA21)

REGULATIONS & RULINGS

Chapter XIA (Section 107A to 107J)
of the Income Tax Ordinance 1984
Rule 70 to 75A of the Income
Tax Rules 1984

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

As per section 107A of the Income
Tax Ordinance, arm's length price
means a price in a transaction, the
conditions
(e.g. price, margin or profit split)
of which do not differ from the
conditions that would have prevailed
in comparable uncontrolled
transactions between independent
entities carried out under
comparable circumstances.

PRICING METHODS PRIORITY

Arm's length principle (ALP) price
may be determined using the
following acceptable common
criteria:

1. Comparable uncontrolled price
method (CUP)
2. Resale price method (RPM)
3. Cost plus method (CPM)
4. Profit split method (PSM)
5. Transactional net margin
method (TNM)

In exceptional circumstances where
none of the methods can be reliably
applied, the entity has the discretion
of
utilising any other reasonable
method that yields a result
consistent with the arm's length
price.

TRANSFER PRICING PENALTIES

Section 107G of the Income Tax
Ordinance 1984: Where any entity
fails to keep, maintain or furnish any
information or documents or records
as required by the Ordinance, the
Deputy Commissioner of Taxes (DCT)
may impose upon such entity a
penalty not exceeding 1% of the value
of each international transaction

entered into by such entity.
Section 107H of the Income Tax
Ordinance 1984: Where any entity
fails to comply with the notice or
requisition of the tax office, the DCT
may impose upon such person a
penalty not exceeding 1% of the value
of each international transaction
entered into by such entity.
Section 107HH of the Income Tax
Ordinance 1984: Where any entity
fails to submit its Statement of
International
Transactions (SIT) within the
stipulated time frame, the DCT may
impose a penalty not exceeding 2%
of the value of each international
transaction entered into by such
entity.

Section 107I of the Income Tax
Ordinance 1984: Where an entity
fails to furnish a transfer pricing
report duly signed by a Chartered
Accountant (if required), the DCT
may impose upon such person a
penalty of a sum not exceeding BDT
300,000.

REDUCTION IN PENALTIES

There are no specific provisions.

DOCUMENTATION REQUIREMENTS

As per Section 107E of the Income
Tax Ordinance 1984:

1. Every person who has entered into
an international transaction shall
keep and maintain such information,
documents and records as may be
prescribed.
2. Without prejudice to the provisions
of sub-section (1) (above), the Board
may prescribe the period for which
the
information, documents and records
shall be kept and maintained.
3. The DCT may, by notice in writing,
require any person to furnish any
information, documents and records
as
prescribed under sub-section (1)
(above) within the period as may be
specified in the notice.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

1. A Statement of International
Transaction must be submitted along
with the annual tax return of the
company (i.e. within 6 months and 15
days from the financial year end).
2. A Transfer Pricing Report from

an accountant must be submitted
within the same period if the
aggregate value of such transactions
exceeds BDT 30,000,000 in a
financial year.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

Standard disclosure as per IAS 24:
Related-Party Disclosures.

STATUTE OF LIMITATIONS

Within three years from the end of
the assessment year.

ADVANCE PRICING AGREEMENTS (APAS)

There is no formal APAs programme.

BURDEN OF PROOF

National Board of Revenue,
Bangladesh

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

Transfer pricing regulations are
largely based on OECD Guidelines.

CONTACTS FOR BANGLADESH

Syful Islam
UHY Syful Shamsul Alam & Co
syful@ssacbd.com
+880 2 955 5915, 9515491

BELGIUM



TAX AUTHORITY

Service Public Fédéral Finances
(English: General Administration of Taxes). Website: <https://finances.belgium.be/fr/entreprises/international/prix-de-transfert-beps-13#q8>

TAX LAW

- Loi-programme du 01.07.2016
- Arrêté royal du 28.10.2016 – Country-by-Country declaration
- Arrêté royal du 28.10.2016 – Master File
- Arrêté royal du 28.10.2016 – Local File

REGULATIONS & RULINGS

Information and documents can be downloaded from the General Administration of Taxes website on the following requirements for notification:

- Explanation of the forms to be completed and erratum + forms
- Law 31.07.2017 and Circulaire 04-09-2017 – information to be shared
- Arrêté royal du 29.06.2018 (MB 09.07.2018) – penalties
- OECD documentation
- EU documentation: Directive (UE) 2016/881 du Conseil du 25.05.2016 modifiant la directive 2011/16/UE en ce qui concerne l'échange automatique et obligatoire d'informations dans le domaine fiscal (DAC 4 CBCR)
- Circulaire 2019/C/14 – administrative penalties
- Circulaire 2020/C/88 – FAQs relating to BEPS13

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

Reference to the market price and the mechanisms of the market.

PRICING METHODS PRIORITY

Traditional methods:

- Uncontrolled price (CUP)
- Resale price method (RPM)
- Cost plus method (CPM)

Methods based on results:

- Split of the net margin (TNMM)
- Profit split method (PSM)

TRANSFER PRICING PENALTIES

In the case of error without intention to evade tax:

- First offence – no fine
- Second offence – EUR 1,250
- Third offence – EUR 6,250
- Fourth offence – EUR 12,500
- Subsequent offences – EUR 25,000.

In case of deliberate errors with the aim of tax evasion:

- First offence – EUR 12,500
- Subsequent offences – EUR 25,000.

REDUCTION IN PENALTIES

None

DOCUMENTATION REQUIREMENTS

- Master File including details on the following:
 1. Organisational structure
 2. Description of group activities
 3. Intangible fixed assets (such as defined in chapter VI of the OECD principles)
 4. Intercompany financial activities
 5. Financial statements and tax situation of the group
- Local File for the Belgian entity.

Documentation can be files in Dutch, French, German or English.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

The Master File has to be filed with the Belgian tax authorities within 12 months of the end of the fiscal year. The Local File has to be filed together with the tax return.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

A total figure on related-party disclosure is required.

STATUTE OF LIMITATIONS

Three years starting from the close of the accounting year. In case of fraud, the tax authorities have the right to adjust the income during a five- or seven-year period.

ADVANCE PRICING AGREEMENTS (APAS)

The Belgian tax authority accepts APAs. For unilateral agreements, there is also a service for anticipated decisions, which is an autonomous department of the Belgian tax authority.

BURDEN OF PROOF

The tax authority has the burden of

proof for transfer pricing transactions.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

None

CONTACTS FOR BELGIUM

Chantal Bollen
UHY-CDP Partners
c.bollen@cdp-partners.be
+32 2 663 11 20

BOLIVIA



TAX AUTHORITY

National Tax Service ("SIN" Spanish)
<https://www.impuestos.gob.bo/>

TAX LAW

SUPREME DECREE No. 2227

REGULATIONS & RULINGS

In 2014, the Bolivian government public Supreme Decree No. 2227, which established the guidelines for the application of transfer pricing for taxpayers.

INTERPRETATION OF

ARM'S LENGTH PRINCIPLE (ALP)

Bolivian regulations in the Supreme Decree No. 2227, this principle is not mentioned, but it does mention that companies have the obligation to carry out their commercial and/or financial operations at market prices. These operations must be reflected and documented in the financial statements or special records of the taxpayers of the Corporate Income Tax.

PRICING METHODS PRIORITY

The methods used to calculate the market values are the same as dictated by the OECD, Article 7 of Supreme Decree

No. 2227 establishes, for the determination of the price agreed by independent third parties in comparable operations, may be carried out by any of the following methods:

1. Comparable Price method not controlled
2. Resale Price method
3. Cost method added
4. Method of division of benefits
5. Transactional net margin method
6. Notorious price method in transactions in transparent markets

TRANSFER PRICING PENALTIES

According to transfer pricing rules, the penalties go from 2500 UFV up to 5000 UFV.

Sanctions for not submitting or submitting it after the deadline, with errors or incomplete information on the ETPT or Form 601, sanctioned with fines from 50% to 100% of the maximum sanction established in art. 162 of Law 2492.

REDUCTION IN PENALTIES

Reduction for this obligations is regulated according to the Law 2492 or "Bolivian Tax Code", which depend on the type of offense committed.

DOCUMENTATION REQUIREMENTS

For the purposes of compliance with Supreme Decree, taxpayers must submit to the Tax Administration the documentation and information related to:

1. Complete identification of the taxpayer and of the different natural or legal persons related to it;
2. Description of the activity carried out;
3. Description of the characteristics, amounts and volumes of the operations with related parties;
4. Identification number or tax registration of the related party and their country of residence;
5. Business strategies, including pricing and other special circumstances;
6. Function performed by the taxpayer within the related transaction from the commercial or industrial point of view;
7. Other documentation or information that the Tax Administration defines in administrative regulation

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

The term to send physically and digitally Study and the Sending the Electronic Form 601, when its required its be, according to Article 9 of the RND N°10-0008-15, within the deadline established for the presentation of the Sworn Declaration and payment of the Income Tax of Companies (IUE).

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

According to the Article 2 of Supreme Decree No. 2227 indicates certain Linking assumptions, such as the following:

A national natural or legal person participates directly or through third parties in the direction, control, management or owns capital in one or more companies of the abroad or, branches, affiliates or subsidiaries of companies of the abroad that carry out operations in national territory;

A natural or legal person from abroad, participates directly or through third parties in the direction, control, management or owns capital in one or more companies nationals or branches, affiliates, or subsidiaries of companies from abroad that operate in national territory; A natural or legal person with operations in the territory national that maintains commercial relations and/or financial, direct or indirect, with natural persons or domiciled or that carry out operations in countries or regions with low or no taxation; linked.

STATUTE OF LIMITATIONS

The Tax Administration may require that taxpayers keep the books, files or records of their negotiations, necessary for the proper inspection and determination of tax obligations and receipts, such as invoices, tickets or other documents that facilitate verification. Taxpayers or those responsible should keep duplicates of these documents.

ADVANCE PRICING AGREEMENTS (APAS)

The law does not mention anything about Advance Price Agreements

BURDEN OF PROOF

The taxpayer has the burden of proof.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

The main difference is that Bolivia incorporates a sixth method versus the five method used by the OECD

CONTACTS FOR BOLIVIA

Marcia Berthin
 HBA S.R.L.
 MBerthin@uhyberthin.com
 +591 2 2443372

Bryan Pérez
 UHY Pérez & Co
 Rosales bperez@uhy-perez.com
 +502 2503 5900

BOSNIA AND HERZEGOVINA



TAX AUTHORITY

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

TAX LAW

Bosnia and Herzegovina (BiH) consists of two territorial and administrative entities: the Federation of Bosnia and Herzegovina (FBiH) and the Republic of Srpska (RS), as well as the District of Brcko (BD). Corporate Profit Tax legislation is enacted on the level of the FBiH, the RS and the BD. Companies doing business in BiH should be aware that different transfer pricing rules apply in the FBiH and in the RS. FBiH Articles 44–46 of the Corporate Income Tax (CIT) Law define the arm's-length principle, the acceptable methods, and the obligation to prepare and file TP documentation, which are available on the official website of the Tax Authority of the FBiH. (www.pufbih.ba)
RS
Articles 31–35 of the CIT Law prescribe the related-party definition, arm's-length principle, acceptable methods and the obligation to prepare and file TP documentation. Articles 58–60 of the CIT Law refers to penalties, among others, for non-possession of TP documentation and are available on the official website of the Tax Administration of Republic of Srpska. (www.poreskaupravs.org)

REGULATIONS & RULINGS

FBiH
Rulebook on transfer pricing (Official Gazette of FBiH 97/16)
RS
Rulebook on transfer pricing and methods (Official Gazette of RS 47/16)

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

Tax authorities of the FBiH and RS verify if prices agreed between related parties correspond to those that would be agreed with respect to comparable transactions between independent parties. Differences

discovered must be explained to the tax authority. If this explanation is not sufficient, tax authority may adjust the prices and assess penalties. The TP requirements apply to both domestic as well as cross-border transactions, subject to certain exceptions (e.g. financing with no or low interest provided by a non-resident taxpayer)

PRICING METHODS PRIORITY

All of the Organisation for Economic Co-operation and Development (OECD) methods (CUP, CPLM, Resale Price Method, Profit Split Method, and Transactional Net Margin Method) are acceptable in the FBiH and RS. But in FBiH, the Comparable Uncontrolled Price (CUP) Method and Cost Plus Method (CPLM) are preferred over others.

TRANSFER PRICING PENALTIES

Federation of BiH (FBiH)
The taxpayer is obligated to possess a TP report at the time of submission of the CIT return. Penalties in the amount of BAM 3.000 to BAM 100.000 (approximately EUR 1.500 to EUR 50.000) could be imposed if the taxpayer doesn't possess the TP report on the due date of the CIT return. Additionally, penalties in the amount of BAM 2.500 to BAM 10.000 (approximately EUR 1.250 to EUR 5.000) could be imposed on a responsible person in the company for the previously mentioned.
Republic of Srpska (RS)
The range of penalties for eventual noncompliance (i.e., not having a prepared TP report on the day of submission of the annual CIT return or missing the deadline for submitting TP documentation after receiving a request from the relevant tax authorities) is between approximately EUR 10,000 and approximately EUR 30.000 for the legal entity. And it's between approximately EUR 2.500 and approximately EUR 7.500 for the responsible individual in the legal entity

REDUCTION IN PENALTIES

No provisions.

DOCUMENTATION REQUIREMENTS

Documentation on transfer is not submitted to the tax authority together with the tax return, but the taxpayer keeps it and submits it upon request of the tax authority at the initiation of the audit procedure. The taxpayers should keep full scope transfer pricing documentation for their transactions. The full scope transfer pricing documentation should include general transfer pricing documentation (Masterfile) and specific transfer pricing documentation (local file). The Masterfile outlines information about the pricing policy within the whole group of related entities (BiH and foreign). The local transfer pricing documentation should contain specific information about the BiH entity and its transactions with its domestic and foreign related parties.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

The taxpayer is obligated to have a Transfer Pricing Study till 31 March for the previous fiscal year.
FBiH
In case tax inspection, the taxpayer has to submit the documentation upon request and has 45 days to deliver the supporting documentations upon request.
RS
In case tax inspection, the taxpayer has to submit the documentation upon request and has 30 days to deliver the supporting documentations upon request.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

FBiH
Taxpayers are obligated to submit the TP-900 form by 31 March for the previous fiscal year (FY) if they fulfill the prescribed requirements for a TP adjustment waiver. In addition, taxpayers should also prepare the form with summary of controlled transactions (TP 902 form) in case that its related-party transactions exceed BAM 500.000. This document should be provided to the tax authorities alongside the CIT return. There is a specific form prescribed in this respect and should be signed by an authorized person in the company.



BOSNIA AND HERZEGOVINA continued

RS

Taxpayers are obliged to submit an annual report of controlled transactions if the total amount of their controlled transactions is above approximately BAM 700.000.

Related-party disclosures along with corporate income tax return

Taxpayers are obliged to disclose in their annual CIT return on the revenues and expenses resulting from transactions with related parties, as well as disclose tax-based adjustments on the basis of the TP analysis

STATUTE OF LIMITATIONS

The statute of limitations is five years from the end of the year of assessment. It is thus in practise six years from the end of tax year in question.

ADVANCE PRICING AGREEMENTS (APAS)

Advance pricing agreements are not available in the FBiH or the RS.

BURDEN OF PROOF

Initially, the taxpayer bears the burden of proof. If the tax authority disagrees with the transfer prices set and documented by the taxpayer, it has to prove the difference. Still, the taxpayer has the possibility to explain the difference claimed by the tax authority in order to avoid additional tax and penalty.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

It's not yet prescribed, however, it's recommended that all OECD Guidelines be followed.

CONTACTS FOR BOSNIA AND HERZEGOVINA

Matko Knezevic
UHY Revident d.o.o. Mostar
matko.knezevic@uhy-ba.com
+387 39 662 485

BRAZIL



TAX AUTHORITY

Receita Federal do Brasil (RFB).
English: Federal Revenue of Brazil.
Website: www.receita.fazenda.gov.br

TAX LAW

Law 9.430/96 and 9.959/00 (before 2013) amended by Law 12.715/12 and 12.766/12 (from January 2013)

To align procedures with the OECD, Brazil enacted a new transfer pricing law - Law n° 14,596/2023, which changes the methodology for calculating transfer pricing.

The new law is optional for 2023, but mandatory for 2024. It is in the process of being regulated.

REGULATIONS & RULINGS

Normative Instruction n° 1,312/2012, amended by Normative Instruction n° 1,870/2019

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

The principle of equal and fair conditions of competition in the market.

PRICING METHODS PRIORITY

Several methods are acceptable. These methods may vary in accordance with the nature of the transaction, import or export.

For import transactions:

1. PIC - Comparable uncontrolled price method
2. CPL - Production cost in the country of origin plus 20% profit margin
3. PCI - Commodity exchange import price
4. PRL - Resale price method proposes 20% to 40% of the statutory gross profit.

For export transactions:

1. CAP - Production cost plus 15% profit margin
2. PVEX - Sales price on exports
3. PVA and PVV - Resale price minus 15% for wholesale, 30% for retail
4. PCEX Commodity exchange export price.

Normative Rulings 1,312/2012 instruct the exceptions on safe-harbour exports.

According to the Brazilian legislation, taxpayers may use the most beneficial method, with the exception of commodities transactions which are subject to a specific transfer pricing method (comparable uncontrolled price).

TRANSFER PRICING PENALTIES

Although there are no specific penalties established by the transfer pricing legislation, general tax penalties are applicable:

20% for delayed payments (before tax audit)

From 75% to 225% where the tax authorities make an income adjustment following assessment of a tax deficiency, plus interest based on Selic rate
3% of the transaction price for not submission, late or incorrect submission of documentation in support of the Country-by-Country report.

REDUCTION IN PENALTIES

A reduction of 50% in penalties may be established for recognised payments, after analysis and valuation.

DOCUMENTATION REQUIREMENTS

The required transfer pricing documentation is submitted with the Digital Income Tax Return (ECF), including:

- Records W100 and W300 - Country-by-Country report
- Records X291 - Operations with Related Persons Abroad
- Records X300 and X320 - Exports and Imports
- Records X430 and X450 - Income/Payments Abroad.

Further information may be requested during the tax audit.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

The Brazilian Income Tax Return should be delivered on the last business day of June, where all taxpayers' transaction details are published.

On 31 January of the following fiscal year the necessary transfer pricing adjustments and the payment of in-

terest incurred from January to June should be completed. Penalties relating to transfer pricing adjustments should be paid on the same date.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

Details of related parties, transfer pricing methods adopted, and prices of transaction and interest are included in the transfer pricing disclosure forms submitted with the tax return.

Transfer pricing methods cannot be changed after the tax assessment has started.

STATUTE OF LIMITATIONS

The statute of limitations is six years.

ADVANCE PRICING

AGREEMENTS (APAS)

APAs are not available at this time.

BURDEN OF PROOF

Burden of proof lies with the taxpayer and the tax authorities can refuse evidence when considered unsuitable or inconsistent.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

Brazil is not a member of the OECD. Brazilian transfer pricing rules do not focus on the identification of the true arm's-length price or profit, but on objective methods for determining what the most suitable transfer price for tax purposes is.

There are no local requirements for Master File and Local File.

CONTACTS FOR BRAZIL

Mônica Bendia
UHY Bendoraytes & Cia -
Auditores Independentes
monica.bendia@uhy-br.com
+55 21 988976262

CANADA



TAX AUTHORITY

Canada Revenue Agency (CRA).
Website: www.cra-arc.gc.ca

TAX LAW

Income Tax Act (Canada) Section 247

REGULATIONS & RULINGS

Information Circular IC 87-2R –
International Transfer Pricing.

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

Section 251 of the Income Tax Act
provides definition of the arm's
length principle (ALP).

Two people, or entities, are said to
be dealing at arm's length with each
other if they are independent, and
one does not have undue influence
over the other. Related individuals
and enterprises are not deemed to
deal with each other at arm's length.

Related persons are individuals
who are related by blood, marriage,
common-law or adoption.
Enterprises are related when they are
under common control.

PRICING METHODS PRIORITY

There is no statutory requirement,
however comparable uncontrolled
price (CUP) is preferred.

Others in priority are resale price
(RPM), cost plus (CP), profit split
(PSM), and transactional net margin
(TNMM).

TRANSFER PRICING PENALTIES

The penalty is 10% of the amount
by which the transfer pricing
adjustments exceed the lesser of (i)
10% of gross revenue and (ii) CAD 5
million.

REDUCTION IN PENALTIES

A penalty may be reduced where
reasonable efforts were made to
determine and use arm's length
principle (ALP) transfer prices.

DOCUMENTATION REQUIREMENTS

Taxpayers are required to
contemporaneously document
the methodology by which they
determine their transfer pricing
method, as well as transfer pricing
transaction details.

Documentation should include a
complete and accurate description
of:

- Property or services transferred
- Terms and conditions
- Identity of participants and
relationships
- Functions performed
- Property used
- Risks assumed
- Analysis to determine the transfer
pricing method used
- Factors that influenced the
determination of transfer prices
- Overview of the business.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

Documentation must be prepared by
the filing due date of the taxpayer's
tax return (six months after the year-
end date for corporations).

The taxpayer must submit the
documentation within three months
of a written request by the CRA.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

Form T106 is required when
transactions with non-resident
related parties plus inter-corporate
accounts exceed CAD 1 million. It
reports the extent and description of
all transactions with the non-resident
including the transfer-pricing
method used for each category of
transactions.

Form T1134 details all controlled
foreign affiliates together with
information on their assets, liabilities,
revenues and expenses

Form RC4649 is a Country-
by-Country (CbC) reporting of
all revenues and expenses for
multinational
enterprise groups

All of the above information returns
are due by the due date of the annual
income tax returns (six months after
the year-end date for corporations).

STATUTE OF LIMITATIONS

Seven years from the date of notice
of assessment for a particular
year for non-resident controlled
corporations (six years for Canadian
controlled private corporations).

ADVANCE PRICING AGREEMENTS (APAS)

APAs can be made with the CRA.

BURDEN OF PROOF

The taxpayer

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

Almost all OECD Guidelines
are followed.

CONTACTS FOR CANADA

Paul Andersen
UHY Forbes Andersen LLP
paul@fa.ca
+1 416 947 0464

Brahm Shiller
UHY Victor LLP
bshiller@uhyvictor.com
+1 514 282 9868

Ken Shemie
UHY Victor LLP
kshemie@uhyvictor.com
+1 514 282 9533

CHILE



TAX AUTHORITY

Servicio de Impuesto Internos
(English: Internal Revenue Service).
Website: www.sii.cl

TAX LAW

Chilean Income Tax Law

REGULATIONS & RULINGS

Revenue Tax Law D.L. N° 824
Tax Law to Sales and Services D.L.
N°825
Tributary Code D.L. N°830

Internal Revenue Service Resolution No. 101 established new Transfer Pricing Informative Sworn Statements No. 1950 (Annual Master File Affidavit) and No. 1951 (Annual Local File Affidavit) in November 2020. These are complementary to Affidavit No. 1937 (Country-by-Country Report) and No. 1907 (Transfer Pricing).

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

Legislation and regulation dictated by the fiscal authority (circular letters, resolutions) outline interpretation of the arm's length principle, which is aligned with the definition in the OECD Transfer Pricing Guidelines.

PRICING METHODS PRIORITY

Sales values are used to appraise the market value or the global presumed profit (utility) of the business.

Accepted methods are:

- Comparable uncontrolled price
- Resale price method
- Cost plus method
- Profit split method
- Transactional net margin method
- Residual profit methods
- Any other reasonable methods

TRANSFER PRICING PENALTIES

Penalties are decided by a fiscal inspection and through computational means. Fines and interest and/or corporate sanctions are applied for the intentional filing of false transfer pricing data.

REDUCTION IN PENALTIES

Any reduction in penalties is subject to the conduct and gravity of the committed act.

DOCUMENTATION REQUIREMENTS

There is a legal obligation to preserve countable records and supporting documentation (documents of sales and purchases, contracts, etc.) for six years to demonstrate the veracity of operations to the fiscal authority when required.

Documentation must be submitted in Spanish.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

The due date for transfer pricing documentation is the last business day of June of each year. This may be extended once for up to three months on request.

When requested by the fiscal authority, documentation must be submitted instantly.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

No obligation to disclose.

STATUTE OF LIMITATIONS

Six years.

ADVANCE PRICING AGREEMENTS (APAS)

Chilean transfer pricing rules provide an option to obtain unilateral, bilateral and/or multilateral APAs.

BURDEN OF PROOF

It is generally considered that the burden of proof lies with the fiscal authority, although there are no specific rules with regard to burden of proof as it relates to transfer pricing.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

Chilean transfer pricing rules are generally aligned with the OECD Guidelines but are not obligatory by law.

CONTACTS FOR CHILE

Ximena Guiñazú
UHY Guiñazú & Asociados SpA
xguinazu@uhy-cl.com
+56 2 3213 8700

CHINA



TAX AUTHORITY

State Administration of Taxation.
Website: www.chinatax.gov.cn.

TAX LAW

The State Council: Income Tax Law of the People's Republic of China for Enterprises 2007 Article 44 and the Law Concerning the Administration of Tax Collection Article 36.

REGULATIONS & RULINGS

Detailed Rules for Implementation of the Income Tax Law 2007 Article 111. Guoshuifa [2009] No. 2.

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

Associated enterprises legislation (see Tax Law above).

PRICING METHODS PRIORITY

Comparable uncontrolled price (CUP); resale price (RPM); and cost plus (CP) are the first three methods applicable. If they are inappropriate, other reasonable methods, such as comparable profits; profit split (PSM); and transactional net margin (TNMM) may be used.

TRANSFER PRICING PENALTIES

The Chinese tax authority can make adjustments as a result of the provision of false information, or when companies are unwilling to provide required information on related-party transactions.

REDUCTION IN PENALTIES

Not applicable.

DOCUMENTATION REQUIREMENTS

No mandatory requirements. Annual Report of Business Transactions with Related Parties by Foreign-invested Enterprises and Foreign Enterprises. Special rules apply to adjustments and notifications made by Chinese tax authorities. Annual tax returns in written form.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

Generally within a taxable year. Under local tax authorities' inspection, enterprises should provide relevant information within 60 days.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

Only for companies quoted in Chinese exchanges.

STATUTE OF LIMITATIONS

Generally within 3 years beginning from the following tax year, no more than 10 years.

ADVANCE PRICING AGREEMENTS (APAS)

APAs are regulated by the Chinese tax authorities for related-party transactions.

For detailed procedure see Guoshuifa [2009] No. 2.

BURDEN OF PROOF

Taxpayers must provide proper documentation and support for their transfer pricing policies.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

Revised OECD Guidelines are followed, but they only enumerate pricing methods and lack regulations to apply practically the methods and to deal with the most important international comparative problems.

CONTACTS FOR CHINA

Liqian Sun liqian_sun@zhonghuacpa.com
Zhonghua Certified Public Accountants LLP
sun@zhonghuacpa.com
+86 21 6360 3162

Youyi Lu youyi_lu@zhonghuacpa.com
Zhonghua Certified Public Accountants LLP
youyi_lu@zhonghuacpa.com
+86 21 3366 4786

COLOMBIA



TAX AUTHORITY NAME

Dirección de Impuestos y Aduanas Nacionales (DIAN)
 English: The National Tax and Customs Directorate (DIAN)
 Website: www.dian.gov.co

TAX LAW

Tax statute article from 260-1 to 260-11.
 Decree 2120 of 2017.

REGULATIONS & RULINGS

Colombia follows the Transfer Pricing Guidelines determined for the OECD, which have been regulated by Decree 2120 of 2017 and are indicated in the tax statute articles from 260-1 to 260-11.

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

The arm's length principle is defined in the tax statute article 260-2, that a transaction between associated enterprises complies with the conditions that would have been used in comparable transactions with or between independent enterprises.

PRICING METHOD PRIORITIES

The following are the generally accepted transfer pricing methods:

1. Comparable uncontrolled price
2. Resale price
3. Cost plus
4. Transactional net margin
5. Transactional profit split

TRANSFER PRICING PENALTIES

Penalties are defined in the tax statute article 260-11 and are classified according to the type of breach. Colombian legislation includes penalties for extemporaneity, inconsistency, failure to present information as required, for omission and for having to correct information. Penalties are determined by the value of the operations, with percentages that can vary between 0.02% and 4%. When involving transactions with low or zero tax jurisdictions, the percentage can increase to 6%. In the case of the sanction for extemporaneity the penalty is settled per month or fraction of a month, with a maximum monthly value of USD 15,700 and a

total value of USD 188,498.

REDUCTION IN PENALTIES

The penalties for inconsistencies and omission in the information will be reduced to 50% of the amount determined in the statement of objections or in the special request, if they are corrected before the notification of the resolution that imposes the sanction, or of the official liquidation. For this purpose, you must present a memorial of acceptance of the reduced penalty.

DOCUMENTATION REQUIREMENTS

These include Informative Statement, Local File, Master File and Country-by-Country Report.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

In accordance with your tax ID.
 For the Informative Statement and Local File: September
 For the Master File and Country-by-Country Report: December

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

Transactions with associated enterprises are reported in the transfer pricing information statement (Form 120) annually.

STATUTE OF LIMITATIONS

Six years from the expiration of the income tax.

ADVANCE PRICING AGREEMENTS (APAS)

Article 260-10 of the tax statute allows the realisation of Advance Pricing Agreements (APAs), upon request made by the taxpayers. The Tax Administration has a period of 9 months to carry out the pertinent analysis and accept or reject the request.

BURDEN OF PROOF

The taxpayer.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

Almost all OECD Guidelines are followed.

CONTACTS FOR COLOMBIA

Luis Alfonso Pacheco
 UHY Consultores SAS
luis.pacheco@uhy-co.com
 +57 310 2759060

COSTA RICA



TAX AUTHORITY

Ministerio de Hacienda (MH).
(English: Ministry of Finance.)
Website: www.hacienda.gov.cr

TAX LAW

On September 13, 2016, the General Directorate of Taxation (DGT) publishes, through Resolution No. DGT-R-44-2016, the final version of what will be the Annual Transfer Pricing Statement, which was submitted to public consultation during a period of approximately two months for the different interested parties to offer their comments for the improvement of it. However, it is worth mentioning that, until now, the DGT has not made available to taxpayers the electronic means by which said informative declaration will be presented.

REGULATIONS & RULINGS

In September 2013, the Costa Rican government public Decree 37898-H, which established the guidelines for the application of transfer pricing for taxpayers.

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

The Costa Rican legislation establishes the principle of full competition in article 7 of Decree 37898-H, according to the Costa Rican legislation, the Interquartile range must be constructed with the identified comparables that would apply for the specific case. Once the interquartile range has been determined, the analyzed transaction must be within that margin, either by comparing its prices or margins. The interquartile range that dictates the norm and whose values would be at market prices, are those that are between the first and third quartile. Otherwise, the value should be adjusted to the median obtained for the specific case. (This applies to related companies outside and inside the country).

PRICING METHODS PRIORITY

The methods used to calculate the market values are the same as dictated by the OECD, Article 6 of Decree 37898-H establishes, for the determination of the price agreed by independent third parties in

comparable operations, may be carried out by any of the following methods:

1. Comparable Price method not controlled
2. Resale Price method
3. Cost method added
4. Method of division of benefits
5. Transactional net margin method

In addition, Article 6 of the Transfer Pricing Regulation leaves open a sale to use the valuation of goods international prices. The quotations of certain products in the different stock exchanges are used as a parameter.

TRANSFER PRICING PENALTIES

The penalties for non-compliance in the preparation of the transfer pricing study have not yet been specifically regulated; However, there are general penalties for non-compliance with tax obligations determined in the Costa Rican Tax Code, and those established in Article 82 of the Tax Code may be applied. The sanctions related to the Informative Transfer Pricing Statement can be found in Article 83 of the Tax Rules and Procedures Code, which mentions that, in case there is a breach in the supply of information, a sanction equivalent to a Monetary fine proportional to 2% (two percent) of the gross income figure of the infringing party, in the period of the income tax prior to that in which the violation occurred, with a minimum of ten base salaries and a maximum of one hundred base salaries.

REDUCTION IN PENALTIES

Not applicable.

DOCUMENTATION REQUIREMENTS

Article 1 of Decree 37898-H of the Transfer Pricing Legislation of Costa Rica defines the principle of effective independence or Arm's Length, which obligates all taxpayers who enter into transactions with related parties, for purposes of income tax, to determine their income, deductions and costs, considering amounts and prices of the considerations, which would be agreed upon by independents in comparable operations.

Article 9 of the Decree establishes

the general documentation guidelines, which should be sufficient to demonstrate to the tax authorities that transactions between related companies comply with the principle of free competition.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

Article 9 of the Transfer Pricing Decree in Costa Rica mentions in its first paragraph that the documentation prepared must be available to the Tax Administration, in order to verify compliance with the Principle of Full Competition. This information must be available for the correct completion of the Informative Declaration, which should be presented on the last day of June. Therefore, it is recommended that the Transfer Pricing Study be prepared before that date.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

The obligation to present the Transfer Pricing Informative declaration in Costa Rica is stipulated in Article 8 of Decree 37898-H, which establishes that such declaration must be presented annually by the taxpayer who is within the two situations following:

- a) To carry out national or cross-border operations with related companies, and,
- b) It is classified within the large taxpayers or large territorial companies, or persons or entities that are under the free zone regime.

STATUTE OF LIMITATIONS

In accordance with Article 109 of the Code of Tax Rules and Procedures, the Tax Administration may require that taxpayers keep the books, files or records of their negotiations, necessary for the proper inspection and determination of tax obligations and receipts, such as invoices, tickets or other documents that facilitate verification. Taxpayers or those responsible should keep duplicates of these documents, for a period of four years.



COSTA RICA continued

ADVANCE PRICING AGREEMENTS (APAS)

In accordance with Article 10 of Decree 37898-H, taxpayers may request a Price Agreement in advance from the Tax Administration in order to determine the valuation of transactions between related persons, prior to their realization.

Said request must be accompanied by a proposal from the taxpayer that is based on the value of the operations that independent parties would have agreed to in similar operations.

When a consensus is not reached between the taxpayer and the tax administration in the signing of the agreement, automatically one will be dictated, that it so indicates and in the same the archiving will be available.

The agreements of prices in advance will have a validity of three years.

BURDEN OF PROOF

The taxpayer has the burden of proof.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

The main difference with OECD is that the taxpayer is free to use a different methodology for Commodities, Decree 37898-H allows to use a special method based on international prices in the commodity markets.

CONTACTS FOR COSTA RICA

Bryan Pérez
UHY Auditores y Consultores, S.A.
bperez@uhy-sv.com
+503 2260 9000

Bryan Pérez Rosales
UHY Pérez & Co
bperez@uhy-perez.com
+502 2503 5900

Bryan Pérez Rosales
UHY Pérez & Co
bperez@uhy-perez.com
+502 2503 5900

CROATIA**TAX AUTHORITY**

Ministarstvo financija Porezna uprava
(English: Tax Administration,
Ministry of Finance).
Website: www.porezna-uprava.hr

TAX LAW

Profit Tax Act (Official Gazettes:
„Narodne novine“, No. 177/04, 90/05,
57/06, 146/08, 80/10, 22/12, 148/13,
143/14, 50/16, 115/16, 106/18, 121/19,
32/20, 138/20, 114/22), Articles 13,14,15

REGULATIONS & RULINGS

Profit Tax Ordinance (Official
Gazettes: „Narodne novine“, No.
95/05, 133/07, 156/08, 146/09, 123/10,
137/11, 61/12, 146/12, 160/13, 12/14,
157/14, 137/15, 1/17, 2/18, 1/19, 1/20,
59/20, 1/21, 156/22), Article 40

**INTERPRETATION OF ARM'S
LENGTH PRINCIPLE (ALP)**

Related party legislation
(see tax law above)

PRICING METHODS PRIORITY

- Comparable uncontrolled price (CUP)
- Resale price (RPM)
- Adding gross profit to the costs
- Profit split (PSM)
- Net profit

TRANSFER PRICING PENALTIES

From EUR 260 to EUR 26.540 for a
legal entity; from EUR 260 to EUR
2.650 for the person responsible

REDUCTION IN PENALTIES

No provisions

DOCUMENTATION REQUIREMENTS

Master file, country specific file
(local file), study on transfer pricing

**DEADLINE TO PREPARE AND
SUBMIT DOCUMENTATION**

The deadline is April 30 for the
previous year (together with the
profit tax return). Permanent
documentation is necessary.

**RETURN DISCLOSURE /
RELATED-PARTY DISCLOSURE**

No provisions

STATUTE OF LIMITATIONS

No provisions

**ADVANCE PRICING
AGREEMENTS (APAS)**

Not applicable

BURDEN OF PROOF

The taxpayer

**PRINCIPAL DIFFERENCES WITH
OECD GUIDELINES**

Although not yet proscribed, it is
recommended that all OECD
Guidelines are followed.

CONTACTS FOR CROATIA

Helena Budisa
UHY HB EKONOM d.o.o.
helena.budisa@uhy.hr
+385 21 381 120

Vedrana Miletic
UHY RUDAN d.o.o.
vedrana.miletic@uhy.rudan.hr
+385 1 3906 374

CYPRUS



TAX AUTHORITY

Tax Department under the Ministry of Finance
Website: <http://mof.gov.cy/en/departments/tax-department>

TAX LAW

Cyprus Income Tax Law (L.118(I)/2002, as amended,) ("ITL") Specifically, the legislation of arm's length principle as stated in Article 33 and the Advance Pricing Agreement ("APA") of controlled transactions as stated in Article 33C, are applied and interpreted in accordance with the OECD Transfer Pricing Guidelines, as amended from time to time.

REGULATIONS & RULINGS

Regulatory Administrative Acts 314/2022 & 273/2022 in relation to the Controlled transaction prices file and advance pricing agreement, passed by the House of Representatives and were published in the Republic's official newspaper "Gazette" on 29 July 2022 and 8 July 2022, respectively and are effective as from 1 January 2022.

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

Controlled transactions are transactions between related parties as defined in paragraph 3 of Article 33 In summary, two companies are considered as related if the same person (and its related persons) or group(s) of persons (under certain conditions) directly or indirectly:

- hold 25% of the voting rights or share capital of both companies, or
- have the right to at least 25% of both companies' income.

A company is also considered related to a person (and its related persons) that directly or indirectly:

- hold 25% of its voting rights or share capital, or
- have the right to at least 25% of its income.

Two or more persons are considered related if they act together (or take directions) to directly or indirectly:

- hold 25% of the voting rights or share capital, or
- have the right to at least 25% of the profit of a company.

PRICING METHODS PRIORITY

The pricing method used for the controlled transactions is the arm's length principle, as defined by paragraph 1 of article 33 of the ITL, in compliance with article 9 of the OECD Model Tax Convention on Income and Capital. To ascertain the application of the above principle, the OECD Transfer Pricing Guidelines for Tax Administrations and Multinational Enterprises, as amended from time to time must be taken into consideration.

As per Chapter II of the latest OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax administrations issued in January 2022, the traditional transaction methods are the comparable uncontrolled price method or CUP method, the resale price method, and the cost-plus method The transactional profit methods are the transactional net margin method and the transactional profit split method.

TRANSFER PRICING PENALTIES

The TP Documentation must be submitted to the CTD upon request and within 60 days from such request. The Summary Information Table shall be submitted to the CTD at the time of submission of the Company Income Tax Return of the relevant year.

Penalties vary depending on the days of delay in responding to the CTD following the receipt of their notification. The penalties are EUR 5,000, EUR 10,000 or EUR 20,000 if delayed 60-90 days, 90-120 days and more than 120 days respectively, following the notification, EUR 20,000 in case of non-submission of the Master File and/or Local File and EUR 500 in case of non-submission of the Summary Information Table.

REDUCTION IN PENALTIES

The taxpayer has the right to submit an objection to the CTD.

DOCUMENTATION REQUIREMENTS

Applicable as from 1.1.2022, the Transfer Pricing documentation ("TP Documentation file") consist of the Master File and the Local File, the contents of which follow the definition and suggested contents

of the OECD TP Guidelines and BEPS Actions 13 Report.

