



Overview

Borenium, Taxand Finland

Borenium is a leading Finnish law firm headquartered in Helsinki.

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

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

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

General : Transfer Pricing Framework

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

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

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

Accepted Transfer Pricing Methodologies

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

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

Transfer Pricing Documentation Requirements

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

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

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

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

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

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



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

Local Jurisdiction Benchmarks

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

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

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

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

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

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

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

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

Transfer Pricing Audits

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

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

The Burden of Proof in Transfer Pricing: Theory versus Practice

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

If the FTA questions the arm's length nature of a transaction, the taxpayer is typically required to provide evidence to refute the allegations. However, this requirement does not extend to proving a negative, such as demonstrating that a specific event has not occurred and this remains the FTA's responsibility to prove. This aspect is particularly relevant in disputes concerning alleged business restructurings, where the FTA may argue that something of value has exited Finland.



Transfer Pricing Penalties

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

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

In addition, the ordinary tax penalties (i.e., tax increases), are typically imposed in connection with transfer pricing related reassessments. A punitive tax increase can amount to as much as 10% of the adjusted income. If the punitive tax increase cannot be calculated based on the adjusted income, the increase can amount to up to 50% of the increased tax.

Local Hot Topics and Recent Updates

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

Business restructurings between related parties have remained a priority for the FTA. Recently, the FTA has been particularly active in monitoring the transfer pricing aspects of various business restructurings, especially those involving intangibles. Recent case law from the Supreme Administrative Court has confirmed Finland's alignment with the principles outlined in Chapter IX of the OECD Guidelines in this respect.

Partly aligned with the reduced transfer pricing audit activity, as mentioned above, the emphasis on various pre-emptive processes is significant for both the FTA and taxpayers.

Finland is a remarkably active APA/MAP player and has a broad range of concluded and pending processes with other jurisdictions. Combined with the increasing use of pre-emptive discussions, the pre-emptive processes have assumed a primary role in resolving transfer pricing issues. We have very good experiences from utilising said processes for the benefit of Finnish taxpayers, and strongly recommend considering these in connection to broad range of Finnish tax and transfer pricing matters.



Documentation threshold

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

Submission deadline

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

Penalty Provisions

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



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