SLOVAKIA

Overview

BMB Partners, Taxand Slovakia

Established in 1996, BMB Partners has been a high-end tax advisory firm in Slovakia for more than 25 years. BMB Partners is an independent tax boutique offering a comprehensive and integrated range of tax consultancy and compliance services.

The BMB Partners team provides a wide range of transfer pricing services for multinational clients, in particular:

- Transfer pricing consultations and advisory
- Preparation and/or updates of transfer pricing documentation in Slovak, German and/or English languages (global and/or local file)
- Preparation of benchmark studies for various industry and service sectors
- Assistance in filing APA and BAPA applications, representation of clients during pre-filing meetings and negotiations with tax authorities
- Assistance and representation of clients during transfer pricing audits
- Assistance in MAPs

General: Transfer Pricing Framework

Transfer pricing regulations are an integral part of the Slovak Income Tax Act (Act No. 595/2003 Coll.). The arm's length principle is applicable and is defined directly in the Income Tax Act (Section 18). The law defines also a material-controlled transaction – transaction the value of which (revenue or expense) exceeds EUR 10,000. In the case of loans between related parties, the transaction is considered to be material if the principal amount exceeds EUR 50,000.

The OECD Guidelines have been officially translated into Slovak and published. The Slovak Income Tax Act (Section 18) contains a direct reference to OECD Guidelines and their methodology. Thus, OECD Guidelines are widely applied and generally accepted as an interpretation tool by both taxpayers and tax administration.

The currently applicable rules and criteria concerning the duty to prepare transfer pricing documentation are set out in the Guidance of the Ministry of Finance of the Slovak Republic No. MF/020061/2022-724 on the contents of the documentation under section 17(7) and section 18(1) of the Act No. 595/2003 Coll. on Income Tax, as amended (hereafter "SK TPD Guidance"). Whether a particular entity is obliged to keep transfer pricing documentation and in what scope (full-scope, basic and simplified) depends on a number of criteria. These include turnover, value of particular controlled transactions, whether an APA application has been filed, whether losses are generated.

Accepted Transfer Pricing Methodologies

The OECD principles are applicable and the OECD methods have been taken over and incorporated into Slovak Income Tax Act. Traditional transaction methods (Comparable uncontrolled price method, Resale price method, Cost plus method) as well as Transactional profit methods (Transactional net margin method, Transactional profit split method) and their combinations are allowed. There is no hierarchy of methods, but the method which is most suitable in the given circumstances has to be applied and argumentation has to be provided why the particular method has been selected.

Transfer Pricing Documentation Requirements

The Master File & Local File obligation exists. However, as Slovakia is mainly a capital importing country, the most typical scenario is that headquarters are located abroad and subsidiaries in Slovakia. Accordingly, Slovak companies mostly need to prepare a Local File, as the Master File is generally provided by the parent company.

In Slovakia, the criteria specifying when companies are obliged to keep transfer pricing documentation and in which scope are very complex. Please see the specification below:

- Full-scope documentation is obligatory for:
  - taxpayers conducting a cross-border material-controlled transaction or a group of cross-border controlled transactions, and preparing the individual financial statements under International Financial Reporting Standards;
  - taxpayers conducting a cross-border controlled transaction or a group of cross-border controlled transactions, if the value of such a controlled transaction or a group of controlled transactions for the relevant tax period exceeds EUR 10 million;
  - taxpayers conducting a cross-border material-controlled transaction or a group of cross-border controlled transactions with a related party resident in a non-contractual state;
  - taxpayers conducting a controlled transaction or a group of controlled transactions which are covered by an APA application;
  - taxpayers conducting a controlled transaction or a group of controlled transactions which are covered by a tax base adjustment request, except for the adjustment of the income tax base related to inland controlled transactions;
  - taxpayers conducting a controlled transaction or a group of controlled transactions which are covered by MAP application for the tax period; and
  - taxpayers conducting a cross-border material-controlled transaction or a group of cross-border controlled transactions and applying a tax relief in the relevant tax period.

- Basic documentation is obligatory for:
  - taxpayers conducting a cross-border material-controlled transaction or a group of cross-border controlled transactions, if the total revenues from operating and financing activities of the taxpayer for the relevant tax period exceed EUR 8 million;
  - taxpayers conducting a cross-border controlled transaction or a group of cross-border transactions, if the value of such a controlled transaction or a group of controlled transactions for the relevant tax period exceeds EUR 1 million;
  - taxpayers conducting an inland material-controlled transaction or a group of material-controlled transactions, and applying a tax relief in the relevant period; and
  - taxpayers conducting a controlled transaction or a group of controlled transactions with a related party residing in a non-contractual state.
- Simplified documentation is obligatory for:
  - taxpayers conducting a material-controlled transaction or a group of controlled transactions who generated a tax loss or utilized a tax loss; and
  - taxpayers conducting a controlled transaction or a group of controlled transactions and applying a tax relief in the relevant tax period.