All taxpayers that engage in Controlled Transactions must also prepare on an annual basis a Summary Information Table including all the required information.

Cyprus tax resident persons and permanent establishments in Cyprus of non-Cyprus tax resident persons that engage in domestic and/or cross-border transactions are required to prepare annually a TP Documentation File, subject to the following exemptions:

- Only Cyprus tax resident entities that are the ultimate parent or surrogate parent entity of an MNE group falling under the scope of Country-by-Country reporting have an obligation to prepare and maintain a Master File. All other persons are exempt from this obligation.

- Persons that engage in Controlled Transactions with arm's length value less than EUR 750,000 p.a. in aggregate per transaction category (e.g. sale/purchase of goods, provision/receipt of services, financing transactions, receipt/payment of IP licencing/royalties, others) are exempt from the obligation to prepare a Cyprus Local File.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

The TP Documentation File must be prepared annually by the deadline of filing the Company Income Tax Return to the CTD for the relevant year (e.g. currently 15 months after calendar year-end) and should be retained and submitted to the CTD upon request and within 60 days from such request. The Local File should be subject to Quality Review (sign-off) by a person who holds a Practising Certificate from the Institute of Certified Public Accountants of Cyprus or another body of certified auditors in Cyprus, as approved by the Council of Ministers.

It is the responsibility of the taxpayer to complete



CYPRUS continued

the Summary Information Table. The Summary Information Table shall be submitted electronically together with the Company Income Tax Return of the relevant year, by the Statutory Auditor or Tax Consultant.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

According to the ITL – Article 33 paragraph 1c defines the related parties, as follows:

- two companies are considered as related if the same person/ and its related persons/ or group(s) of persons directly or indirectly hold 25% of the voting rights or of the share capital of both companies, or have the right to at least 25% of both companies' income.
- A company is considered related to a person (and its related persons) that directly or indirectly holds 25% of its voting rights or share capital, or has the right to at least 25% of its income.
- Two or more persons are considered related if they act together (or take directions) to directly or indirectly hold 25% of the voting rights or share capital, or have the right to at least 25% of the profit of a company.

STATUTE OF LIMITATIONS

The CTD is allowed to reassess the period of previous six years. In the case of fraud, the authorities may review the previous 12 years.

ADVANCE PRICING AGREEMENTS (APAS)

According to the ITL, Cyprus tax resident persons and permanent establishments in Cyprus of non-Cyprus tax resident persons may submit to the CTD an APA to agree the pricing methodologies in advance. APAs may relate to unilateral, bilateral or multilateral arrangements and will be valid for a period of up to four years and cannot apply retrospectively.

BURDEN OF PROOF

The Local file should be subject to Quality Review (sign-off) by a person who holds a Practising Certificate from the Institute of Certified Public Accountants of Cyprus or

another body of certified auditors in Cyprus, as approved by the Council of Ministers and no local sign-off requirement exists for the Master File, however the burden of proof falls on the Cyprus taxpayer.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

OECD principles are followed.

CONTACTS FOR CYPRUS

Antonis Kassapis
UHY Antonis Kassapis Limited
antonis.kassapis@cosmoserve.com
+357 2237 9210

Zehra Guran
UHY Antonis Kassapis Limited
uhy@uhy.com.cy
+357 22379210

Charoula Mesaritis
UHY Antonis Kassapis Limited
c.mesaritis@uhy.com.cy
+357 22379210

CZECH REPUBLIC



TAX AUTHORITY

Finanční správa (Tax administration).
Website: www.financnisprava.cz

TAX LAW

Income Tax Act No. 586/1992 Coll., Articles 23/7, 22/1/g/3, 23/11, 25/1/w, 35a/2/d, 37 and 38nc. Tax Administration Code No. 280/2009 Coll., Articles 132 and 133. Act on International Cooperation in Tax Administration No. 164/2013 Coll.

REGULATIONS & RULINGS

Administrative Rulings of Ministry of Finance or General Financial Directorate No. D-334 (defines scope of documentation for transfer pricing), GFR-D-32 (on the Binding Ruling of Transfer Pricing and the Method of Determining the Tax Base for Permanent Establishments), GFR-D-10 (on Low Value Adding Intra-Group Services) and GFR-D-34 (on the application of international standards in taxation of transactions between related enterprises). In 2021, the General Financial Directorate issued the Information on transfer pricing implications of the Covid-19 pandemic pursuant to recommendations of the OECD and the Information on the guidance on transfer pricing in financial transactions. In December 2022, the Financial Administration published new information regarding the impact of the energy crisis on transfer prices. The Czech regulation is consistent with OECD TP Guidelines.

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

The Czech tax authorities verify if prices agreed between related parties correspond to those that would be agreed with respect to comparable transactions between independent parties. Differences discovered must be explained to the tax authority. If this explanation is not sufficient, the tax authority may adjust the prices and assess penalties. The domestic regulation provides a definition of related parties. The TP requirements apply to both domestic as well as cross-border transactions, subject to certain exceptions (e.g. financing with no

or low interest provided by a non-resident taxpayer).

PRICING METHODS PRIORITY

There is no preferred pricing method. Generally, all OECD methods (CUP, RPM, CPM, PSM and TNMN) are equal, for each case the most appropriate method shall be used.

TRANSFER PRICING PENALTIES

TP documentation is not explicitly required by the law, thus its non-existence as such is not penalized. General provisions about penalties are applicable to transfer pricing disputes. Where prices agreed between related parties differ from an arm's length price without proper documentation and explanation, the tax authority will increase the taxpayer's tax base by the ascertained difference. Consequently, a penalty amounting to 20% of the additional tax assessment (or 1 % of the reduced tax loss) and interest for late payment (approx. 16 % p.a.) will be due. For non-compliance with the regulations regarding Country-by-country report a penalty up to CZK 1,500,000 can be imposed.

REDUCTION IN PENALTIES

Only in exceptional cases

DOCUMENTATION REQUIREMENTS

TP documentation is not obligatory, but recommended by the Tax authority. Administrative Rulings D-334 defines the scope of documentation for transfer pricing. The Czech Tax administration refers to the methodology set by the OECD. The OECD Guidelines and EU Transfer Pricing Documentation are generally accepted. If the local TP Documentation refers to a Group Masterfile these Group documents can be required by the local tax authority

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

A general deadline to prepare and file the TP documentation does not exist. Usually, a period of 15 days is given to provide the documentation during the course of a tax inspection. Therefore it is

strongly recommended to have a TP documentation prepared in advance.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

The Czech corporate income tax return contains a specific annex which includes information about transactions with related parties, e.g. total volume of sales and purchases, royalties, interests. According to Czech Commercial law, all companies are required to prepare and publish annually a Report on Relationships between Affiliated Companies in the Commercial Register. Moreover, the Czech Commercial Register publishes information about the executives of every company and their shareholders.

STATUTE OF LIMITATIONS

All taxable years are open for tax inspection for 3 years, in some cases even up to 10 years.

ADVANCE PRICING AGREEMENTS (APAS)

Taxpayers may apply for APAs with respect to their current or future transactions. APAs are not made retrospectively. They are subject to a fee of 10,000 CZK and are valid for a maximum of 3 years. The Administrative Ruling No. GFR-D-32 contains details about APA.

BURDEN OF PROOF

Generally, the taxpayer bears the burden of proof. First, the taxpayer has to prove if and how a transaction with a related party took place and if the transaction has economic benefit for tax payer. Then if the tax authority disagrees with the transfer prices set and documented by the taxpayer, the tax authority has to prove that prices differ from prices, which would have been agreed between unrelated parties. The taxpayer has afterwards the possibility to explain the difference claimed by the tax authority in order to avoid additional tax and penalty.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

All OECD Guidelines are accepted.



CZECH REPUBLIC continued

CONTACTS FOR CZECH REPUBLIC

Renata Prechova
AUDITOR, spol. s r.o.
renata.prechova@auditor.eu
+420 602 105 326

Jana Snajdrova
AUDITOR, spol. s r.o.
jana.snajdrova@auditor.eu
+420 224 800 411

Natália Šenková
AUDITOR, spol. s r.o.
natalia.senkova@auditor.eu
+420 542 422 604

Georg Stöger
AUDITOR, spol. s r.o.
georg.stoeger@auditor.eu
+420 224 800 411

ECUADOR



TAX AUTHORITY

Servicio de Rentas Internas (SRI).
English: Internal Revenue Service.
Website: www.sri.gob.ec

TAX LAW

The Ecuadorian legal provisions in force regarding transfer pricing established by the articles listed below:

To articles 4, 15 and 22 of the Organic Law of Internal Tax Regime (hereinafter "LORTI"), in Resolutions NAC-DGERCGC15-0000455 and NAC-DGER 2008-0182, issued by the Revenue Service concerning the subject of transfer pricing, in the Technical File for the Standardization of Transfer Pricing Analysis with effective date July 10, 2015 (hereinafter "Technical File") and as technical reference the "Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations" approved by the Council of the Organization for Economic Cooperation and Development in 1995 (hereinafter "the OECD Guidelines"), regarding the transfer pricing treatment with related parties.

REGULATIONS & RULINGS

If your country's tax authority has adopted regulations, or your legal system has established rulings related to the interpretation and application of the law, mention them here.

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

The correct application of the Arm's Length Principle (APP) in transactions between related parties requires a comparability analysis as indicated in article numbered (3) of the Organic Law of the Internal Tax Regime, as well as the application of one of the Transfer Pricing methods established in article 85 of the Regulations for the Application of the Organic Law of the Internal Tax Regime. In this way, the functional analysis previously performed on the Company made it possible to define its business profile and set the parameters for comparison of its intercompany operations with unrelated commercial transactions. It is important to note that the

economic analysis of Transfer Pricing is a quantitative analysis whose purpose is to compare prices, profitability margins or any other financial indicator of related companies against the same financial parameter of comparable unrelated companies, selected based on a comparability analysis.

PRICING METHODS PRIORITY

In Ecuador there is no direct or mandatory application of this methodology.

TRANSFER PRICING PENALTIES

The transfer pricing rules provide for a penalty in case of failure to file the Transfer Pricing Report or the Annex of

Related Party Transactions, as well as if they are declared in an inaccurate manner.

According to Articles 22 and 84 of the LORTI and the RLRTI, respectively, the mentioned infraction will be sanctioned with a fine of up to 15 thousand US dollars.

However, the IRS issued an Instruction for the Establishment of Monetary Penalties in order to establish the amount of the fine according to the seriousness of the failure or misdemeanour, which in case of late delivery or incomplete information could result in a fine of up to \$333 US dollars.

REDUCTION IN PENALTIES

The SRI does not set in writing a penalty reduction in the country, however, technical recalculations can be made with the purpose of reducing glosses or penalties, this recalculation is performed by consultants specialized in Transfer Pricing.

DOCUMENTATION REQUIREMENTS

Provide a general explanation of the kind of documentation required to substantiate a transfer pricing agreement (e.g. a transfer pricing study; contracts; board minutes; group agreements, etc.).

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

In the case of those taxpayers who have carried out transactions with related parties in excess of \$3 million

USD, they must file within a period of no more than two months after filing the annual income tax return in accordance with the deadline established by the SRI according to the ninth digit of their RUC

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

The amount of transactions must be disclosed in the income tax return, in addition to the transfer pricing report and annex

STATUTE OF LIMITATIONS

In Ecuador, tax obligations are extinguished by the IRS after 7 years of the tax obligation.

ADVANCE PRICING AGREEMENTS (APAS)

In Ecuador, these prior agreements are called prior valuation consultations, which are submitted to the IRS in order to seek the opening of these operations.

BURDEN OF PROOF

There are two burdens of proof, the first when taxpayers exceed USD 3 million with related parties, the requirement is a Schedule of Related Party Transactions and the second when taxpayers exceed USD 3 million with related parties, the requirement is a comprehensive Transfer Pricing report.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

Ecuador is not a member of the OECD, however the guidelines considered in the transfer pricing area are the same.

CONTACTS FOR ECUADOR

Kevin Arroyo
UHY Assurance & Services Cia. Ltda.
k.arroyo@uhyecuador.ec
+593 983301227

Freddy Cevallos
UHY Assurance & Services Cia. Ltda.
f.cevallos@uhyecuador.ec
+ 593 2353 0204

Karen Terán
UHY Assurance & Services Cia. Ltda.
a.comercial@uhyecuador.ec

EGYPT



TAX AUTHORITY

Egyptian Tax Authority (ETA).
Website (in Arabic only):
www.incometax.gov.eg

TAX LAW

Income Tax Law No. 91 of 2005

REGULATIONS & RULINGS

Article 30 of Income Tax Law No. 91 of 2005
Egyptian Transfer Pricing Guidelines 2018 (Ministerial Decree No. 547 of 2018, updating guidelines issued in 2010)

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

The principle is defined in line with general international consensus. An arm's length provision will have been made between two independent enterprises. In comparing actual and arm's length price, the terms and conditions of the transaction are assessed and adjusted to arm's length terms.

PRICING METHODS PRIORITY

Minister of Finance Decree No. 991 of 2005 Promulgating the Executive Regulation of the Income Tax Law No. 91 of 2005, Article (39): The neutral price is specified, as stipulated in Article (30) of this law, according to one of the following methods:

1. Comparative free price

The price of goods or services between related parties is determined on the basis of the price of the same goods or services as if it is carried out between the company and unrelated persons. The comparison depends on other similar goods or services, taking into account the following factors: (a) the legal conditions to which every party to the contract is committed; (b) the market circumstances; and (c) special circumstances of the process.

2. Total cost added to mark-up

The price of the goods or services is determined between related parties on the basis of the total cost of goods or services, adding a certain percentage as a mark-up in favour of the selling company or the service provider. The mark-up is determined on the basis of the mark-up received

by the taxpayer in transactions carried out with independent parties, or the mark-up received by another independent party in a similar transaction.

3. Resale price (RPM)

The price of the goods or services among related parties is determined on the basis of the resale price of the goods or services to an unrelated third party after deducting a percentage representing a reasonable mark-up to the mediator party. The mark-up is determined on the basis of the mark-up received by the same seller through transactions with independent parties.

Furthermore, the mark-up may be determined on the basis of the mark-up received by an independent person in a similar transaction.

Article (40): In determining which approach to use, comparative price must be used first. If data is unavailable to support this determination, either of the other methods may be used. In the case of inability to apply any of the methods mentioned, the market price may be determined by any other method prescribed by the OECD, or any other method suitable for the taxpayer.

For transactions post-2018, the updated Egyptian Transfer Pricing Guidelines (Ministerial Decree No. 547 of 2018) apply. The Guidelines align with OECD transfer pricing practice, placing all methods on an equal footing and abolishing the hierarchy of methods.

TRANSFER PRICING PENALTIES

Where the taxpayer has been negligent in filing a transfer pricing position as part of a tax return, the tax authorities may impose penalties whereby further tax becomes due as a result of adjustments. Penalties may amount to up to 80% of the additional tax which falls due, and/or imprisonment for a period of between six months and five years.

Penalties may also be imposed for failing to document and retain evidence justifying the transfer pricing adopted.

According to a newly enforced procedural tax law; all tax registrants mandated to prepare and file a TP local study will suffer a penalty of 1% of the total related party transaction in case of failure to file the TP study.

REDUCTION IN PENALTIES

No reductions

DOCUMENTATION REQUIREMENTS

A transfer study including: a review of the group activities; analysis of risks and assets; and transactions with connected parties. It should discuss the basis for the pricing method adopted and an analysis of the data reviewed for benchmarking purposes. Any corporate entity subject to Egyptian income tax on its profit is required to prepare and maintain documentation which outlines its transfer pricing policy. It must retain documentation and supporting benchmarking materials used to establish pricing. Documentation should include written agreements and board minutes which approve the conclusions of the transfer pricing study. All the above information should be agreed with the Egyptian tax code no. 91 of 2005 Article 30.

For the year ending 31 December 2018 onwards, a three-tiered level of transfer pricing reports has been introduced. This includes:

- Master File, for the ultimate parent company of the group
- Local File, for each subsidiary in the group
- Country-by-Country Report (CbCR).

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

Taxpayers are required to submit their transfer pricing documentation annually.

Master File: Will depend on the submission deadline of the country of the ultimate parent company. However, this must be available to the ETA when needed if the ultimate parent is in Egypt.

Local file: Two months following the submission of the tax return deadline.



EGYPT continued

CbCR: Within one year of the financial year end to which the report relates.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

The taxpayer is required to confirm that transactions are being carried out on an arm's length basis. The taxpayer is mandated to disclose transfer pricing adjustments that are not in its accounts.

STATUTE OF LIMITATIONS

The ETA confines its enquiries to the period covered by the tax return. However, where transfer pricing compliance requirements have not been met, or in the case of fraud or negligence, the authorities can reassess any number of previous years, randomly or sequentially.

ADVANCE PRICING AGREEMENTS (APAS)

In all cases, there may be a prior agreement between the tax authority and the taxpayer with respect to the method to be followed by the taxpayer to determine the neutral price when undertaking a transaction between related parties.

BURDEN OF PROOF

The taxpayer

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

The Egyptian Income Tax Law generally conforms with OECD Guidelines.

In the case of an inability to apply any of the methods mentioned, the market price may be determined by any other method described by the OECD, or any other method suitable for the taxpayer.

CONTACTS FOR EGYPT

Ahmed Hegazy
UHY United For Auditing, Tax,
Advisory & Financial Services
ahmed.hegazy@uhy-united.com
+20 2 251 75598

Waled Mounir
UHY Waled Mounir
and Muhammad Arafa
waled.mounir@uhy-eg-alex.com
+20 3 424 3371

EL SALVADOR



TAX AUTHORITY

Ministerio de Hacienda (English: Ministry of Finance) Website: www.mh.gob.sv

TAX LAW

Legislative Decree No. 233, dated December 17, 2009, published in the Official Diary No. 239, determines the regulatory framework in terms of transfer pricing, adding and amending the Articles 62-A, 124-A, 199-B, 199-C and 199-D, of the Tax Code, which came into force in 2010. Likewise, Legislative Decree No. 763 dated July 31, 2014.

REGULATIONS & RULINGS

Legislative Decree No. 763, dated July 31, 2014, published in the Official Diary No. 142, reforms Article 62-A, urging taxpayers to use the procedures and technical methods contained in the Tax Code and in the guidelines on transfer prices of the Organization for Economic Cooperation and Development (OECD).

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

The market price for local and international transactions between related parties or entities domiciled in tax havens or territories with nil or low tax rates. Market price is determined through comparable transactions (This applies to related companies outside and inside the country).

PRICING METHODS PRIORITY

The methods with priority are: comparable price (CP) internal and external. If this is not possible, the tax code has considered, in accordance with the provisions of Decree 763-2014, to include the OECD guidelines, which is why the methods described in its guidelines are also applicable:

1. Comparable uncontrolled price (CUP)
2. Resale price (RPM)
3. Cost plus (CP)
4. Utility partition
5. Net margin of transaction method

TRANSFER PRICING PENALTIES

Failure to submit the F-982, is sanctioned with a fine equivalent to

0.5% of the assets of the infringing company, as established in Article 241 of the Tax Code. Also, for not having the Transfer Pricing Study, an Adjustment to the equivalent to the operations not analyzed.

REDUCTION IN PENALTIES

Art. 261, number 1 of Tax Code allows for a penalty reduction of up to 75% if transgressions are voluntarily corrected before the tax authority issues judgment; otherwise, a reduction of up to only 30% is possible.

DOCUMENTATION REQUIREMENTS

According to Article 62-A, taxpayers must determine that the prices agreed in transactions with related parties and third parties domiciled, incorporated or located in countries, states or territories with preferential tax regimes, low or no taxation or tax havens, comply with the arm's length principle; documenting said determination with reasonable information and available in a Transfer Pricing Study.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

In accordance with Article 124-A of the Tax Code the filing of Form 982 "Transactions with Related Subjects" must be made no later than within the first three months after the end of the fiscal year. The presentation of the probatory documentation in terms of transfer prices is subject to the Tax Administration's request.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

Submit to the Tax Administration no later than within the first three months following the end of the fiscal year, the Form 982 "Report of Transactions with Related Subjects", which is equivalent to a Sworn Transfer Pricing Statement. Art. 124-A of Tax Code requires that transactions greater than USD\$ 571,429 must be reported within the first quarter that follows the end of the fiscal year.

STATUTE OF LIMITATIONS

In accordance with the Tax Code, the substantive tax obligation expires in

three years, which can be extended.

ADVANCE PRICING AGREEMENTS (APAS)

Not applicable.

BURDEN OF PROOF

If suitable documentation exists, the burden of proof falls on the tax authorities.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

The OECD guidelines do not prioritize a method to analyze transactions with related parties and the Tax Code of El Salvador has as a priority the uncontrolled comparable price method.

CONTACTS FOR EL SALVADOR

Bryan Pérez
UHY Auditores y Consultores, S.A.
bperez@uhy-sv.com
+503 2260 9000

Bryan Pérez Rosales
UHY Pérez & Co
bperez@uhy-perez.com
+502 2503 5900

FRANCE

**TAX AUTHORITY**

Ministry of Finance, Tax Administration. Website: https://www.impots.gouv.fr/sites/default/files/media/3_Documentation/guides_notices/guide_prix_transfert_pme.pdf

TAX LAW

- Article 57 of the French Tax Code (Code Général des Impôts) and /or article 238 A of the FTC
- Article 223 quinquies B of the FTC
- Articles L 13AA, L 13 AB and L13B of the French Livre des Procédures Fiscales; Abnormal act of management theory also applicable.
- Article 223 quinquies C of the FTC

REGULATIONS & RULINGS

Official Public Finance Bulletins (Le Bulletin Officiel des Finances Publiques):
 RES-20-20120912, 19 September 2012
 BOI-INT-DG-20-40-20120912, 12 September 2012
 BOI-BIC-BASE-80-20140218, 18 February 2014
 BOI-BIC-BASE-80-20-20150902, 2 September 2015
 BOI-INT-DG-20-30-10-20170201, 1 February 2017

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

International group companies must set the price of their internal transactions as unrelated parties would do for identical transactions. This principle also applies to domestic group companies.

PRICING METHODS PRIORITY

Article 57 provides that, in the absence of specific elements to assess tax, the tax basis may be determined by comparison with the one of similar businesses 'operating normally'.

In practice, traditional OECD methods are applied, such as Comparable Uncontrolled Price (CUP), Resale Minus (PRL) and Cost Plus (CP), Transactional Net Margin Method (TNMM) and Profit Split (PSM).

Tax inspectors usually prefer the TNMM, based on French comparables for the French tested party.

TRANSFER PRICING PENALTIES

The following penalties may be incurred:

- penalty equal to 10% of the tax due if the concerned tax return has not been filed in due time or has not been filed at all
- penalty equal to 10% of the underpaid amount
- interest for late payment (at a rate of 0,20% per month)
- penalty equal to 40% of the tax due if the breach of law was deliberately done
- penalty equal to 80% of the tax due if the breach of law was done with fraud manoeuvres.

Failure to provide transfer pricing documentation upon request of the tax authorities in case of audit will result in a civil penalty equal to 5% of the gross reassessed amount, or equal to 0.5% of the amount of the transactions for which the documents requested by the French tax administration have not been provided - whichever is greater. The minimum penalty is EUR 10,000 per legal entity, per period under audit.

Failure to submit a Transfer Pricing Declaration (form #2257-D) incurs a penalty of EUR 150. There is also a fixed penalty of EUR 15 per error or omission, the total of which cannot be lower than EUR 60 or higher than EUR 10,000.

Where Country-by-Country reporting is required but not submitted on time, the taxpayer is liable to a fine of up to a maximum of EUR 100,000.

REDUCTION IN PENALTIES

Not applicable

DOCUMENTATION REQUIREMENTS

French companies must document all transactions recorded in their books, including intercompany transactions, if any. The documentation (notably intercompany agreements) needs to be provided upon request in the case of a tax audit.

If transactions are not sufficiently well documented, the French tax administration may reassess the company's tax result.

Specific documentation for large companies

Any French legal entity that has a turnover or balance sheet in excess of EUR 400 million or owns (or is owned by), directly or indirectly, more than 50% of a corporate entity's capital or of a corporate entity's voting shares, established inside or outside of France, that meets this EUR 400 million threshold, needs to prepare transfer pricing documentation in compliance with Article L13 AA of the Livre des Procédures Fiscales to justify its operations with related parties.

Since 2018 The French Finance Bill aligns French transfer pricing documentation with OECD Guidelines and requires that French entities provide a Master File and a Local File.

The decree issued on 29 June 2018 provides comprehensive guidance on the transfer pricing documentation requirements, applicable for fiscal years that begin on or after 1 January 2018.

The Master File must have five sections: organisational structure, overview of the group's activities, intangible assets, financial intragroup activities, and the group's tax situation.

The Local File must have three sections: entity in France, related-party transactions, and financial information. There is a materiality threshold of EUR 100,000 per type of transaction. The entity's financial information must be sourced from the French statutory accounts and the corresponding account numbers must be provided.

Both files must be made available in electronic format, and all financial data must be available in a format that allows the French tax authorities to verify the calculations (e.g. in Excel). The decree specifies section headings and order; these are consistent with the OECD's Action 13 recommendations.



FRANCE continued

Country-by-Country reporting (form #2258-SD)

The scope of the Country-by-Country reporting (CbCR) applies to the following companies in France:

- Companies established in France and meeting cumulatively the following criteria:
 - Producing consolidated accounts
 - Having an annual worldwide consolidated turnover equal or superior to EUR 750 million
 - Owning or controlling, directly or indirectly, permanent establishments outside France
 - Not being held by another company that issues CbCR in France or a similar declaration in another country.
- Entities established in France and owned or controlled, directly or indirectly, by another foreign company that meets the four above criteria, established in a state that has not implemented a similar CbCR requirement, and:
 - The French entity has been appointed by the group to submit the report, or
 - The French entity cannot demonstrate that another company of the group is appointed to submit the report in France or in a state that has implemented a similar CbCR requirement.

Regularly the French authorities will publish a list of states that have implemented a similar CbCR requirement. From 2018 onwards the French authorities will automatically transmit CbCR to those states, and reciprocally, unless the other state fails in its transmission obligations.

CbCR should provide the repartition of the group's income per country, and the location and activities of the group's entities, as well as economic, accounting and fiscal indicators.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

Transfer pricing documentation must be made available to the French tax administration at the start of the tax audit. If the required documentation is not made available by this date, or is only partly made available, the tax administration will demand

that it be produced, or completed, within a period of 30 days – which can be extended to 60 days upon the taxpayer's request. The decision to allow such an extension is at the discretion of the tax inspector.

The annual Transfer Pricing Declaration (form #2257-D) must be e-filed no later than six months after the due date for the filing of the corporate tax return.

Country-by-Country reporting should be e-filed within 12 months of the fiscal year end.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

Transfer Pricing Declaration (form #2257-SD)

Since 2014, as per article 223B of the French Tax Code, permanent establishments (French commercial companies, subsidiaries, branches, etc.) of international groups are subject to an annual transfer pricing declaration requirement. The entities subject to it are permanent establishments:

- A. For which the annual turnover (VAT excluded) or the total of the gross assets disclosed in the balance sheet is equal or higher than EUR 50 million, or
- B. Which own directly or indirectly and at the end of the fiscal year, more than half of the capital or more than half of the voting rights of a legal entity which satisfies a condition mentioned in the point A, or
- C. For which half of their capital or half of their voting rights are owned directly or indirectly, at the end of the fiscal year, by a legal entity which satisfies a condition mentioned in the point A, or
- D. Which belong to a group which is subject to Article 223A if there is at least one legal person which satisfies a condition mentioned in the point A, B or C.

STATUTE OF LIMITATIONS

The French tax administration may audit the three preceding fiscal years, but if tax losses were carried forward to one of these three years, the tax audit may concern all the previous years in which the loss was carried forward.

ADVANCE PRICING AGREEMENTS (APAS)

Regulation BOI-SJ-RES-20-10 dated 18 February 2014 provides for possible bilateral APAs involving the tax authorities of two countries. These agreements are not retroactive, but are renewable, and have a duration of between three and five years.

Article 20 of the law of 30 December 2004 and Regulation BOI-SJ-RES-20-20 dated 18 February 2014 provides for possible unilateral APAs involving only the French tax authorities, under the same terms.

Regulation BOI-SJ-RES-20-30 provides for a Transfer Pricing Guide helping SMEs to respect proceedings.

When an APA is granted, in theory, the French tax authorities do not challenge it unless facts have been shown to be misrepresented or have changed during the course of the years, or information was not disclosed.

BURDEN OF PROOF

The burden of proof lies on the French tax administration, except notably when the company cannot provide a compliant Fichier des Ecritures Comptables (mandatory transactions ledger in a specific format) or when the parent company has not declared a hidden permanent establishment in France.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

The French tax authorities consider the French transfer pricing regulations to be consistent with the OECD Guidelines, although they are not prescriptive under French domestic law or regulation.

CONTACTS FOR FRANCE

Virginie Desbazeille
UHY GVA
virginie.desbazeille@uhygva.fr
+33 1 45 00 76 00

GEORGIA



TAX AUTHORITY

Shemosavlebis Samsakhuri
(English: Revenue Service).
Website: www.rs.ge

The Revenue Service is under the jurisdiction of the Ministry of Finance.

TAX LAW

Tax Code of Georgia
Decree No. 423 of the Minister of Finance of Georgia dated December 18, 2013 "On Approving the Instruction on Evaluation of Transfer Pricing Operations".

REGULATIONS & RULINGS

Certain transfer pricing concepts have been included in the Georgian tax legislation since 2011 (Tax Code of Georgia).

Although specific provisions related to transfer pricing were added to the Tax Code of Georgia on November 8, 2011, it actually came into force on December 18, 2013, when the decree of the Minister of Finance of Georgia was approved.

Specific transfer pricing regulations became effective from 18 December 2013.

Chapter XVII. Articles: 126, 127, 128, 129, 129¹ (approved since 2011).

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

The Georgian taxation authority can adjust the tax base if there is evidence that the arm's length price was not used in a transaction between related parties.

Parties are recognised as related if special relations between them may affect the conditions or economic results of their activities. Such special relations include, in particular, relations where:

- one person directly or indirectly participates in the management, control or capital of the other person
- the same persons directly or indirectly participate in the management, control or capital of two persons.

A person directly or indirectly

participates in the management, control or capital of an enterprise if:

- a) he/she directly or indirectly owns over 50% of an enterprise;
- b) he/she actually controls the business decisions of an enterprise.

A taxpayer to whom these provisions are applicable shall be obligated, in case of the demand from a tax authority, to submit economic justification of the prices used in a transaction and the documents that prove the conformity of the prices stated in a transaction with the market principle. The rule, timeframes, and procedures for the submission of documents shall be prescribed under decree of the Minister of Finance of Georgia.

When the tax authority of another country has made an adjustment in a transaction concluded between an enterprise that is taxed in Georgia and its related enterprise, as a result of which in this country the share of profit was taxed that had already been taxed in Georgia, and where Georgia has concluded an agreement with that country about avoidance of double taxation, then Georgia's taxation authority on the basis of the demand from a Georgian taxpayer enterprise shall check whether or not the entered adjustment corresponds to the market principle. If a tax authority concludes that the above-mentioned adjustment corresponds to the market principle, it shall enter a relevant adjustment and perform the correction of the tax amount of a taxpayer enterprise of Georgia

PRICING METHODS PRIORITY

The following are the generally accepted transfer pricing methods:

- Comparable uncontrolled price method
- Resale price method
- Cost plus method
- Net profit margin method
- Profit split method.

The arm's length price of a controlled transaction shall be determined by the method that best suits each particular transfer pricing instance.

TRANSFER PRICING PENALTIES

There are no specific penalty regulations for the violation of transfer pricing rules.

However, if transfer pricing adjustments are made by tax authorities as part of a tax audit and the taxpayer's tax liability increases, additional fines and penalties will be charged.

Specific measures include:

- Profit tax - 15%
- Fine - 25% or 50% of the understated sum of payable taxes (depending on the understatement of a tax in a Tax Return/tax calculation)
- Penalty - 0.05% of the outstanding tax liability for each overdue day of payment.

REDUCTION IN PENALTIES

Not applicable

DOCUMENTATION REQUIREMENTS

Although the taxpayer is required to provide transfer pricing documentation on request of the Revenue Service, no specific format is stipulated. The documentation may comprise a simple transfer pricing report, or an explanation from the taxpayer.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

Documentation must be provided to the Revenue Service within 30 calendar days of receipt of the request in writing.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

This information is considered confidential and disclosure is the decision of the taxpayer.

STATUTE OF LIMITATIONS

The statute of limitations is three years and will be calculated from the following year. The inspection time is three years.

ADVANCE PRICING AGREEMENTS (APAS)

Any taxpayer may apply for an advance pricing arrangement.

An advance pricing arrangement is made



GEORGIA continued

before the commencement of a transaction, for a fixed period of time. An advance pricing arrangement shall apply only to the person in relation to whom it has been concluded. If a person acts under an advance pricing arrangement, a controlling authority shall in no event make a decision or charge taxes and/or penalties that contradict the advance pricing arrangement.

BURDEN OF PROOF

The burden of proof for a financial indicator adjustment shall be on the Revenue Service or the taxpayer, whichever party asserts that the facts and circumstances indicate that the financial indicator is equal to a point different from the median of the market range.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

The Georgian transfer pricing law follows recognised OECD principles and there are no provisions in the law to suggest that non-OECD positions will be taken. Consequently, it is reasonable to expect that an analysis based on OECD Guidelines will be acceptable in Georgia

CONTACTS FOR GEORGIA

Guka Ubiria
UHY LLC
gubiria@uhy-ge.com
+995 577225578

Irma Shamugia
UHY LLC
ishamugia@uhy-ge.com
+995 555252332

GERMANY

**TAX AUTHORITY**

Bundesministerium der Finanzen - BMF (English: Federal Ministry of Finance). Website: www.bundesfinanzministerium.de
 Bundeszentralamt für Steuern - BZSt. (English: Federal Tax Office). Website: www.bzst.de

TAX LAW

Section 1 Foreign Tax Act (Außensteuergesetz)
 Section 4j Income Tax Act (Einkommensteuergesetz)
 Section 8 para. 3 Corporate Income Tax Act (Körperschaftsteuergesetz)
 Sections 90 para.3, 138a, 146 para. 2b, 162 para. 3 and 162 para. 4 General Fiscal Code (Abgabenordnung)
 Article 4 EU Arbitration Convention (90/436/EEC)

REGULATIONS & RULINGS

AEASStG and other regulations from German Federal Ministry of Finance: 02-23-1983 (VWG 1983); 08-24-1984 (Kontroll-und Koordinierungsstellen); 12-24-1999 (VWG Betriebsstätten); 11-09-2001 (VWG Arbeitnehmerentsendung); 10-28-2003, 02-26-2004, 09-29-2004 (VWG Dotationskapital); 04-12-2005 (VWG Verfahren); 10-05-2006 (APAs); 08-14-2007, 08-12-2008, 04-16-2010, 10-13-2010 (VWG Funktionsverlagerung); 09-26-2014 (Personengesellschaften); 10-13-2014 (BsGaV); 12-22-2016 (VWG BsGa); 07-11-2017 (Country-by-Country Report); 07-19-2017 (GAufzV); 07-05-2018 (VWG Umlageverträge) with reference to Chapter VIII OECD Transfer Pricing Guidelines 2017 (Cost Contribution Arrangements).

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

Related party legislation (see Tax Law above) and decisions of the Tax Courts, especially of the Federal Tax Court.

Also the 2010 Authorised OECD Approach to Permanent Establishments has been transferred into Section 1 Para. 5 of the Foreign Tax Act.

PRICING METHODS PRIORITY

In principle there are no priorities,

but the following order is practice:

- Resale price (RPM)
 - Comparable uncontrolled price (CUP)
 - Cost plus (CP)
- Profit split (PSM) is not yet applicable.

TRANSFER PRICING PENALTIES

Tax inspection can result in alteration to the prices on basis of market values or estimate. There are high penalties for non-performance of documentation.

REDUCTION IN PENALTIES

Only in cases of successful remedy.

DOCUMENTATION REQUIREMENTS

Section 90 Para. 2 + 3, Section 138a, Section 162 Para. 3 + 4 AO (General Fiscal Code): strict duties of documentation, BMF-Regulations 10-28-2003, 02-26-2004, 04-12-2005, 10-13-2010. Required types of documents: all price- or cost-sharing arrangements and related back-up documentation and in some cases Country-by-Country reporting, all in German language. The application of external databases is accepted if compared with other publicly available information and a functional analysis of the compared companies. In the case of a cross-border transfer of functions: documentation of the group structure and the functions of the group member companies.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

60 days after request. In extraordinary cases, documentation must be submitted within 30 days.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

Associated companies or persons must be disclosed.

STATUTE OF LIMITATIONS

Four years deadline from last filing; 10 years in case of fraudulent intent.

ADVANCE PRICING AGREEMENTS (APAS)

APAs can be concluded with the BMF and the consent of the tax authority of the affected Bundesland (state).

BURDEN OF PROOF

German tax authorities have to prove the wrongness of price agreements; however, strict duties of cooperation apply.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

OECD Guidelines are followed, with the exception of the profit split (PSM) and transactional net margin (TNMM) methods.

CONTACTS FOR GERMANY

Henning Kuhlmann
 Clostermann & Jasper
 Partnerschaft mbB
HK@clostermann-jasper.de
 +49 40 5302965521

Dr. Edmund Weigert
 Dr. Langenmayr GmbH
 Wirtschaftsprüfungsgesellschaft
eweigert@dr-langenmayr.de
 +49 89 55 17 07 0

Michael Huke
 UHY Lauer & Dr. Peters KG
huke@uhy-berlin.de
 +49 30 22 65 93 0

Stephanie Mannsky
 UHY Wahlen & Mannsky PartGmbH
stephanie.mannsky@uhy-ffm.com
 +49 69 660 593 79 13

Thomas Wahlen
 UHY Wahlen & Mannsky PartGmbH
thomas.wahlen@uhy-wahlen.de
 +49 2236 33005 87

GHANA



TAX AUTHORITY

Ghana Revenue Authority.
Website: <https://gra.gov.gh>

TAX LAW

Transfer Pricing Regulations,
2020, LI 2412

REGULATIONS & RULINGS

Per article 11(7) of the 1992 Constitution of the Republic of Ghana, the Legislative Instrument LI 2412 was laid in Parliament on 21 parliamentary sitting days in August 2020 and entered into force in November 2020.

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

A transaction is conducted at arm's length between persons in a controlled relationship, if the term of the transaction does not differ from the terms of a comparable transaction between independent persons.

PRICING METHODS PRIORITY

The following Internationally accepted transfer pricing methodologies have been proposed by the Ghana Revenue Authority:

- Comparable uncontrolled price method
- Resale price method
- Cost plus method
- Transactional net margin method
- Transactional profit split method

TRANSFER PRICING PENALTIES

Penalties and Interest charges have been introduced per Article (16) of LI 2412. Failure to comply with the requirements carries the same penalties as under ACT 915, which is 500 currency points plus a ten point penalty for each day the failure persists (a currency point is GHS 500).

There are penalties specified for the Master and Local files in the new legislation:

- 1) For non-filing: an initial payment of GHS 500, with an extra payment of GHS 10 for each day the failure persists. When one is found guilty, a fine of not less than 100 penalty units (GHS 12,000) and not more than 200 penalty units (GHS 24,000) is imposed. One can be sentenced

to imprisonment of not less than 2 years and not more than 5 years.

2) For an incomplete or incorrect filing: if the statement was made without reasonable justification, the penalty is 100% of the tax deficit; otherwise, the penalty is 30%.

3) For not having files available: failure to keep documents up to date might result in penalties. The tax payer is obliged to pay for each month or part-month during which the failure persists, as follows:

- i) in some instances, 75% of the tax attributable to the period of the failure
- (ii) in other instances, the lesser of 75% attributable tax or 250 currency points.

