SLOVENIA

Overview

LeitnerLeitner d.o.o., Taxand Slovenia

Our experienced team consists of transfer pricing specialists who can assist you with all aspects of your domestic and foreign transfer pricing obligations and documentation requirements, and with the planning and implementation of international supply chains.

Our services include among others:

- Update of existing/conceptualization and implementation of BEPS-compliant transfer pricing systems and tax-optimized supply chains, including transfer pricing documentation,
- Management of bilateral and multilateral arbitration and mutual agreement procedures (MAP).
- Defense of existing intragroup transfer pricing mechanisms and transfer pricing systems in appeal proceedings.
- Request for rulings, and initiation of advance pricing agreements (APAs).

General: Transfer Pricing Framework

The arm's length principle is laid down in the Corporate Income Tax Act (the "CITA"). Transfer prices ("TP") among tax residents and tax non-residents are regulated in Article 16 of the CITA. TP among tax resident entities are regulated in Article 17 of the CITA. The general liability to document TP is stipulated in Article 18 of the CITA, whereby some further details are determined in the procedural tax law. Article 19 of the CITA specially regulates payment of interest among related entities. As of 1 January 2025, thin capitalization rules, i.e. former Article 32 of the CITA, no longer apply. Consequently, only interest limitation rule applies (see also below). The substantive part of TP is further regulated in Rules on TP. The essential components of transfer pricing documentation ("TPD") are regulated in the Tax Procedure Act (hereafter: "TPA"), namely in Article 382. TP rules and use of the arm's length principle are generally in line with the OECD TP Guidelines.

Accepted Transfer Pricing Methodologies

The OECD principles are not formally implemented to the Slovenian tax law, albeit they are generally recognized as an explanation tool by the Financial Authority (the "FA") and judicial practice. Nevertheless, we notice in tax audits that OECD TP Guidelines are used very selectively. Especially with respect to guidance on low value-added services (pts.7.43 -7 .65 of the OECD TP Guidelines 2022), whereby the FA recognizes it in its brochure on TP, however in practice, the auditors insist on regular treatment of those services as well. Additionally, to a very limited extent, the Rules on TP stem also from the OECD TP Guidelines, however it shall be noted that they were not updated since 2012 to match more recent updates to the OECD TP Guideline.

The CITA follows the classic split between traditional and transactional TP methods and accepts the 5 OECD pricing methods.

According to the the Rules on TP, determination of the comparable market price shall be executed by using the most appropriate method, considering circumstances of the case. The CUP method, however, has the advantage before all other methods. Nevertheless, CUP method is rarely efficiently used in practice for lack of comparables.

Transfer Pricing Documentation Requirements

The mandatory and minimum content of the TPD is provided in Article 382 of the TPA. The general liablitly of a taxpayer is to ensure the masterfile and country-specific documentation ("local file").

According to Article 382 paragraph 1, the masterfile may be unified for the entire group of related entities and shall include at least: a description of the taxpayer, its global organisational structure and type of affiliation (such as capital, contractual, personal), its TP system, a general description of its business and business strategies, general economic and other factors as well as competitive environment. The local file shall include at least information detailing transactions with related parties (description, type, value, terms and conditions). The information should include the performance of a comparability analysis of the transactions, which will reflect: characteristics of assets and services, the functional analysis performed (tasks performed in relation to the assets or services invested and risks assumed), the contractual terms, economic and other conditions affecting the transactions, business strategies, other influences relevant to the execution of the transaction, information on the method(s) used to determine the TP and their determination in accordance with comparable market prices, other documentation demonstrating that TP are consistent with comparable market prices.

Multinational enterprises must prepare a Country by Country Report ("CbCR") if the consolidated group turnover amounts to € 750 million or more in the previous tax year. However, CbCR is not formally deemed a part of TPD.

There are no further legally provided details applicable to TPD according to the local tax law. To a very limited extend, there are some further informal guidelines provided by the FA in its TP brochure and brochure on TP Audits. Moreover, the FA generally accepts the OECD TP Guidelines. The taxpayer shall prepare the TPD regularly, however it shall be prepared no later than until the CIT tax return submission

is due, which is three months after the financial year. For cross-border transactions, TPD is mandatory, while for domestic transactions, documentation must be only prepared upon request of the tax authorities within the tax control framework. It is important to note that some data have to be submitted already in the attachments to the CIT tax return, whereby the form for submission has been altered and new reporting liabilities apply for the tax periods starting with 2024. Namely, the tax return attachments include details on taxpayer's liabilities and transactions, on the basis of which the FA verifies the credibility of tax returns and identifies tax risks. In attachments no. 16 and 17, the taxpayer must identify types of transactions with related parties separately and no longer aggregately. To the contrary, the TPD as such does not have to be submitted to the FA. It must be available at the taxpayer and presented to the tax auditors on their request. In an event of audit, if the taxpayer is not able to present its TPD immediately, the tax auditor determines a deadline in which the TPD shall be made available for audit. This deadline shall not be shorter than 30 days, but also not longer than 90 days.

According to the applicable tax law, there is no threshold below which the transaction does not fall under TP rules. There are also no particular thresholds regarding the TPD provided. Nevertheless, it is common in practice that taxpayers set their relevance thresholds themselves, as it is common under foreign legislations.