Taxpayers that do not meet the criteria for any of the documentation types will file just a duly completed income tax return for the relevant tax period. Taxpayers do not have to prepare documentation in relation to transactions which do not have an impact on the tax base of the taxpayer.

Entities obliged to keep full-scope and basic documentation have the duty to prepare both Master file and Local File. Requirement for simplified documentation is met by completing a standard template (3 pages).

The documentation is not automatically filed with tax authorities, which means there is no precise date when it should be prepared. The taxpayer keeps the documentation and submits it only upon request of the tax administrator. The tax administrator may request the submission of the documentation either during a tax audit or, without opening a tax audit, by sending a request to the taxpayer to submit the documentation. In the latter case, the taxpayer has to submit the documentation within a 15-day-deadline after the submission request is delivered. For this reason, it is recommended to prepare the documentation after the conclusion of the fiscal year so that it is ready if the tax administrator requests it. It cannot be reasonably expected to prepare it within the 15-day-deadline after receiving the submission request.

Pursuant to the recent legislative changes, the documentation may be submitted to the tax administrator also in a language other than Slovak. However, if requested by the tax administrator, the taxpayer is obliged to provide a translation into Slovak within a 15-day-deadline.

Local Jurisdiction Benchmarks

Benchmarks are a useful and efficient tool to prove that the transfer prices used by the taxpayer are in line with the arm's length principle. According to the SK TPD Guidance, a benchmark (a comparability analysis) is an essential part of the full-scope documentation. Entities not obliged to keep full-scope documentation are not required to submit a benchmark. However, it is advisable to prepare a benchmark anyway, as it is useful for the taxpayer to define its tax position. If the taxpayer submits a benchmark, the burden of proof is shifted to the tax administrator, and if the tax administrator does not agree with the benchmark, it has to prove the benchmark is not correct. Benchmarks submitted by taxpayers to the tax authorities are closely reviewed and it is not uncommon that the tax administrator prepares its own benchmark (even if a benchmark is submitted by the taxpayer), and if the results deviate from the figures presented by the taxpayer as market values, it is up to the taxpayer to defend its position. The tax administrator may still accept the figures presented by the taxpayer if the taxpayer provides valid argumentation. At this point, valid negotiation and argumentation is extremely important. If the taxpayer fails to defend its position, the tax administrator calculates the difference in tax (tax adjustment) and the taxpayer has to pay the outstanding amount plus late interest.

Benchmarks are mostly based on regional comparison, as Slovakia is a small country and there might not be enough comparable entities within the country for an exclusively local comparison. When selecting the comparable region, it is advisable to select countries similar in both geography and economic position to Slovakia (e.g., EU, Europe, Central and Eastern Europe), so that the results are truly comparable. Otherwise, it might prove very difficult to defend the results.

Internal CUPs are very difficult to find, but not impossible. As a direct method, internal CUP is even preferred by the tax administrator. If internal CUP method is applied by a taxpayer, the tax administrator closely inspects whether the conditions are truly comparable.

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

In Slovakia, it is possible to apply for both unilateral APA and BAPA, and numerous taxpayers decide to take this step to gain legal certainty. The request for unilateral APA/BAPA has to be filed no later than 60 days prior to the beginning of the first year to which the APA should apply. APAs may be approved for a period of up to 5 years. If the taxpayer files a new APA request no later than 60 days before the lapse of the first APA and proves that the conditions have not changed,

the tax administrator may approve another APA for a period of further up to 5 years.

The conditions for a BAPA are analogous. Roll-back is possible for a BAPA if both contracting states agree.
If no agreement on BAPA with the other state is reached, the Slovak administrator may still approve a unilateral APA.

The law specifically defines the information which has to be provided in the APA request.

The standard fee for a unilateral APA amounts to EUR 10,000 and for a BAPA to EUR 30,000. The fee is due at the time the request is filed. Both fees are reduced by 50% if the taxpayer is ranked as "highly reliable" within the Tax Reliability Index rating. This rating monitors the history of the taxpayer (whether the tax returns and other filings were filed on time, whether taxes were paid on time and in the correct amount etc.).

The duration of the process depends on individual circumstances. If there are no disputed issues, an APA may be approved within a few months. According to our experience, most unilateral APAs are issued within the period of 4 – 6 months. On the other hand, the average time to negotiate a BAPA is 42 months (according to EU statistics for 2021 published in August 2023). According to these statistics, there were 16 applicable unilateral APAs and 2 applicable bi- or multilateral APAs in Slovakia as at the end of 2021. More recent statistics are not available yet.