REDUCTION IN PENALTIES

Not applicable

DOCUMENTATION REQUIREMENTS

Companies must include the following documentation.

Master File:

- a) the group's organisational structure comprising a chart depicting the group's legal and ownership structure, as well as the geographic location of functioning businesses
- b) a description of the group's operation
- c) the group's intangible assets
- d) the group's financial activities
- e) the group's financial and tax situation.

Local File:

- a) the organisational structure of the company in Ghana
- b) the controlled activities of the company in Ghana
- c) the financial activities of the company in Ghana

Country-By-Country Reporting

- a) for each country in which the multinational enterprise (MNE) operates: aggregate information on revenue, income tax paid, profit or loss before income tax, stated capital, income tax incurred, number of employees, accumulated earnings, and tangible assets other than cash or cash equivalent
- b) a description of each MNE group entry, including the jurisdiction

of tax residence and, if different, the jurisdiction under the laws of which the constituent's entity is organised, as well as the nature of the constituent's entry minimum business activity or activities

Also required:

- Industry analysis
- Company analysis
- Functional analysis
- Choice of TP method
- Economic analysis
- Intercompany legal agreement
- Production process for TP-relevant returns, documents, forms and financials.

Mandatory language

Tax returns must be provided in the format prescribed by the Commissioner-General and documentation must be prepared in the English language.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

Deadline for submission of transfer pricing documentation to the Ghana Revenue Authority is six months after the year end or, together with filing of Financial statements on 30th April after year end.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

Taxpayers are required to file transfer pricing returns within four (4) months after the end of the financial year. The transfer pricing return is now a standalone return for which penalties for non-filing or late filing apply.

STATUTE OF LIMITATIONS

The Revenue Administration Act, 2016 (Act 915) requires taxpayers to maintain documents for a period of six (6) years after that document is used in filing a tax return. However, the Commissioner-General may request a taxpayer to maintain a document for a period of time contained in a notice served on a taxpayer.

ADVANCE PRICING AGREEMENTS (APAS)

Not applicable

BURDEN OF PROOF

With respect to the imposition of a penalty,



GHANA continued

the Commissioner-General has the burden of proof. In all other instances, the taxpayer has the burden of proof.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

The Ghana transfer pricing law conforms with the OECD Guidelines, but a key departure is the proposal to widen the scope of Ghana's transfer pricing provision by using connected persons instead of Associated Enterprises, so as to include, individuals, corporate and unincorporated bodies.

CONTACTS FOR GHANA

Roy Godwinson
UHY Godwinson (CHARTERED
ACCOUNTANTS)
r.godwinson@uhygodwinson-gh.
com
+233 262 916 520

Henry Djangmah
UHY Voscon Chartered Accountants
henry.djangmah@uhyvoscon-gh.
com
+233 302 683430

GREECE

**TAX AUTHORITY**

General Secretariat of Public Revenue, General Division of Tax Administration, Ministry of Finance

TAX LAW

Law 4172/2013 (articles 48-51) and Law 4174/2013 (articles 21-22 and 56)

REGULATIONS & RULINGS

Ministerial Decisions 1097/9.4.2014 and 1144/15.5.2014 Ministerial Decision 1142/2015 (for implementation purposes)

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

Article 50 (first subparagraph of paragraph 1) of Law 4172/2013 uses the "principle of an open market or free market or arm's length (Arm's Length Principle)" to determine the price of intercompany transactions. This principle is reflected in paragraph 1 of Article 9 of OECD Model Tax Convention on Income and Capital as follows:

"If the conditions of the commercial or financial relations between two (connected) firms differ from those which would be valid between independent enterprises, then any profits which would have been accrued to one of the enterprises, but have not been accrued due to those conditions, may be included in the profits of that enterprise and taxed accordingly."

PRICING METHODS PRIORITY

The traditional methods are the most direct way to determine whether transactions between associated enterprises follow the principle of the free market (Arm's Length Principle), and are consequently preferred to other methods.

If there are no available data or the data for the application of traditional methods are insufficient, and in particular if there are no fully comparable data, businesses can justifiably apply transactional methods.

TRANSFER PRICING PENALTIES

According to Law 4174/2013 (article 56), the penalties are as follows:

1. In case of late filing of the Summary Information Table, the penalty is calculated at the rate of one thousandth (1/1000) of the transactions of the taxable person for which there was an obligation for documentation. The fine shall not be less than EUR 500 and more than EUR 2,000).

2. In the case of late filing of an amending Summary Information Table, the penalty is calculated at the rate of one thousandth (1/1000) of the transactions of the taxable person for which there was an obligation for documentation (no less than EUR 500 and more than EUR 2,000), however the penalty shall be imposed only if there are changes in the amounts of the transactions, and the overall differences are above EUR two hundred thousand (200,000).

3. In the case of inaccurate filing of the Summary Information Table, the aforementioned fine shall be calculated based on the amounts related to the inaccuracy and shall be imposed only if such inaccuracy is higher than 10% of the overall transactions for which there was an obligation for documentation.

4. In case the Summary Information Table is not submitted, the fine is calculated as one thousandth (1/1000) of the of the transactions of the taxable person for which there was an obligation for documentation. The fine shall not be less than EUR 2,500 and more than EUR 10,000.

5. In case the TP Documentation File is made available to the Tax Administration from the thirty-first (31st) day from the notification of a relevant invitation until the sixtieth (60st) day, a fine equal to five thousand (5,000) euro shall be imposed; if it is made available from the sixty-first (61st) day until the ninetieth (90th) day, a fine equal to EUR ten thousand (10,000) shall be imposed, while if it is not made available at all or if it is made available after the ninetieth (90th) day, a fine equal to twenty thousand EUR (20,000) shall be imposed.

6. If relapse happens within five (5)

years, the fine amounts to twice the original fine. In the case of a second relapse within five (5) years, the fine amounts to four times the original fine.

7. In case of not filing the Country-by-Country Report, a fine shall be imposed amounting to EUR 20,000. In case of late filing or inaccurate/incomplete filing of Country-by-Country Report, a fine shall be imposed amounting to EUR 10,000.

REDUCTION IN PENALTIES

No reduction in penalties is possible.

DOCUMENTATION REQUIREMENTS

Transfer pricing study including flow of invoices, copies of signed contracts, description of contractual terms, transfer pricing policies adopted, etc.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

Documentation, comprising basic documentation and Greek documentation, must be prepared within the deadline for the filing of the yearly Company Income Tax return. The same applies for the Summary Table of Information, which is submitted electronically to the Tax Administration within the same period.

The documentation file is kept at the premises of the company during the entire period for which there is obligation for retention of books and records of the relevant tax year. The documentation must be made available to the Tax Administration whenever required within 30 days of receipt of the request.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

The disclosure is made in the Notes to the annual FS.

STATUTE OF LIMITATIONS

The same period applies as that for the retention of books and records.

ADVANCE PRICING AGREEMENTS (APAS)

According to the article 22 of Law 4174/2013 and Ministerial Decision 1284/31.12.213, the Greek tax authorities accept advance pricing agreements (APAs).



GREECE continued

The subject of preliminary approval is the appropriate set of criteria used for pricing intercompany transactions during a given period. These criteria include documentation of the principle method used, data comparison or reference and related adjustments, and critical assumptions about future conditions. Pre-approval can also relate to any other specialised matters concerning the pricing of transactions with related persons.

A relevant application is submitted to the General Secretariat in order that the request can be examined and further accepted or rejected. The decision shall be issued within a period of 120 days from the application date. The validity of the decision on prior authorisation may not exceed four (4) years and the period of validity cannot be traced back to a tax year that has elapsed at the time of application for pre-approval.

BURDEN OF PROOF

The burden of proof for transfer pricing transactions lies with the legal representative of the company, the president and managing director of the board of directors (BoD) and any other members of the BoD with executive power against local tax authorities.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

Greek law conforms to the OECD Guidelines, thus there are no key differences.

CONTACTS FOR GREECE

Ioannis Rousakis
UHY Axon Certified Auditors S.A.
irusakis@alphacon.gr
+30 210 8254649

Valia Nikiforaki
UHY Axon Certified Auditors S.A.
vnikiforaki@axonaudit.gr
+30 210 8211754

Georgia Ziotou
UHY Axon Certified Auditors S.A.
gziotou@axonaudit.gr
+30 210 821 1754

GUATEMALA



TAX AUTHORITY

Superintendencia de Administración Tributaria (SAT). (English: Tax Administration Superintendence)
Website: www.sat.gob.gt

TAX LAW

In 2012, Guatemala adheres for the first time the Special Valuation Rules between Related Parties of the Tax Update Law. Subsequently, on December 20, 2013, Decree 19-2013 was published, which granted the suspension of the application of the Special Valuation Rules between Related Parties, which were reactivated as of January 1, 2015.

REGULATIONS & RULINGS

The application Regulations & Rulings is based on Decree 10-2012 of the Congress of the Republic of Guatemala, in which the compliance information is specified in terms of Transfer Prices by the taxpayer, being composed of the general principles of information and documentation, application methods and valuation rules, that is based on the principles of OECD.

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

This principle is developed in articles 54 of the Tax Update Law (LAT) and 37 of the Regulation of the tax update law (RLAT). The basis of the principle of free competition are the prices or amounts of an operation agreed by independent parties fixed in conditions of free competition. (This applies to related companies outside the country)

PRICING METHODS PRIORITY

Article 59 of Decree 10-2012 establishes, for the determination of the value of operations under conditions of free competition, one of the following methods applies:

1. Comparable uncontrolled price (CUP)
2. Cost plus (CP)
3. Resale price (RPM)
4. Utility partition
5. Net margin of transaction method
6. Imports and exports of goods valuation.

TRANSFER PRICING PENALTIES

For this purpose, article 66 of the regulations of the Taxation Update Law establishes that infractions derived from non-compliance with formal obligations shall be sanctioned in accordance with the Tax Code, infractions that are regulated in articles 93 and 94. Failing to submit the reports established by the tax law to the Tax Authorities will incur a penalty of Q. 5,000 for the first time; Q. 10,000 for the second time; and in the event of failing more than twice will incur a penalty of Q. 10,000 plus the payment of 1% of the gross income from the taxpayer during the last month in which he declared income. This penalty will be applied for each time it fails to meet its obligation.

REDUCTION IN PENALTIES

Not applicable.

DOCUMENTATION REQUIREMENTS

Article 65 of the Regulation, contained in the Governmental Agreement 213-2013, establishes that the information and sufficient analysis, referred to in Articles 65, 66 and 67 of the Tax Update Law (Decree 10-2012), to demonstrate and justifying the correct determination of prices, the amounts of the consideration or profit margins in transactions with related parties must be contained in a single report called "Transfer Pricing Study".

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

The law establishes in article 65, the documentation is necessary for the completion of the Annex on Transactions with Related Parties, which is presented in conjunction with the Annual Affidavit of the ISR no later than March 31 of the immediately following year of the period that is declared, so it is advisable count on it.

The supporting documentation or study of transfer prices should only be sent by the taxpayer to the Tax Authority, when this requires it in writing.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

Article 64 of the Regulation of the

Tax Update Law, Decree 213-2013, mentions that pursuant to the provisions of Article 65, numeral 1 of the Law, taxpayers who state in their Annual Tax Return on Income that they carry out operations with related parties abroad; must attach an annex with the information that the Tax Administration will have for this purpose.

STATUTE OF LIMITATIONS

In accordance with Article 47 of the Tax Code of Guatemala, the Tax Administration's right to make verifications, adjustments, rectifications or determinations of tax obligations must be exercised within a period of 4 years. Article 48 of the Tax Code establishes that the term of the prescription will be extended to 8 years, when the taxpayer has not registered with the Tax Administration.

ADVANCE PRICING AGREEMENTS (APAS)

1. Taxpayers may request to the tax authorities to determine the valuation of transactions between related persons prior to the completion of these. Such application shall be accompanied by a proposal from the taxpayer based on the value agreed by independent parties in similar transactions.
2. The tax authorities will have the power to establish and resolve this procedure.
3. The tax authorities may approve the proposal, reject or modify it with the acceptance of the taxpayer.
4. This agreement takes effect with respect to the transactions made after the date approval and is valid during the settlement periods that are realized in the agreement itself, but it may not exceed the four following periods as of the date of approval. It also can be determined that its effects reach the transactions of the current period.
5. The proposal referred to in this article can be understood as dismissed within 30 days elapsed from the application; without prejudice to the obligation to resolve the procedure in accordance with the paragraph.



GUATEMALA continued

BURDEN OF PROOF

The taxpayer has the burden of proof

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

The main difference with the OECD is that Guatemalan legislation has six methods. The sixth method is the import and export of valuation goods.

CONTACTS FOR GUATEMALA

Bryan Pérez Rosales
UHY Pérez & Co
bperez@uhy-perez.com
+502 2503 5900

HONDURAS



TAX AUTHORITY

Servicios de Administración de Rentas (SAR). (English: Rent Administration Service) Website: www.sar.gob.hn

TAX LAW

On December 10, 2011 was published in the Official Journal (La Gaceta), the Law of Regulation of Transfer Pricing (LRPT), where it was established that the law would enter into force on 1 January 2014. However, it is until September 18, 2015 when the Revenue Administration System publishes the Transfer Pricing regulations.

REGULATIONS & RULINGS

The application Regulations & Rulings is based on Decree No. 232-2011 of the Nacional Congress. The legislation in Honduras does not include any regulations with respect to comparable, for which reason the OECD Guidelines on the matter are applicable.

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

The general definition of the arm's length principle is established in article 3, paragraph 5 and article 10 of the regulation, the arm's length principle deals with commercial and financial transactions between related parties as if they are operating as independent companies in a comparable situation, offering an equitable tax treatment between multinational companies and independent companies. (This applies to related companies abroad and local company if has tax benefits)

PRICING METHODS PRIORITY

Article 8 of the Transfer Pricing Regulation Law specifies the following five transfer pricing methods:

1. Comparable Price method not controlled
 2. Resale Price method
 3. Cost method added
 4. Method of division of benefits
 5. Transactional net margin method
- Additionally, as defined in section 6 of article 8, the taxpayer is free to use a different methodology to

determine compliance with effective independence for transactions between related parties, as long as it can be demonstrated that none of the five methods can be reasonably applied to analyze the transaction.

In the case of commodities, Article 10 of the LRPT allows the use of the applicable methodology export operations of goods with international prices.

TRANSFER PRICING PENALTIES

In accordance with the Law of Regulation of transfer prices in articles 35 and 36, failure to provide, provide false information, manifestly incomplete or inaccurate, the information or documentation that at the time was required by the Tax Authority. It will be sanctioned with a fine of \$ 10,000 US dollars, payable in its equivalent in Lempiras.

Declare a tax base lower than that which would have corresponded in free market operations in any year will be sanctioned with a 15% fine, calculated on the amount of the adjustment made by the Tax Authority.

In case it is accompanied by the infringement of the presentation of false data, it will be sanctioned with a fine greater than 30% on the amount of the adjustment determined by the Fiscal Authority or US \$ 20,000, payable in its equivalent in Lempiras. Any other breach of the provisions of the LRPT will be sanctioned with a fine of \$ 5,000 dollars payable in its equivalent in Lempiras.

REDUCTION IN PENALTIES

Not applicable.

DOCUMENTATION REQUIREMENTS

In accordance with Article 1 of the LRPT in Honduras, commercial and financial operations carried out between related parties must be valued in accordance with the arm's length principle. Also, Article 5 of this Law establishes that taxpayers of income tax who are related parties and who carry out commercial and financial transactions with each other are obliged to determine, for tax purposes, their income, costs and deductions, applying for such operations and operating results the prices and profit margins that

would have been used in comparable commercial and financial operations.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

The study of transfer prices must be prepared and used for the correct presentation of the informative statement of transfer prices, so it must be ready before the date established for its completion, which expires officially on 30 April of each year.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

For the purposes of the application of Article 17 of the LRPT must be submitted to the tax authority in Honduras, the sworn statement on transfer pricing in conjunction with the tax declaration. Additionally, Article 30 of the LRPT complements the obligation to submit an Annual Informative Affidavit on Transfer Pricing, as mentioned in Article 17 of the LRPT.

STATUTE OF LIMITATIONS

There are no regulations related to the statute of limitations.

ADVANCE PRICING AGREEMENTS (APAS)

In Honduras, there are the Advance Price Agreements (APA) through which taxpayers can enter into agreements on the value of their transactions with the SAR before they are carried out.

According to article 13 and 14 of the Law, the taxpayer must make the written request before the SAR accompanied by the price proposal and the SAR will give a response that may be approved or denied. Through the APA the taxpayer may establish predetermined with the SAR the prices that will agree on certain commercial and financial transactions with certain related parties, this agreement will be valid for a specific period of time.

BURDEN OF PROOF

The taxpayer has the burden of proof.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

The main difference with the OECD is that the



HONDURAS continued

taxpayer is free to use a different methodology to determine compliance with effective independence for transactions between related parties, provided that it can be demonstrated that none of the five methods can be applied reasonably. Also allows the use of the methodology applicable in the export operations of goods with International quotation in the case of commodities.

CONTACTS FOR HONDURAS

Bryan Pérez
UHY Auditores y Consultores, S.A.
bperez@uhy-sv.com
+503 2260 9000

Bryan Pérez Rosales
UHY Pérez & Co
bperez@uhy-perez.com
+502 2503 5900

HUNGARY



TAX AUTHORITY

Nemzeti Adó-és Vámhivatal (NAV)
(English: National Tax and Customs Administration of Hungary).
Website: www.nav.gov.hu

TAX LAW

Hungarian Corporate Income Tax law: 1996. LXXXI. Article 18

REGULATIONS & RULINGS

Ministry for National Economy
Decree 32/2017

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

Related party legislation
(see Tax Law above)

PRICING METHODS PRIORITY

Comparable uncontrolled price (CUP); resale price (RPM); cost plus (CP); transactional net margin method (TNMM); profit split method (PSM), with tax law stating no priorities. Other methods may be used if arm's length conditions cannot be derived by using the above methods.

TRANSFER PRICING PENALTIES

Tax audit adjustments may be carried out during a tax inspection due to the use of non-market values. These adjustments may carry a penalty of up to 50% of tax deficit plus late payment charges. The consequence of not preparing documentation: those taxpayers which are obliged to prepare transfer pricing documentation may face a default fine of up to 5 million Hungarian forint (HUF) in case of non-compliance with the obligation to prepare documentation. In case of repeated non-compliance by the same taxpayer, a penalty of up to 10 million HUF can be levied.

REDUCTION IN PENALTIES

A reduction may be requested at the tax office with considerations of fairness.

DOCUMENTATION REQUIREMENTS

A Transfer Pricing Study must be prepared (not obligatory for small size enterprises) detailing all factors considered in transfer price calculations. The register of related-

party contracts must be submitted only at the request of the tax authority. There is a requirement to indicate in the Corporate Tax Return if the company uses a common register of the company group (master file concept).

The registration obligation according to the decree does not apply to the transactions of affiliated enterprises in which the value of the performance based on the contract does not exceed HUF 100 million - at the normal market price calculated without general sales tax in the tax year.

When establishing the value limit - regardless of the fact of the merger -, the value of the performance based on contracts can be combined according to the decree must be taken into account.

Documentation requirements changed in 2018 and the master file concept was fully adopted. This means that the ultimate holding company has to prepare a master document including (among other details) an introduction to the group (including structure and locations), the key drivers of the business performance of the group, the supply chain of the top five products/ services and any product/service exceeding 5% of group revenue, intellectual property of the group (development strategy, IP owners within the group, agreements, etc.), group financing, etc.

It is considered as a separate register the main document as well as local documents per transaction type.

The local document must contain (among other details):

- the structure of the management, name and position of the persons they are reporting to
- a detailed overview of the business strategy
- main competitors
- overview of advance pricing agreements (if any)
- affiliated company's name, address and tax number or equivalent ID
- the subject of the contract,

contracting date or its modification date

- the normal market price
- function analysis
- an introduction to the market and comparable businesses
- sources of data used

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

31 May following the current year or submission date of corporate tax return in case of early submission of tax return. No submission of the study is necessary but it must be presented when it is requested during a tax audit.

RELATED-PARTY DISCLOSURE

All businesses are affected by transfer pricing rules. Tax authority notification of the conclusion of a related company contract for the first time applies to all Hungarian businesses.

This means that if a company enters into a contractual relationship with an affiliated company, it must be reported to NAV within 15 days, otherwise the company may be fined up to HUF 500,000 per report.

Hungarian taxpayers who are required to register in connection with the standard market price are obliged to provide information in their corporate tax returns.

STATUTE OF LIMITATIONS

Five years following last day of the year in which the corporate income tax return was filed. Example: the corporate tax return on 2018 is due by 31 May 2019. All relevant documents must be kept on file until 31 December 2024.

ADVANCE PRICING AGREEMENTS (APAS)

APAs are available. The fee to be paid for the procedure - in the case of a unilateral procedure - is the same as the fee for the application for a conditional tax assessment of 5 million HUF, while the amount of the fee to be paid for bilateral and multilateral procedures is the same amount of 8 million HUF. If other tax jurisdictions are involved and a bi- or multilateral APA is applied for, the base fee



HUNGARY continued

is multiplied by the number of jurisdictions. Consultation before submitting the claim is also available; this incurs a fee of 500,000 HUF/consultation.

BURDEN OF PROOF

If a Transfer Pricing Study was prepared, the tax office must prove their statements if they challenge the content.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

Hungarian regulations were prepared based on OECD Guidelines. All noted methods are applicable.

CONTACTS FOR HUNGARY

Péter Bergmann
Bergmann Accounting & Auditing
peter.bergmann@bergmann.hu
+36/20 745 7102

László Hegedűs
Bergmann Accounting & Auditing
laszlo.hegedus@bergmann.hu
+36/20 359 7894

Edina Galamb
Bergmann Accounting & Auditing
edina.galamb@bergmann.hu
+36/20 745 7105

INDIA

**TAX AUTHORITY**

Under the overall supervision and administration of the Central Board of Direct Taxes (CBDT), transfer pricing falls under the purview of the Directorate of Transfer Pricing in India which is headed by Director General (International Taxation), Income Tax Department, New Delhi. Website: <https://www.incometaxindia.gov.in/Pages/about-us/central-board-of-direct-taxation.aspx>

TAX LAW

Income-tax Act, 1961, read with Income-tax Rules 1962

REGULATIONS & RULINGS

Rules 10A to 10E of the Income-tax Rules pertaining to Transfer Pricing Rules 10F to 10T of the Income-tax Rules pertaining to Advance Pricing Agreements Rules 10TA to 10THD of the Income-tax Rules pertaining to Safe Harbour Rules

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

The interpretation of the arm's length principle is consistent with the OECD Transfer Pricing Guidelines and applies to all international transactions and specified domestic transactions between associated enterprises.

PRICING METHODS PRIORITY

Arm's length price may be determined by any of the methods: comparable uncontrolled price (CUP); resale price (RPM); cost plus (CP); profit split (PSM); transactional net margin (TNMM) or any other method. Though no priorities are laid down, the factors to be taken into account are indicated. The law (Rule 10CA) has the concept of range (35th to 65th percentile) while applying certain methods and in cases wherein a minimum number comparable companies are available.

TRANSFER PRICING PENALTIES

Penalties are laid down for under-reporting/mis-reporting of income; failure to keep and maintain information and documents; failure to furnish a report or for furnishing an inaccurate report (Master File); failure to furnish a report from

an accountant; failure to furnish information or documents to the tax authorities.

REDUCTION IN PENALTIES

No penalty may be imposed if the taxpayer proves that there was reasonable cause for the failure. However, in the case of penalty consequent to re-determination by the tax authorities of arm's length price, the taxpayer has to prove to the satisfaction of the tax authorities that the transaction value was computed in accordance with the provisions of the law and in the manner provided thereunder in 'good faith' and with 'due diligence'.

DOCUMENTATION REQUIREMENTS

Documentation is prescribed by law. Extensive documentation is required where:

1. The aggregate of international transactions with associated enterprises exceeds 10 million Indian rupees (INR);
2. The aggregate of specified domestic transactions with associated enterprises exceeds 200 million INR.
3. The information and documentation includes:
4. Description of the ownership structure
5. Profile of the multinational group
6. Description of the business and its industry
7. Nature and terms of the transactions general industry information
8. Functions performed, risks undertaken and assets employed with respect to each transaction
9. Economic analysis justifying the ALP
10. Description of the methods considered for determining ALP and supporting documentation.
11. Records of the actual working carried out for determining arm's length price.
12. Assumption, policies and price negotiation which affected determination of arm's length price.
13. Details of adjustments made to transfer prices to align them with arm's length price.

Documentation also includes a report from a chartered accountant (in a prescribed form) certifying that the transactions adhere to the arm's length standard.

Documentation includes intimations and reports to be filed in line with the BEPS-OECD requirements for Master File and Country-by-Country Reporting.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

The report of the chartered accountant in a specified form is required to be filed one month prior to the due date of filing the return of income.

All necessary documentation is required to be maintained (not filed) contemporaneously.

Certain BEPs-based intimations are required to be furnished prior to the filing of the return of income.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

Information in relation to the BEPs Master File and Country-by-Country Reporting also needs to accompany the tax return.

STATUTE OF LIMITATIONS

Where, during the assessment proceedings, the computation of the arm's length price is referred to a Transfer Pricing Officer: 24 months from the end of the relevant tax year. However, returns of the past 10 years can be reopened under certain circumstances.

ADVANCE PRICING AGREEMENTS (APAS)

The law incorporated the concept of APAs in 2012. A taxpayer may enter into an APA which will be binding for a period of a maximum of five consecutive years provided there is no change in the law/facts or fraud involved. Rollback provisions permit APAs to also be applied to international transactions undertaken in the previous four years in specified circumstances.

BURDEN OF PROOF

In case of tax proceedings the burden of proof is on the taxpayer.



INDIA continued

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

India is not a member of the OECD but continues to remain an observer. The Indian transfer pricing regulations are nevertheless largely based on the OECD Guidelines on Transfer Pricing, but do not make a direct reference to the guidelines. Similarities include adherence to the arm's length principle, and use of CUP, RPM, CPLM, PSM and TNMM for arriving at the arm's length price. Certain marginal differences do exist. For example: the OECD permits use of foreign comparables while Indian transfer pricing legislation does not. The difference between the OECD and Indian regulations has further narrowed due to the permissibility to use multiple year data and introduction of the range concept for economic analysis of comparables.

CONTACTS FOR INDIA

Prashant Khandelwal
Lodha & Co
prashantkhandelwal@lodhaco.com
+91 33 4040 0000

R. P. Singh
Lodha & Co
rpsingh@lodhaco.com
+91 33 4040 0000

INDONESIA



TAX AUTHORITY

Direktorat Jenderal Pajak (English: Directorate General of Taxes).
Website: www.pajak.go.id

TAX LAW

The Income Tax Law (ITL) contains transfer pricing provisions under Article 18.

PER-43/PJ/2010 (PER-43) is the article's implementing regulation which adopts the arm's length principle and mandates the preparation of transfer pricing documentation, providing the guidelines for establishing the arm's length nature of transactions.

Amendment by regulation PER-32/PJ/2011 (PER-32) provides additional guidance on comparability analysis required in the transfer pricing documentation. PER-43, as amended by PER-32, also applies to domestic transactions, but only if the related domestic enterprises are subject to different tax rates, and the related party transaction fulfils specific tax and industry criteria.

REGULATIONS & RULINGS

SE-01/PJ.7/2003 of April 1, 2003 (revised)

SE-02/PJ.7/2005 of March 31, 2005
SE-10/PJ.04/2008 of December 31, 2008

PER-67/PJ.2009 of 30 December 2009

PER-43/PJ.2010 of 06 September 2010

PER-69/PJ/2010 of 31 December 2010 rules on the agreed fair price between DGT and the taxpayer

PER-48/PJ/2010 of 03 November 2010 rules on the mutual agreement procedures (MAP) based on tax treaty agreement. Amended by PER-32/PJ/2011 with additional guidance on comparability analysis required in the TP documentation.

PMK-213/PMK.03/2016 and PER-22/PJ/2013 contain the guidance of documents needed and how taxpayers are examined for special relationships with other parties. PMK-49/PMK.03/2019 regulates the Mutual Agreement Procedure and dispute settlement in respect of

tax treaty.

PMK-22/PMK.03/2020 coordinates the Advance Pricing Agreement with the Base Erosion and Profit Shifting (BEPS) of the OECD and G20.

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

DGT letter No. S-153/PJ.4/2010 provides guidelines for the application of the arm's length principle in the context of a tax audit. The main issues for examination are:

- Existence of a special relationship between the parties
- Selection of independent transactions that are comparable
- Selection of examined/audited party and tested transaction
- Comparability of conditions of related party transaction and comparable independent transaction
- Selection of a profit level indicator for benchmarking
- Selection and application of a transfer pricing method to apply the arm's length principle

Under PER-43, as amended by PER-32, any transfer pricing adjustment made by the tax authority can result in a corresponding adjustment to the income or costs of the foreign or local counterpart of the transaction.

PER-22/PJ/2013 states that affiliated transactions could be equipped to avoid tax so the DGT will apply the arm's length principle and has authority to readjust income and costs, including any liabilities involved as financial capital in the calculation of taxable income.

PRICING METHODS PRIORITY

Comparable Uncontrolled Price method (CUP) is the primary method applicable. Subsidiary to CUP is Cost Plus (CP) and sale minus, or Resale Price Methods (RPM). If the above cannot be determined, comparable profits or ROI (return on investment) on similar business must be applied.

Other methods include Transactional Net Margin Method (TNMM) and Profit Split Method (PSM), which depend on the profit or contribution scheme applied.

Selection is carried out via 'the most

appropriate method' test based on the nature of the transaction and available data.

TRANSFER PRICING PENALTIES

The taxpayer is expected to submit the overview Transfer Pricing Document with the annual tax declaration submission. Failure to submit it incurs a penalty of IDR 1 million. For late submissions, there is a penalty of 2% per month for late payment of tax, up to a maximum of 48% of the tax underpayment. However, if the taxpayer did not submit the requested Transfer Pricing Documents, there will be a decision letter on the tax underpayment with an increased penalty of 50%.

REDUCTION IN PENALTIES

Tax auditors will adjust related party transactions where they do not believe an arm's length price has been used, and taxpayers have the right to object to these assessments. The objection must be lodged in writing within three months and the DGT has 12 months to issue a decision in relation to the objection.

An unfavourable DGT decision on the objection results in an administrative penalty of 50% of the underpaid tax. The penalty increases to 100% if an appeal is lodged and that decision also is not in the taxpayer's favour. Note, the Tax Court Law, which governs tax appeals, demands a minimum payment of 50% of the tax due. If an appeal to the Tax Court is still unsuccessful, taxpayers can appeal to the Supreme Court, provided that certain criteria are met.

DOCUMENTATION REQUIREMENTS

Under PMK-213/PMK.03/2016 and PER-22/PJ/2013, transfer pricing documentation is mandatory. Within 90 days of the close of the fiscal year, and simultaneously with the submission of the corporate tax declaration, taxpayers are required to disclose overview information used to establish the arm's length nature of its price or profit in related party transactions. Information must include:

- Detailed description of the tested party, such as structure of group's business,



INDONESIA continued

ownership structure, organisational structure, operational aspects of business activities, list of competitors, descriptions of business environment

- Pricing policies and/or cost allocation policies
- Results of comparable analysis on characteristics of products being traded, results of functional analysis, economic conditions, provisions of the contracts/agreements, and business strategy
- Selected comparable transactions
- Application of the transfer pricing methods selected by the taxpayer.

Based on the DGT's letter No. S-479/PJ.033/2012 issued on 27 April 2012, taxpayers are not required to submit their transfer pricing documentation simultaneously with their corporate tax declaration.

Provision of Master File and Local File is required for companies with:

- Affiliated transactions/sales over 50 billion rupiahs
- Tangible goods transaction above 20 billion rupiahs
- Services, interests, intangible goods affiliated transactions above 5 billion rupiahs
- Affiliated parties which are domiciled in countries where the corporate tax rate is lower than Indonesia's.

Parent Companies from business groups in Indonesia with consolidated sales of 11 trillion rupiahs or above, without affiliation transactions, must provide a Country-by-Country report (CbCR). Those with affiliation transactions must include Master File, Local File, and CbCR.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

Under PER-32, the taxpayer is required to submit transfer pricing documentation, in reporting their related party transactions. Related party transactions must be reported in the Annual Income Tax Declaration.

In a tax audit, any document requested by the tax auditor must be provided within a month from the date of request. Furthermore,

under PER-43, all documentation to support the arm's length nature of the related party transactions, including a transfer pricing study, must be maintained for 10 years from the close of the relevant fiscal year. The taxpayer is required to present their transfer pricing documentation upon request from the Indonesian tax authorities.

According to PMK-213/PMK.03/2016, the taxpayer must provide the Master File and Local File within four months after the tax year end, or whenever the DGT requests. CbCR must be submitted within one year from year-end, as an attachment to the Annual Tax Declaration for the next year.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

Disclosure of related party transactions in the tax return has been required since 1 January 2002. Domestic and international related party transactions must be disclosed. Required information includes the type of transaction, the value of the transaction, the transfer price and the method used to determine the transfer price.

Since 2009, the disclosure requirements have included a confirmation of the information that the taxpayer used to establish the arm's length nature of the related party transactions.

STATUTE OF LIMITATIONS

There is no separate statute of limitations under PER-22/PJ/2013. However, under the tax laws, the tax authority may conduct a tax audit, which includes assessing the arm's length nature of related party transactions, within five years from the relevant fiscal year.

ADVANCE PRICING AGREEMENTS (APAS)

As from 1 January 2001, the Indonesian Income Tax Law includes a provision that authorises the Indonesian DGT to enter into an APA, which is valid for agreed periods and is renegotiable. Unilateral or bilateral APAs can be beneficial in resolving transfer pricing uncertainties before they become disputes.

On 31 December 2010, the DGT released APA regulation No.69/PJ/2010 (PER 69). The coverage period for an APA is three fiscal years from the conclusion of the agreement.

A rollback to previous years is possible, provided that the following criteria are met:

- The taxpayer's corporate income tax return for the relevant tax year has not been audited
- The taxpayer has not filed any tax objection regarding the tax return
- There is no indication of tax crime.

The rollback of an APA to prior years is not automatic and will be subject to negotiation between the taxpayer and the ITO (Indonesian Tax Office).

BURDEN OF PROOF

DGT Letter No. S-153/PJ.4/2010, March 2009, provides guidelines for application of the arm's length principle in the context of a tax audit. In general, the risk of an annual tax audit is characterised as medium; however, the risk of an immediate tax audit after a taxpayer applies for a tax refund is high. The risk that transfer pricing will be reviewed as part of a regular tax audit is characterised as high, while the risk that the tax authority will challenge the transfer pricing methodology is also high.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

Indonesia is not a member of the OECD, although it has been granted 'enhanced participation' status. PER-22 reconfirms the basic transfer pricing concepts and principles of the OECD Transfer Pricing Guidelines. The current regulation of PMK-49/PMK.03/2019 and PMK-22/PMK.03/2020 are adjustments in line with the OECD.

CONTACTS FOR INDONESIA

Hananta Budiarto
KAP Hananta Budiarto & Rekan
hananta@hananta.com
+62 24 841 2000

IRELAND

**TAX AUTHORITY**

Office of the Revenue
Commissioners. Website:
www.revenue.ie

TAX LAW

The Tax Consolidation Act of 1997 is the major tax law which governs direct taxation of income in Ireland.

REGULATIONS & RULINGS**Transfer Pricing Rules from 1 July 2010 to 31 December 2019**

Ireland had enacted transfer pricing legislation with effect for accounting periods commencing on or after 1 January 2011 in relation to any arrangements other than those in place on 1 July 2010 (i.e. grandfathered arrangements). The previous transfer pricing legislation was introduced in Finance Act 2010. It applied to any agreement or arrangement of any kind involving the supply and acquisition of goods, services, money or intangible assets where at the time of supply and acquisition the person making the supply and person making the acquisition are associated and the profits/gains or losses are within charge to Case I or II of either party (i.e. trading transactions only). The rules did not apply to non-trading or capital transactions. There was also a full transfer pricing exemption for SME companies.

Transfer Pricing Rules from 1 January 2020

On 5 September 2018 Ireland's Government announced a Roadmap for the future of Ireland's Corporation Tax (CT) regime. The Roadmap reflects Ireland's tax policy objectives to remain aligned with the changes in the international tax landscape, including with the OECD's Base Erosion and Profit Shifting (BEPS) project, with continuing engagement in the global debate on how the arm's length principle can be adapted for the modern world. With reference to the OECD's 2017 Transfer Pricing Guidelines, Ireland introduced legislation in Finance Act 2019 to update Ireland's transfer pricing regime with effect from 1 January 2020.

The Finance Bill in October 2022

updated the definition of "transfer pricing guidelines" in Irish tax law to require the transfer pricing rules in Ireland to be construed, as far as practicable, in accordance with the 2022 version of the OECD Transfer Pricing Guidelines. The rules previously referred to the 2017 version of the OECD Transfer Pricing.

Extension to non-trading transactions

The scope of Irish transfer pricing rules has now been extended with few exemptions. From 1 January 2020 Irish transfer pricing rules will now apply to non-trading transactions. This extension will bring a significant number of commercial arrangements within the scope of transfer pricing. For example, many cross-border outbound interest-free funding loans will now require pricing in accordance with the arm's length principle. This will impact Irish groups that provide financing to foreign group companies to fund international businesses and markets. In many cases, the income arising will be taxed in Ireland as passive income at 25%, unless it is derived from an active financing trade.

There is an important exemption for non-trading transactions where both parties to the transaction are within the charge to Irish tax (i.e. Irish domestic transactions), subject to certain anti-avoidance rules.

Extension to capital transactions

Intra-group sales and purchases of assets will also be subject to Ireland's transfer pricing rules if the market value of the assets is more than EUR 25 million. If valuations of those assets do not satisfy the OECD arm's length standards, then Irish businesses can be exposed to further capital gains tax on sales or reduced capital allowance relief (i.e. tax depreciation) on acquisitions. While Ireland's tax regime contains pre-existing provisions about capital transactions, the extension of transfer pricing rules adds prescribed documentation obligations and compliance requirements for asset transfer transactions. In specific conditions, other provisions in Irish tax legislation

supersede transfer pricing rules, thereby, removing the arm's length value requirement for pricing the relevant assets.

The proposed rules will have a number of implications including:

- The OECD Guidelines will apply to determine the value of intangible assets for the purposes of claiming capital allowances. This is intended to apply only to assets acquired after 1 January 2020 and not for assets acquired prior to this date where capital allowances are claimed in subsequent accounting periods.
- Exit charges under Irish capital gains tax rules will now be calculated by reference to value determined in accordance with OECD transfer pricing rules.
- The measures can apply to individuals. The disposal of certain assets with a market value in excess of EUR 25 million could be within scope of transfer pricing rules, where that disposal is made to an associated person. This includes a disposal to a company controlled by the individual and/or their relatives.

Extension to SMEs (subject to Ministerial Order)

An SME employs fewer than 250 people and has either:

- (i) turnover not exceeding EUR 50 million, or
- (ii) balance sheet values of less than EUR 43 million.

The transfer pricing legislation proposes to remove the current exemption for these businesses.

Medium companies need only apply transfer pricing rules for cross-border arrangements above EUR 1 million. Documentation obligations are also substantially reduced relative to the Master and Local File framework mentioned earlier.

While it was proposed that the transfer pricing rules will be extended to SMEs, the date of implementation is subject to Ministerial Order and will not apply from 1 January 2020.

Pre- July 2010 Arrangements ("Grandfathered") Arrangements under the new rules.

From 1 January 2020, Grandfathered arrangements agreed before 1 July 2010 are no



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longer exempt from transfer pricing rules in Ireland. The original purpose of the exemption was to ease the transition burden of transfer pricing compliance. It is not expected that many ongoing transactions in Ireland continue to claim this exemption, and hence few businesses, if any, will be affected by this change.