Local Jurisdiction Benchmarks

Neither CITA nor Rules on TP provide expressly that benchmarks are required. Nevertheless, benchmarks are in practice the essential component of the comparability analysis and are recognized by the FA as an adequate tool to execute it. FA's TP brochure lists the most common databases (i.e., Amadeus, Orbis and Gvin). The FA mostly uses Amadeus, which is thus unofficially recognized as the preferred source of information. In TP audits, the FA will often challenge the benchmarks and request additional information on their execution. In line with the OECD TP Guidelines, a financial update is to be conducted every year. In practice, however, most taxpayers do not update their benchmark searches on an annual basis. In cases when a business activity does not undergo significant changes, a search can be updated every 3 years, which is deemed a market standard.

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

Under Article 14.a of the TPA, the taxpayer may request conclusion of a unilateral, bilateral or multilateral APA.

The general conditions to APA conclusion are set in Article 14.b of the TPA and are the following:

- a pre-application interview between the FA and the taxpayer, in which both agree on the appropriateness of entering into an APA;
- the taxpayer's cooperation throughout the APA process; the transaction subject to the APA must have an economic substance and a serious purpose to be carried out;
- the agreement of the taxpayer and the FA on the content of the APA; and
- the transaction that is the subject of the agreement must be conducted for a reasonable period of time after the conclusion of the APA or not be a transaction that is about to expire after the conclusion of the APA agreement.

The fee to conclude an APA amounts to € 15,000. For extension of the APA, the fee is set at € 7,500. If APA is not concluded for reasons outside the scope of a taxpayer, the taxpayer is reimbursed a lump-sum amount of € 5,000.

There is no prescribed deadline for APA conclusion. In practice, it takes more than one year to conclude an APA. Because of high prices and lengthy procedures, APAs are not very popular in the Slovenian tax practice.

Transfer Pricing Audits

TP is gaining more and more attention of the FA. The latter also invests in educating its officials and in employing more staff on the area. Consequently, we experience an increase of TP Audits in the recent years along with increasing complexity of the procedures.

The FA is particularly interested in the following topics:PE profit distribution, royalty payments, adjustments based on credit/debit notes (year-end adjustments), services to associated entities, adequateness of the comparability analysis. These are also areas that proved to be the most problematic in practice, since these are the areas on which the FA finds the most irregularities.

The Burden of Proof in Transfer Pricing: Theory versus Practice

In Slovenian procedural tax law, the principle of the duty to provide information (Article 10 of the "TPA") applies, requiring taxpayers to submit true, accurate, and complete information to the FA, as needed for tax collection. At the same time, the principle of material truth in tax matters (Article 5 of the TPA) stipulates that the FA must establish all facts relevant to making a lawful and correct decision. This includes an obligation to determine facts that are in the taxpayer's favor with the same level of diligence, unless otherwise provided by law.

According to case law, the burden of proof lies with the party making a claim. If the FA does not accept the taxpayer's evidence, it must provide counterevidence. Similarly, it should apply in transfer pricing cases, if the FA is not convinced by the TPD and claims of the taxpayers, it should prove otherwise. In practice, however, FA often make generalized determinations that the taxpayer has failed to substantiate the appropriateness of transfer pricing but do not provide a well-reasoned explanation as to why the transfer pricing is inappropriate or what the correct transfer price should be. Particularly in the case of intra-group services, taxpayers often lack the specific documentation required by the FA, making it difficult to effectively verify the appropriateness of transfer pricing.

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Transfer Pricing Penalties

A penalty of € 1,200 to 15,000 (€ 3,200 to 30,000 for medium and large sized companies) and of € 400 to 4,000 for the company person in charge can be imposed if the taxpayer does not submit TPD as provided by the applicable TPA.

In addition to the adjustment of the income tax base, penalties are imposed for inadequate tax compliance and non-deduction of the withholding tax in case of constructive dividend. As the TP are not in line with the arm's length principle, the income tax return is not correct resulting in further liability.

Local Hot Topics and Recent Updates

Although the TP area continues to be fairly stable, there are legislative changes in place, which also impact the TP area. The most important is the Minimum Tax Act, which implemented the Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the European Union. The Minimum Tax Act applies from 31 December 2023, with first reporting liabilities coming in the middle of 2026 for tax year 2024. Additionally, the Interest Limitation Rules have been amended, raising the excess borrowing costs threshold from 1.000.000 EUR to 3.000.000 EUR. The amendment applies for tax periods starting with 1 January 2025.

Documentation threshold

Master file	Not Applicable
Local file	Not Applicable
CbCR	Turnover € 750 million

Submission deadline

Master file	Should be available in the taxpayer's administration upon due date filling corporate income tax.
Local file	Should be available in the taxpayer's administration upon due date filling corporate income tax return.
CbCR	Submission within 12 months after end tax year. Notification together with the within 11 months.

Penalty Provisions

Documentation – late filing provision	Fines up to a maximum of € 30,000 can be imposed on the taxpayer.
Tax return disclosure – late/incomplete/no filing	Fines up to a maximum of € 30,000 can be imposed on the taxpayer.
CbCR – late/incomplete/no filing	Fines up to a maximum of € 30,000 can be imposed on the taxpayer.

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