Transfer Pricing Audits

In recent years, the Slovak tax administration started focusing on transfer pricing audits. The statute of limitation for cross-border transactions, and thus also for cross-border transfer pricing issues, is considerably long: 10 years after the lapse of the tax period in which the tax return was due, which means 11 years after the year in which the transaction was conducted. Transfer pricing audits are often performed by the tax administrator within the last 2-3 years of the limitation period, which results in rather big late interest charges if findings are identified.

During transfer pricing audits, the tax administrator focuses mainly on losses or extremely low profit margins/mark-ups.

During transfer pricing audits, the tax administrator often prepares its own benchmark (even if a benchmark is submitted by the taxpayer), and if the results deviate from the figures presented by the taxpayer as market values, it is up to the taxpayer to defend its position. The tax administrator may still accept the figures presented by the taxpayer if the taxpayer provides valid argumentation. At this point, valid negotiation and argumentation is extremely important. If the taxpayer fails to defend its position, the tax administrator calculates the difference in tax and the taxpayer has to pay the outstanding amount plus penalty (late interest).

Transfer Pricing Penalties

Since 2017, the sanctions (late interest charges) for the failure to comply with the arm's length principle in transactions with related parties have increased. The stricter sanctions are applicable to taxpayers that intentionally decrease the tax base or increase the tax loss through transfer prices. In such a case, the sanction is not the standard 3 x ECB base interest rate p.a. of the adjustment (additionally assessed tax) generally imposed by the tax administrator during tax audits, but double the amount. The maximum sanction is 100 % of the additionally assessed tax.

In addition to late interest, penalties may be imposed for other transfer pricing related offences, e.g., the failure to submit transfer pricing documentation or the submission of faulty transfer pricing documentation. These administrative offences are subject to a penalty of up to EUR 3,000.

Local Hot Topics and Recent Updates

Pursuant to the recent legislative changes, a new rule regarding transfer pricing adjustments came into effect since 2023. If the taxpayer does not comply with the arm's length principle (i.e., when his values are outside the range of independent comparable values), the adjustment by the tax administrator shall be based on the median resulting from the benchmark (independent comparable values). If the taxpayer proves that, considering the particular circumstances, another value within the interquartile range than median is more suitable, the tax base shall be adjusted to this value. The law amendment copies the previous practice, as the adjustments of the tax administrator were based on the value of the median in the past, too.

Experts argue that this new provision is actually not in line with the OECD Guidelines, which specify that the whole range of independent comparable values (interquartile range) is in line with the arm's length principle and should therefore be accepted by the tax administrator without the need to defend the value with special arguments and circumstances. It will therefore be interesting to see the future development in this field, especially whether the tax administrator will enforce this provision during tax audits and how willing it will be to accept the argumentation of the taxpayer.

The latest update of the SK TPD Guidance has been applicable since 2023 and has introduced the following changes:

- amendments to rules for TP documentation of a permanent establishment, including the requirement for capital attribution;
- extended requirements for economic information on the activities of both the group and the entity, and linking financial information and pricing to results from accounting books;
- simplification of documentation requirements for micro-taxpayers.

SLOVAKIA

Documentation threshold

Master file	N/A (complex rules explained in part Transfer Pricing Documentation Requirements)
Local file	N/A (complex rules explained in part Transfer Pricing Documentation Requirements)
CbCR	group revenue over EUR 750 million/year

Submission deadline

Master file	During the transfer pricing audit, or, outside the audit within 15 days after the receipt of the request of the tax administrator
Local file	During the transfer pricing audit, or, outside the audit within 15 days after the receipt of the request of the tax administrator
CbCR	For CbCR: 12 months after the lapse of the relevant fiscal year (according to the fiscal year of the parent company) For Notification on which foreign entity within the group files the CbCR: same as tax return filing deadline (standard deadline 3 months after the lapse of the tax period)

Penalty Provisions

Documentation – late filing provision	from EUR 60 up to EUR 3,000 (at the discretion of the tax administrator, depending on the severity, duration and possible consequences)
Tax return disclosure – late/incomplete/no filing	from EUR 60 up to EUR 16,000 (at the discretion of the tax administrator, depending on the severity, duration and possible consequences)
CbCR – late/incomplete/no filing	up to EUR 10,000 (for non-filing of CbCR), repeatedly up to EUR 3,000 (for non-filing of the Notification on which foreign entity within the group files the CbCR), repeatedly

CONTACT

Judita Kuchtova
BMB Partners
judita.kuchtova@bmb.sk
+421 2 212 99 000

Renata Blahova
BMB Partners
renata.blahova@bmb.sk
+421 2 212 99 000