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

Interpreted in accordance with OECD Transfer Pricing Guidelines

PRICING METHODS PRIORITY

There are no specific pricing methods, but application of the arm's length principle (ALP) and open market values are considered appropriate when dealing with related-party transactions and are based on the OECD Guidelines.

TRANSFER PRICING PENALTIES

No specific provisions. 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. The Finance Act (No.2) Act 2008 includes a tax geared penalty system with a revised penalty regime applying to cases of tax default occurring on or after 24 December 2008. Interest will arise on underpaid tax at a daily rate of 0.0273%. From 1 January 2020 businesses have 30 days to submit documentation to the Revenue upon request. Failure to prepare and submit the required documentation will attract penalties of EUR 25,000 or greater for larger businesses; or EUR 4,000 for those companies under the EUR 50 million threshold.

REDUCTION IN PENALTIES

Not applicable

DOCUMENTATION REQUIREMENTS

From 1 July 2010 to 31 December 2019

The legislation required that a company must have transfer pricing documentation available. There was no legislated format for the documentation and the documentation did not have to be

prepared in Ireland. Transfer pricing documentation completed for tax purposes in another jurisdiction may have been sufficient to meet Revenue requirements, on the basis that the documentation was in English. The tax authorities in Ireland recognised that the format of the documentation would depend on the types of transactions. For example, more complex transactions would require more detailed documentation.

From 1 January 2020 - new documentation obligations

Larger businesses operating in Ireland must prepare OECD standard Master and Local Files to evidence their compliance with transfer pricing rules.

An Irish business of any size will have an annual obligation to prepare a Local File if it is a member of a global group that has a turnover greater than EUR 50 million. An Irish business will have a further Master File obligation if it is a member of a global group that has a turnover greater than EUR 250 million. The Master File is a group-wide document that introduces a tax authority to the business, its transfer pricing policies and capital structure. The Local File is a detailed document seeking to prove that all material intra-group transactions were executed using the arm's lengths pricing.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

From 1 July 2010 to 31 December 2019

There was no deadline to prepare and submit documentation other than any figures included in the annual tax return must have been based on actual calculations completed using the relevant transfer pricing legislation. The documentation must have been available for inspection if the annual tax return was reviewed and must be submitted within three months of request. Revenue guidance stated that it was best practice that the documentation be prepared at the same time as the terms of the transaction are agreed, and that the documentation should have existed at the time that the tax return is filed.

From 1 January 2020 - new documentation obligations

Businesses have 30 days to submit documentation to the Revenue upon request, whereas three months was afforded previously. Failure to prepare and submit the required documentation will attract penalties of EUR 25,000 or greater for larger businesses; or EUR 4,000 for those companies under the EUR 50 million threshold. Businesses in scope for documentation requirements should bridge gaps with existing documentation to align with the latest OECD standards.

A critical new item in the Local File is to reconcile transfer pricing policies to statutory accounts of the Irish entity.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

There are no specific requirements other than those to comply with the completion of the annual tax return.

STATUTE OF LIMITATIONS

Four years, or in the case of fraud or negligence an assessment may be made at any time.

ADVANCE PRICING AGREEMENTS (APAS)

The competent authority for transfer pricing Mutual Agreement Procedures (MAPs) and Advance Pricing Agreements (APAs) is: Director, Corporate Business and International Division, Office of the Revenue Commissioners, Stamping Building, Dublin Castle, Dublin 2, Ireland.

In general, a bilateral APA is a binding agreement between two tax administrations and the taxpayers concerned. This is entered into by reference to the relevant Double Taxation Agreement (DTA) and governs the treatment for tax purposes of future transactions between associated taxpayers. Essentially, the APA makes the tax treatment of relevant transactions clear for all concerned - the tax administrations and the taxpayers - for a fixed period of generally three to five years.

Effective from 1 July 2016, the Revenue introduced a formal bilateral APA



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programme. The introduction and publication of this formal programme provides clarity to taxpayers, not only with respect to the process involved in applying for a bilateral APA, but also the ongoing reporting and administrative requirements, once an APA has been agreed. Guidance on the operation of the programme is contained in the Revenue's Bilateral Advance Pricing Agreement Guidelines

BURDEN OF PROOF

The taxpayer

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

Legislation has been adopted to align Ireland with international standards by adopting the OECD arm's length principles (ALPs).

CONTACTS FOR IRELAND

Michael Bellew
UHY Farrelly Dawe White Limited
michaelbellew@fdw.ie
+353 42 933 9955

ISLE OF MAN**TAX AUTHORITY**

Isle of Man Government, Income Tax Division. Website: www.gov.im/categories/tax,-vat-and-your-money/income-tax-and-national-insurance/

TAX LAW

Isle of Man has no specific transfer pricing guidelines but has entered into Tax Information Exchange Agreements (TIEAs), bilateral agreements that have been signed to establish exchange of information for tax purposes, with a number of jurisdictions.

The enactment of a TIEA is usually accompanied by an agreement for affording relief from double taxation with respect to individuals and establishing a mutual agreement procedure in connection with the adjustment of profits of associated enterprises where conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises.

REGULATIONS & RULINGS

Not applicable

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

Not applicable

PRICING METHODS PRIORITY

Not applicable

TRANSFER PRICING PENALTIES

Not applicable

REDUCTION IN PENALTIES

Not applicable

DOCUMENTATION REQUIREMENTS

Not applicable

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

Not applicable

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

Not applicable

STATUTE OF LIMITATIONS

Not applicable

ADVANCE PRICING AGREEMENTS (APAS)

Not applicable

BURDEN OF PROOF

Not applicable

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

Not applicable

CONTACTS FOR ISLE OF MAN

Andrew Pennington
UHY Crossleys LLC
apennington@crossleys.com
+44 1624 822 816

ITALY

**TAX AUTHORITY**

Agenzia delle Entrate
(English: Italian Revenue Agency).
Website: www.agenziaentrate.gov.it

TAX LAW

Presidential Decree no. 917/1986,
art. 109 and art. 110. Implementation
Decree, 29 September 2010
Ministerial Decree, 14 May 2018.
Provision of Italian Revenue Agency
23 November 2020

REGULATIONS & RULINGS

Provision of Italian Revenue Agency
23 November 2020. Ministerial
Decree, 14 May 2018.

For transfer pricing documentation:
Italian Revenue Agency
Commissioner Decision, 29
September 2010

For advanced pricing agreements:
Presidential Decree no. 600/1973
and Italian Revenue Agency
Commissioner Decision, 21 March
2016

**INTERPRETATION OF
ARM'S LENGTH PRINCIPLE (ALP)**

Presidential Decree no. 917/1986, art. 9

PRICING METHODS PRIORITY

Comparable uncontrolled price
(CUP) is the primary method
applicable. Subsidiary to CUP, resale
price (RPM) and cost plus (CP). If
the above cannot be determined,
profit split (PSM), comparable profits
(CPM), invested capital profit, or
gross profit margin
can be applied.

TRANSFER PRICING PENALTIES

Tax audit adjustments may be carried
out during a tax inspection due to
the use of non-market values. In
general, penalties from 90% to 180%
of non-paid taxes are applicable.

REDUCTION IN PENALTIES

To avoid penalties in the case of tax
audit, a communication attesting
the ownership of transfer pricing
documentation must be filed. The
documentation shall be prepared
accordingly with requirements
provided by Implementation Decree,
29 September 2010, and clarifications
stated in Ministerial Decree, 14 May
2018 and Provision of Italian Revenue
Agency 23 November 2020.

DOCUMENTATION REQUIREMENTS

The documentation to be kept
available to the Tax Authorities in
order to
avoid penalties is provided by
Implementation Decree, 29
September 2010, and clarifications
stated in Ministerial Decree, 14 May
2018 and Provision of Italian Revenue
Agency
23 November 2020.

**DEADLINE TO PREPARE AND
SUBMIT DOCUMENTATION**

Confirmation attesting to ownership
of transfer pricing documentation
must be submitted to the Italian
Revenue Agency with the annual
income tax return. Documentation
must be electronically signed
and marked within the deadline
of submission of tax return.
Documentation must be submitted to
the tax authorities on request, within
10 days of receipt of the request.

**RETURN DISCLOSURE /
RELATED-PARTY DISCLOSURE**

Revenues and costs resulting from
related-party transactions must be
provided in relevant sections of
the tax return.

STATUTE OF LIMITATIONS

December 31 of the fifth year after
the date the return is filed.

**ADVANCE PRICING
AGREEMENTS (APAS)**

APAs can be made with the Italian
Tax Authorities only by companies
carrying out an international activity
on a specific matter (normal value,
royalties, dividends, interests, other
income components, inter-company
charges, etc.).

APAs are binding agreements
between taxpayers and the Italian
Revenue Agency (replacing the
former procedure "international
standard rulings") aimed at
enhancing tax compliance
and promoting the business of
multinational enterprises by giving
them certainty on international tax
issues in advance. The arrangements
are based on mutual cooperation
and transparency between taxpayers
and the Italian Revenue Agency.
APAs remains in force for five years

starting from the fiscal year in which
they are signed, provided that the
circumstances – specifically, the
critical assumptions – under which
the agreement was signed
remain unchanged.

BURDEN OF PROOF

The Italian Tax Authorities must prove
the use of non-market values.

**PRINCIPAL DIFFERENCES
WITH OECD GUIDELINES**

Almost all OECD Guidelines
are followed.

CONTACTS FOR ITALY

Cristiano Fasanari
FiderConsult Srl (Tax & Accounting)
c.fasanari@uhyitaly.com
+39 06 591 7469

Andrea D'Amico
UHY Audinet Srl
a.damico@uhyaudinet.com
+39 06 591 7469

JAPAN



TAX AUTHORITY

National Tax Agency of Japan.
Website: www.nta.go.jp

TAX LAW

Article 66-4 of the Act on Special Measures concerning Taxation

REGULATIONS & RULINGS

Article 39-12 of the Cabinet Order of the Act on Special Measures concerning Taxation
Commissioner's Directive on Interpretation of the Act on Special Measures concerning Taxation 66-4(3)

Target dealings

The Japanese transfer pricing laws and regulations are outlined in the Special Measures Taxation Law in clauses 66-4 and 68-88. These laws and regulations are overall consistent with the OECD guidelines.

The regulations cover tangible goods transactions, service transactions, and intangible goods transactions rendered with "a foreign related party".

"A foreign related party" is defined as a foreign corporation that either controls or is controlled by a Japanese corporation through a direct or indirect ownership. A business related company is also included in it.

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

An arm's length price for a transaction is defined as the price of that transaction were the parties not related.

PRICING METHODS PRIORITY

- Comparable uncontrolled price (CUP)
- Cost plus (CP)
- Resale price (RPM)
- Profit split (PSM)
- Transactional net margin (TNMM)

TRANSFER PRICING PENALTIES

- Under-reported tax: 10%–15% of the increase in tax
- Failure to file a tax return: 15% of the tax on a late return
- Heavy penalty tax: under-reported tax 35%; failure to file 40%

REDUCTION IN PENALTIES

Not applicable

DOCUMENTATION REQUIREMENTS

Transfer pricing documentation comprises:

- Master File, to be submitted in Japanese or English
- Local File (no language requirement)
- Country-by-Country Report, to be submitted in English.

If the consolidated revenue of a group exceeds 100 million JPY, each of tax payers are required to submit a Master File (MF). A MF must be filed within one year after the fiscal year end.

Additionally, 'Information on Foreign Related Persons' (Form 17-(3)) should be submitted with the final tax return.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

The Master File and Country-by-Country Report should be submitted to the competent District Director within one year of the day following the end of the fiscal year of the Ultimate Parent Entity.

The Local File should be prepared by the due date of the final return and be maintained for seven years. It should

be presented or submitted within a certain appointed period if request by the tax authorities during the course of tax examination.

The final tax return, with Form 17-(3) should be submitted within two months of the day after the end of the tax year.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

Related party dealings must be disclosed by all taxpayers in the income tax return (Form 17-(3)).

STATUTE OF LIMITATIONS

Six years starting from last filing deadline

ADVANCE PRICING AGREEMENTS (APAS)

The taxpayer can ask the tax authorities to determine the market

price. APAs are valid for three to five years.

ABilateral APA ("BAPA") that requires the Mutual Agreement Procedures ("MAP") and a Unilateral APA ("UAPA") that does not require MAP are available.

BURDEN OF PROOF

The taxpayer

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

No significant differences

CONTACTS FOR JAPAN

Nobuyuki Hara
UHY Tokyo & Co.
info@uhy-tokyo.or.jp
+81 3 6417 0141

Akira Wakatsuki
UHY Tokyo & Co.
akira.wakatsuki@uhy-tokyo.or.jp
+81 3 6417 0868

JORDAN



TAX AUTHORITY

Income & Sales Tax Department.
Website: www.istd.gov.jo

TAX LAW

Income Tax Law No. (38) of 2018

REGULATIONS & RULINGS

Regulations No. (40) for the year 2021 in the official gazette on 7 June 2021

INTERPRETATION OF ARM'S LENGTH PRINCIPLE

Any transaction involving Related People or Persons Under Common Control is covered by the Rules, which are applicable to all taxpayers.

PRICING METHODS PRIORITIES

Suggested Transfer Pricing methodology techniques are:

1. Comparable Uncontrolled Price
2. Resale Price
3. Cost Plus
4. Transactional Net Margin
5. Transactional Profit Split.

TRANSFER PRICING PENALTIES

Although there is no particular penalty regime, income tax law's standard penalty measures apply to non-compliance.

REDUCTION IN PENALTIES

Not applicable

DOCUMENTATION REQUIREMENTS

Disclosure Form
Local File
Master File
Country-by-Country Report (CbCR)

Types of documentation required:

(1) The disclosure file must contain details about the type of related party transaction (e.g. purchase or sale of goods, fixed assets, or provision or receipt of services, agency services, lease agreements, financing of research and development, royalty and license agreement and financial transactions).

The transfer pricing disclosure form must also include details about the transfer pricing method used, the taxpayer's acknowledgement of whether transactions were conducted without payment (i.e., non-cash consideration) during

the tax period, and a statement regarding the maintenance of the master file and local file.

(2) The local file must contain specific information on related party transactions, such as:

- a description of the related party transaction
- receipts for each category of related party transaction involving the taxpayer
- the identity of the related party involved in a related party transaction
- copies of all intercompany agreements reached by the taxpayer
- detailed comparability and functional analysis of the taxpayer and related parties
- an indication of the related party involved in the related party transaction
- any other related party information that may be relevant, and shall contain financial data, such as annual financial statements for the taxpayer's fiscal year
- information and allocation schedules illustrating the use of financial data in determining the transfer pricing method
- a summary of schedules of pertinent financial data for comparable used in the analysis.

(3) The master file shall include a description of the group's operations, including:

- key drivers of business profit
- a description of the supply chain for the group's largest product and service offerings by turnover, plus any additional products and services accounting for more than 5% of group turnover
- a list and a brief description of significant service agreements as well as other arrangements between group members
- the primary geographic markets for the group's products and services
- a functional analysis of the group's operations and any other information that is relevant to the group
- details about the group's intangible assets, such as a list of intangibles, significant agreements reached between relevant parties, transfer pricing guidelines and group policies for managing and transferring such assets.

Additionally, the master file must include details on the intercompany financial activities of the group, a general description of the group's financing, identification of any group members who are thought to perform the central financing function, and transfer pricing guidelines pertaining to financing agreements between related parties.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

Disclosure form: Must be presented by the deadline for filing the tax return.

Master File and Local File: Keeping this document with the transfer pricing disclosure form will allow it to be submitted when the Income and Sales Tax Department asks for it.

Country-by-Country Report: Notifications must be made by the deadline for filing the tax return, and the CbCR itself must be submitted within a year after the year's end. Criteria are for international organisations with headquarters in Jordan and outside of Jordan and aggregated sales of more than JOD 600 million.

For natural persons and small businesses with related-party transactions valued at less than JOD 500,000 at arm's length, an exemption is offered.

RETURN DISCLOSURE RELATED PARTY DISCLOSURE

A Disclosure Form must be submitted by the taxpayer each year along with their income tax return. The Disclosure Form will contain specifics on the related party transactions of the taxpayer.

STATUTE OF LIMITATIONS

4 years following the year these transactions were recorded.

ADVANCE PRICING AGREEMENTS (APA)

Not applicable.

BURDEN OF PROOF

If transaction is comparable, burden of proof is on the Income Tax Department.

In case comparing is with



JORDAN continued

foreign transactions, burden of proof is on the taxpayer.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

OECD criteria are substantially reflected in the Regulations' comprehensive definition of Related Persons. It is important to note that according to the regulations, two people are considered related if they are under the same common control or if one has effective control over the other.

CONTACTS FOR JORDAN

Nabil Haddad
nih@arabauditors.jo
+962-6-55 11 779

KENYA

**TAX AUTHORITY**

Kenya Revenue Authority (KRA).
Website: www.kra.go.ke

TAX LAW

Income Tax Act (ITA)
Tax Procedures Act

REGULATIONS & RULINGS

a) Section 18 (3) of the ITA provides that all transactions between related entities and non-resident entities should be at arm's length, meaning the transaction price payable between two independent entities. If otherwise, the Commissioner has power to adjust transaction prices.

b) Section 18 (6) of the ITA spells out the definition of related parties in Kenya, which entails the direct or indirect participation by a person in the management, control and capital of the business.

c) Income Tax (Transfer Pricing) Rules, effective from 1 July 2006, which largely borrow from the OECD Transfer Pricing Guidelines.

Scope of transfer pricing rules

The guidelines shall apply to:

- Transactions between related enterprises within a multinational company, where one enterprise is located in and is subject to tax in Kenya, and the other is located outside Kenya
- Transactions between a permanent establishment and its head office or other related branches, in which case the permanent establishment shall be treated as a distinct and separate enterprise from its head office and related branches.

Transactions subject to adjustment of prices under these rules shall include:

- The sale or purchase of goods
- The sale, purchase or lease of tangible assets
- The transfer, purchase or use of intangible assets
- The provision of services
- The lending or borrowing of money
- Any other transactions which may affect the profit or loss of the enterprise involved.

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

The arm's length principle is the internationally accepted standard for allocation of taxable income to associated enterprises. The ALP ensures that related companies in different tax jurisdictions do not pay proportionately less taxes by rigging their inter-group pricing structure to reduce the profits of their affiliates.

PRICING METHODS PRIORITY

Transfer pricing methods Rule 7 of the Transfer Pricing Rules, 2006, provides for the following methods:

- Comparable Uncontrolled Price Method (CUP)
- Resale Price Method (RPM)
- Cost Plus Method (CPM)
- Transactional Net Margin Method (TNMM)
- Transactional Profit Split Methods (PSM)
- Such other method as may be prescribed by the Commissioner from time to time, where in his opinion and in view of the nature of the transaction, the arm's length price cannot be determined using any of the methods contained in the guideline.

Choice of method

The taxpayer has the right to choose the most appropriate method in determining the taxes payable.

This right is emphasised under Rule 8(2) which stipulates that the taxpayer shall apply the most appropriate method for the enterprise, with regard to the nature of the transaction, or class of transaction, or class of related persons, or function performed by such persons in relation to the transaction.

Notably, the above right is not absolute. Pursuant to Rule 8(3) the Commissioner may issue guidelines to specify the conditions and procedures of the method applicable. Further, Rule 9 empowers the Commissioner to request information and Books of Account to justify the method employed.

Can the Commissioner change the transfer pricing method in raising an assessment?

While the taxpayer is entitled to choose the most favourable method to their advantage as far as liability to tax is concerned (e.g. Unilever Kenya Ltd vs Commissioner of Income Tax [2005] eKLR), the Commissioner can intervene where there is evidence of fraud or evasion of taxes, and can intervene and re-asses the income tax of a taxpayer and raise additional assessments (cf. Pilli Management Consultants Ltd vs Commissioner of Income Tax – Mombasa HC Misc. Application No.525 of 2016).

The ruling on Kenya Fluospar Company Limited vs Commissioner of Domestic Taxes [2020] eKLR, addressing an issue where the Commissioner had elected to change the appellant's method from Profit Split Method to Transactional Net Margin Method on account that there were factors that had not previously been considered, concluded: "The main issue that has arisen herein is that instead of addressing the objection raised using the selected profit margin method, the Commissioner changed to the Transactional Net Margin Method without indicating the law that confers on the Commissioner the power to change the method."

TRANSFER PRICING PENALTIES**i. Lack of documentation**

Section 23 of the Tax Procedures Act, 2015 requires the taxpayer to maintain records that ascertain tax liability for a period of five (5) years from the reporting year to which an assessment relates. Section 93 of the said Act construes failure to keep records without a reasonable excuse as an offence. The penalty is 10% of the tax payable for the period the subject document relates to, or KES 100,000 where no tax is payable for the said period.

Failure to provide documentation is highly detrimental to the taxpayer where the Commissioner elects to invoke his powers under Section 73(3) of the Income Tax Act and raises an assessment from



KENYA continued

approximating the tax payable.

In the event the taxpayer appeals against an assessment, as the burden of proof rests with the taxpayer, the appeal is likely to fail following lack of evidential documentation.

ii. Late submission and late payment penalties

Where an adjustment of the transfer pricing transaction is upheld, the specific rates shall be applicable subject to whether the company is a resident or non-resident. In addition to, the relevant penalties shall also be enforced to the full extent of the Income Tax Act. Unpaid taxes at the rate of 5% and the principal tax outstanding attracts interest at 1% per month over the period it remains unpaid, and the in duplum rule is considered.

REDUCTION IN PENALTIES

None.

Where there is no negligence in misapplication of policy, it is possible to seek waiver of interest and penalties. However, the principal amounts must be settled before the application of waiver is submitted.

DOCUMENTATION REQUIREMENTS

Upon the Commissioner's request, the taxpayer must avail documentation to evidence the computed tax within thirty (30) days. This should be prepared or translated in the English language.

The documents should address and justify the transfer pricing method elected; the applicability and calculations made and the price adjustment considered; the global organisational structure of the enterprise; the details of the transaction being considered; the assumptions, strategies and policies applied in selecting the said method; and such other background information that may be necessary relevant to the transaction.

Transfer pricing documentation should be reviewed annually to ensure that it remains relevant in

view of changes in the business environment

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

Section 23 of the Tax Procedures Act, 2015 requires the taxpayer to maintain records that ascertain tax liability for a period of five (5) years from the reporting year to which an assessment relates.

Section 93 of the said Act construes failure to keep records without a reasonable excuse as an offence.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

The taxpayer should disclose in the financial statements any transactions with related parties and the nature of the transaction. The KRA requires disclosure of related-party transactions with overseas enterprises.

STATUTE OF LIMITATIONS

None

ADVANCE PRICING AGREEMENTS (APAS)

There is no mechanism in the Tax Procedures Act for an Advanced Pricing Agreement between the KRA and a taxpayer.

BURDEN OF PROOF

The burden of proof, once the transfer pricing policy has been approved, rests with the KRA.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

None

CONTACTS FOR KENYA

Daniel Kabiru
UHY Kenya
dkabiru@uhy-ke.com
+254 20 4442860

LUXEMBOURG



TAX AUTHORITY

Administration des Contributions Directes (English: Direct Taxation Department). Website: www.impotsdirects.public.lu

TAX LAW

Luxembourg Income Tax Law is the main primary legislation, amended on transfer pricing on 27 December 2016.

Additionally, administrative notices complete this law.

REGULATIONS & RULINGS

Primary legislation: Articles 56, 56bis and 164(3) of the Income Tax Law and Paragraph 171(3) of the General Tax Law.

Secondary legislation: Circular LIR 56/1–56bis/1 of 27 December 2016; Action 13 of the OECD Base Erosion and Profit Shifting (BEPS) Report; Luxembourg law enacted on 23 December 2016 on country-by-country reporting.

The Luxembourg tax administration has not issued any specific regulations.

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

General OECD Transfer Pricing Guidelines are applicable.

Accordingly, the arm's-length principle is a key aspect of the transfer pricing framework in Luxembourg. The Luxembourg tax administration can therefore make adjustment to transactions between associated enterprises that deviate from the arm's-length principle.

PRICING METHODS PRIORITY

The five methods detailed in the OECD Guidelines (comparable uncontrolled price method (CUP), the resale price method (RPM), the cost plus method (CP), the transactional net margin method (TNMM) and the transactional profit split method (TPS)), which can be split into two categories (traditional transactions methods and transactional profit methods), all are accepted if the taxpayer is able to justify that the method chosen for the determination of an arm's length price is the most appropriate in the

case at hand. The CUP method is most commonly used.

TRANSFER PRICING PENALTIES

Adjustment of taxable income in order to comply with arm's length principle (ALP). Withholding tax (15%) may apply to transactions that are determined to be hidden profit distribution. Specific penalties related to transfer pricing non-compliance apply only for country-by-country reporting. The penalty for a resident constituent entity of a multinational group or for the reporting entity amounts to maximum EUR 250,000.

REDUCTION IN PENALTIES

No specific provisions.

DOCUMENTATION REQUIREMENTS

No specific documentation is required, but it is recommended that the documentation follows the OECD Guidelines.

Documents need to be provided upon request by the taxation office during the process of tax assessment; however, there is no specific requirement to file transfer pricing documentation during the filing of the tax return. As regards country-by-country reporting, the information that must be provided is that requested in EU Directive 2016/881 on the mandatory automatic exchange of information in the field of tax and Action 13 of the BEPS Report.

Further, it is recommended to retain justification for each transaction and to have a written transfer pricing study including comprehensive reference to current market conditions.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

Since no specific documentation is required according to applicable law, there is no deadline. Based on the tax return received, the tax authorities may request further information/documentation which may include questions with regard to transfer pricing. Normally, tax authorities grant a delay of one month to answer the questions or to provide the additional information/documents.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

Detailed information on related parties involved in related-party transactions should be attached to the tax return.

STATUTE OF LIMITATIONS

Five years, increased to 10 years in the case of tax fraud.

ADVANCE PRICING AGREEMENTS (APAS)

Luxembourg law provides the possibility to request a ruling from the Luxembourg tax authorities, including rulings on transfer pricing issues (i.e. advance pricing agreements or APAs). Bilateral and multilateral APAs should be available through a mutual agreement procedure.

The APA request should include a transfer pricing analysis that is compliant with the OECD Transfer Pricing Guidelines, as well as a precise designation of the taxpayer, the parties involved, their respective activities, and a detailed description of the envisaged operations that have not yet produced their effects.

BURDEN OF PROOF

The burden of proof is generally split between taxpayer and the tax authorities depending on upward or downward adjustments. Where the tax authorities have doubts, the taxpayer has to deliver additional information. The burden of proof regarding the correctness of the information contained in the tax return rests with the taxpayer.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

Generally, the Luxembourg tax authorities follow the OECD Guidelines.

CONTACTS FOR LUXEMBOURG

Mauro Pietropaolo
UHY Finova Sarl
m.pietropaolo@finova.lu
+352 2637711

MEXICO



TAX AUTHORITY

Servicio de Administración Tributaria (SAT). English: Tax Administration Service (SAT) of the Ministry of Finance and Public Credit (SHCP). Website: www.sat.gob.mx

TAX LAW

Mexican Income Tax Law (LISR / Ley del Impuesto Sobre la Renta)

REGULATIONS & RULINGS

As set forth in Article 76 of the LISR Frac. IX, X and XII, the Mexican taxpayer is obliged to obtain and keep supporting documentation of the transactions carried out with related parties residing in Mexico and abroad.

Article 179 of the LISR establishes that, in order to determine comparable companies or transactions, and the differences that might exist, the required pertinent elements should be taken into account in accordance with the chosen pricing method.

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

Transactions between related parties must fix the price and amount of consideration that would have been used with or between independent parties in comparable transactions.

PRICING METHODS PRIORITY

The LISR establishes strict enforcement laws on methodology, outlined in Article 180. Methods must be applied in the following order

- CUP (comparable uncontrolled price)
- RPM (resale price method)
- CP (cost plus)
- Profit split method
- Residual profit split method
- TNMM (transactional net margin method)

TRANSFER PRICING PENALTIES

In the case of failure to comply with the transfer pricing rules outlined in Article 179 of the LISR, the tax authority is entitled to determine the cumulative income and authorised deductions of the taxpayers by means of the specification

of the price or total amount of consideration in transactions between related parties. The tax authority will determine the amount of omitted income tax, and the taxpayer will incur a surcharge for late payment and applicable fine.

Pursuant to section XVII, Article 81 and Article 82 of the LISR, in the case of failure to provide the relevant documentation, or presentation of incomplete or erroneous documentation, a fine of between MXN 86,050 and MXN 172,100 will be imposed.

REDUCTION IN PENALTIES

Not applicable.

DOCUMENTATION REQUIREMENTS

The taxpayer is required to produce and retain a Transfer Pricing Study and supporting documentation including:

- Contracts
- Contract period
- Agreement terms
- Considered operations
- Board minutes
- International group policies
- Group agreements.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

A specific transfer pricing return must be filed in conjunction with the annual tax return or statutory income tax report within three months after the fiscal year end (31 March), and 15 May, 2023, for exercising the option to be taxed. (SIPRED).

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

Multiple Information Return Annex 9 is submitted to the tax authority through the web portal. It contains information of the transactions with related parties residing abroad.

In Mexico, in response to Action 13 of the BEPS Plan and for the purpose of timely compliance with it, the Federal Tax Code (CFF) was adapted and incorporated into the Income Tax Law (LISR) in 2016. Article 76-A of the LISR includes the obligation to present three declarations: Master File; Local File; Country-by-Country Report.

The Local File should be filed no later than May 15 of the year following the declared fiscal year. The Annual Informative Declaration of Related Parties Master File, and Country-by-Country Report, should be filed no later than 31 December of the year following the declared fiscal year.

STATUTE OF LIMITATIONS

Five years

ADVANCE PRICING AGREEMENTS (APAS)

Not applicable.

BURDEN OF PROOF

Burden of proof belongs to the taxpayer, otherwise the tax authorities will determine cumulative income and authorised deductions (Article 179)

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

The OECD Transfer Pricing Guidelines are specifically referenced in the Mexican legislation and are used for guidance and interpretation in transfer pricing-related issues.

CONTACTS FOR MEXICO

Oscar Gutiérrez Esquivel
UHY Glassman Esquivel y Cía S.C.
oge@uhy-mx.com
+52 55 5566 1888

Jose Espinosa Castro
UHY Glassman Esquivel y Cía S.C.
jec@uhy-mx.com

Rafael Quiñones Olivera
UHY Glassman Esquivel y Cia S.C.
rqq@uhy-mx.com

MOROCCO



TAX AUTHORITY

Direction Générale des Impôts (DGI) which is the tax administration and its publications each financial year according to the annual Budget Act, forming the Tax Code (Code Général des Impôts-CGI)

English: Tax Office

Website: www.tax.gov.ma

TAX LAW

Moroccan Tax Code (2023 Finance Bill) - Code General des Impôts

- Article 210 "Right of control" - paragraph five: Companies which are directly or indirectly dependent on companies located outside Morocco and with which they carry out transactions must make available to the tax authorities the documentation justifying their transfer pricing policy, as referred to in Article 214-III-A below, on the date on which the audit of their accounts begins.

- Article 213 - relating to the "discretion of the administration (arm's length)":

II - Where a company is directly or indirectly dependent on companies located in Morocco or outside Morocco, the profits indirectly transferred, either by increasing or reducing purchase or sales prices, or by any other means, are added to the declared taxable income and/or turnover. For the purposes of this adjustment, the profits indirectly transferred as indicated above are determined by comparison with those of similar companies or by direct assessment on the basis of information available to the tax authorities.

III - Where the scale of certain expenses incurred or borne abroad by foreign companies with a permanent business in Morocco does not appear to be justified, the tax authorities may limit the amount or determine the company's tax base by comparison with similar companies or by direct assessment on the basis of information available to them.

- Article 214 on the "right of communication and information exchange":

II - The tax authorities may request information from the tax authorities of States that have concluded conventions or agreements with Morocco allowing for the exchange of

information for tax purposes.

III - A - Companies which have carried out transactions with companies located outside Morocco and with which they are directly or indirectly dependent, as referred to in Article 210 (paragraph five) above, must provide the tax authorities, by electronic means, with documentation to justify their transfer pricing policy, the list and procedures for which are laid down by regulation, including:

- a master file containing information relating to all the activities of affiliated companies, the overall transfer pricing policy applied and the allocation of profits and activities worldwide;
- a local file containing information specific to the transactions that the audited company carries out with the aforementioned non-arm's length companies.

This documentation is produced by the aforementioned companies when:

- their declared turnover, excluding value added tax, is greater than or equal to fifty (50) million dirhams (MAD);
- their gross assets shown in the balance sheet at the end of the financial year concerned are equal to or greater than fifty (50) million dirhams (MAD).

If all or part of the aforementioned documentation is not provided during the audit of a financial year, the taxpayer is requested, in the manner provided for in Article 219 below, to produce the missing documents within a period of thirty (30) days from the date of receipt of the request to provide the said documents.

III - B - For transactions carried out with companies located outside Morocco, the tax authorities may ask the company liable for tax in Morocco to provide information and documents relating to:

- 1 - the nature of the relationship between the company liable for tax in Morocco and the company located outside Morocco
- 2 - the nature of the services rendered or the products marketed
- 3 - the method used to determine the prices of transactions carried out between the said companies and the factors justifying it

4 - the tax regimes and rates applied to companies located outside Morocco.

The request for information is made in the form set out in Article 219 below. The company concerned has a period of thirty (30) days following the date of receipt of the aforementioned request to provide the administration with the information and documents requested.

- Article 214-IV-a of the Moroccan Tax Code - Livre II "Fiscal Procedures" on the documentation that must be produced in the framework of a tax control.

REGULATIONS & RULINGS

The 2023 Finance Bill states that companies that have direct or indirect relationships with companies located outside Morocco must prepare and provide transfer pricing documentation (in electronic format). The effective date of this obligation is for tax audits open after 1 January 2020. Tax audits by the administration are usually carried out for the periods not prescribed (in broad outline, four financial years preceding the control).

To date, there is no specification about the scope of entities and how to assess this relationship from a legal or financial criterion.

The transactions covered by this documentation, are intragroup cross-border transactions, without any minimum threshold. Additionally, the documentation may include domestic intra-group transactions (Article 213-II of Moroccan Tax Code). The detailed content of the documentation will be specified by a decree (law enforcement order). Generally, the documentation submitted to tax administration is drafted in French.

Morocco has joined the OECD BEPS inclusive framework, which requires member countries to comply with certain minimum standards on transparency and information exchange, including BEPS Action 13 which covers transfer pricing documentation and Country-by-Country reporting (CbCR).



MOROCCO continued

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

International group companies must fix the price of their internal transactions as intra parties would do for identical transactions; this principle also applies to domestic group companies.

PRICING METHODS PRIORITY

In terms of transfer pricing analysis, the 2019 Finance Bill does not specify methods, analyses, or comparable data accepted to justify a transfer pricing policy. Generally, the transfer pricing principles are profit-based methods. In practice, tax auditors control every intra-group transaction. The documentation must be provided on the first day of tax audit.

According to Article 213-II of the CGI: "When a Moroccan firm has, directly or indirectly, an [economic and legal] dependency toward firms established in or out of Morocco, the profits transferred indirectly, either by means of increase or decrease of prices (purchase or sale), or by any other means, are reported to the tax result and/or turnover stated (by the firm). For the purpose of a rectification, the profits indirectly transferred (as mentioned before) are determined by comparison with those of similar firms or by direct 'evaluation' (by the Tax Office) on the grounds of information provided."

Original text: «Lorsqu'une entreprise marocaine a directement ou indirectement des liens de dépendance avec des entreprises situées au Maroc ou hors du Maroc, les bénéfices indirectement transférés, soit par voie de majoration ou de diminution des prix d'achat ou de vente, soit par tout autre moyen, sont rapportés au résultat fiscal et /ou au chiffre d'affaires déclarés. En vue de cette rectification, les bénéfices indirectement transférés comme indiqués ci-dessus, sont déterminés par comparaison avec ceux des entreprises similaires ou par voie d'appréciation directe sur la base d'informations dont dispose l'administration ».

TRANSFER PRICING PENALTIES

ARTICLE 185-IV: Any company that

has not provided the tax authorities with the missing documents provided for in Article 214-III-A below is liable to a fine equal to 0.5% of the amount of the transactions concerned by the documents not produced. This may not be less than two hundred thousand (200,000) dirhams per financial year concerned. This fine is issued by way of assessment.

ARTICLE 214-III-B: If the documentation is not provided within the the deadlines referred to in paragraphs A or B above or where the documents are incomplete, insufficient or erroneous, the link of dependence between the undertakings concerned is deemed to be established.

Article 210 of Moroccan Tax Code states "if, during the audit of a given financial year, the taxpayer fails to produce some of the accounting documents and supporting evidence provided for by the laws and regulations in force, the taxpayer is requested, in the manner provided for in Article 219 below, to produce these documents and evidence within a period of thirty (30) days from the date of receipt of the request for communication of the said documents and evidence. This period may be extended until the end of the inspection period. The missing documents and evidence may not be presented by the taxpayer for the first time before the local taxation commission, the regional tax appeals commission or the national tax appeals commission."

It is strongly recommended to prepare any transfer pricing documentation beforehand, to be able to submit it to tax auditors.

REDUCTION IN PENALTIES

Late payment penalties and interest is generally not negotiable. Companies may ask for a total or partial waiver of penalties; the tax authority's decision is discretionary.

DOCUMENTATION REQUIREMENTS

The detailed content of the transfer pricing documentation

will be specified by a decree (law enforcement order). Generally, the documentation submitted to tax administration is drafted in French. However, all transactions should be documented for justification purposes in case of a tax inspection. The Tax Administration may ask the taxable company in Morocco to communicate and provide information and documents concerning:

- The nature of relations between the taxable company in Morocco and the company outside of Morocco OR between two companies in Morocco that share common shareholders (part of a group)
- The nature of services rendered or products exchanged
- The method of determination of price transactions between the said companies and the factors justifying them
- The tax regime and rate for companies located outside of Morocco.

PLEASE NOTE that CbCR (Country-by-Country Reporting) requirements apply for reporting fiscal years beginning on or after 1 January 2021 (2020 Finance Bill):

CbCR requirements are introduced for multinational enterprise (MNE) groups:

- Ultimate parent entities in Morocco are required to submit a CbC report if meeting an annual group revenue threshold of MAD 8.1225 billion in the previous year, which must be submitted electronically within 12 months following the end of the reporting fiscal year; and
- Non-parent constituent entities in Morocco must submit a CbC report if the group revenue threshold is met and:

* the ultimate parent is resident in a country that does not require the filing of CbC reports;

* the ultimate parent is resident in a country that has not concluded an agreement for the exchange of information with Morocco;

* the constituent has been designated by the group to submit a CbC report and this has been informed to the tax authorities; or



MOROCCO continued

* the ultimate parent is resident in a country that requires CbC reports and has an information exchange agreement with Morocco, but there is a systemic failure for exchange;

- If two or more constituent entities in Morocco would be required to file a CbC report, one may be designated to file; and
- Failing to comply with the CbCR requirements will result in a fine of MAD 500,000.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

Documentation must be provided on the first day of tax audit.

If not provided, the tax auditor make a formal request to submit it. The company has 30 days to release information to the tax administration. If no answer is received or the response does not satisfy the required elements demanded, the dependency factor between these companies will be assumed by default.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

Related parties disclosure usually covers:

- Information on all related companies' activities, the overall transfer pricing policy of the group and the worldwide breakdown of profits and activities
- Specific information about transactions that the company subject to tax control carries out with related companies.

No specific return/form is provided by tax administration.

STATUTE OF LIMITATIONS

Generally 31 December of the fourth year following the current financial year.

ADVANCE PRICING AGREEMENTS (APAS)

Article 234 - APA procedure
Decree n2-16-571 of 03/07/2017 - APA implementation
Scope of the agreement: Companies that are directly or indirectly dependent on companies located outside Morocco may ask the tax authorities to conclude a

prior agreement on the method of determining the prices of the transactions referred to in Article 214-III above for a period not exceeding four financial years. The procedures for concluding the said agreement are laid down by regulation.

BURDEN OF PROOF

Moroccan tax authorities must prove that the parties are related; the transfer of earnings and the dependence law or facts are motivated by the tax administration in case of recovery.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

Practice generally follows OECD recommendations except in the method of price determination: Morocco currently retains only the method by comparison of similar companies.

In 2023, methods of price determination might be officially disclosed by tax administration.

CONTACTS FOR MOROCCO

Najlaà Ben Mokhtar
UHY Ben Mokhtar & Co
nbm@uhy-benmokhtar.ma

MOZAMBIQUE



TAX AUTHORITY

Tax Authority of Mozambique.
Website: www.at.gov.mz/eng

TAX LAW

Decree No. 70/2017, which came into force on 1 January 2018

REGULATIONS & RULINGS

The Transfer Pricing Regulation is applied to:

1. Permanent establishments with operations related to non-resident entities
2. Permanent establishment situated in Mozambican territory, effecting operations related to other permanent establishments of the same entity and situated outside of Mozambique
3. An entity, resident or non-resident, with a permanent establishment situated in Mozambican territory, effecting operations related to an entity subject to a more favourable fiscal regime, according to the Corporate Tax Code
4. Operations effected by a taxpayer domiciled in Mozambican territory, through someone not characterised as a related party, who operates with another foreign party, characterised as a related party to the Mozambican taxpayer.

For the purposes of determining the transfer price, a party is considered to be related to another entity, when:

1. Directly, indirectly through one of several intermediaries, the party controls, is controlled, or is under the common control of the same entity; has an interest in the entity giving significant influence on the same; or has joint control over the entity
2. The party is an associate or joint enterprise of the other entity
3. The party is a key staff member of the management of the entity or of its parent-company

4. The party manages the post-employment benefit plan, for the benefit of the employees of the entity, or any related part of that entity.

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

The taxpayer must adopt transactional terms and conditions that would normally be agreed and accepted or practiced among independent entities, according to the principle of free competition, for the goods or services.

PRICING METHODS PRIORITY

The necessary corrections of profit are based on the following methods:

- Comparable uncontrolled price method
- Resale price method
- Cost plus method
- Profit split method
- Transactional net margin method
- Any other appropriate method for the factors and specific circumstances of the operation.

TRANSFER PRICING PENALTIES

There are no specific transfer pricing penalties. However, the normal penalties for tax return non-compliance are also applicable to transfer pricing cases for late filing, failure to disclose records, and non-payment of tax.

REDUCTION IN PENALTIES

Not applicable

DOCUMENTATION REQUIREMENTS

Documentation and relevant information relating to the transfer pricing policy adopted in related-party transactions should be indicated in the annual tax return.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

Supporting documentation should be filed within a month of the deadline for annual tax returns (31 May).

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

Related-party transactions should be indicated in the annual tax return.

STATUTE OF LIMITATIONS

For corporate income tax assessment, the end of the fifth year following the taxable event.

ADVANCE PRICING AGREEMENTS (APAS)

Not applicable

BURDEN OF PROOF

Not applicable

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

Not applicable

CONTACTS FOR MOZAMBIQUE

Carlos Siteo
UHY & Associados - Sociedade de Contabilistas e Auditores Certificados, Limitada
director.geral@uhy-mz.com
+258 849538843
+258 827192584

NEPAL



TAX AUTHORITY

The tax authorities administering the tax laws in Nepal are as follows:

- Inland Revenue Department
- Customs Department

TAX LAW

The provisions regarding transfer pricing in Nepal are stated in Income Tax Act 2058. As per Section 33 of Income Tax Act 2058:

1. In case any arrangement has been made between persons who are associates, the department may, by notice in writing, distribute, apportion, or allocate amounts to be included or deducted in calculating income between persons as is necessary to reflect the taxable income or tax payable that would have arisen for them if the arrangement had been conducted at arm's length.
2. While taking any action under the department may:
 - a. Re-characterise the source and type of any income, loss, amount, or payment; or
 - b. Allocate costs, including head office expenses, incurred by a Person in conducting a business to the associates based on the comparative turnovers of the business, in case such costs have benefited the associated person or persons.

REGULATIONS & RULINGS

Regulations regarding transfer pricing in Nepal adopted by the Inland Revenue Department are as follows:

- Income Tax Rules 2059
- Income Tax Directives 2072
- If any decisions are made in respect of matters relating to transfer pricing by the Tribunal or Supreme Court, the same rulings shall be necessitated to be complied upon.

Rule 15 of the Income Tax Rules states that if any clarification is required regarding transfer price, a person can ask the Department to determine it. Also, as per the directive issued by the Department, in order to understand transfer pricing, terms such as associated persons, arrangement, market value and arm's length must be understood in line with definition provided in the Act itself.

'Associated person' means any person or group of persons who act as per the intention of each other, including the following:

- (1) A natural person and relative of that person or a partner of that person
- (2) A foreign permanent establishment and a person having ownership in that establishment
- (3) Any entity which, by itself or jointly with any other person related with it or with an assisting entity or any other person or entity related with such assisting entity, controls 50 percent or more of the income, capital or voting right of any entity or derives benefits there from.

The following shall not be an associated person:

1. An employee
2. A person specified by the Department as a non-associated person.

Arrangement, market value and arm's length price are as defined and used in general practice.

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

The interpretation of arm's length principle is consistent with the OECD Guidelines, which state that where conditions are made or imposed between the two associated enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but by reason of those conditions have not so accrued, may be included in the profits of that enterprise and taxed accordingly. It shall apply to all international transactions and specified domestic transactions between associated enterprises. Its main objective is to ensure that entities that are related via management, control or capital in their controlled transactions should agree the same terms and conditions that would have been agreed between non-related entities for comparable uncontrolled transactions.

PRICING METHODS PRIORITY

There are no specific pricing method priorities in the Income Tax Act. However, as per Section 13 of Customs Act 2007, the pricing method is made as follows:

1. Transaction price

The transaction price is the amount of consideration an entity expects to receive for the transfer of goods or services to the customer. The amount can be fixed, variable, or a combination of both. Transaction price is allocated to the identified performance obligations in the contract. These amounts are what are recognised as revenue when the performance obligation is fulfilled.

2. Price of identical goods

When unable to determine the fair transaction price of a transaction between associated enterprises, we use the transaction price of identical goods for a comparable uncontrolled transactions of independent enterprises. Here, identical goods means goods which are the same in all respects, including physical characteristics, quality and reputation.

3. Price of similar goods

In this method, we use the transaction price of similar goods transacted between the independent enterprises. Here, similar goods means goods which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable.

4. Deductive value method

In the deductive value method, the transaction price is determined by deducting the tax, duty levied in Nepal on the selling price at which the associated enterprise sells a product to a third party, and other related costs and profits.

5. Computed value method

The first step is to determine the costs incurred by the supplier in a controlled transaction for products transferred to an associated purchaser. Secondly, an appropriate mark-up is added to this cost, to make an appropriate profit in light of the functions performed. After adding this (market-based) mark-up to these costs, a price can be



NEPAL continued

considered at arm's length.

TRANSFER PRICING PENALTIES

There are no direct or specific penalties for transfer pricing, but Income Tax Act 2058 has provisions against tax evasion/avoidance through transfer pricing

REDUCTION IN PENALTIES

There is no provision for reduction in penalties.

DOCUMENTATION REQUIREMENTS

- Contracts, board minutes, profile of the firm, etc
- Profile of the chief of the firm
- Registration certificate of the firm
- Local files containing relevant financial data such as transfer price used, transfer pricing calculation method

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

There is not any deadline for the submission of the documentation, but it must be submitted when demanded by Inland Revenue Department officials.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

Taxpayers are required to publish related-party disclosures during the time of Tax Audit as per Section 99 of the Income Tax Act.

STATUTE OF LIMITATIONS

Not applicable

ADVANCE PRICING AGREEMENTS (APAS)

Not applicable

BURDEN OF PROOF

Burden of proof lies with the taxpayer

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

The Income Tax Law provides quantification and re-characterisation of related-party transactions in case the tax officer suspects or finds tax evasion/avoidance.

CONTACTS FOR NEPAL

Akash Suman
 UHY Suvod Associates
 Chartered Accountants
akash@suvodassociates.com.np
 +977 9801023255

NETHERLANDS



TAX AUTHORITY

Belastingdienst (English: Dutch Tax Administration/Authorities).

Website: www.belastingdienst.nl

TAX LAW

Dutch Corporate Income Tax Act (CITA) 1969, Article 8b (regarding the arm's length principal and the general transfer

pricing documentation obligation). Articles 8ba to 8bd, Dutch CITA 1969, Articles 29b to 29h (regarding the additional transfer pricing obligations for multinationals with a consolidated group turnover of more than 50M (Master File + Local File(s)) or 750M (Country-by-Country Reporting (CbCR) + Master File + Local File(s)) and Article 35.

REGULATIONS & RULINGS

Decree DB/2015/462M; Decree 2022-0000139020; Decree 2019/13003

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

Dutch CITA, Article 8b (regarding the arm's length principal and the general transfer pricing documentation obligation).

Internal transactions should take place under conditions similar to those conditions which would have been agreed upon between unrelated parties with respect to identical transactions.

Corresponding Adjustments

No downward adjustment of profits with regard to affiliated entities are made if there is no corresponding upward adjustment leading to taxation elsewhere.

PRICING METHODS PRIORITY

Traditional transaction methods:

- Comparable uncontrolled price (CUP)

- Resale price (RPM)

- Cost plus (CP)

Other (transactional profit) methods:

- Profit split (PSM)

- Transactional net margin (TNMM).

TRANSFER PRICING PENALTIES

Tax audit adjustments may be carried out during a tax inspection in case of incorrect transfer pricing (e.g. when prices are not at arm's length). These

adjustments may only carry a penalty if there is proof of fraudulent intent or gross negligence.

With respect to the additional transfer pricing compliance obligations (Local File, Master File, CbCR and CbCR notification) - which were introduced in 2016 - the following penalties apply in case of non-compliance.

Country-by-Country Report (CbCR) & CbCR Notifications

- A fine of up to EUR 900,000;
- Reversed burden of proof (e.g. regarding the filed tax return);
- If a correction is made by the Dutch tax authorities (e.g. with respect to the tax return), a fine of up to 100% of the tax which was not paid (on time); and
- Possible criminal prosecution.

Master File

- A fine of up to EUR 9,000 in case of no cooperation (e.g. not providing the documentation / not allowing copies of the documentation to be made);
- Reversed burden of proof (e.g. regarding the filed tax return);
- If a correction is made by the Dutch tax authorities (e.g. with respect to the tax return), a fine of up to 100% of the tax which was not paid (on time); and
- Possible criminal prosecution.

Local File

- A fine of up to EUR 9,000 in case of no cooperation (e.g. not providing the documentation / not allowing copies of the documentation to be made);
- Reversed burden of proof (e.g. regarding the filed tax return);
- If a correction is made by the Dutch tax authorities (e.g. with respect to the tax return), a fine of up to 100% of the tax which was not paid (on time); and
- Possible criminal prosecution.

REDUCTION IN PENALTIES

A possible reduction of the penalty depends on the facts and circumstances.

DOCUMENTATION REQUIREMENTS

The Dutch State Secretary for Finance ruled that multinational enterprise (MNE) groups with a consolidated turnover up to EUR 50 million will be free of the obligation to provide a CbC report, Master File and Local

File. However, they still need to fulfill the standard administrative transfer pricing obligations of Article 8b, Dutch CITA (i.e. have documentation available which substantiates the arm's length character of the applied transfer pricing).

As of January 2016, the Netherlands introduced new legislation regarding the so-called three-tiered approach to transfer pricing documentation. Based on these additional transfer pricing regulations, Dutch taxpayers that are part of a MNE group with a consolidated turnover over EUR 50 million are obliged to prepare additional documentation, including a Master File and a Local File (tier one and tier two). Dutch entities that are part of a MNE group with a consolidated turnover of at least EUR 750 million have to inform the Dutch tax authorities - before the end of the book year of the Ultimate Parent Entity of the group - which entity of the group will complete the CbCR (tier three). The reports will be used to assess transfer pricing risks and every other risk related to profit shifting and base erosion.

Local File

A Local File should include the more detailed information related to inter-company transactions. This will help in assessing whether the taxpayer has complied with the arm's length principle in its transactions with another entity of the group in another country as well as the allocation of profits to a permanent establishment.

Master File

The Master File should provide an overview of the MNE group business, its overall transfer pricing policy and its global allocation of income and economic activities. This means that, specifically, the Master File should include the following information:

- The organisational structure of the MNE group
- A description of its business activities
- The MNE's intangibles
- Its financial and tax position
- A list of important agreements, intangibles and transactions.

Country-by-Country Reporting (CbCR)



NETHERLANDS continued

A Dutch-resident ultimate parent entity of a MNE group with a consolidated turnover of at least EUR 750 million is obliged to provide a CbCR within 12 months after the last day of the (fiscal) year. The CbCR will be exchanged by the tax inspector with other tax authorities in countries the MNE is operating in, as long as the Netherlands has concluded an information exchange agreement. If the Dutch-resident entity is not the ultimate parent company of a qualifying MNE, it might be obliged to file a CbCR in the Netherlands if the country in which the ultimate parent entity is a tax resident has not implemented any CbCR obligations in its own legislation or does not have a signed agreement regarding the exchange of information with the Netherlands on CbCRs. It might also be obliged to file a CbCR if the inspector has informed the Dutch group entity that the country in which the ultimate parent company is a tax resident has systematically failed to comply.

A CbCR is a report about the MNE which contains the following content:

- For each state in which the MNE group is active the CbCR should include the revenues, earnings before income tax, income tax paid, income tax paid according to the statutory accounts, paid-up capital, accumulated profit, number of employees and the tangible assets other than cash or cash equivalents.
- A description of each group entity of the MNE group with reference to the state of which the group entity is a tax resident, and in case of deviation, the state under whose law the group entity has been incorporated. The nature of the main business activities of the group entity should also be included.
- In the Netherlands the CbCR should be delivered in the Dutch or English language.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

Sufficient documentation must be available, preferably before transactions start (see 'Burden of Proof').

CbCR:

A Dutch-resident ultimate parent entity of a MNE group with a consolidated turnover of at least EUR 750 million is obliged to provide a CbCR within 12 months after the last day of the (fiscal) year.

CbCR Notification:

Dutch entities that are part of a MNE group with a consolidated turnover of at least EUR 750 million will have to inform the Dutch tax authorities – before the end of the book year of the Ultimate Parent Entity of the group – which entity of the group will complete the CbCR.

Local File and Master File:

A Master File and Local File should be present in the files of the Dutch entity(s) ultimately from the moment of the deadline for filing the tax return regarding the fiscal year in question. In the Netherlands these files do not have to be sent to the tax authorities directly, but must be kept in the administration of the Dutch entity(s). These files can, however, be requested by the Dutch tax authorities in case of a tax audit.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

Every person liable for corporate income tax

STATUTE OF LIMITATIONS

Five years after the filing deadline

ADVANCE PRICING AGREEMENTS (APAS)

APAs can be made with the Dutch tax authorities. APAs can be made for the future and retrospectively. Also possible:

an Advanced Tax Ruling (ATR), i.e. an agreement on the characterisation of international corporate structures.

An ATR will only be issued if the requesting entity is part of a group which pursue business operating activities in the Netherlands (the economic nexus). Besides that, the group has to have a sufficient amount of relevant people in the Netherlands who carry out the activities on behalf of and at the risk of the requesting entity.

Furthermore, an anonymised abstract

is published of every ruling of international character.

BURDEN OF PROOF

If there is no documentation the tax authorities can reject the transfer prices (reversed onus of proof).

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

Dutch transfer pricing policy is generally in alignment with the OECD Guidelines.

CONTACTS FOR NETHERLANDS

Bas Pijnaker
Govers Accountants/Consultants
pijnaker@govers.nl
+31 6 83671854

Harm Kolen
Govers Accountants/Consultants
kolen@govers.nl
+31 6 51 46 72 51

Mark Broekhuizen
Govers Accountants/Consultants
broekhuizen@govers.nl
+31 402504504

NEW ZEALAND



TAX AUTHORITY

Inland Revenue Department (IRD).
Website: www.ird.govt.nz

TAX LAW

Income Tax Act 2007: Subpart FE. Sections GC6 to GC19, BG1, GB2, YD4, YD4B, YD5 and subpart YB. Section GC6 (1B) says that this section and sections GC7 to GC14 apply consistently with the OECD Transfer Pricing Guidelines.

Tax Administration Act 1994: Sections 21B, 22, 78G. Part 5A. Sections 141 to 141EC, 141F, 141FB and 141G to 141JAA, 141K, 143, 143A, 143B and 149A(2)(b).

The Inland Revenue has powers to request information from large multinational groups in order to assist a tax investigation of the relevant multinational.

New Zealand's anti-Base Erosion Profit Shifting (BEPS) legislation dealing with 'hybrid and branch mismatches' applies from income years commencing on or after 1 July 2018 sections FHI to FH15, BH1(4), FE6(2), FE6(3)(a), FE6(3)(aba), FE15(1)(a), Income Tax Act 2007.

REGULATIONS & RULINGS

The New Zealand transfer pricing rules are to be read consistent with the OECD Guidelines, which are prescriptive and include a Local File to document the arm's length nature of the New Zealand entity's cross-border transactions with associated persons.

The Inland Revenue guidelines are to be read in conjunction with the legislation. Inland Revenue considers that the guidelines supplement rather than replace the OECD guidelines. A simplified approach is allowed for transactions that are not material and there are administrative concessions relating to services and a safe harbour relating to small value loans. The level of documentation required by Inland Revenue is therefore determined after considering the materiality of the transactions.

For small businesses it may be quite satisfactory to simply complete a transfer pricing questionnaire, evaluate the results and make notes to explain why the pricing is considered appropriate.

Inland Revenue has said, "the OECD has introduced an elective simplified approach for pricing low value-adding intra-group services and Inland Revenue recognises that there are considerable benefits for taxpayers in aligning our practices with international standards." As a result Qualifying Services may be priced at cost plus a 5% mark-up without the need to provide bench-marking. Such qualifying services are non-core services.

Furthermore, for small value loans (cross-border associated party loans by groups of companies for up to \$10m principal in total) Inland Revenue currently considers 250 basis points over the relevant base indicator as being broadly indicative of an arm's length rate. e.g. the New Zealand 90-day bank bill rate plus 250 basis points.

In addition to this a Thin Capitalisation regime acts as a back-up to the transfer-pricing regime.

Thin capitalisation rules operate to prevent foreign-controlled or multinational corporations allocating a disproportionate amount of debt to their New Zealand operations (an excess debt entity) and thereby reduce their taxation liabilities.

An 'excess debt entity' has deemed interest income on excess debt to the extent that its debt percentage of the New Zealand Group for the year is more than 60%, and for a company or a trust, the percentage is also more than 110% of the debt percentage for the worldwide group.

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

As adopted by OECD and New Zealand legislation (section GC 13 of the Income Tax Act 2007) for regulating cross-border associated party transactions by members of Multinational Enterprises (MNEs), an arm's length consideration for a transaction must be determined by identifying the arm's length conditions. The actual transaction must be 'accurately delineated' to account for the wider economic arrangement and commercial environment as well as the contractual terms.

A 'restricted transfer pricing rule'

applies to certain cross-border loans from non-residents. This may potentially restrict the permissible arm's length interest rate.

PRICING METHODS PRIORITY

Taxpayers are required to use at least one of the five methods prescribed in legislation. These include:

- Transactional based methods (comparable uncontrolled price [CUP], resale price, cost plus)
- Profit based methods (transactional net margin method [TNMM], transactional profit split).

The traditional transaction methods offer a direct means of setting an arm's length transfer price, whereas transactional profit methods take into account the overall profit or loss generated by the transaction. In New Zealand the TNMM is more commonly used because of the availability and reliability of data, and because the stricter comparability criteria for traditional transaction methods can be difficult to satisfy.

TRANSFER PRICING PENALTIES

Penalties can be imposed under the general penalties provisions:

- Lack of reasonable care: 20%
- Unacceptable tax position: 20%
- Gross carelessness: 40%
- Abusive tax position: 100%
- Evasion: 150%

These penalties can be increased by 25% for obstruction.

REDUCTION IN PENALTIES

Not taking reasonable care, unacceptable tax position or unacceptable interpretation penalties can be reduced by 100% and other penalties reduced by 75%, if disclosure is made before notification of an audit received from the Commissioner of Inland Revenue. Each penalty may be reduced by 40% if disclosure is made after notification of an audit.

DOCUMENTATION REQUIREMENTS

The absence of TP documentation will mean that if Inland Revenue considers a taxpayer's TP position is incorrect, the onus will be on the taxpayer to show that Inland Revenue is wrong. Having TP documentation in place should allow the taxpayer to show that it has taken



NEW ZEALAND continued

reasonable care in determining its TP position and should mitigate the risk of penalties.

Every person who carries on a business is required to keep full financial and tax records for seven years. This retention period also applies to the documents listed further below.

While transfer pricing documentation is not specifically described, its preparation is expected and is advantageous as it can reduce the risk of a tax audit and penalties. In a tax audit the Inland Revenue expect to see:

- details of operation and financial performance of the company and other entities under its MNE group
- details of the market it operates in and the types and value of inter-company transactions, as well as a description of the functions, assets (especially intangibles) and risks of the parties
- industry analysis
- efforts made to find internal comparable
- description of process of selecting best transfer pricing method
- details of comparable undertaken
- why companies were selected are comparable
- unadjusted income statement for each comparable with adjustments explained
- cross-check using at least a second profit level indicator
- conclusions and copies of all inter-company agreements

in addition to the following:

- Local and global corporate structures
- Master File – overview of global business operations, transfer pricing policies, global allocation of income and economic activity
- Local File – detailed information regarding material related party transactions
- Country-by-Country Report (CbCR)- For New Zealand headquartered multinational groups with EUR 750 million or more of consolidated revenue
- Details of any special circumstances
- Working papers including calculations using the selected method
- Supporting data and information.

As a bare minimum for smaller organisations, the Inland Revenue's Transfer Pricing Questionnaire should be completed, and analysis carried out on the data with a conclusion that supports the pricing used.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

It is recommended that transactions are documented when they occur or at least by the time the relevant tax return is filed. With the exception of large New Zealand headquartered multinational groups, no documentation needs to be filed with the tax return, but it must be at hand in case of a tax audit.

For New Zealand headquartered multinational groups with annual consolidated revenue in excess of EUR 750 million, CbCRs must be completed for each jurisdiction the group operates in. The due date is 12 months after the end of the relevant accounting period.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

New Zealand's transfer pricing legislation applies a wide range of cross-border related party arrangements, including:

- an arrangement between associated persons
- a company and a member of a non-resident owning body with collective voting or market value interests in the company of 50% or more
- a non-resident lender and another person (borrower) that includes a financial arrangement that is a cross-border related borrowing.

Related party transactions must be disclosed in financial statements.

STATUTE OF LIMITATIONS

Records must be retained for seven years, extended to 10 years if Inland Revenue advises of their intention to carry out an audit for that year.

IRD guidelines allow the Commissioner to amend an assessment of tax within a seven-year period after the tax year in which the relevant tax return was originally filed but only if the taxpayer is notified of an intended audit within four years after the year the relevant

tax return was filed. Otherwise (in the absence of an omission of income or providing a fraudulent or wilfully misleading tax return) the Commissioner of Inland Revenue is statute barred from amending the assessment after that initial four year period has lapsed.

ADVANCE PRICING AGREEMENTS (APAS)

The Inland Revenue has not established a formal process for obtaining an Advance Pricing Agreement (APA). This is because each application is unique.

Legislation allows for unilateral APAs to be issued in the form of a binding ruling and bilateral and multilateral APAs may be entered into pursuant to New Zealand's double tax treaties.

The APA process involves: an initial discussion with Inland Revenue or a short written submission to determine formal discussion; a pre-lodgement meeting with Inland Revenue to discuss any issues prior to formal lodgement of an application for a binding ruling; the submission of a formal application on a prescribed binding ruling application form including:

- Transfer pricing documentation
- A draft of the actual APA for which approval is being sought
- Separate submission regarding particular issues Inland Revenue expects the taxpayer to address.

BURDEN OF PROOF

The onus of proof is on taxpayer to provide evidence that their transfer pricing positions are correct (i.e. determined using arm's length conditions).

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

There are no principal differences, though Inland Revenue guidelines have been issued to supplement the OECD Guidelines.

CONTACTS FOR NEW ZEALAND

James (Jim) Martin
 UHY Haines Norton (Auckland) Ltd
 jmartin@uhyhn.co.nz
 +64 9 839 0087

NICARAGUA



TAX AUTHORITY

Dirección General de Ingresos (DGI).
(English: General Directorate of Income) Website: www.dgi.gob.ni

TAX LAW

Transfer Pricing regulations in Nicaragua are contained in the Tax Agreement ("LCT") No. 822, which introduces the issue of transfer pricing to the country for the first time. Law No. 822 establishes the new obligations of taxpayers in relation to their intercompany operations. Its entry into force was scheduled for January 1, 2016, but after the disagreement of the private sector regarding this new obligation and under the allegation of not being prepared to begin reporting transfer prices as of the date stipulated by article 303 of the LCT, on December 17, 2015, the National Assembly approved a reform to expand this measure, establishing a new application date of June 30, 2017.

REGULATIONS & RULINGS

The application Regulations & Rulings is based on Law No. 822, in which the compliance information is specified in terms of Transfer Prices by the taxpayer, being composed of the general principles of information and documentation, application methods and valuation rules, that is based on the principles of OECD.

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

This principle is developed in article 96 in the Tax Agreement ("LCT") No. 822. The basis of the principle indicates that the operations carried out between related parties will be valued at the price or amount that independent parties have agreed to in comparable operations under free competition conditions. (This applies to related companies outside the country)

PRICING METHODS PRIORITY

Article 100 of Law No. 822 contemplates the application methods to validate the principle of free competition, which are: Comparable Uncontrolled Price Method (CUP) Additional Cost Method (MCA) Resale Price Method (MPR) Utility Partition Method

(MPU), and Transactional Net Margin Method (MMNT).

TRANSFER PRICING PENALTIES

In the particular case of transfer prices, there are no specific infractions related to the lack of documentation, however, Article 97 of the Law 822 establishes that the General Directorate of Revenues of Nicaragua has the power to verify that the operations carried out between related parties have been valued in accordance with the principle of free competition, and may make corresponding adjustments when the valuation agreed between the parties results in less taxation in the country or a deferral in the payment of the tax.

REDUCTION IN PENALTIES

Not applicable.

DOCUMENTATION REQUIREMENTS

In accordance with chapter V of Law No. 822, to verify correct compliance with transfer pricing, taxpayers must prepare a transfer pricing study or supporting documentation, which considers the complexity and volume of intercompany transactions. This documentation must contain: a) information related to the business group to which the taxpayer belongs, and b) information related to the taxpayer, in which the intercompany transactions carried out are stipulated, as well as the valuation methods used and the results obtained.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

Based on the provisions of article 104 of the Law No.822, the information or documentation that proves the prices must be available at the time of presentation of the declaration. However, the taxpayer must only provide the established documentation, at the request of the Tax Administration, within a period of 45 days from receipt of the request.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

To date, there is no relative regulation on the declaration that the taxpayer must present in their intercompany operations.

STATUTE OF LIMITATIONS

In accordance with the general provisions established in the Tax Code in its Article 43, the statute of limitations established to retain the tax information is four years.

ADVANCE PRICING AGREEMENTS (APAS)

To determine the valuation of transactions between related parties before their completion, the Tax Administration may establish a procedure to request an Advance Price Agreement (APA)

1. Taxpayers may request the Tax Administration to determine the valuation of operations between companies related to prior to the realization of these. This request will be accompanied by a proposal from the taxpayer that will be based on the value that independent parties would have agreed in similar operations.
2. The specialized transfer pricing unit will be competent to resolve this procedure.
3. The Tax Administration may approve, deny, or modify the Proposal with the acceptance of the taxpayer. Your resolution will not be actionable;
4. This agreement will take effect with respect to the operations carried out after the date it is approved, and will be valid during the tax periods that are specified in the agreement, without it being able to exceed the four tax periods following the date on which it begins to take effect. Likewise, it may be determined that its effects reach the operations of the current tax period; And
5. The proposal referred to in this article can be understood rejected after the expiration of thirty (30) days from of the request, without prejudice to the obligation to resolve the procedure according to point 3.

BURDEN OF PROOF

The taxpayer has the burden of proof.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

This new obligation currently lacks a regulation that defines, as in other countries, minimum amounts of application,



NICARAGUA continued

forms of compliance and, what is more important, the obligation to present an affidavit of transfer prices. Currently, the Tax Authority is in the process of developing its internal transfer pricing department, as well as the implementation of computer systems that allow it to carry out proper transfer pricing audits.

CONTACTS FOR NICARAGUA

Bryan Pérez Rosales
UHY Pérez & Co
bperez@uhy-perez.com
+502 2503 5900

NIGERIA



TAX AUTHORITY

Federal Inland Revenue Service (FIRS). Website: www.firs.gov.ng
Nigeria Customs Service (NCS). Website: www.customs.gov.ng

TAX LAW

Companies Income Tax Act (CITA), Cap C21, Laws of the Federation of Nigeria, 2004

In exercise of the powers conferred by Section 61 of the Federal Inland Revenue Service Establishment Act No 13 of 2017, the Income Tax (Transfer Pricing) Regulations, 2018 (TP Regulations) has been issued to replace the Income Tax (Transfer Pricing) Regulations, 2012.

The Income Tax (Transfer Pricing) Regulations, 2018, provides the legal framework for the application of the arm's length principle to transactions between related persons. The commencement date of the TP Regulations, 2018, is 12 March 2018.

REGULATIONS & RULINGS

The profits of a company other than a Nigerian company, from any business, are deemed to be derived from Nigeria where the business is between the company and another person controlled by it or with a controlling interest in it. Conditions are made or imposed between the company and such person in any commercial or financial relations which, in the opinion of the Federal Inland Revenue Service (FIRS), is deemed to be artificial or fictitious. Profits may be adjusted by the FIRS to reflect the arm's length principle (ALP).

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

Any transaction which, in the opinion of the FIRS, reduces or would reduce the amount of any tax payable is artificial or fictitious – and therefore not done at arm's length.

PRICING METHODS PRIORITY

- Comparable uncontrolled price (CUP)
- Resale price method (RPM)
- Cost plus method (CPM)
- Transactional net margin method
- Transactional profit split method

TRANSFER PRICING PENALTIES

Tax is due if transactions are not treated as at arm's length at company income, personal income, education, value added or withholding tax rates, whichever is applicable.

The 2018 TP Regulations impose administrative penalties for non-compliance with relevant provisions.

REDUCTION IN PENALTIES

Subject to the appeal process for other tax assessments.

DOCUMENTATION REQUIREMENTS

Specific transfer pricing returns, including a TP Declaration Form and TP Disclosure Form, must be filed along with the annual filing of audited financial statements and tax returns of the global income of permanent establishments in Nigeria.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

Six months after the financial year end.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

Global income – earned in Nigeria plus earned elsewhere – of permanent establishment in Nigeria.

STATUTE OF LIMITATIONS

Six years

ADVANCE PRICING AGREEMENTS (APAS)

APAs are subject to approval by the FIRS.

BURDEN OF PROOF

The taxpayer – permanent establishment in Nigeria.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

No formal guidelines adopted for general application. Each double taxation agreement is a blend of 4 models – OECD, UN, Nigeria, and the other contracting party. The Nigerian model is closest to the UN model.

CONTACTS FOR NIGERIA

Gabriel Idahosa
UHY Maaji & Co
g.idahosa@uhy-ng-maaji.com
+234 802 329 5410

Tony Uwadiae
UHY Maaji & Co
t.uwadiae@uhy-ng-maaji.com
+234 8033157232

NORWAY



TAX AUTHORITY

Skattedirektoratet (SD). English: Norwegian Tax Authority (NTA). Website: www.skatteetaten.no

TAX LAW

Norwegian Taxation Act
Tax Administration Act (2017)

REGULATIONS & RULINGS

Norwegian Taxation Act § 13-1: Arm's length principle
Tax Administration Act (2017) § 8-11 and § 8-12: Transfer pricing filing and documentation requirements

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

The OECD Transfer Pricing Guidelines should be followed when applying the arm's length principle.

PRICING METHODS PRIORITY

OECD pricing methods are accepted by the NTA. The traditional transaction methods – comparable uncontrolled price (CUP); resale price (RPM); and Cost Plus (CP) – are generally preferred to the transactional profit methods – transactional net margin (TNMM) and profit split (PSM). There seems to be increasing support for application of the profit methods under certain circumstances.

There is no specified priority under Norwegian tax law, but reference is often made to the OECD hierarchy. As stated by the Norwegian Supreme Court, the Norwegian General Tax Act § 13-1 allows for the use of several transfer pricing methods, including methods not described by the OECD Guidelines, provided those methods will provide arm's length principle (ALP) results.

The NTA seems to be applying the principles outlined in OECD Guidelines Chapter IX ("Transfer Pricing Aspects of Business Restructurings"). Recent tax audits and court cases have shown that the principles described in the chapter are applied in practice.

TRANSFER PRICING PENALTIES

There are no specific transfer pricing penalties. A surtax may apply in cases of tax adjustments,

if the taxpayer is deemed to have provided incomplete or insufficient information. The surtax is 20% of the tax that would have applied on the adjusted amount. In cases of gross negligence, an additional surtax of 20% or 40% may be applied.

Failure to comply with the filing requirement carries the same penalties as failure to complete the annual tax return. The same is applicable if the documentation is not submitted by the deadline.

REDUCTION IN PENALTIES

The risk of a penalty being imposed may be reduced if proper documentation is prepared. Disclosure in the tax return may, in principle, relieve penalties because the Tax Authority technically will have been informed and may further investigate the transfer pricing case.

The assessment of penalties is becoming increasingly common.

DOCUMENTATION REQUIREMENTS

Taxpayers are obliged to prepare transfer pricing documentation. The documentation needs to include sufficient information to enable the NTA to evaluate the arm's length nature of the transfer prices applied between associated enterprises. Both cross-border and domestic transactions are covered.

The filing requirement is an attachment to the annual tax return (Form RF-1123), which includes a statement of all inter-company transactions. The form serves as a basis for the tax authorities when targeting transfer pricing tax audits.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

Transfer pricing documentation must be submitted within 45 days after a request by the tax authorities. All documentation must be retained for 10 years.

The NTA assumes that documentation is made contemporaneously and, accordingly, does not allow for extensions.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

The filing requirement is an attachment to the annual tax return (Form RF-1123) which includes a statement of all intercompany transactions. The form will serve as a basis for the tax authorities when targeting transfer pricing tax audits.

STATUTE OF LIMITATIONS

The general statute of limitations for amended tax assessments in Norway is five years. Transfer pricing documentation must be retained for at least 10 years.

ADVANCE PRICING AGREEMENTS (APAS)

Not applicable

BURDEN OF PROOF

The taxpayer

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

The NTA has a long history of following the OECD Transfer Pricing Guidelines and Norwegian regulations follow OECD principles. Documentation prepared in line with the OECD Guidelines will generally meet Norwegian requirements.

CONTACTS FOR NORWAY

Kirsti Armann
Revisorgruppen AS
ka@rg.no
post@rg.no

PAKISTAN**TAX AUTHORITY**

Federal Board of Revenue (FBR)
Website: www.fbr.gov.pk

TAX LAW

Section 108 and 230 E of Income Tax Ordinance, 2001

REGULATIONS & RULINGS

Rule 20 to 27Q of Income Tax Rules, 2002

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

A controlled transaction shall meet the arm's length principle standard if the result of the transaction is consistent with the result (referred to as the arm's length result) that would have been realised if an uncontrolled person had engaged in the same transaction under the same conditions.

PRICING METHODS PRIORITY

Arm's length principle price may be determined using the following:

- a. Comparable uncontrolled price (CUP)
- b. Resale price (RPM)
- c. Cost plus (CP)
- d. Profit split (PSM).

The tax authorities are empowered to choose between (a), (b) & (c) having regard to facts and circumstances of the case; (d) is applied only when arm's length principle results cannot be reliably determined under (a), (b) and (c).

TRANSFER PRICING PENALTIES

Any person who fails to keep and maintain record of transfer pricing: 1% of value of transactions, the record of which is required to be maintained under section 108. Any person who fails to furnish information required by tax authorities through formal notice: a penalty of Rs. 25,000/- for the first default and Rs. 50,000/- for each subsequent default.

REDUCTION IN PENALTIES

There is no specific provision.

DOCUMENTATION REQUIREMENTS

There are many documentation requirements. However, the crux of the same is as under:-

- (i) General description of transfer

pricing policies related to financing agreements between associates
(ii) A description of all controlled transactions between associates and relationships among the associates
(iii) Identifications of associated enterprises involved in each category of controlled transactions and relationships between them
(iv) List of all intercompany agreements
(v) Details of transfer pricing method applied and reasons for its selection.

Detailed requirements are given in rule 27K to 27Q of Income Tax Rules, 2002 which can be accessed at <https://www.fbr.gov.pk/Categ/Income-Tax-Rules-2002/335>

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

On or before the filing of Income Tax Return.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

As explained above.

STATUTE OF LIMITATIONS

Six years from the date of filing of the return.

ADVANCE PRICING AGREEMENTS (APAS)

No formal APAs programme.

BURDEN OF PROOF

Pakistan Tax Authorities.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

Transfer pricing regulations are largely based on OECD Guidelines.

CONTACTS FOR PAKISTAN

Naeem Sheikh
UHY Hassan Naeem & Co
sheikhnaeem@uhy-hnco.com
+92 42 3540 3550

PANAMA



TAX AUTHORITY

Ministry of Economy and Finance, Direccion General de Ingresos (DGI), Transfer Pricing Department.

TAX LAW

Law 33 of June 30, 2010, modified by the Law No. 52 of 2012.

Executive Decree No. 390 of 2016 which establishes the requirements and documents for transfer pricing. Resolution No. 201-1937 of 2 April 2018 modified Form 930, "Transfer Pricing Information Return".

Law 159 of 2020 establishes that entities under the EMMA must apply the transfer pricing principle established in the Panamanian Fiscal Code to all transactions carried out with related parties in Panama, those that are tax residents abroad and those that are registered under the Panama Pacific Regime, MHQ regime, Colón Free Zone, Fuel Free Zone, City of Knowledge regime or any other free zone or special economic area regime currently existing or that may be created in the future.

REGULATIONS & RULINGS

On 24 January 2019, Panama's tax authorities signed the Multilateral Competent Authority Agreement for Country-by-Country Reporting, which is a multilateral framework agreement that provides and facilitates the bilateral automatic exchange of information.

Executive Decree No. 46 of 2019 has established the disclosure of information in the Country-by-Country Reporting by tax resident companies in Panama for purposes of the automatic exchange of information. Furthermore, Resolution No. 201-9117 of 2019, regulating the notification obligation included in Executive Decree 46 of 2019.

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

Cross-border intercompany transactions conducted by Panamanian taxpayers are subject to transfer pricing obligations if the transactions result in income, costs or expenses that are considered in the determination of taxable income, and should be analysed transaction

by transaction and in accordance with the valuation methods established in article 762-F of the Tax code.

Article 762-C of Chapter IX of the Tax Code of the Republic of Panama, two or more persons shall be considered related when one of them participates directly or indirectly in the management, control or capital of the other, or when a person or group of persons participates directly or indirectly in the management, control or capital of such persons.

The transfer pricing rules are based on the arm's length principle established in the Organisation for Economic Co-operation and Development (OECD), mainly those contained in Action 13 (Transfer Pricing Documentation): Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

PRICING METHODS PRIORITY

Article 762-F of the Fiscal Code establishes that the determination of the price agreed upon by independent parties in comparable transactions may be made by the application of any of the following internationally accepted methods.

- i) Comparable Uncontrolled Price Method (CUP)
- ii) Resale Price Method (RPM)
- iii) Cost Plus Method (ACM)
- iv) Profit Sharing Method (MPU); or Profit Split Method (PSM)
- v) Transactional Net Margin Method (TNMM)

TRANSFER PRICING PENALTIES

The law has established that if the Form 930 is not filed, a fine of 1% of the total gross amount of the operations with related parties, up to a maximum of 1 million USD/PAB, will be levied.

The Law of transfer pricing does not contemplate a specific fine for the lack of a transfer pricing study, however, the general fines for failure to submit documentation will apply, which can range between USD 1,000 and USD 5,000 the first year, and between USD 5,000 and USD 10,000 in case of recurrence.

REDUCTION IN PENALTIES

The law does not have established conditions or reduction in penalties.

DOCUMENTATION REQUIREMENTS

The company requires a transfer pricing study; furthermore, agreements between related parties, board minutes, accounting and all the documentation about the transactions of income, cost and expenses.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

An annual statement of transactions (Form 930) with related parties must be submitted to the tax authorities within six months after the end of the fiscal year (if the fiscal year coincides with the calendar year, the deadline is 30 June). In addition, taxpayers must prepare a transfer pricing study and make it available to the tax authorities. If required, the taxpayer will have a period of 45 business days for the delivery of transfer pricing study.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

The DGI can require from the taxpayer, information and documentation regarding the organisational, legal and operational structure of the multinational group to which the taxpayer belongs, including:

- i) the transfer pricing policies of the group and its profit generators
- ii) a description of the value chain of the main products or services of the group
- iii) consolidated financial statements
- iv) a list and description of intercompany agreements
- v) a list of intangible assets as well as information on the ownership of these assets
- vi) information on financial operations and anticipated transfer pricing agreements
- vii) details on restructuring and transfer of intangibles.

STATUTE OF LIMITATIONS

According to the Tax Code of the Republic of Panama, the statute of limitations is 5 years from the date the tax return is filed.



PANAMA continued

ADVANCE PRICING AGREEMENTS (APAs)

The tax authority does not accept advance pricing agreements. However, DGI has submitted a draft bill to incorporate Article 762-L to the Tax Code of the Republic, which contemplates the inclusion of the figure of APAs.

BURDEN OF PROOF

The taxpayer has the burden of proof for transfer pricing transactions under Panamanian law.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

Panama follows OECD recommendations.

CONTACTS FOR PANAMA

Nereida Marquez P.
UHY Botello & Marquez
nmarquez@uhy-pa.com
+1 507 394 4428

PHILIPPINES



TAX AUTHORITY

Bureau of Internal Revenue (BIR).
Website: www.bir.gov.ph

TAX LAW

National Internal Revenue Code (NIRC) of 1997: Sec. 50

REGULATIONS & RULINGS

Revenue Memorandum Order (RMO) No. 5-2012 (issued by the BIR on March 30, 2012), prescribing guidelines and policies under the performance benchmarking method. Under this RMO, benchmarking shall be done separately for individual and corporate taxpayers.

Revenue Regulations (RR) No. 2-2013 (issued by the BIR on January 23, 2013) was released to provide guidelines in applying the arm's length principle for cross-border and domestic transactions between associated enterprises which are largely based on the arm's length methodologies as set out under the Organisation for Economic Cooperation and Development (OECD) Transfer Pricing Guidelines.

Revenue Audit Memorandum Order (RAMO) No. 1-2019 (issued by the BIR on August 27, 2019) known as the "Transfer Pricing Audit Guidelines" to provide for standardized audit procedures and techniques in the conduct of audit of taxpayers with related party as well as intra-firm transactions.

RR No. 19-2020 (issued by the BIR on July 8, 2020), prescribing the guidelines and procedures for the submission of BIR Form No 1709, Transfer Pricing Documentation (TPD), and other supporting documents.

Revenue Memorandum Circular (RMC) No. 76-2020, clarifies certain issues with related party transactions.

RR No. 34-2020 (issued by the BIR on December 21, 2020) amends certain provisions of RR 19-2020.

RMC No. 54-2021 clarifies certain provisions of RR No. 34-2020.

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

The arm's length principle requires the transaction with a related party to be made under comparable conditions and circumstances as a transaction with an independent party. It is founded on the premise that where market forces drive the terms and conditions agreed in an independent party transaction, the pricing of the transaction would reflect the true economic value of the contributions made by each entity in that transaction. Essentially, this means that if two associated enterprises derive profits at levels above or below the comparable market level solely by reason of the special relationship between them, the profits will be deemed as non-arm's length.

PRICING METHODS PRIORITY

The BIR introduced five (5) transfer pricing methodologies (TPM) in its regulation, namely: comparable uncontrolled price method (CUPM), resale price method (RPM), cost plus method (CPM), profit split method (PSM), and transactional net margin method (TNMM). However, it does not have a specific preference for any one method.

Instead, the TPM that produces the most reliable results, taking into account the quality of available data and the degree of accuracy of adjustments, should be utilised.

In exceptional circumstances where there may not be comparable transactions or sufficient data to apply the above TPM, the BIR may use the following approaches to verify whether the controlled transactions comply with the arm's length principle:

- (i) Extend the transfer pricing methods, e.g. the comparable may be with enterprises in another industry segment or group of segments; and/or
- (ii) Use a combination or mixture of the transfer pricing methods or other methods or approaches.

TRANSFER PRICING PENALTIES

No specific provision. The BIR, after audit investigation, will determine the amount the taxpayer is liable for as a result of illegal transfer pricing.

The general penalty provision under the Tax Code is either 25% or 50%. See Sec. 248 of the NIRC.

REDUCTION IN PENALTIES

No specific provision. In general, the BIR may compromise or abate basic taxes (at 10% to 40%) and penalties. See Sec. 204 of the NIRC.

In addition, failure to file a BIR Form 1709 (whenever a taxpayer is deemed required to comply based on the criteria set by the BIR through RR 34-2020) may be liable to compromise penalties amounting to one thousand pesos (P 1,000.00) per failure, pursuant to Sec. 250 of the Tax Code.

DOCUMENTATION REQUIREMENTS

The following taxpayers are required to prepare and attached to their income tax return an annual information return (BIR Form 1709):

1. it is required to file an Annual Income Tax Return (AITR);
2. it has transactions with a domestic or foreign related party during the concerned taxable period; and
3. it falls under any of the following categories:
 - a. large taxpayers
 - b. taxpayers enjoying tax incentives, i.e. Board of Investments (BOI)-registered economic zone enterprises, those enjoying Income Tax Holiday (ITH) or subject to preferential income tax rate
 - c. taxpayers reporting net operating losses for the current taxable year and the immediately preceding two (2) consecutive taxable years
 - d. a related party that has transactions with (a), (b) or (c).

In addition, the following taxpayers are required to prepare a transfer pricing documentation:

- a. annual gross sales/revenue for the subject taxable period exceeding One Hundred Fifty Million Pesos (P150,000,000) and the total amount of related



PHILIPPINES continued

party transactions with foreign and domestic related parties exceeds Ninety Million Pesos (P90,000,000)

b. sale of tangible goods involving the same related party exceeding Sixty Million Pesos (P60,000,000) within the taxable year

c. service transaction, payment of interest, utilization of intangible goods or other related party transaction involving the same related party exceeding Fifteen Million Pesos (P15,000,000.00) within the taxable year.

The taxpayer must keep adequate contemporaneous documentation of the transfer pricing which include, but are not limited to, the following details: (1) Organizational structure; (2) Nature of the business/ industry and market conditions;; (3) Controlled transactions; (4) Assumptions, strategies, policies; (5) Cost contribution arrangements (CCA); (6) Comparability, functional and risk analysis; (7) Selection of the transfer pricing method; (8) Application of the transfer pricing method; (9) Background documents; and (10) Index to documents.

If the taxpayer is not required to prepare a documentation, it is still recommended that a taxpayer with material related party transactions prepare one to reasonably assess and prove whether its dealings with related parties adhere to the arm's length principle.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

The transfer pricing documentation is a required attachment when filing the annual income tax return.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

Related-party transactions are required to be disclosed in the audited financial statements to be submitted to the BIR and Securities and Exchange Commission (SEC).

STATUTE OF LIMITATIONS

Three (3) years from the date of filing of tax returns and ten (10) years

from discovery of fraud in case of fraudulent or false return.

ADVANCE PRICING AGREEMENTS (APAS)

The taxpayer may enter into a unilateral APA or a bilateral/ multilateral APA as authorized under the Mutual Agreement Procedure (MAP) Article of the 43 Philippine tax treaties. It is not a mandatory requirement to avail of an APA for the controlled transactions. However, if the taxpayer does not choose to enter into an APA and its transactions are subject later on to transfer pricing adjustments, it may still invoke the MAP Article to resolve double taxation issues.

The BIR issued RR 10-2022 on June 29, 2022 to prescribe the guidelines and procedures on how to request MAP assistance. On the other hand, the BIR is yet to issue specific guidelines on how to apply for an APA.

BURDEN OF PROOF

Burden of proof rests upon the taxpayer to show that the determination of arm's length pricing is appropriate and in accordance with the arm's length principle.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

All OECD rules on transfer pricing are used as reference.

CONTACTS FOR PHILIPPINES

Gerry Francisco
UHY M.L. Aguirre & Co. CPAs
gerry.francisco@mlaguirre.org
+63 926 710 8984

Jonah-Lyn Colona
UHY M.L. Aguirre & Co. CPAs
jonah-lyn.colona@mlaguirre.org
+63 918 237 1401

POLAND



TAX AUTHORITY

Departament Cen Transferowych i Wycen (Transfer Pricing Department)
Website: www.mf.gov.pl

TAX LAW

Corporate Income Tax Act as of 15.02.1992, art. 11a -11t, Act of October 16, 2019 on settling disputes related to double taxation and concluding advance pricing agreements

REGULATIONS & RULINGS

Regulation of the Minister of Finance of April 2, 2022 on transfer pricing documentation in the field of corporate income tax

Regulation of the Minister of Finance of February 28, 2022 on transfer pricing in the field of corporate income tax

Regulation of the Minister of Finance of August 29, 2022 on information on transfer pricing in the field of corporate income tax

Act of October 16, 2019 on the method and procedure for eliminating double taxation and concluding advance pricing agreements

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

Accordingly to art. 11c Corporate Income Tax Act related entities are obliged to establish transfer prices on conditions that would be agreed between unrelated entities.

If as a result of the existing relationships, established and imposed conditions are different from those that would be established between unrelated entities and as a result the taxpayer shows an income lower (higher loss) than that which would be expected if the said relationships did not exist, the tax authority determines the income (loss) of the taxpayer without taking into account the conditions resulting from these connections.

When determining the amount of the taxpayer's income (loss), the tax authority takes into account the actual course and circumstances of the conclusion and implementation of the controlled transaction and the behaviour of the parties to this transaction.

If the tax authority decides that, in comparable circumstances, unrelated

entities guided by economic rationality would not conclude a given controlled transaction or would enter into a different transaction, or would perform another action, hereinafter referred to as the "proper transaction", taking into account:

1) conditions that have been established by related entities,
2) the fact that the conditions established between related entities make it impossible to determine the transfer price at a level that would be agreed by unrelated entities guided by economic rationality, taking into account the options realistically available at the time of concluding the transaction

- this authority determines the taxpayer's income (loss) without taking into account the controlled transaction, and if it is justified, it determines the taxpayer's income (loss) from the transaction relevant to the controlled transaction.

The basis for the application cannot be solely:

1) difficulty in verifying the transfer price by the tax authority, or
2) there are no comparable transactions between unrelated entities in comparable circumstances.

PRICING METHODS PRIORITY

Comparable uncontrolled price (CUP); resale price (RPM), reasonable margin; cost plus (CP), transaction net margin

(NTM), profit sharing method (PSM). It should be stressed that if it is not possible to apply one of these method,

another method (that is called sixth method) should be used including valuation methods, as the most appropriate under the circumstances.

TRANSFER PRICING PENALTIES

According to the Penal Fiscal Code failure to comply with duties in transfer pricing documentation and reporting obligation can be punished by severe retributions.

Furthermore, with the meaning of other tax regulations, tax authority could determine additional tax obligation, which elementary rate amounts 10% of either excessively high tax loss or not reflected in whole/in part taxable profit. The

rate could be doubled or tripled in case of the lack of transfer pricing documentation.

REDUCTION IN PENALTIES

Penalty may be reduced if taxpayer fulfil transfer pricing documentation in appropriate terms.

DOCUMENTATION REQUIREMENTS

According to Polish regulations (art. 11k corporate income tax law), taxpayer is obligated to prepare local file documentation for homogenous (of the same kind, alike) transactions which value (excluding value added tax) exceeding the following thresholds:

1. 10 000 000 PLN for goods transactions,
2. 10 000 000 PLN for financial transactions,
3. 2 000 000 PLN for services transactions,
4. 2 000 000 PLN for other than points 1-3.

The obligation to prepare transfer pricing documentation also covers transactions, other than a controlled transaction, with an entity having its place of residence, seat or management board in the territory or a country applying harmful tax competition (so-called tax havens) or a foreign permanent establishment located in a tax haven, if the value of this transaction for the tax year, and in the case of companies that are not legal entities - for the financial year, exceeds:

1. 2 500 000 PLN - for financial transactions,
2. 500 000 PLN - in other cases.

Each transfer pricing documentation should contain transfer pricing analysis. Such analysis might be prepared as:

- comparative analysis (benchmarking study) or - compatibility analysis.

Form of preparing transfer pricing analysis in most cases is determined by the type, character of transaction and the access to the comparable data.

Local file documentation should contain following elements:

- 1) description of related party,
- 2) description of the transaction including the functions performed by the



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taxpayers, risk assumed and the assets they use,

3) transfer pricing analysis

4) financial information.

Additionally, related parties that consolidates their financial statements using the full or proportional method, that are obligated to prepare local file documentation, should attach group transfer pricing documentation (Master File), drawn up for the financial year, if they belong to the group of related entities:

1) for which consolidated financial statements are prepared,

2) whose consolidated revenues exceeded 200 000 000,00 PLN

or its equivalent in the previous financial year. Group transfer pricing documentation contains the following elements concerning the capital group within the meaning of Art. 3 clause 1 point 44 of the Accounting Act:

1) description of this group;

2) description of the significant intangible assets of this group;

3) description of significant financial transactions of this group;

4) financial and tax information of this group.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

Related parties, who are obligated to prepare local transfer pricing documentation or group transfer pricing documentation, submit this documentation at the request of the tax authorities within 14 days from the date of delivery of the request. If there is a probability that the value of controlled transaction was lowered or the conditions for low value added transactions are not met or the safe harbor conditions for loans are not met, tax authorities may demand that taxpayer will submit local file documentation without transfer pricing analysis within 30 days from such demanding. Accordingly to Polish transfer pricing regulations local file documentation must be ready within 10 month after the fiscal year is closed, whereas the time for preparing a group documentation (master file) is longer – 12 month.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

Related parties have an obligation (if they are obligated to prepare transfer pricing documentation) to fulfil to Tax Authorities an information about transfer pricing called TPR form.

The deadline for submitting the form is 11 months from the end of the financial year.

STATUTE OF LIMITATIONS

As for all taxes, 5 years after end of the fiscal year in which obligation arose.

ADVANCE PRICING AGREEMENTS (APAS)

Based on current regulations it is possible to negotiate an APA with the Tax Authorities. Validity: maximum 5 years. The APA is up to the Head of National Fiscal Administration decision, which is a confirmation of the selection and application of a method determining transaction prices between related parties.

BURDEN OF PROOF

The taxpayers who conduct transactions with their related parties are obligated to justify that the terms of that transactions are in line with the arm's length principle.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

Regulations are generally based on OECD Guidelines.

CONTACTS FOR POLAND

Michał Serafin
UHY ECA Group
michal.serafin@uhy-pl.com
+48 795 142 680

PORTUGAL



TAX AUTHORITY

Autoridade Tributária e Aduaneira(AT); English: Customs and Tax Authority. Website: www.portaldasfinancas.gov.pt

TAX LAW

Articles 63 and 138 of the Portuguese Corporate Income Tax Code.

REGULATIONS & RULINGS

Administrative Decree 268/2021 of 26 November 2021.

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

The interpretation of arm's length principle follows OECD rules. In transactions carried out between a taxable person subject to corporate income tax or personal income tax and any other entity, whether or not subject to these taxes, with which it is in a situation of special relations, terms and conditions must be contracted, accepted and practiced substantially identical to those which would normally be contracted, accepted and practiced between independent entities in comparable operations.

Special relations between two entities are considered to exist in situations where one has the power to directly or indirectly exercise significant influence over the management decisions of the other, which is considered to be verified, namely, between:

- a) an entity and the holders of its capital, or their spouses, ascendants or descendants, who hold, directly or indirectly, a holding of not less than 20% of the capital or of the voting rights;
- b) entities in which the same holders of the capital, or their spouses, ascendants or descendants, directly or indirectly have a holding of not less than 20% of the capital or of the voting rights;
- c) An entity and the members of its corporate bodies, or of any administrative, direction, management or supervisory bodies, and their spouses, ascendants and descendants;
- d) Entities in which the majority of the members of the corporate bodies, or of the members of any administrative, direction,

management or supervisory bodies, are the same persons or, being different persons, are linked to each other by marriage, legally recognized de facto union or kinship in direct line;

- e) Entities linked by a subordination contract, parity group or other contract of equivalent effect;
- f) Companies that are in a relationship of dominium, under the terms of article 486 of the Commercial Companies Code;
- g) Entities whose legal relationship allows, due to its terms and conditions, that one of them conditions the management decisions of the other, according to facts or circumstances foreign to the commercial or professional relationship itself;
- h) A resident or non-resident entity with a permanent establishment located in Portugal and an entity subject to a clearly more favorable tax regime resident in a country, territory or region included in the list approved by administrative ruling of the Minister of Finance (tax havens).

PRICING METHODS PRIORITY

The Portuguese Tax Authority accepts any of the following methods: comparable uncontrolled price (CUP); resale price (RPM); cost plus; profit split (PRM); transactional net margin (TNMM); or other methods.

TRANSFER PRICING PENALTIES

If taxpayers do not have the transfer pricing documentation, they may be liable for the payment of a fine from 1.000 euros up to 20.000 euros. Transfer pricing adjustments, resulting from a tax inspection carried out by the tax authorities, are subject to the general tax penalty regime. Late payment interest penalty is 4% per year.

REDUCTION IN PENALTIES

The general tax penalty regime is applicable and the voluntary payment of additional tax assessment may contribute towards the reduction of fines.

DOCUMENTATION REQUIREMENTS

Taxpayers with an annual income that exceeds 10 million Euros in the

previous year need to prepare a fiscal documentation dossier, which must contain the master file and the country-specific documentation/legislation. The fiscal documentation must contain: the description of the related parties; the scope of activity; detailed description of goods, rights and services involved; functional analysis; risk analysis; and conclusions.

Supporting documents should include: organization structure; related parties status; a description of the company's activity and of related companies; description of transactions; amounts and conditions of the transactions; functional and technical analysis; description of the method used and the reason for its use; a demonstration of price calculation; market comparisons (using databases, of which the Iberian SABI is the most recognized); intra-group contractual agreements and unrelated parties' agreements

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

When the fiscal year is the same as the calendar year documentation must be prepared by 15 July after the tax year-end and kept in the fiscal documentation dossier. Only taxpayers subject to tax inspection, taxpayers whose tax situation must be monitored by the Major Taxpayers Unit (Administrative Decree 130/2016 of 10 May 2016) and entities to which the special tax regime for groups of companies is applied are obliged to submit fiscal documentation to the Tax Authority. Auditors should include a reserve in the Legal Certification of Accounts in case of non-preparation of obligatory documentation.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

The main disclosure requirements are contained in annexes A and H of the Simplified Business Information filing (Informação Empresarial Simplificada (IES)). The deadline to submit the declaration is 15 July after the tax year end.



PORTUGAL continued

STATUTE OF LIMITATIONS

Additional assessments are possible within four years from the end of the assessment year. As with all relevant accounting documentation, transfer pricing documents must be kept for 10 years.

ADVANCE PRICING AGREEMENTS (APAs)

APAs are permitted with a validity of up to four years (Administrative Decree 267/2021 of 26 November 2021).

BURDEN OF PROOF

Taxpayers should have the transfer pricing documentation correctly prepared.

The tax authority must prove the non-use of the arm's length principle (ALP). Obviously, the task will be more difficult when the transfer pricing documentation exists and it includes a demonstration of how the principle is fulfilled.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

Nothing significant.

CONTACTS FOR PORTUGAL

António Oliveira
UHY Oliveira, Branco & Associados,
SROC, LDA
aoliveira@uhy-portugal.pt
+351 21 782 7510

Carlos Costa
UHY Oliveira, Branco & Associados,
SROC, LDA
ccosta@uhy-portugal.pt
+351 21 761 33 30

QATAR



TAX AUTHORITY

1. General Tax Authority (GTA)
2. Qatar Financial Centre (QFC)

TAX LAW

State Tax Regime
(Income Tax Law No. 24 of 2018)
QFC Tax Regime
(QFCA Tax Department)

REGULATIONS & RULINGS

State Tax Regime - Income Tax Law No. 24 of 2018 should be applied to tax payers in Qatar, except for those registered in Qatar Financial Center. QFC Tax Regime - This tax regime is separate and distinct from the state tax regime. The QFC Regulations, which were enacted pursuant to Law No. 7 of 2005 on the promulgation of the law for the QFC, and the QFCA Tax Manual (TP Manual) should be applied to QFC-registered entities.

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

The Qatar Financial Centre (QFC) Authority will imminently issue a New Transfer Pricing Manual providing guidance for the application of the arm's length principle to cross border and domestic transactions between registered QFC tax payers and their associated parties.

PRICING METHODS PRIORITY

Transfer pricing is applicable for International transactions and domestic transactions. There is no distinction between domestic and international transactions under the current TP legislation. Therefore, it is expected that transfer pricing methods would equally apply.

TRANSFER PRICING PENALTIES

There are currently no specific transfer pricing penalties.

REDUCTION IN PENALTIES

N/A

DOCUMENTATION REQUIREMENTS

State tax regime: The Qatar Income Tax Law does not provide specific documentation requirements; however, because the Qatar Income Tax Law requires the use of the CUP method, or other transfer pricing

(TP) methods also authorized by the OECD, there is an implied requirement to have documentation in place.

QFC tax regime: The burden of proof is on the QFC-registered taxpayer to establish that the actual conditions are consistent with the arm's-length conditions. There are four classes of records or evidence that will need to be considered, including:

- 1- Primary accounting records
- 2- Tax adjustment records
- 3- Records of transactions with an associated business
- 4- Evidence to demonstrate an arm's-length result (this includes a description of the intercompany transactions and a functional analysis)

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

Documentation preparation deadline:

It is recommended that the transfer pricing documentation be available on or before the annual tax return is filed with the GTA.

Documentation submission deadline: There is no statutory deadline for submission of transfer pricing documentation.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

Related party disclosures:

State tax regime: Related party disclosures must be in the notes to the audited financial statements, which are filed with the GTA in support of the annual tax declaration. There is currently no related party disclosures or transfer pricing-related appendices/additional forms/documents.

QFC tax regime: Related party transactions must be disclosed in the notes to the audited financial statements, which are filed with the QFC Tax Department, along with the income tax return. A QFC branch is not required to submit full financial statements.

There is currently no related party disclosures or transfer pricing-related appendices/additional forms/documents.

Transfer pricing-specific returns: For both the state and QFC tax regimes, there is currently no

requirement to prepare a transfer pricing-specific return separately or with the corporate income tax return.

STATUTE OF LIMITATIONS

State tax regime:

A transfer pricing assessment is a part of the regular corporate income tax audit by the GTA. The statute of limitations to complete a regular tax audit is five years following the year in which the taxpayer submitted the tax return.

QFC tax regime:

The time limit for the QFCA Tax Department to conduct a tax assessment is six years after the end of the accounting period to which it relates.

ADVANCE PRICING AGREEMENTS (APAS)

In November 2017, Qatar signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (the Convention) and joined the BEPS Inclusive Framework. On 19 December 2017, Qatar also signed the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports.

BURDEN OF PROOF

The burden of proof is on the QFC-registered taxpayer to establish that the actual conditions are consistent with the arm's-length conditions.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

Qatar is not a member of the OECD; in practice, Qatar generally follows the OECD Guidelines.

CONTACTS FOR QATAR

Moomen Elsalawy
UHY Ammo & Co
m.salawy@uhy-qa.com
+974 44989453

Moomen Elsalawy
UHY Ammo & Co
m.salawy@uhy-qa.com
+974 44989453

ROMANIA



TAX AUTHORITY

Agentia Nationala de Administrare Fiscala (ANAF). English: National Agency for Fiscal Administration. Website: www.anaf.ro

TAX LAW

- Law no. 227/2015 on the Fiscal Code, modified and completed
- Government Ordinance no. 207/2015 on the Fiscal Procedural Code
- Order no. 3735/2015 for approving the procedure for issuing APAs
- Order no. 222/2008, Order no.442/2016 of the President of the National Agency for Fiscal Administration (ANAF) regarding the transfer pricing file

REGULATIONS & RULINGS

Art. 11 – Fiscal Code:

Transactions between affiliated persons shall be carried out according to the market value principle.

Within a transaction or group of transactions between affiliated persons, the tax bodies may adjust, where the market value principle is not respected, or may estimate, in case the taxpayer does not make available to the tax authority the data necessary for determining whether transfer prices comply with the market value principle, the amount of the income or the expense related to the tax result of any of the affiliated parties based on the level of the central trend of the market.

The procedure for adjustment/ estimation and the method of determining the level of the central trend of the market, as well as the situations in which the tax authority may consider that a taxpayer has not provided the data necessary to establish the compliance with the principle for the analysed transactions, shall be established according to the Fiscal Procedural Code.

When determining the market value of the transactions carried out between affiliated persons the most appropriate method of the following shall be used:

1. Price comparison method;
2. Cost-plus method;
3. Resale price method;
4. Net margin method;
5. Profit-sharing method;
6. Any other method recognised in the OECD Transfer Pricing Guidelines, as amended/ modified and supplemented.

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

The Romanian fiscal authority can, in order to calculate the fiscal obligations of affiliated persons, reassess transactions between the affiliated person from Romania, with a view to examining if transactions between the affiliates reflect, or not, the real taxable profits coming from Romania.

Transactions between affiliated persons are not reassessed when they take place in commercial circumstances and terms of free market, as well as when the transactions are made between affiliated persons who are Romanian legal persons or corporate bodies.

Reassessing the records means adjusting the incomes and the expenses in order to calculate the fiscal obligations of the affiliated persons.

PRICING METHODS PRIORITY

In order to establish the most adequate method, the taxpayer considers:

- The method that is the most appropriate to the circumstances where the prices, subject to free competition on compared markets from a commercial point of view, are established
- The method for which data is available; data resulting from the effective functioning of the affiliated persons involved in transactions subject to free competition
- The degree of precision that can be helpful in making adjustments in order to obtain comparison
- The circumstances of an individual event
- The activities effectively processed by the different affiliated persons
- The suitability of the method to the given circumstances on the market

and to the activity of the taxpayer

- The documents which can be provided by the taxpayer.

TRANSFER PRICING PENALTIES

For legal persons and corporate bodies, in cases where a transfer pricing file is not drawn up and presented at the request of the authorised fiscal authority within the timeframe established by that authority, the penalty is between RON 12,000 and RON 14,000.

In cases where the taxpayer refuses to present a transfer pricing file, or the file presented is incomplete, the fiscal authority is entitled to make estimations in order to establish transfer prices.

REDUCTION IN PENALTIES

The penalties are not negotiable.

DOCUMENTATION REQUIREMENTS

Documentation must reveal the economic reality of the company as well as the system of transfer pricing.

Government Ordinance no. 207/2015 on the Fiscal Procedural Code provides regulations on presenting and drawing up the transfer pricing file for companies who run transactions with affiliated parties. The content of the transfer pricing file was approved by order of the president of ANAF.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

1. The large taxpayers, who perform transactions with affiliated persons with a total annual value, higher or equal to any of the materiality thresholds, provided in this paragraph, shall have the obligation to annually prepare the transfer prices file. The time limit for preparing the transfer prices file shall be the legal time limit for submitting the annual statements on the profit tax, for each fiscal year, the 25th of June.

The value level of the materiality threshold for the above-mentioned taxpayers/payers, depending on the type of transaction performed, shall be:

- EUR 200 000 in case



ROMANIA continued

of the interest received/paid for financial services;

- EUR 250 000, in the case of transactions concerning the supplies of services received/supplied;
- EUR 350 000 in the case of transactions concerning the purchases/sales of tangible or intangible assets.

The time limit for making available the transfer prices file prepared, shall be maximum 10 calendar days from the date of the request by the tax inspection body, but not earlier than 10 days after the time limit set for preparing the file expires, the 25th of June.

2. The large taxpayers, who do not meet the criteria established according to the provisions of the previous paragraph, as well as the taxpayers/payers in the categories of small and medium taxpayers, who perform transactions with affiliated persons of a total annual value, higher than or equal to any of the materiality thresholds, provided in this paragraph, shall have the obligation to prepare and present the transfer prices file only at the request of the tax body, within a tax inspection action.

The value level of the materiality threshold for the taxpayers/payers in the category of large taxpayers, who do not meet the criteria established according to the provisions of the previous paragraph, as well as for the taxpayers/payers in the categories of small and medium taxpayers, depending on the type of transaction performed, is:

- EUR 50 000, in the case of interest received/paid for financial services;
- EUR 50 000 in the case of transactions concerning the supplies of services received/supplied.
- EUR 100 000 in the case of purchases/sales of tangible or intangible assets.

In this case, the time limit for presenting the transfer prices file requested by the tax inspection body, shall be 30 to 60 calendar days, with the possibility of one-time extension, on the written request of taxpayers/payers, for a period of 30 calendar days at the most.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

Not applicable

STATUTE OF LIMITATIONS

The statutory limitation term starts on 1 January of the year following the year in which the fiscal debt was created and is five years. In cases of evasion, this term is 10 years.

ADVANCE PRICING AGREEMENTS (APAS)

APAs are regulated in Romania by Order no. 3735/2015. Agreements are issued for a period of five years. By rules of exception, it is possible for agreements to be issued for a longer period, where long-term contracts are involved.

The terms for issuing APAs are:

- 12 months in the case of a unilateral agreement
- 18 months in the case of a bilateral or versatile agreement.

The tariffs collected by NAFA for issuing such agreements are:

- EUR 10,000 for small and medium enterprises; EUR 6,000 for amendments to the agreement
- EUR 20,000 for large enterprises; EUR 15,000 for amendments to the agreement.

BURDEN OF PROOF

The burden of proof is on the tax administration.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

Regulations were prepared on the basis of OECD Guidelines and European Commission documents. All mentioned methods are applicable.

CONTACTS FOR ROMANIA

Camelia Dobre
UHY Audit CD S.r.l.
camelia.dobre@uhy-ro.com
+40 31 425 4774

SAINT LUCIA



TAX AUTHORITY NAME

INLAND REVENUE DEPARTMENT
(IRD)

<http://irdstlucia.gov.lc/>

TAX LAW

Saint Lucia has no specific transfer pricing guidelines. However, related-party transactions are accepted if they are made on an arm's-length basis. The IRD has the power under the Income Tax Act to make any adjustment deemed necessary to place such transactions at arm's length.

REGULATIONS & RULINGS

No adopted regulations.

INTERPRETATION OF ARM'S LENGTH PRINCIPLE

Where an enterprise of one of the territories is engaged in trade or business in the other territory through a permanent establishment situated therein, there shall be attributed to such permanent establishment the industrial or commercial profits which it might be expected to derive if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arms' length with the enterprise of which it is a permanent establishment.

PRICING METHOD PRIORITIES

No preferred pricing method.

Development of agreements are governed by Income Tax Act and relevant territorial laws.

TRANSFER PRICING PENALTIES

Saint Lucia has no specific penalties. However, general provisions for penalties apply.

REDUCTION IN PENALTIES

No specific provisions are made for penalty reductions.

DOCUMENTATION REQUIREMENTS

IRD legislation is not specific as to substantive documentation, but submissions may include for consideration:

1. Description of business
2. Description of associated enterprises
3. Information on transactions

4. Functional analysis of transactions between associated enterprises
5. Comparability analysis, including information on comparables
6. Description of applied pricing policy.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

No specific deadline unless requested by the IRD.

RETURN DISCLOSURE / RELATED- PARTY DISCLOSURE

Financial statements presented to the IRD must include related-party disclosures as required by the IFRS.

STATUTE OF LIMITATIONS

Assessments are not final until six years after the end of the income year, within which period assessments may be made at any time. In cases of misrepresentation or failure to disclose any material fact, a reassessment can be made at any time.

ADVANCE PRICING AGREEMENTS (APA)

No specific provisions are made for penalty advance pricing agreements.

BURDEN OF PROOF

Burden of proof falls upon the taxpayer.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

No specific provisions are made. However, Saint Lucia has joined the OECD and those guidelines will influence future decision making.

CONTACTS FOR SAINT LUCIA

Anthony Walcott
UHY A.P. Walcott and Associates
walcottap@gmail.com
+1 758 453 2223

SAUDI ARABIA



TAX AUTHORITY

Zakat, Tax, and Customs Authority (ZATCA). Website: zatca.gov.sa

TAX LAW

The Zakat, Tax, and Customs Authority (ZATCA) has announced the implementation of Transfer Pricing in the Kingdom based on international standards and tax policies.

In further alignment of the Kingdom's taxation policies and practices with those of the international tax community, ZATCA has prepared comprehensive transfer pricing bylaws (TP Bylaws) through which procedures and measures are established to ensure that transactions between related entities and between entities under common control are priced on an arm's-length basis.

REGULATIONS & RULINGS

Transfer Pricing Bylaws (TP Bylaws) issued by the ZATCA pursuant to Board Resolution No. [6-1-19] dated 25/05/1440H corresponding to 31/01/2019.

The TP Bylaws are based on international standards and tax policies, and centre around the basic principle of transfer pricing; namely that for purposes of preserving the corporate income tax base, prices of transactions between related persons and persons under common control should be similar to transaction prices between independent parties.

See also Transfer Pricing Guidance (second edition), issued by the ZATCA, May 2020.

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

Under the arm's length principle, where conditions are made or imposed between two or more related persons in their commercial or financial relations which differ from those which would be made between unrelated persons, any profits which would, but for those conditions, have accrued to one of such related persons, but by reasons of those conditions have not so accrued, may be included in the profits of that person and taxed accordingly.

PRICING METHODS PRIORITY

Approved transfer pricing methods:

1. Comparable uncontrolled price method
2. Resale price method
3. Cost plus method
4. Transactional net margin method
5. Transactional profit split method

When it is possible to determine an arm's-length remuneration for some of the functions performed by the related person in connection with the controlled transaction using one of the approved methods, the transactional profit split method shall be applied based on the common residual profit that results once such functions are so remunerated.

The approved methods shall not be deemed to be enumerated in any particular order of preference.

The Authority may from time to time set forth any relevant information regarding the selection of an appropriate transfer pricing method in its Transfer Pricing Guidelines.

TRANSFER PRICING PENALTIES

To date, no penalties have been declared in relation to transfer pricing.

REDUCTION IN PENALTIES

Not applicable

DOCUMENTATION REQUIREMENTS

Master File

Each taxable person is required to maintain and make available upon request by the Authority, a Master File containing information on the global business operations and transfer pricing policies of the Multinational Enterprise (MNE) Group to which the taxable person belongs.

The following information should be included in the Master File:

1. Organisational structure, such as legal and beneficial ownership structure, and geographical location of operating entities
2. Description of the business
3. Description of the group's business

4. Information on the groups intangibles
5. Information on group's intercompany financial activities
6. Information on the group's financial and tax positions

Local File

A taxable person is required to maintain at all times, and, when requested in writing provide the Authority with all or any part of, a Local File containing detailed information on all controlled transactions of the taxable person.

The Local File shall include:

1. The taxable person's information
2. Documentation on material controlled transactions in which the taxable person is involved
3. A complete and thorough analysis of the taxable person's industry
4. Financial information

Country-by-Country Report

Each Ultimate Parent Entity (UPE) of an MNE Group shall file with the Authority a Country-by-Country (CbC) Report conforming to the requirements set forth in the Bylaws and the Guidelines with respect to its Reporting Year, on or before the reporting deadline.

A Constituent Entity that is not the UPE of an MNE Group shall file with the Authority a CbC Report conforming to the requirements set forth in the Bylaws and the Guidelines with respect to the Reporting Year of an MNE Group of which it is a Constituent Entity, or on before the reporting deadline, if the following criteria are satisfied:

1. The entity is a taxable person in the Kingdom; and
2. One of the following conditions applies:

(a) The UPE of the MNE Group is not obligated to file a CbC Report in its jurisdiction of tax residence

(b) The jurisdiction in which the UPE is resident for tax purposes has a current international agreement to which the



SAUDI ARABIA continued

Kingdom is a party but does not have a Qualifying Competent Authority Agreement in effect to which the Kingdom is a Party by the reporting deadline.

(c) The jurisdiction of tax residence of the UPE that is a party to an effective Qualifying Competent Authority Agreement with the Kingdom but has suspended automatic exchange of information or otherwise failed to automatically provide to the Kingdom CbC Reports of MNE Groups that have a Constituent Entity in the Kingdom.

Where more than one Constituent Entity of the same MNE Group is a taxable person in the Kingdom and one or more of the conditions set out above apply, the MNE Group may designate one Constituent Entity to file the CbC Report with the Authority with respect to any Reporting Year on or before the reporting deadline. The Authority must be notified that the filing is intended to satisfy the filing requirement of all the Constituent Entities of the MNE Group that are taxable persons in the Kingdom.

The CbC Report must be filed not later than 12 months after the last day of the Reporting Year of the MNE Group.

A CbC Report should include:

- Information relating to the aggregate value of revenue, profit (or loss) before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees, and tangible assets other than cash or cash equivalents with regard to each country in which the MEN Group of the taxable person operates
- Identification of each Constituent Entity of the MNE Group setting out the country of tax residence and, where different from the country of tax residence, the country under the laws of which such Constituent Entity is organised, and the nature of the main business activity or activities.

A Constituent Entity of a MEN Group that is a taxable person but not the UPE shall submit to the Authority a notification about the identity and residence of the Reporting Entity of the group and the country of submission of the CbC Report by such entity within 120 days following the end of the Reporting Year.

Persons that are members of a MEN Group with a consolidated group revenue exceeding SAR 3.2 billion are required to submit a CbC Report.

All documentation should be submitted to the Authority in the language and form that the Authority may specify.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

A taxable person requested by the Authority to provide or otherwise make available the Local File, or any parts thereof shall be submitted within seven days after the date of the request or any other time limit indicated by the Authority in the request, provided that such time limit shall not be less than seven days.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

Not applicable

STATUTE OF LIMITATIONS

Not applicable

ADVANCE PRICING AGREEMENTS (APAS)

Not applicable

BURDEN OF PROOF

The burden of proof is on the taxpayer inside the Kingdom.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

Not applicable

CONTACTS FOR SAUDI ARABIA

Mousa al Mousa
UHY Al Mousa Certified Public
Accountants and
Consultants, Riyadh
mousa@almousacpa.com
+966 11 461 0784

SINGAPORE



TAX AUTHORITY

Inland Revenue Authority of Singapore (IRAS). Website: www.iras.gov.sg

TAX LAW

Section 53(2A) of the Income Tax Act concerns related-party business dealings between a non-resident and a resident.

Section 33 of the Income Tax Act is a general anti-avoidance provision; Section 34D deals with transfer pricing and stipulates the arm's length principle (ALP) for related-party transactions; Section 34E deals with surcharge on transfer pricing adjustments; Section 34F deals with transfer pricing documentation. The concept or use of the principle is also implied or referred to in various provisions of the Income Tax Act, including Sections 32 and 53. The arm's length principle is found in all of Singapore's Double Taxation Agreements (DTAs), typically under the Business Profits Article and the Associated Enterprises Article.

REGULATIONS & RULINGS

The IRAS Transfer Pricing Guidelines published on 23 February 2006 have gone through several editions, the latest being the sixth edition, published on 10 August 2021. With effect from year of assessment 2019, taxpayers who met either of the following conditions are required to prepare transfer pricing documentation under Section 34F of the Income Tax Act unless exemption for the specified transactions applies:

- (a) Gross revenue from trade/business exceeds SGD 10 million for the basis period concerned; or
- (b) Transfer pricing documentation was required to be prepared for the basis period immediately before the basis period concerned.

Taxpayers who are not required to prepare transfer pricing documentation under Section 34F are nevertheless encouraged to do so in order to better manage their transfer pricing risks.

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

Arm's length principle (ALP) is the

internationally endorsed standard for transfer pricing between related parties to reflect comparability to the pricing at which independent commercial entities in similar situations would transact, hence there will be no distortion in the profits and tax liabilities.

PRICING METHODS PRIORITY

There is no specific preference for any of the five prescribed methods outlined in the OECD Guidelines, with the exception of loan transactions, where IRAS specifies that the CUP method is the preferred method for substantiating the arm's length nature of interest charges. The transfer pricing method that produces the most reliable results should be selected and applied.

TRANSFER PRICING PENALTIES

Where taxpayers do not comply with the arm's length principle and transfer pricing documentation requirement, a surcharge and penalty will be imposed from year of assessment 2019 (basis period 2018). Transfer pricing adjustments may be made to increase the taxpayer's income or reduce its deduction or loss if the taxpayer has understated its profits due to non-arm's length related-party transactions. Once the transfer pricing adjustments are finally made, such adjustments are subject to a surcharge of 5% regardless of whether there is tax payable on the adjustments (Section 34E, Income Tax Act).

For non-compliance with transfer pricing documentation requirement, the taxpayer shall be liable on conviction to a fine not exceeding SGD 10,000. The offence may be compounded in lieu of prosecution (Section 34F, Income Tax Act). Both surcharge and penalty are not deductible for tax purposes.

REDUCTION IN PENALTIES

Tax penalties may be mitigated if there is reasonable cause for non-compliance.

DOCUMENTATION REQUIREMENTS

With effect from year of assessment 2019 (basis period 2018), taxpayers whose gross revenue derived from their trade or business is more than

SGD 10 million for the basis period concerned, or where transfer pricing documentation was required to be prepared for the basis period immediately before the basis period concerned, must prepare transfer pricing documentation which covers an overview of the businesses of the group in which the taxpayer is a member that is relevant to the business operations in Singapore, and the taxpayer's business and the transactions with its related parties, including functional analysis and transfer pricing analysis.

The documentation is to be retained for a period of at least five years from the end of the basis period in which the transaction took place.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

The documentation must be completed by the filing due date of the tax return. Should IRAS request it, the transfer pricing documentation must be submitted within 30 days.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

No specified disclosures are required in the Singapore Income Tax Return if the revenue is below SGD 15 million. For a company with revenue above SGD 15 million, this is to be declared in the Return. However, material related-party transactions must be disclosed in the notes to the financial statements submitted for all companies.

STATUTE OF LIMITATIONS

For year of assessment is 2007 or before, the statute of limitations for transfer pricing adjustments is six years from the end of the year of assessment to which the transfer pricing issue relates. For year of assessment is 2008 or later, the statute of limitations is four years from the end of the year of assessment to which the transfer pricing issue relates.

ADVANCE PRICING AGREEMENTS (APAS)

Unilateral, bilateral and multilateral APAs are available. However, for bilateral and multilateral APAs, there must be a DTA



SINGAPORE continued

between Singapore and the other involved country or countries. The Singapore Transfer Pricing Guidelines outline the procedures for applying for an APA.

BURDEN OF PROOF

The taxpayer

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

The transfer pricing guidelines and circulars/other guidelines are generally consistent with the OECD Transfer Pricing Guidelines. The principles and transfer pricing methods as set out in the OECD Guidelines are acceptable in Singapore.

CONTACTS FOR SINGAPORE

Sen Choon Lee
UHY Lee Seng Chan & Co
senchoon.lee@uhyisc.com.sg
+65 6395 5100

Ho Hai Cheong
UHY Lee Seng Chan & Co
haicheong.ho@uhyisc.com.sg
+65 6603 6130

Seng Suan Lee
UHY Lee Seng Chan & Co
lss@uhyisc.com.sg
+65 6395 5100

SLOVAK REPUBLIC



TAX AUTHORITY

Local tax offices Financial Directorate of the Slovak Republic; website: www.financnasprava.sk
Ministry of Finance of the Slovak Republic; website: www.finance.gov.sk

TAX LAW

Act No. 595/2003 Coll. on Income Tax, as amended, Sec. 2, Sec. 17, para. 5-7 and Sec. 18.

REGULATIONS & RULINGS

OECD Transfer Pricing Guidelines published in the Financial Bulletin No. 14/1997 (Part 1), No. 20/1999 (Part 2) and No. 3/2002 (Part 3)
Guideline of the Ministry of Finance of the Slovak Republic No. MF/020061/2022-724 for the content of the transfer pricing documentation

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

Slovak Income Tax Act makes a reference to arm's length principle (ALP) in Sec. 17, para. 5. The ALP shall be interpreted in line with standard international practice. Any difference between the prices agreed in material controlled transactions and prices in comparable uncontrolled transactions shall adjust the tax base, as long as such difference results in the reduction of tax base or increase of tax loss. To determine the tax base, a material controlled transaction or a group of controlled transactions shall be deemed a legal relationship or other similar relationship based on which, in the relevant taxable period, one or more related persons obtain taxable income (revenue) or tax expenditure (expense) with a value exceeding EUR 10.000. In addition, a loan or credit with a principal amount exceeding EUR 50.000 shall also be deemed a material controlled transaction.

PRICING METHODS PRIORITY

There is no legal preference in transfer pricing methods. Slovak Income Tax Act provides for pricing methods to be used in respect of transactions with related parties. The most appropriate method shall be applied (in line with the OECD Transfer Pricing Guidelines).

TRANSFER PRICING PENALTIES

There are no penalties specific to transfer pricing documentation. Generally, a penalty in the amount of EUR 60 up to EUR 3,000 can be imposed for failing to observe the requirements of the Income Tax Act and Tax Procedure Code. The tax authority shall levy an additional income tax if any differences in transfer prices are identified, as long as such differences result in a reduction of tax base or increase of tax loss. In addition to this, the tax authority will impose a tax-geared penalty (10% p.a. of the additional tax), which may be as much as 100% of the additional tax.

The tax authority shall double the penalty should they identify a difference in transfer pricing which resulted in a reduction of tax base or increase of tax loss and at the same time the breach of the general anti-abuse rules as stated in Slovak Income Tax Act and Tax Procedure Code. If the taxpayer does not file an appeal against the decision of the tax authority and pays the additional tax as levied by the tax authority, a double penalty will not apply.

REDUCTION IN PENALTIES

Reduction in penalties or cancellation of penalties is only possible under certain circumstances. E.g. if the taxpayer proves, that the payment of penalty would lead to termination of their business activities. Reduction in penalties or cancellation of penalties shall be subject to the approval of the tax authority (tax office, Financial Directorate or Ministry of Finance depending on the amount of penalty).

DOCUMENTATION REQUIREMENTS

Those taxpayers which – for statutory purposes – follow the IFRS, or are involved in cross-border controlled transactions with a value exceeding EUR 10 Mio, or are involved in material transactions with related parties from non-treaty states, or apply for APA, or apply for secondary adjustments, or claim tax relief, are obliged to prepare a full scope transfer pricing documentation. A full scope transfer pricing documentation is based on EU recommendations and shall include general transfer pricing

documentation (Master file) and specific transfer pricing documentation (Local file). Simplification on transfer pricing documentation requirements applies e.g. for individuals, SMEs, domestic or immaterial transactions. There are no requirements of functional and risk analysis and no requirements of benchmark analysis for transactions of individuals, transactions of SMEs and domestic or immaterial transactions.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

Transfer pricing documentation shall only be submitted upon request of the tax office or the Financial Directorate.

Documentation may be requested not only during a tax inspection. The deadline for submission is 15 days of delivering of such request; extensions are not possible. This request, however, may not be delivered earlier than the first day after the deadline for the filing of a tax return.


RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

Taxpayers are required to disclose transactions with related parties in their corporate income tax returns for respective tax periods. Related-party transactions have to be disclosed cumulative without any details on related parties.

STATUTE OF LIMITATIONS

Generally, five years of the tax return due date. In case of application of international tax treaties, a ten-year-period is applied.

ADVANCE PRICING AGREEMENTS (APAS)

Slovak tax authority accepts advance pricing agreements (APAs). An APA may relate to unilateral, bilateral and multilateral arrangements. The application for an APA must be submitted at least 60 days prior to the start of the respective tax period. The Financial Directorate charges a fee in the amount of EUR 10.000 for a unilateral APA and a fee in the amount of EUR 30.000 for a bilateral and multilateral APA. This fee shall be reduced by half 

SLOVAK REPUBLIC continued

in the case of a tax entity considered to be a highly reliable tax entity at the time of application based on the tax reliability index.

An APA is given for a maximum five-year period. Upon request, this period may be extended by another five years on top if the taxpayer proves that there has been no change in conditions under which the APA was given.

BURDEN OF PROOF

Under Slovak law, the burden of proof for transfer pricing transactions falls to tax payers.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

The OECD Transfer Pricing Guidelines are not legally binding in Slovakia, but acceptable as an explanatory instrument.

CONTACTS FOR SLOVAK REPUBLIC

Georg Stöger
AUDITOR, spol. s r.o.
georg.stoeger@auditor.eu
+420 224 800 411

Jana Sadloňová
AUDITOR SK s.r.o.
jana.sadlonova@auditor.eu
+421 2 544 14 660

SLOVENIA

**TAX AUTHORITY**

Davčna uprava Republike Slovenije (DURS). English: Tax Administration of the Republic Slovenia.

Website: <https://www.fu.gov.si/en/>

TAX LAW

Corporate Income Tax Law - 2 (CIT-2) (Official Gazette 117/2006, 56/2008, 76/2008, 5/2009, 96/2009, 110/2009 – ZDavP-2B, 43/2010,

59/2011, 24/2012, 30/2012, 94/2012, 81/2013, 50/2014, 23/2015, 82/2015, 68/2016, 69/2017, 79/2018, 66/2019, 172/2021, 105/2022 – ZZNŠPP)

Articles 16-19, 32

Tax Procedure Act - 2 (TPA-2) (Official Gazette 13/2011, 32/2012, 94/2012, 101/2013 – ZDavNep, 111/2013,

22/2014- odl. US, 25/2014 – ZFU, 40/2014 – ZIN-B, 90/2014, 91/2015, 63/2016, 69/2017, 13/2018 – ZJF-H, 36/2019, 66/2019, 145/2020 – odl. US, 203/2020 – ZIUPOPĐVE, 39/22

– ZFU-A, 52/22 – odl. US, 87/22 – odl. US, 163/22): Article 14.a-14.g, 382

Rules on transfer pricing (Official Gazette 141/2006, 4/2012)

Rules on the implementation of the Tax Procedure Act (Official Gazette 141/2006, 46/2007, 102/2007, 28/2009, 101/2011, 24/2012, 32/2012 – ZDavP-2E, 19/2013, 45/2014, 97/14, 39/2015, 40/2016, 85/2016, 30/2017, 37/2018, 43/2019, 80/2019, 106/2020, 200/2020, 135/2021, 43/2022, 166/2022) Article 6.a – 6.h

REGULATIONS & RULINGS

By Tax Administration of the Republic Slovenia:

- Adjustments of tax base arising from related-party transactions, No 4200-116/2011 from 29 November 2011
- Adjustments of tax base in case of tax losses carried forward, No 4200-42/2010 from 31 March 2010
- Thin capitalisation, No 4200-92/2008 from 22 July 2008
- Interest rates among related parties, No 32100-19/2007 from 17 January 2008
- Understanding the recognised interest rate No. 0920-14596/2022-2 from 7 October 2022
- Transfer prices (2nd edition, January 2022)
- APA agreement (2017)

INTERPRETATION OF**ARM'S LENGTH PRINCIPLE (ALP)**

The results arising from transactions among related parties are the same as the results from the interaction of supply and demand in a comparable open market.

PRICING METHODS PRIORITY

The determination of the comparable market price must be carried out using the most appropriate method according to the circumstances of the case. All methods outlined in OECD Guidelines are allowed: comparable uncontrolled price (CUP), resale price (RPM), cost plus (CP), profit split (PSM), net margin percentage).

TRANSFER PRICING PENALTIES

In cases of transfer pricing, the first paragraph of Article 397 of TPA-2 provides that a fine of between EUR 3,200 and EUR 30,000 should be imposed on a legal entity for an offence where:

- Data from records, databases, registers or other records that such a person keeps are not made available to the tax authority, or such person does not enable the tax authority to view his own documentation or the documentation held by an associated enterprise (Article 40 of TPA-2),
- Documentation on associated enterprises, the volume and type of business and on the formulation of transfer pricing are not submitted or are not submitted in the prescribed manner or by the prescribed deadline (Article 382 of TPA-2).

The responsible employee of a legal person who commits an infringement is liable to a fine of between EUR 400 and EUR 4,000.

If the unpaid tax exceeds EUR 8,000 the fine for legal entity can amount from EUR 10,500 to EUR 150,000, and for the responsible employee between EUR 1,400 and EUR 20,000.

REDUCTION IN PENALTIES

For small companies (according to Company Law) the fines in cases above are reduced to the range EUR 4,500 to EUR 100,000 and for the responsible employee to the range EUR 1,200 to EUR 20,000.

DOCUMENTATION REQUIREMENTS

According to Article 382 of TPA-2, any taxpayer from Article 18 of CIT-2 (related party) is obliged to ensure and keep transfer pricing documentation comprising of:

- A Master File of standardised information
- A country-specific version of standardised documentation (Local File) for each state in which the taxpayer has transactions with associated enterprises.

Documentation on transfer is not submitted to the tax authority together with the tax return; the taxpayer keeps it and submits it upon request of the tax authority at the initiation of the audit procedure. If transactions do not differ in essence, the taxpayer may provide documentation for two or more transactions, and make adjustments for any differences between these transactions if they exist. The taxpayer may keep documentation in electronic form.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

Documentation should be prepared (collected) at the latest by submission of the tax return for the tax year (TPA-2, Article 382).

In case of tax inspection, the taxpayer must submit the documentation to the tax authorities upon request. If this is not possible, a due date of no longer than 90 days will be set by the tax inspector date (TPA-2, Article 382).

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

Related parties and transactions with them are disclosed in the annual tax return.

According to CIT-2 Article 16, a taxpayer and a foreign legal entity are considered associated enterprises, when:

- The taxpayer directly or indirectly holds at least 25% of the value or number of shares or equity holdings, shares in managing or control and/or voting



SLOVENIA continued

rights of a foreign person, or controls the foreign person on the basis of a contract, or the transaction conditions differ from the conditions that have been or would have been agreed between non-associated enterprises under equal or comparable circumstances; or

- The foreign person directly or indirectly holds at least 25% of the value or number of shares or equity holdings, shares in managing or control and/or voting rights of the taxpayer, or controls the taxpayer on the basis of a contract, or the transaction conditions differ from the conditions that have been or would have been agreed between non-associated enterprises under equal or comparable circumstances; or
- The same person at the same time directly or indirectly holds at least 25% of the value or number of shares or equity holdings, shares in managing or control and/or voting rights of the taxpayer and foreign person or of two taxpayers, or controls this persons on the basis of a contract, or the transaction conditions differ from the conditions that have been or would have been agreed between non-associated enterprises under equal or comparable circumstances; or
- The same individuals or their family members directly or indirectly hold at least 25% of the value or number of shares or equity holdings, shares in managing or control and/or voting rights of the taxpayer and foreign person or of two residents or control them on the basis of a contract, or the transaction conditions differ from the conditions that have been or would have been agreed between non-associated enterprises under equal or comparable circumstances.

STATUTE OF LIMITATIONS

Ten years after the end of the fiscal year.

ADVANCE PRICING AGREEMENTS (APAS)

A taxpayer may apply for the conclusion of a unilateral, bilateral or multilateral APA. Bilateral and multilateral APAs are based on the joint agreement of the competent authorities under the international

treaty on the avoidance of double taxation, which enables such an agreement.

Based on the written initiative of the taxpayer, the tax authority conducts an interview on the possibility of concluding an APA agreement.

After the interview, the taxpayer submits a written application to the tax authority for concluding an APA agreement.

BURDEN OF PROOF

The taxpayer has the burden of proof.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

None

CONTACTS FOR SLOVENIA

Franci Žgajnar
 UHY d.o.o.
franci.zgajnar@uhy.si
 +386 1 300 0040

SOUTH AFRICA



TAX AUTHORITY

South African Revenue Service (SARS). Website: www.sars.gov.za

TAX LAW

The South African Income Tax Act 1962 as amended, Section 31
Taxation Administration Act

REGULATIONS & RULINGS

Draft Interpretation Note only -
Determination of the Taxable Income of Certain Persons from International Transactions: Thin Capitalisation

Draft Interpretation Note only -
Determination of the Taxable Income of Certain Persons from International Transactions: Intra Group Loans

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

Paragraph 1 of Article 9 of the OECD Model Tax Convention

PRICING METHODS PRIORITY

Comparable uncontrolled price (CUP); resale price (RPM); cost plus (CP); transactional net margin (TNMM); profit split (PSM)

TRANSFER PRICING PENALTIES

0-200% depending on behaviour of taxpayer

REDUCTION IN PENALTIES

At the discretion of SARS; subject to appeal

DOCUMENTATION REQUIREMENTS

No statutory requirement, but the burden of proof rests with the taxpayer

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

Normally 21 business days after notice of request

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

Disclosure of international transactions with connected persons in annual income tax returns of entities

STATUTE OF LIMITATIONS

Three years from assessment date if full disclosure made; otherwise no limitation

ADVANCE PRICING AGREEMENTS (APAS)

Neither at present or in the foreseeable future

BURDEN OF PROOF

The taxpayer

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

OECD Guidelines are followed

CONTACTS FOR SOUTH AFRICA

Carlos Pedregal
UHY Hellmann (SA)
carlosp@uhy.co.za
+27 11 447 8447

SPAIN



TAX AUTHORITY

The authority in charge of administering the tax laws in Spain is the "AEAT (Agencia Estatal de la Administración Tributaria)". Website: <http://www.agenciatributaria.es>

TAX LAW

Law 27/2014, of 27th November, of Corporate Income Tax, from now on CIT Law.

- Article 18: It states the concept of "related party transactions" in the Spanish tax system.

REGULATIONS & RULINGS

Regulation on Corporate Income Tax (passed by Royal Decree 634/2015, of 10th July).

- Articles 13 – 16: Information and documentation required for related party transactions.
- Articles 17 – 20: Valuation rules and procedure of review of related party transactions.
- Articles 21 – 36: Advance Pricing Agreement (APA) Procedure.

The Ministerial Decree HFP/816/2017, of 28th August, which regulates the obligation to submit (or not) the Tax return 232 to report the related party transactions is also relevant.

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

The arm's length principle is interpreted according to the transfer pricing rules as per the OECD Guidelines, and are explicitly included in the tax law above-mentioned, meaning that any transaction carried out among entities deemed to be related by Law, must be valued at its arm's length value.

PRICING METHODS PRIORITY

There is no preference or hierarchy on the transfer pricing methods, as the Spanish law is in line with the OECD

Guidelines. Explicitly, the CIT Law, in order to determine which of the methods must be used, establishes certain criteria:

- a) the nature of the transaction;
- b) the availability of reliable

information; and (iii) the level of comparability among related and non-related party transactions.

The methods available (art. 18.4 CIT Law) are the following:

- Comparable uncontrolled method;
- Resale price method;
- Cost-plus method;
- Transactional net margin method; and
- Profit split method.

In case that none of the above-mentioned methods are applicable, the CIT Law allows any other method that fulfills the arm's length principle.

TRANSFER PRICING PENALTIES

The penalty will depend on whether the Tax Administration considers that a valuation adjustment is applicable or not. In case that there is a valuation adjustment, the penalty will amount to a 15% of the amount of it (plus late payment interest). If there is no transfer pricing adjustment but the documentation is insufficient, there may be penalties calculating according to the data that is omitted, inaccurate or false (1.000 € for each data item or 10.000 € for each data set). The limit of this penalty would be the lower of either (i) 10% of the total amount of the related party transactions, or (ii) 1% of the company's turnover.

REDUCTION IN PENALTIES

General tax rules are applicable in this sense (article 188.1 and 3 of the Law 58/2003, of 17th December, of General Tax, from now on GTL). Consequently, a reduction of the 30% of the penalty amount is applicable in case that the taxpayer accepts the penalty without appealing it. Another reduction of 25% is applicable in case that the amount payable of the penalty is paid in the period established for this purpose.

DOCUMENTATION REQUIREMENTS

If requested by the tax authorities, a taxpayer is obliged to provide transfer pricing documentation. The quantity and type of documentation required will vary depending on the net amount of the turnover of the company or group of companies. As

per the OECD Guidelines, transfer pricing documentation requirements comprise the following:

- a) Country-by-country file (for Multinational Groups with more than €750 million in turnover);
- b) Masterfile (for Groups with more than €45 million in turnover in the previous tax period);
- c) Taxpayer-specific documentation (or Localfile), and/or
- d) Documentation to be included as an annex in the CIT Annual Declaration.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

Once certain thresholds have been passed (more than €250,000 in related party transactions with any related party or specific transactions), transfer pricing documentation should be made available to the tax authorities on request at the time of filing the corporate income tax return. Penalties may be applicable, as mentioned above, in the case that the documentation is not made available.

However, even if the company has an exemption to prepare the transfer pricing documentation, the Tax Administration is permitted to request a justification of adherence to the arm's length principle in the course of a tax inspection.

• Tax return 232: it has to be submitted during the month eleventh after the closing of the tax year.

• Country-by-country Report: The Spanish tax resident entities that according to article 18.2 CIT Law are deemed to be parent entities and at the same time they are not subsidiaries of other entity either tax resident or tax non-resident are obliged to prepare and submit the Country-by-country Report to the Tax Administration within 12 months from the closing of the tax year to which that report refers to.

• CIT Declaration Annex: In the case that the taxpayer wishes to complete this Annex, it will be submitted jointly with the



SPAIN continued

CIT Declaration. Only for taxpayers with less than €10 million in turnover, and it is optional.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

Documentation requirements as stated in the Deadline to Prepare and Submit Documentation paragraph.

For taxpayers that have undertaken related party transactions with any related party in excess of €250,000, the taxpayer is obliged to submit the Declaration regarding related-party transactions (Tax return 232).

STATUTE OF LIMITATIONS

Four years, according to article 66 of the GTL, as of the date of filing the corporate income tax return.

ADVANCE PRICING AGREEMENTS (APAS)

According to article 18.9 of CIT Law, taxpayers are entitled to negotiate APA's with the Spanish tax authorities (Central Unit of International Taxation) and with foreign tax authorities.

For the preliminary application, taxpayers shall submit certain documentation in which must be identified the type of related transactions that will take place, the individual or associated entities that will carry those transactions and the basic elements of the APA proposed by the taxpayer to the tax authorities.

After that, a formal application must be submitted. It will be necessary to provide additional and more complete documentation to the tax authorities, that will dispose of a statutory 6-months period to resolve the APA application.

This period applies as well to resolve a modification or extension of the APA.

The maximum period of validity of an APA is the tax period in which is approved by the Tax Administration plus 4 more tax periods, but it can be extended, whether the original economic conditions continue to be the same. If not, is likely that the APA will not be renew or even it will be modified during the validity of the agreement.

BURDEN OF PROOF

The burden of proof lies on the taxpayer (article 105 GTL).

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

No significative differences as the Spanish transfer pricing rules follow the OECD principles.

CONTACTS FOR SPAIN

Joseph Fay
UHY Fay & Co
jfay@uhy-fay.com
+34 952 76 40 65

Miriam López Jadraque
UHY Fay & Co
mlj@uhy-fay.com
+34 952 76 40 65

SWEDEN



TAX AUTHORITY

Skatteverket. English: Swedish Tax Agency. Website: www.skatteverket.se

TAX LAW

Swedish Income Tax law (1999:1229) and LSK (2001:1227).

REGULATIONS & RULINGS

(1999:1229) ch. 14, Articles 19 and 20. (2001:1227) ch 19 Articles 2a and 2b. SKV M 2007:25. SKVFS 2007:01.

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

Related party legislation (see tax law above).

PRICING METHODS PRIORITY

The result is calculated as if market prices ("arms length") were used.

TRANSFER PRICING PENALTIES

20% extra tax on mispricing. Tax audit adjustments may be carried out during a tax inspection due to the use on non-market values. These adjustments may carry a penalty even if there is no intention to act fraudulently.

REDUCTION IN PENALTIES

If mispricing is possible to detect without a tax audit, penalty is reduced from 20% to 5%-10%.

DOCUMENTATION REQUIREMENTS

Required documentation:

- A company description
- Documentation of inter-company transactions as well as conditions applied
- An analysis of company functions and risks
- Documentation of pricing method and an analysis of compatibility with the arm's length principle (ALP).

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

No deadline applicable, but documentation must be prepared if the tax authorities initiate a tax audit.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

Not applicable.

STATUTE OF LIMITATIONS

Six years from last filing deadline.

ADVANCE PRICING

AGREEMENTS (APAS)

Advanced Pricing Agreements (APA) have been enabled with the Swedish Tax Authorities since January 1, 2010.

BURDEN OF PROOF

Swedish Tax Authorities must prove the use of non-market values if documentation by the company is fulfilled according to the above.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

Rules are based on EU principles of conduct.

CONTACTS FOR SWEDEN

Mattias Nilsson
Revisorerna Syd
mattias.nilsson@revisorernasyd.se
+46 761 36 06 03

Rolf Nilsson
Revisorerna Syd
rolf.nilsson@revisorernasyd.se
+46 40 39 67 90

Catharina Clemensson
Revisorerna Syd
catharina.clemensson@revisorernasyd.se
+46 40 39 67 90

Ragnar Santesson
Winthers Revisionsbyrå AB
ragnar.santesson@winthers.se
+46 8 545 852 50

SWITZERLAND



TAX AUTHORITY

Swiss Federal Tax Administration (SFTA) as well as Cantonal and Communal Tax Authorities (CTA)
Website: www.estv.admin.ch and further links to Cantonal Tax Authorities

TAX LAW

Switzerland does not have statutory transfer pricing rules or transfer pricing law. There is currently no plan to issue any domestic provisions on transfer pricing in the near future.

REGULATIONS & RULINGS

Switzerland follows the OECD Transfer Pricing Guidelines and recognises the arm's length principle. The statutory legal provision for adjusting the profit on an arm's length basis can be found in Article 58 of the Federal Direct Tax law and Article 24 of the Federal Tax Harmonisation Law. Regulations such as Circular Letter No. 4 from 2004 provide guidance for cost-plus treatment of certain services provided. To clarify transfer pricing issues, Switzerland offers an informal procedure for agreeing pricing policies in advance (so-called tax rulings).

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

The Swiss tax law does not contain a definition of the arm's length principle. Under the aforementioned articles, the tax law denies a tax deduction for expenditure that is not commercially justifiable and this provides the basis for an adjustment to profits for non-arm's length terms.

PRICING METHODS PRIORITY

As Switzerland accepts the OECD Guidelines as closely as possible, the priority rules as outlined by the OECD prevail.

TRANSFER PRICING PENALTIES

No specific provisions are applicable. Tax audit adjustments may be carried out during a tax assessment due to the use of non-market values. No penalties will apply on transfer pricing adjustments during a normal tax assessment. Penalties will apply where a transfer pricing adjustment

is required based on a fraudulent intent (e.g. in the case of tax fraud).

REDUCTION IN PENALTIES

Penalties are not tax deductible. The level of penalties imposed depends on the level of default action of the taxpayer and can be set as a multiple of between one and three times of the additional tax revenue.

DOCUMENTATION REQUIREMENTS

There are no statutory requirements. If the transfer prices are challenged by the Swiss tax authorities, it is necessary to demonstrate that any transfer prices were based on economic and commercial reasoning. Documentary evidence such as transfer pricing documentation, rationale for specific transfer price and method, board minutes, form and informal transfer price policies, etc. would normally be required.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

There is no special deadline for transfer pricing ruling concepts. After an assessment by tax authorities, the taxpayer has 30 days to appeal against decisions.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

The taxpayer has to provide tax authorities with relevant information for properly assessing the taxpayer's profit. If the taxpayer does not comply, fines may be imposed. Related party transactions, especially receivables, loans etc., are already disclosed in the financial statements and thus often subject to investigation in the assessment process for being at arm's length.

STATUTE OF LIMITATIONS

Basically ten years.

ADVANCE PRICING AGREEMENTS (APAS)

APAs can be made with the Swiss tax authorities. A large ruling policy exists in Switzerland. This procedure is informal and no explicit statute or guidelines exist, only a code of conduct between tax authorities and tax payers.

BURDEN OF PROOF

The taxpayer has to prove the justification of tax-deductible expenses. The tax authorities must prove adjustments which increase taxable income.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

Switzerland follows the OECD Guidelines as closely as possible.

CONTACTS FOR SWITZERLAND

Stefan Wigger
Balmer-Etienne AG
stefan.wigger@balmer-etienne.ch
+41 412281220

TAIWAN

**TAX AUTHORITY**

National Tax Administration for different geographic jurisdictions

TAX LAW

Income Tax Law, article 43-1, Taiwan, Republic of China

REGULATIONS & RULINGS

Examining Guidelines Governing Assessment of Profit-Seeking Enterprise Income Tax, Article 114-1
Regulations Governing Assessment of Profit-Seeking Enterprises Income Tax on Non-Arm's-Length Transfer Pricing

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

Regulations Governing Assessment of Profit-Seeking Enterprises Income Tax on Non-Arm's-Length Transfer Pricing, Chapter II. Arm's length principle (ALP):

- Comparability
- Use of most appropriate pricing methods
- Evaluation of separate and combined transactions
- Use of current year or multiple year data
- Use of arm's length ranges
- Analysis of the cause of loss
- Separate evaluation on transactions being offset.

PRICING METHODS PRIORITY

Comparable uncontrolled price (CUP); comparable uncontrolled transaction (CUT); comparable profits (CPM); resale price (RPM); cost plus (CP); profit split (PSM)

Applicable for different types of transaction:

- Tangible Asset Transfer: CUP, RPM, CP, CPM, PSM
- Intangible Asset Transfer and Utilisation: CUT, CPM, PSM
- Service provision: CUP, CP, CPM, PSM
- Financing: CUP, CP.

TRANSFER PRICING PENALTIES

The taxpayer is subject to a penalty of at most 300% of the assessed income tax payable if the required disclosure is not filed.

Under the premise that the taxpayer has fulfilled the filing obligation, the penalty is at most 200% of the understatement

of income tax liability in either of the following:

- Filed prices of the controlled transactions are more than two times or are less than one half of the arm's length transaction prices assessed by the tax authorities
- The increased taxable income resulting from the tax authority's adjustment is more than 10% of the total assessed taxable income, and is more than 3% of the assessed net operating income
- The taxpayer fails to submit a transfer pricing report and related documents upon the tax authorities' request during examination.

When an adjustment to the taxpayer's return becomes certain, the tax authorities should make corresponding adjustments to the returns of transaction counter-parties (the associated enterprises) within Taiwan. Tax treaties are complied with if the associated enterprises are located in other jurisdictions.

REDUCTION IN PENALTIES

A general rule stipulated by Section 48-1 of the Tax Collection Act is applied to all the tax-related penalties. Where the taxpayer voluntarily files and makes payment covering the tax amount they should have but did not file, as long as it is neither a case brought about by an impeachment, nor a case under investigation by authorities, the taxpayer is exempt from the punishment imposed under various tax acts and regulations governing tax evasion, and is exempt from any criminal liability if a criminal act is involved. In addition to the amount of supplementary tax paid, the taxpayer shall pay the interest accrued at the prescribed interest rate for the delay period.

DOCUMENTATION REQUIREMENTS

A transfer pricing report and related documents should be prepared. Though it is not filed with a return, it should be provided upon request from the tax authorities during

examination. Those taxpayers who do not reach the requirement thresholds prescribed under the Safe Harbour Rules are exempt from preparing a transfer pricing report. Disclosure requirements for related parties information, controlled transactions and adjustments are applied to all the profit-seeking enterprises in return filings, except for those taxpayers who do not reach the requirement threshold prescribed in the Safe Harbour Rules.

Required documentation includes:

- Group overview
- Organisation structure/ ownership linkage within the group
- Summary and detail descriptions of controlled transactions
- Statements and consolidated reports of affiliated enterprises and other materials
- Other documents pertaining to related parties or controlled transactions
- Controlled transaction analysis, which should comprise:
 - Analysis of economy and industry
 - Analysis of the functions and risks of the associated enterprises of the controlled transactions
 - Results of applying the arm's length principle (ALP)
 - Description of the selected comparable transactions
 - Analysis of the comparability
 - An estimation of whether the allocation of profits in the controlled transaction is at arm's length when business restructuring is involved
 - Selection of the most appropriate pricing method and the reason for selection
 - Reasons for rejecting other pricing methods
 - Pricing policies and related information on the associated enterprises of controlled transactions
 - A copy of existing unilateral advanced pricing agreements (APAs) and any advance rulings concerning cross-border income distribution with other countries or jurisdictions, and which are related to the controlled transactions described (if any)
 - Description of the adjustments applied to achieve comparability



TAIWAN continued

- Description of the evaluation, the arm's length range and conclusion
- Adjustments (compensating adjustments) made in accordance with the evaluation.

Where a profit-seeking enterprise that is resident in the Republic of China (ROC) is the ultimate parent entity (UPE) of a multinational enterprise (MNE) group, it shall prepare a country-by-country report of the current fiscal year in accordance with the prescribed format and submit the same to the local tax collection authority within one year after the end of the fiscal year.

Where an MNE group whose UPE is not resident in the ROC, its constituent entity which is resident in the ROC shall submit the country-by-country report prescribed in the preceding paragraph if one of the following conditions applies; where there are two or more constituent entities of the same MNE group resident in the ROC, the MNE group may designate one of such constituent entities to submit the country-by-country report:

- The UPE of the MNE Group is not obliged to file a country-by-country report in its jurisdiction of tax residence; or,
- The UPE has filed a country-by-country report in its jurisdiction of tax residence, but such jurisdiction does not have an agreement in effect that requires the exchange of country-by-country reports to which the ROC is a party by the time specified in the preceding paragraph for submitting the country-by-country report; or,
- The UPE has filed a country-by-country report in its jurisdiction, and such jurisdiction has an agreement that requires the exchange of country-by-country reports in effect with the ROC; however, the tax collection authority is unable to acquire the country-by-country report in accordance with the agreement.

If the surrogate parent entity (SPE) appointed by the MNE group is a profit-seeking enterprise which is resident in the ROC, it shall submit the country-by-country report in accordance with the first paragraph.

The members and contents of the country-by-country report in the preceding four paragraphs are as follows:

1. "Constituent entity of the country-by-country report" shall mean an entity that meets any one of the following conditions:
 - (a) Any profit-seeking enterprise that is included in the consolidated financial statements of the MNE group under the law or accounting principles generally applied in its jurisdiction of tax residence of the UPE;
 - (b) Any profit-seeking enterprise that is not included in the consolidated financial statements in the preceding item, but would be so required if equity interests in the UPE were traded on a public securities exchange in its jurisdiction of tax residence;
 - (c) Any such profit-seeking enterprise that is excluded from the MNE group's consolidated financial statements in the preceding two items solely on size or materiality grounds; and
 - (d) Any permanent establishment of any profit-seeking enterprise of the MNE group included in the preceding three items provided the profit-seeking enterprise prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes.

2. Content of the country-by-country report:
 - (a) Aggregate information relating to the amount of revenue, profit (loss) before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees, and tangible assets other than cash or cash equivalents with regard to each jurisdiction in which the MNE group operates
 - (b) An identification of each constituent entity of the MNE group setting out the jurisdiction of tax residence of such constituent entity mentioned under the preceding item, and the jurisdiction under the laws of which such constituent entity is organised, and the nature of the main business activity or

activities of such constituent entity, which shall include: research and development; holding or managing intellectual property; purchasing or procurement; manufacturing or production; sales, marketing or distribution; administrative, management or support services; provision of services to unrelated parties; internal group finance; regulated financial services; insurance; holding shares or other equity instruments; dormant

(c) A description of any activity engaged by constituent entities other than the preceding item.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

The tax authorities may issue notice to a taxpayer for the submission of a transfer pricing report and related documents for examination. The report and related documents are required to be ready upon return filing and should be submitted within one month of receiving the notice. Application for an extension of submission is allowed for a maximum of one month.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

Disclosure requirements for related parties information, controlled transactions and compensating adjustments are applied to all the profit-seeking enterprises in return filings except for those taxpayers who do not reach the requirement thresholds prescribed in the Safe Harbour Rules.

STATUTE OF LIMITATIONS

Five years for returns to be filed where taxpayers have not been accused of tax evasion; seven years for returns that have not been filed within the prescribed time limit, or where taxpayers have been accused of tax evasion by the tax authorities during examinations.

ADVANCE PRICING AGREEMENTS (APAS)

APAs are permitted between taxpayers and the Taiwan Tax Authorities. Taxpayers applying for an APA must meet the following requirements:

- The amount for the



TAIWAN continued

transactions applied for APAs should be over TWD 500 million (approximately USD 17 million) in total, or its yearly transaction amount should be over TWD 200 million (approximately USD 6.7 million)

- The applicant has not committed significant tax avoidance and tax evasion for the past three years
- The applicant has prepared the required documents for applications
- Applications should be submitted before the end of the accounting period in which the applicable transaction commences.

The review of applications must be completed within one year. If it is necessary, under special circumstances, the tax authority can notify the applicants, before the expiry, of an extension for a maximum of six months. The tax authority can make a second extension for another six months.

APAs are effective for the shorter transaction duration or five years from the year of application (the year in which the applicable transaction commences). Taxpayers should keep records and file an annual report with the tax authorities every year within the effective period of APAs, demonstrating compliance with the terms and that critical assumptions remain relevant.

Taxpayers should inform the tax authorities within one month of the occurrence of changes (e.g. participants of the controlled transactions become non-related; transaction prices are renegotiated; significant changes in the facts influence the outcomes of the controlled transactions) during the effective APA period.

Taxpayers can submit an application, before the expiry of APAs, for an extension of the effective period for no more than five years under a situation where critical assumptions and the business environment remain unchanged.

An APA can be revoked provided that misrepresentations, mistakes or omissions are attributable to the neglect, carelessness or willful default of the applicants. The effect of revocation is retroactively traced back to its commencement.

BURDEN OF PROOF

The transfer pricing report documenting the necessary information supporting the filed amount is in compliance with arm's length principles (ALPs). The tax authorities assess the income tax returns based on the filed and submitted documents. Where taxpayers fail to submit the required documents, the tax authorities have the right to assess the returns based on other available information, or based on profit standard of the same trade of business if there is no available taxation data. Taxpayers can go through remedial procedures if they disagree with the results of assessments, including re-examination, an administrative appeal and two administrative litigations. Taxpayers should submit reasonable arguments or evidence supporting their positions during the procedures.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

Taiwan guidelines do not have stipulations in respect of issues involving other jurisdictions, such as:

- Mutual Agreement Procedures (MAPs) with the tax administrations of other jurisdictions
- Bilateral or multilateral APAs with the competent tax authorities of other jurisdictions
- Simultaneous tax examination.

There is a general rule that the above issues are governed by tax treaties agreed with other jurisdictions. Except for the above, Taiwan guidelines in general follow the OECD Guidelines.

CONTACTS FOR TAIWAN

Lawrence Lin
 UHY L&C Company, CPAs
lawrencelin@uhy-taiwan.com.tw
 +886 2 2391 5555

THAILAND



TAX AUTHORITY

Revenue Department.
Website: www.rd.go.th
Customs Department.
Website: www.customs.go.th
Excise Department.
Website: www.excise.go.th

TAX LAW

Revenue Code, Section 65 bis (4) (7),
Section 65 ter, and Section 70 ter

REGULATIONS & RULINGS

Revenue Department Order No.
Por. 113/2545, On Transfer Pricing
According to the Market Price for
Corporate Income Tax
Revenue Code Amendment Act
No. 47, B.E. 2561 (2018)
Ministerial Regulation No. 365, B.E.
2556 (6 November 2020)

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

A market price or arm's length price is the price of consideration, service fee, or interest which independent contracting parties acting in good faith would charge in a commercial manner for the same characteristics, categories or types of property, service or loan that are transferred or provided on the date of the transfer of property, provision of service, or lending of fund.

PRICING METHODS PRIORITY

Pricing methods accepted by the Revenue Department are:

- Comparable uncontrolled price method
- Resale price method
- Cost plus method
- Other methods if any of the above methods cannot be applied, including profit-based methods adopted by OECD such as profit-split method, transactional net margin method and any other methods that are internationally accepted.

TRANSFER PRICING PENALTIES

Duty and corporate income tax will be recalculated in the event of incorrect transfer pricing.

Failure to submit the required transfer pricing disclosure form within the prescribed period or provision of incorrect information without justifiable reasons may incur

a penalty not exceeding THB 200,000.

REDUCTION IN PENALTIES

Not applicable

DOCUMENTATION REQUIREMENTS

Businesses with a revenue of not less than THB 200 million (approximately USD 6.3 million) are required to prepare a transfer pricing disclosure, which is submitted to the Thai tax authority with the corporate income tax return.

The following documentation should be prepared by the taxpayer when transactions are made and submitted to the tax authorities upon request:

- Documentation establishing the structure and relationship of a business within the same group, including the business nature of each company
- Budgets, business plans and financial projections
- Documentation establishing the business strategies and the reasons for their adoption
- Documentation establishing the sales, operating results and the nature of the business's dealings with associated enterprises
- Documentation establishing the reasons for entering into international dealings with associated enterprises
- Pricing policies, documents relating to product profitability, relevant market information and profit contributions of each party
- Documentation establishing the reasons for selection of pricing methodology or methodologies
- In the case where several pricing methodologies can be adopted, documentation establishing details of other methodologies, and reasons for the rejection of using such methodologies
- Documentation evidencing the negotiating positions taken with associated enterprises
- Other documentation that is relevant to the pricing methodologies, if any.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

The transfer pricing declaration form should be filed with the annual

corporate tax return, within 150 days of year end.

The Thai tax authority may request additional documents or evidence following the filing of the transfer pricing disclosure form. Companies have 180 days to submit transfer pricing documentation from the first notice letter from the Thai tax authority, and 60 days for any subsequent notice letters.

Documentation should be prepared in a timely manner after year end.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

Not applicable

STATUTE OF LIMITATIONS

The tax authority may request additional documents or evidence with respect to related-party transactions within five years of the filing of the transfer pricing disclosure form.

ADVANCE PRICING AGREEMENTS (APAS)

APAs are available in Thailand and are generally effective for between three and five accounting periods.

See: www.rd.go.th/publish/fileadmin/download/GUIDANCE-ON-APA-PROCESS-TH.pdf

BURDEN OF PROOF

Burden of proof lies with the taxpayer.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

OECD Guidelines are introduced according to the OECD Thailand Country Programme phase 1 (2018-2022) and phase 2 (2023-2025).

CONTACTS FOR THAILAND

Saman Jaokonun
UHY Yongyuth Accounting
and Son Co. Ltd.
samansas@uhy-th.com
+66 2 4128327

Panit Mokarakorn
UHY Yongyuth Accounting
and Son Co. Ltd.
panityas@uhy-th.com
+66 2 4128327

TURKEY



TAX AUTHORITY

Gelir İdaresi Başkanlığı (GIB)
(English: Tax Revenue Administration).
Website: www.gib.gov.tr

TAX LAW

Turkish Corporate Income Tax Law
5520 (CITL), Article 13, June 2006

REGULATIONS & RULINGS

- Article 13(5) of the CITL
- Ministerial Decree No. 2007/12888 of 6 December 2007
- Ministerial Decree No. 2008/13490 of 13 April 2008
- Transfer Pricing General Communiqué No. 1 of 18 November 2007
- Transfer Pricing General Communiqué No. 2 of 22 April 2008

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

Article 13(3) of Corporate Income Tax Law No. 5520 (CITL) states: "Arm's length principle means that the price or consideration charged for the purchase or sale of goods or services between related parties should be the price or consideration which would have been occurred in the absence of such a relationship between them."

PRICING METHODS PRIORITY

Comparable uncontrolled price (CUP) is the primary method applicable. Subsidiary to CUP are resale price (RPM) and cost plus (CP).

TRANSFER PRICING PENALTIES

No specific provisions. Tax audit adjustments may be carried out during a tax inspection due to the use of non-market values. These adjustments may only carry a penalty if there is proof of fraudulent intent.

REDUCTION IN PENALTIES

Not applicable

DOCUMENTATION REQUIREMENTS

Statutory requirement; documentation will be needed for defence in case of a tax inspection.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

April 25 for previous calendar year. In case of a tax inspection, documentation is submitted upon

request of Turkish
Tax Authority within 15 days.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

All companies

STATUTE OF LIMITATIONS

Five years from last filing deadline

ADVANCE PRICING AGREEMENTS (APAS)

APAs can be made with the Turkish tax authorities and bilaterally between countries and are valid for three years.

BURDEN OF PROOF

Turkish tax authorities must prove the use of non-market values.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

OECD Guidelines are followed

CONTACTS FOR TURKEY

Şenol Çudin
UHY UZMAN Sworn in CPA and
Independent Auditing Inc.
senol@uhy-uzman.com.tr
+90 212 272 56 00

UNITED ARAB EMIRATES



TAX AUTHORITY

Ministry of Finance (Competent Authority) & Federal Tax Authority (FTA)

TAX LAW

In December 2022, the UAE Federal Tax Authority released Federal Decree-Law No. 47 of 2022 (Taxation of Corporations and Businesses) ("CT Law") which shall be applicable to all the UAE entities from 1 June 2023, considering its financial year.

The Law includes transfer pricing rules that apply to UAE businesses with respect to related party and connected persons transactions.

REGULATIONS & RULINGS

The following key Articles of the UAE CT Law forms the UAE Transfer Pricing Regulations.

- Article 34 – Arm's Length Principle
- Article 35 – Related Parties and Control
- Article 36 – Payments to Connected Persons
- Article 55 – Transfer Pricing Documentation.

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

The UAE transfer pricing regime applies to arrangements between related parties and connected persons, irrespective of whether the Related Parties or Connected Persons are located in the UAE Mainland, a Free Zone or in a Foreign Jurisdiction.

Arm's Length Standard is met if the results of the transaction or arrangement between Related Parties/with Connected Persons are consistent with the results that would have been realised if Persons who were not Related Parties/ Connected Persons had engaged in a similar transaction or arrangement under similar circumstances.

The arm's length result of a transaction or arrangement between Related Parties must be determined by applying one or a combination of the given transfer pricing methods:

- a) The comparable uncontrolled price method.

- b) The resale price method
- c) The cost-plus method
- d) The transactional net margin method
- e) The transactional profit split method
- f) Other method may also be applied to demonstrate in case none of the given methods can be reasonably applied to determine an arm's length result.

PRICING METHODS PRIORITY

The choice and application of a transfer pricing method or combination of given transfer pricing methods must be made having regard to the most reliable transfer pricing method and taking into account factors like:

- (a) The contractual terms of the transaction or arrangement
- (b) The characteristics of the transaction or arrangement
- (c) The economic circumstances in which the transaction or arrangement is conducted
- (d) The functions performed, assets employed, and risks assumed by the Related Parties entering into the transaction or arrangement
- (e) The business strategies employed by the Related Parties entering into the transaction or arrangement.

TRANSFER PRICING PENALTIES

To be announced.

REDUCTION IN PENALTIES

To be announced.

DOCUMENTATION REQUIREMENTS

The UAE businesses would be required to maintain a Group Master file and a Local Country file. The Ministerial decision no. 97 provides for the following conditions to maintain both a master file and a local file in the relevant Tax Period: Condition 1 (based on Group Revenues): Taxpayers which are part of a group with consolidated revenues of more than or equal to AED 3.15 billion in the relevant tax period; or Condition 2 (based on Local Revenues): Taxpayers with more than or equal to AED 200 million revenues in the relevant tax period.

COUNTRY-BY-COUNTRY REPORTING

Country-by-Country Reporting – Cabinet Resolution No. 44 of 2020 organising reports submitted by multinational companies. For this resolution, the Multinational Enterprises Group (MNE) includes:

- Two or more companies, the tax residence of which is located in different jurisdictions, or including one single company having its tax residence in one country and being subject to tax with respect to the activity it carries out through a permanent company located in another country
- Companies with a total consolidated group revenue that is equal to or more than USD 857.73 million (AED 3.15 billion) during the fiscal year immediately preceding the reporting fiscal year as indicated in its consolidated financial statements for that preceding fiscal year.

Notification & reporting requirements: The Ultimate Parent Company of the MNE Group whose tax residence is located in the UAE is required to submit the Report in accordance with the provisions of this resolution.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

Article 55 Clause 2 of the CT Law requires that Taxable Persons transacting with their Related Parties and Connected Persons maintain a Local File and Master File and must be submitted within (30) thirty days following a request from the Authority.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

The UAE transfer pricing law requires the taxpayers to submit a Transfer Pricing Disclosure Form together with the Corporate Income Tax Return (which is due within 9 months after the financial year end of the UAE taxpayer).

STATUTE OF LIMITATIONS

Taxable Person shall maintain all records and documents for a period of (7) seven years



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following the end of the Tax Period to which they relate.

Where applicable, businesses are required to keep records such as:

- a cash book recording daily sales, including credit sales
- a salary and wages register if the business has employees
- related records that support the information provided in the Tax Return or other documents filed with the Authority
- any other records that will allow the Taxable Income to be calculated.

ADVANCE PRICING AGREEMENTS (APAS)

An APA is an agreement between a Taxpayer and Tax Authority determining the transfer pricing methodology for pricing the taxpayer's international transactions for future years. The methodology is to be applied for a certain period of time based on the fulfilment of certain terms and conditions.

An APA aims to avoid any transfer pricing disputes, by determining in advance a set of criteria to apply, for specific controlled transactions, to ensure their compliance with the Arm's Length Principle.

UAE TP Regulations introduces Advance Pricing Agreement (APA) Regime. However, APA process is yet to be clarified.

BURDEN OF PROOF

For Country-by-Country Reporting, the burden of proof will be on the reporting company.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

UAE transfer pricing rules are aligned with the OECD's internationally accepted transfer pricing standards.

CONTACTS FOR UNITED ARAB EMIRATES

James Mathew
UHY James Chartered
Accountants
james.mathew@uhy-ae.com
0506572575

UNITED KINGDOM



TAX AUTHORITY

HM Revenue & Customs (HMRC).
Website: www.hmrc.gov.uk

TAX LAW

Primary legislation: Taxation (International and Other Provisions) Act 2010 (TIOPA 2010) Part 4, formerly Taxes Act 1988, Schedule 28AA, as amended. The legislation is based on the arm's length principle as stated in Article 9 of the OECD Model Treaty, and is expressly stated to follow OECD Guidelines. Therefore, the OECD BEPS project will have an impact on UK legislation.

The legislation does not distinguish between UK to UK transactions and UK to non-UK transactions. Most Small Enterprises (as defined by the EU Directive) should be exempt from complying with the legislation, and such compliance requirements for most Medium-Sized Enterprises (as defined by the EU Directive) are relaxed somewhat. The primary factor affecting the size of an Enterprise is its headcount. Where the Enterprise is autonomous, the size of the Enterprise is by reference to the number of people employed by that Enterprise. However, when measuring headcount, it may also be necessary to look at the size and influence of any Linked or Partner Enterprises. Please note the exit of the UK from the EU may result in changes in the limits going forward.

When reviewing transfer pricing, the basic premise to consider is whether the "transaction" which is being undertaken by "connected parties" is at a price which would be charged on a commercial and arm's length basis as if the parties were unconnected. A "transaction" covers any product, service or facility which is offered or sold, and will range, typically, from the sale or purchase of physical goods, to sales and marketing services, and low risk contracted out manufacturing and research activities, to financing. In the case of financing, transfer pricing may also be a risk where the funding is provided by a third party. A connected party is generally one which participates in the management, control or capital of

the other party. The test can also be met where one party has 40% control in a joint venture, that party will then be connected with the joint venture for transfer pricing purposes.

It should be noted that the connected party need not be a company liable to UK corporation tax. There are situations in which such an entity may be subject to UK income tax and therefore caught under the UK transfer pricing rules. This could apply where, for example, a non-UK company holds UK real estate. Transfer pricing may be a factor in certain cases where it has procured financing via a connected investor.

There is no requirement for the company's statutory accounts to include such transfer pricing adjustments. Any such adjustment may be made as a "tax only" adjustment in the company's corporation tax return. This is sometimes a beneficial arrangement.

UK case law: There have been very few reported cases, although HMRC are prepared to litigate: *Glaxo Group Ltd and Others v. CIR* (68TC166); *Waterloo Plc, Euston & Paddington v CIR* [2002] STC (SCD) 95; *Ametalco v CIR* [1996] STC (SCD) 399; *DSG Retail and Others v HMRC* [2009] STC 397; and *Medor Capital Management v. Feighan* [2004] STC 273.

The preferred route is to resolve cases by way of a settlement. *Astra Zeneca* and *Diageo* are two recent cases; *Starbucks* is, arguably, another. HMRC are also encouraging taxpayers to reach settlement through the appointment of facilitators under the Alternative Dispute Resolution mediation programme.

EU law and practice: *Lankhorst-Hohorst GmbH v Finanzamt Steinfurt* (Case C-324/00 ECJ).

REGULATIONS & RULINGS

HMRC's manuals set out the HMRC policies and their interpretation of OECD Transfer Pricing Guidelines (issued July 2010) and therefore provide some guidance. These manuals are available to the public. As stated above, HMRC will apply

Article 9 of the OECD Model Treaty in so far as adjustments are made in the UK tax return where the counterparty is resident in one of the countries with which the UK has a full OECD Model Treaty. The taxpayer may also make a request to enter into the Mutual Agreement Procedures (MAPs) under Article 25 or the EU Arbitration Convention. MAPs may be used where a counterparty wants to make a compensating adjustment to a transaction affected by transfer pricing adjustments. MAPs may not be used in UK to UK transactions. Compensating adjustments can no longer be claimed where the counterparty is a partnership or by individuals. HMRC issued a revised statement of practice in SPI/2018 on 20 February 2018.

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

The principle is defined in line with general international consensus. An arm's length provision will have been made between two independent enterprises. In comparing actual and arm's length price, the terms and conditions of the transaction are assessed and adjusted to arm's length terms.

PRICING METHODS PRIORITY

There are no specific rulings, although UK taxpayers are encouraged to select one of the methodologies adopted under the OECD Guidelines. The following is a general guide only to some possible pricing methods, and applies where the company undertakes comparable transactions with third parties in similar circumstances:

- Resale minus (RMM) compensates the reseller of goods for costs incurred and provides an appropriate margin for functions performed, assets employed and risks borne. This basis may be inappropriate where the reseller adds substantially to the value of the product or incorporates the product into another.

- Cost plus (CPM): An appropriate mark-up is applied to costs incurred. CPM is appropriate where there is a provision of services, in particular where the services are of a routine nature and do not



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contribute significantly to the profits of the recipient.

- Transactional net margin (TNMM) is a profit-based method that tests the arm's length nature of a transaction with third parties by examining the net profit margin. The standard of comparability is less rigorous under TNMM and is more flexible to apply than CPM and RMM.

TRANSFER PRICING PENALTIES

Where the taxpayer has been 'negligent, careless or fraudulent' in filing a transfer pricing position as part of a tax return, HMRC may impose tax-g geared penalties where further tax becomes due as a result of adjustments. In serious cases, penalties may be as much as 100% of the additional tax which falls due. A penalty will also be levied where the effect of the enquiry is to reduce the losses carried forward. Interest for late payment of the additional tax may also become payable. Negligence may include cases where the UK company fails to document and/or retain evidence justifying the transfer pricing adopted.

REDUCTION IN PENALTIES

The level of penalties may be decreased at the discretion of HMRC, dependent upon the circumstances in which the correction to the tax return arose. Where a genuine effort was made to apply UK transfer pricing principles and HMRC contends that an adjustment should be made, penalties may be reduced considerably. Where the differences in approach and pricing are minor it may be argued that no penalties should be levied. The level of penalties can depend on the taxpayer's circumstances and cooperation.

DOCUMENTATION REQUIREMENTS

Where the UK transfer pricing legislation applies, the UK taxpayer will be required to prepare detailed transfer pricing documentation which set out, inter alia, a detailed background of the company/group's operations, the market in which it operates, and the economic factors affecting the industry, a functional analysis of the transactions with related parties, a detailed review of

functions risks, and benefits which flow. The report should then discuss the range of pricing arrangements (as approved by the OECD) which are at its disposal and the reasons for rejecting and selecting the appropriate pricing mechanisms. Finally, a full range of comparables must be selected, the data analysed and a statistical analysis undertaken which then underlines the transfer pricing margin/ benchmarking adopted by the company/group. Group agreements which document the various transactions undertaken, services performed, etc. including the terms and conditions. Board minutes which evidence the company's agreement to the adoption of the study, the group agreements etc.

OECD guidelines published in 2014 described a three tier standardised approach to transfer pricing documentation, consisting of:

- A Master File containing standardised information which is relevant for all multinational enterprise (MNE) group members;
- A Local File which refers specifically to material transactions of the local taxpayer; and
- A Country-by-Country (CbC) Report containing certain information relating to the global allocation of the MNE group's income and taxes paid together with certain indicators of the location of economic activity within the MNE group.

These guidelines recommended that the above-mentioned Master File and Local File standard be implemented through local country legislation or administrative procedures and that they should be filed directly with the tax administrations in each relevant jurisdiction as required by those administrations.

Following on from this recommendation, a CbC reporting requirement has been introduced in the UK which applies, for accounting periods starting on or after 1 January 2016, to parent entities/UK entities of multinational enterprises with a consolidated group turnover of EUR 750 million or more. HMRC does not require a Master File or Local File to be prepared or filed

with the CbC report but it remains a requirement that the transfer pricing documentation retained must adequately demonstrate that transfer pricing meets the arm's length standard.

Although HMRC does not require the Master File or Local File to be prepared or filed, other tax authorities may have this requirement for multinational groups operating in their jurisdiction.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

Documentation as described above forms part of company compliance records and should be in place prior to the filing of a tax return. Without it, the taxpayer is not in a position to make an accurate self-assessment of its chargeable profits. Documentation may be requested by HMRC during enquiries into a filed tax return. The deadline for submission will usually be 30 days. The deadline is extended where a company is classed as a Medium-Sized Enterprise.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

The taxpayer is required to confirm that it is carrying out transactions on an arm's length basis when filing a return. The taxpayer may be required to disclose and make transfer pricing adjustments on its return that are not in its accounts.

STATUTE OF LIMITATIONS

HMRC ordinarily confines its enquiries to the period covered by the tax return, and generally initiate enquiries within 24 months of the balance sheet date. However, where transfer pricing compliance requirements have not been met, it can reassess the previous six years. In the case of fraud or negligence the authorities may review the previous 21 years.

ADVANCE PRICING AGREEMENTS (APAS)

APAs may relate to unilateral, bilateral or multilateral arrangements, including group loans. HMRC does not charge a fee for APAs. It will only permit an applicant to



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enter the APA programme where their position is deemed to be sufficiently complex and will set out in detail what they expect to see in an application, including the nature of the underlying documents. HMRC also expects relevant business briefings before deciding whether or not to accept the application. An APA is normally given for a three to five year period.

BURDEN OF PROOF

The UK taxpayer is expected to self-assess for corporation tax purposes. Therefore, in general, the burden of proof falls on the UK taxpayer.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

HMRC accepts most of the pricing policies recommended by the OECD. However, the pricing policy adopted should be consistent with the circumstances in which the OECD deems these to be acceptable.

CONTACTS FOR UNITED KINGDOM

Andrew Snowdon
UHY Hacker Young
a.snowdon@uhy-uk.com
+44 2072164613

UNITED STATES



TAX AUTHORITY

Internal Revenue Service (IRS).
Website: www.irs.gov

TAX LAW

United States Code (USC) Title 26, Subtitle A, Chapter 1, Subchapter E, Part III, Section 482; USC Title 26, Subtitle F, Chapter 68, Subchapter A, Part II, Section 6662

REGULATIONS & RULINGS

Reg. §§1.482-0 through 1.482-9;
Reg. §1.6662-6

Other Adopted Regulations & Rulings
OECD Base Erosion and Profit Shifting (BEPS) Project: Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 – 2015 Final Report, Chapter V; October 5, 2015. The US has only adopted the sections of Chapter V of the Action 13 – 2015 Final Report related to Country-by-Country Reporting (CbCR).

Filing Requirements
Applies to multinational enterprises (MNEs) in the US with annual consolidated group revenue equal to or greater than USD 850 million in the previous year. A US territory ultimate parent entity may designate a US business entity that it controls to file on its behalf. The US does not provide for the possibility to act as a surrogate for filing the CbCR.

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

The amount charged by one related party to another for a given product or service must be the same as if the parties were not related. An arm's-length price for a transaction is therefore what the price of that transaction would be on the open market.

PRICING METHODS PRIORITY

There is no priority in the choice of pricing methods under US law. The Best Method approach is used.

The Best Method approach includes the following acceptable pricing methods:

- comparable uncontrolled price (CUP)
- resale price (RPM)

- cost plus (CP)
- comparable profits (CPM)
- profit split (PSM)
- other unspecified methods, as appropriate.

The best method should be chosen and an explanation given as to why the other methods were not chosen.

TRANSFER PRICING PENALTIES

A penalty is imposed on any under-payment attributable to a substantial valuation misstatement in the form of either a transactional penalty or a net adjustment penalty. The penalty is equal to 20% of the under-payment of tax attributable to that substantial under-valuation. The penalty is increased to 40% of the under-payment in the case of a gross valuation misstatement with respect to either penalty. Reg. §1.6662-6(a).

Penalties for CbCR Reporting:
Penalties ranging between USD 10,000 and USD 50,000 will apply for noncompliance with CbCR requirements, including reasonable cause relief for failure to file.

REDUCTION IN PENALTIES

Generally not applicable.

DOCUMENTATION REQUIREMENTS

Contemporaneous documentation for transfer pricing is required and should be maintained in anticipation of the event of an examination by the IRS, as discussed above. To be contemporaneous, the documentation must be completed on or before the filing of the taxpayer's income tax return.

Transfer pricing contemporaneous documentation includes 10 principal documents:

- Overview of taxpayer's business
- Description of the taxpayer's organisational structure
- Explicitly required documentation per section 482
- Description of method selected and explanation of why
- Description of alternative methods not used and why
- Description of controlled transactions

- Description of comparables used and why
- Explanation of the economic analysis and projections relied upon
- Description of any relevant data the taxpayer obtains after year-end but before the filing of the tax return
- General index of the principal and background documents used.

The CbCR requires aggregate tax jurisdiction-wide information relating to the global allocation of the income, the taxes paid and certain indicators of the location of economic activity among tax jurisdictions in which the MNE group operates on Form 8975.

The report also requires a listing of all the Constituent Entities for which financial information is reported, including the tax jurisdiction of incorporation, where different from the tax jurisdiction of residence, as well as the nature of the main business activities carried out by that Constituent Entity.

The CbCR is divided into three tables, detailed below.

Table 1: Overview of allocation of income, taxes and business activities by tax jurisdiction

- Tax jurisdiction
- Unrelated party revenue
- Related party revenue
- Total revenues
- Profit (loss) before income tax
- Income tax paid (on cash basis)
- Income tax accrued – current year
- Stated capital
- Accumulated earnings
- Number of employees
- Tangible assets (other than cash and cash equivalents)

Table 2: List of all the Constituent Entities of the MNE group included in each aggregation per tax jurisdiction

- Tax jurisdiction
- Constituent entities resident in the tax jurisdiction
- Tax jurisdiction of organisation or incorporation if different from tax jurisdiction of residence
- Main business activity (check off one or more)



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- Research and development
- Holding or managing intellectual property
- Purchasing or procurement
- Manufacturing or production
- Sales, marketing or distribution
- Administrative, management or support services
- Provision of services to unrelated parties
- Internal group finance
- Regulated financial services
- Insurance
- Holding shares or other equity instruments
- Dormant
- Other

Table 3: Additional information

Include any further brief information or explanation you consider necessary or that would facilitate the understanding of the compulsory information provided in the CbCR.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

To be considered contemporaneous, transfer pricing documentation must be prepared by the filing date of the annual income tax return. If the documentation is requested by the IRS, it must be provided within 30 days of the request.

For CbCR, Form 8975 must be filed with its annual income tax return.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

Forms 5471, 5472, 8865 for intercompany transactions.

Form 8975, created for purposes of filing the CbCR with the annual tax return. CbCR reports must be provided in English and the US has not yet adopted the OECD's XML Schema standardised electronic format.

STATUTE OF LIMITATIONS

Generally, three years from the later of: the due date of the tax return, or the date the tax return is actually filed. Can be extended to six years for substantial understatements of income.

ADVANCE PRICING AGREEMENTS (APAS)

APAs can be negotiated with the IRS. A unilateral, bilateral, or

multilateral request may be made.

APAs are generally prospective in nature, although a rollback may be requested.

BURDEN OF PROOF

The burden of proof generally resides with the taxpayer.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

The US model treaty generally conforms with OECD Guidelines. As previously mentioned, the US has only adopted CbCR and has not adopted Master Files and Local Files.

CONTACTS FOR UNITED STATES

Donna Frye
UHY Advisors
dfrye@uhy-us.com
+1 -586-843-2583

URUGUAY



TAX AUTHORITY

Dirección General Impositiva (DGI)
(English: General Directorate of
Taxation). Website: www.dgi.gub.uy

TAX LAW

Law 18.083, Title 4, Chapter VII,
Articles 38 to 46. Enacted December
2006; valid since July 2007
Decrees: 150/007; 56/009; 353/018
(with subsequent modifications)

REGULATIONS & RULINGS

Incorporate Resolutions:
- 94/019
- 2470/022 (with subsequent
modifications)

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

Transactions with related persons
or entities will be considered for all
purposes as made by independent
parties, as will be operations that the
taxpayers carry out with their foreign
subsidiaries, branches, permanent
establishments or other types of
related non-resident entities.

Transactions that taxpayers perform
with entities resident, domiciled,
incorporated or located in countries
or jurisdictions of low or no taxation,
or who benefit from a special low
or no tax regime, will be presumed,
without admitting proof to the
contrary, made between related
parties and will not be considered
to be in line with the practices or
the normal market values between
independent parties.

PRICING METHODS PRIORITY

There is no priority in pricing
methods established by tax
regulations. The pricing method
should be the most appropriate of
the following according to the type
of transaction made:

1. Comparable uncontrolled price
(CUP) method
2. Resale price method (RPM)
3. Cost plus method (CP)
4. Transactional profit
split method (PSM)
5. Transactional net
margin method (TNMM)

For import and export operations
of goods which have international

prices of public and notorious
knowledge through transparent
markets, stock exchanges or similar,
these prices should be used for the
purpose of determining the net
income of Uruguayan source, unless
proven otherwise.

TRANSFER PRICING PENALTIES

There are no specific instructions.
Penalties for overdue taxes rise
up to 20% plus the corresponding
surcharges.

REDUCTION IN PENALTIES

Not applicable

DOCUMENTATION REQUIREMENTS

An annual report is required to be
submitted to the fiscal authority:
When engaged in activities included
in this regime where the amount
is greater than UI 50,000,000
(fifty million indexed units) in the
corresponding fiscal period

When notified by the DGI.

The information provided shall
contain:

- An affidavit giving details of
operations
during the period of transfer pricing;
- A copy of the financial statements
for
the fiscal year;
- The transfer pricing analysis;
- Form 3001;
- Country-by-Country Report and
Master
File (if applicable).

Those not included above must retain,
for the prescribed period of taxes
(five to ten years) documentation
and evidence of transfer pricing
and comparison criteria, in order to
demonstrate and justify the correct
determination of these prices and the
amounts of payments.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

The deadline will expire in the ninth
month from the closing date of the
corresponding fiscal year.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

Form 3001 must be submitted to the
DGI when applicable.

STATUTE OF LIMITATIONS

There are no specific instructions.

ADVANCE PRICING AGREEMENTS (APAS)

The DGI may subscribe Advance
Pricing Agreements (APAs) with
taxpayers, prior to the completion of
the transactions they comprise, and
may not exceed three fiscal years.

BURDEN OF PROOF

There are no specific instructions.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

Uruguay is not a member of the
OECD but has aligned to its Transfer
Pricing Guidelines.

CONTACTS FOR URUGUAY

Stefany Santos
UHY Gubba & Asociados
ssantos@uhygubba.uy
+598 2 915 58 07

Martin Rubinstein
UHY Gubba & Asociados
mrubinstein@uhygubba.uy
+598 2 915 58 07

UZBEKISTAN



TAX AUTHORITY

The State Tax Committee of Uzbekistan is responsible for implementing transfer pricing regulations in the country. Website: www.soliq.uz

TAX LAW

The transfer pricing regulations are governed by the Tax Code of the Republic of Uzbekistan and its accompanying regulations.

REGULATIONS & RULINGS

The key regulations and rulings of transfer pricing in Uzbekistan include the following:

1. The Tax Code of the Republic of Uzbekistan provides the legal framework for transfer pricing regulations in Uzbekistan.
2. According to Article 178 of the Tax Code, related-party transactions must be conducted on an arm's length basis, meaning that the prices and terms of the transactions should be similar to those that would apply if the parties were unrelated.
3. The State Tax Committee of Uzbekistan is responsible for implementing transfer pricing regulations in the country.
4. Companies that engage in related-party transactions must maintain transfer pricing documentation to support their pricing policies. The documentation should include information about the transactions, the pricing methods used, and the selection of comparable transactions.
5. The State Tax Committee may conduct transfer pricing audits to ensure compliance with the regulations. During an audit, the tax authorities may request additional documentation and information from the company.
6. Penalties for non-compliance with transfer pricing regulations in Uzbekistan can include tax adjustments, interest, and fines. The amount of the penalty depends on the nature and extent of the violation.
7. In 2020, the State Tax Committee of Uzbekistan issued a ruling on transfer pricing documentation requirements. The ruling specifies the types of documentation that companies must maintain and the deadlines for submitting the documentation.

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

The Tax Code of the Republic of Uzbekistan defines transfer pricing as a commercial and/or financial arrangement and/or the results of activity involving related parties that are different from the terms and results that would have been obtained in comparable economic conditions by independent parties.

PRICING METHODS PRIORITY

The Uzbekistan tax code outlines the following five methods to analyse the arm's length nature of the controlled transactions: (i) comparable uncontrolled price (CUP) method; (ii) resale price method; (iii) cost plus method; (iv) transactional net margin method; and (v) profit split method.

Even though the TP provisions do not set out a specific hierarchy for use of the methods, the CUP should be a priority when analysing the arm's length nature of the controlled transactions. If necessary, a combination of two or more methods may be used.

TRANSFER PRICING PENALTIES

Liability for underpayment of taxes as a result of applying non-market prices in controllable transactions may result in a penalty of 40% of underpaid tax.

Failure to provide a report on controlled transactions (i.e. transfer pricing documentation), or submitting a report with incorrect information, may result in a fine of UZS 500,000 (USD 44).

REDUCTION IN PENALTIES

Not applicable. However, the tax authorities may defer payments for six months if the penalty amounts to more than 20% of the legal entity's assets, and the penalty may be paid in equal installments within a six-month period.

DOCUMENTATION REQUIREMENTS

Companies that engage in related-party transactions are required to maintain transfer pricing documentation to support their pricing policies. The documentation requirements are outlined in the Tax

Code of the Republic of Uzbekistan and the accompanying regulations.

1. General information: The documentation should include general information about the company, such as its legal name, address, tax identification number, and the nature of its business
2. Description of related-party transactions: The documentation should describe the nature and scope of the related-party transactions, including the goods or services involved, the terms and conditions of the transactions, and any special features of the transactions
3. Selection of transfer pricing methods: The documentation should explain the selection of the transfer pricing method used to determine the arm's length price of the related-party transactions. The company should also justify why the selected method is appropriate
4. Comparable transactions: The documentation should identify comparable transactions that were used to determine the arm's length price of the related-party transactions. The company should provide information about the comparable transactions, including their terms and conditions, and explain why they are comparable to the related-party transactions
5. Financial information: The documentation should include financial information about the company and the related parties involved in the transactions, such as revenue, costs, and profits.

Companies should ensure that their transfer pricing documentation is up-to-date and accurate. The documentation should be available for inspection by the tax authorities upon request. Failure to maintain proper transfer pricing documentation can result in penalties and legal consequences.

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

The Tax Code of Uzbekistan does not specify a specific deadline for the preparation and



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submission of transfer pricing documentation. However, companies should ensure that their transfer pricing documentation is prepared and maintained in a timely manner, preferably before the tax return deadline, which is generally 25 March of the following year.

In case of a tax audit, the tax authorities may request transfer pricing documentation within 30 days of the audit notification. Therefore, it is recommended that companies prepare and maintain their transfer pricing documentation before the notification of an audit.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

Disclosure should be made through financial statements.

STATUTE OF LIMITATIONS

Three years under the Civil Code, and five years under the Tax Code.

ADVANCE PRICING AGREEMENTS (APAS)

Taxpayers qualified as 'large taxpayers' are eligible to apply to tax authorities for an advance pricing agreement. APAs may be valid for up to three years and extended for an additional two years upon the taxpayer's request.

BURDEN OF PROOF

The tax authorities of Republic of Uzbekistan have to prove that prices do not correspond to market prices.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

Uzbekistan is not a member of the OECD although its transfer pricing rules are similar to the OECD Transfer Pricing Guidelines.

There are several distinctions with the key difference being that the OECD Transfer Pricing Guidelines are applicable to international transactions with related parties, whereas the Tax Code of the Republic of Uzbekistan also covers transactions involving unrelated parties.

CONTACTS FOR UZBEKISTAN

Sarvarkhon Karimov
UHY Tashkent LLC
s.karimov@uhy-uz.com
+9987 12092247

VIETNAM



TAX AUTHORITY

Ministry of Finance
(website: www.mof.gov.vn)
The General Department of Taxation
(website: www.gdt.gov.vn)

TAX LAW

The Law on Corporation Income Tax and its amendments

REGULATIONS & RULINGS

- Decree 132/2020/ND-CP of the Government dated 15 November 2020, providing tax administration applicable to enterprises having related transactions, taking effect from 20 December 2020 and applied to the tax year 2020
- Circular 201/2013/TT-BTC of the Ministry of Finance dated 20 December 2013, providing guidance on the application of Advance Pricing Arrangement

INTERPRETATION OF ARM'S LENGTH PRINCIPLE (ALP)

Overall, this refers to market price of the similar transactions conducted by independent parties.

PRICING METHODS PRIORITY

Decree 132 provides three groups of methods to evaluate the arm's length nature of related-party transactions:

Group one

Comparable Uncontrolled Price Method (CUP)

The CUP method involves comparability of transaction terms, transaction levels, business environments, and product similarity for transactions between related parties with transaction terms, transaction levels, business environments, and product similarity for transactions between unrelated parties.

Group two

Resale Price Method (RPM)

The RPM involves the comparability of profits derived from reselling products to an independent third party with profits derived from related-party transactions. Under the RPM, the starting point of the analysis is the resale price at which a product

(that is bought by a reseller from a related party) is sold to an unrelated party. The resale price is then reduced by an "appropriate" profit margin to arrive at the arm's-length purchase price from the related party.

Cost Plus Mark-up Method (CPLM)

The CPLM evaluates the arm's length price of a transaction by calculating the direct and the indirect costs incurred in the transaction, excluding overheads, and adding a cost mark-up to ensure an appropriate profit in the light of the functions performed.

Comparable Profit Method (CPM)

The CPM is based on the profitability of the controlled transactions and that of comparable uncontrolled transactions with similar economic conditions to determine whether the controlled transactions have been conducted on an arm's length basis.

This could be considered as an extension of the RPM and CPLM with the application of net profit margin, including ratios of operating profit above net sales, operating cost and/or operating assets.

Group three

Profit Split Method (PSM)

The PSM is based on the profit earned from an associated transaction conducted between related parties so as to determine an appropriate profit of each party in such a way that the independent parties share profits in comparable uncontrolled transactions. PSM is often applied for related party transactions which aim to develop new products or intangible property.

TRANSFER PRICING PENALTIES

Non-compliance with transfer pricing requirements (e.g. non submission of transfer pricing disclosure forms, non-availability of the Local File and Master File to justify the arm's length price) is subject to the levy of administrative penalties and transfer pricing adjustment by the tax authority.

Additional tax liabilities deducted by

the local tax authorities will trigger 20% penalty on the outstanding tax liability and 0.03% interest charge per day for late payment of the outstanding tax from the (original) due date.

REDUCTION IN PENALTIES

Not applicable

DOCUMENTATION REQUIREMENTS

A Transfer Pricing Declaration (form 01-04) is required from those companies engaged in related-party transactions in order to disclose the transactions. This should be submitted to the tax authority together with the year-end corporate income tax (CIT) return.

At the same time, companies are required to maintain transfer pricing documentation as evidence of application of the arm's length principle. Specifically, this documentation consists of:

- A Local File
- A Master File (a file covering global corporation's information); and
- A Country-by-Country Report of the ultimate parent company (if applicable).

DEADLINE TO PREPARE AND SUBMIT DOCUMENTATION

The Local File and Master File are prepared before the CIT filing deadline and should be submitted to the tax authorities, in Vietnamese, upon request within 15 working days from the date of request.

RETURN DISCLOSURE / RELATED-PARTY DISCLOSURE

Transfer pricing disclosure forms (01-04) should be submitted together with the final CIT return within 90 days of the fiscal year-end, and the Local File/ Master File should be prepared before the final CIT filing deadline.

During transfer pricing audit, the deadline for submission of documentation is no later than 15 working days upon receipt of the tax authority's request. During the consultation period before the transfer pricing audit, the deadline for submission



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of documentation is no later than 30 working days upon receipt of the request document from the tax authority, with only a one-time extension of 15 working days being accepted.

STATUTE OF LIMITATIONS

The statute of limitations is five years. The tax authorities can go back for a period of 10 years; however, penalties and interest charges are imposed for the most recent five years.

Additional tax liability (for 10 years) is required to be paid to the State Budget as instructed in the tax audit decision.

ADVANCE PRICING AGREEMENTS (APAs)

Under Circular 201/2013, APAs have been introduced in Vietnam. The Circular outlines the APA framework, governance, process, application, negotiation and execution of APAs, etc.

Given the regulation on APAs, the taxpayer is allowed to agree on the pricing of their related-party transactions, in advance, with the relevant tax authority/tax authorities for a period of not more than five years on a unilateral, bilateral or multilateral basis.

Where there is no circumstance raising material changes at the conclusion of the initial APA term, the taxpayer has option to renew his APA.

BURDEN OF PROOF

Providing proof is the responsibility of the taxpayer.

PRINCIPAL DIFFERENCES WITH OECD GUIDELINES

Overall, the transfer pricing rules of Vietnam are consistent with the OECD Guidelines.

CONTACTS FOR VIETNAM

Thanh Nguyen
UHY Auditing & Consulting Co Ltd
thanhnt@uhyvietnam.com.vn
+84 24 3555 2088

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