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Overview

Garrigues,Taxand Spain

Garrigues,Taxand Spain, is an international firm that provides tax and legal advisory services at local, regional and global level, covering every angle of business law. Its strength lies in its team of over 2,100 people working across multiple disciplines to deliver comprehensive client solutions, and in its shared values in the 3 countries it represents within Taxand: unparalleled service quality, ethical commitment and an innovative approach that helps Garrigues stay one step ahead of market needs.

Garrigues provides a full range of transfer pricing services, which can be summarised as follows:

- Design and implementation of transfer pricing policies, business reorganizations and value chain analysis;
- Advice during transfer pricing audits;
- Assistance in negotiating Advanced Pricing Agreement ("APA"s) with the Spanish Tax Authorities, either unilateral or bilateral;
- Assistance in Mutual Agreement Procedures ("MAP"s) for the resolution of double taxation situations deriving from adjustments of related party transactions;
- Advice to multinational corporations on how to fulfill their formal obligations concerning documentation and information of related-party transactions in Spain (e.g., Master and local file, 232 Form and country-by-country report,); and
- Valuation of companies or assets for tax purposes.

General: Transfer Pricing Framework

The arm's length principle can be found under Spanish regulations in the "Ley del Impuesto de Sociedades", which is the Spanish Corporate Income Tax Law ("CITL") 27/2014.

Article 18 of the law contains a series of rules regarding the obligation to value related party transactions at arm`s length, stating, in particular, that these type of transactions *"shall be valued at their market value", considering this as that which "would have been agreed upon by independent persons or entities".*

Spain is a member of the OECD. The preamble to the CITL specifically declares that the interpretation of the Spanish transfer pricing provisions must be done in accordance with the OECD Transfer Pricing Guidelines and with the EU Joint Transfer Pricing Forum recommendations, insofar as they do not contradict what is expressly established in the CITL or in its implementing legislation.

Accepted Transfer Pricing Methodologies

Spanish transfer pricing regulations define the methodologies that are to be used to analyze related party transactions. These are the following:

- Comparable Uncontrolled Price Method.
- Cost-Plus Method.
- Resale Price Method.
- Profit Split Method.
- Transactional Net Margin Method.

The CITL also allows the application of other generally accepted pricing methods where it is not possible to apply the aforementioned methodologies, as long as they are consistent with the arm`s length principle.

There is no specific priority of methods. The most appropriate method must be chosen, considering the characteristics of the transactions and the availability of reliable information.

Transfer Pricing Documentation Requirements

The Corporate Income Tax Regulation ("CITR"), contained in Royal Decree 634/2015, establishes the formal information and documentation obligations, namely: transfer pricing documentation, a tax return disclosure and country-by-country reporting.

The transfer pricing documentation requirements are drawn from the principles contained in Chapter V of the OECD Transfer Pricing Guidelines, divided into two parts, each of which is structured into blocks of information:

- Documentation relating to the group to which the taxpayer belongs (Masterfile), required for entities belonging to groups having a net turnover exceeding EUR45 million, which is structured according to the following sections:
  - Information on the group's structure and organization.
  - Information on the group's activities.
  - Information relating to the group's intangible property.
  - Information on financial activity.
  - Group's financial and tax position.

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- Documentation on the taxpayer *(Localfile)*, required for entities performing related party transactions exceeding a quantitative threshold (EUR 250.000 per related-party whole aggregation of operations), and which is structured according to the following sections:
  - Information on the taxpayer.
  - Information on the controlled transactions.
  - Taxpayer's economic and financial information.

  There are certain related-party transactions for which the documentation is not required, such as the ones below the quantitative threshold mentioned above or transactions carried out between entities in the same consolidated tax group, among others.

  Furthermore, there is an option for a simplified documentation system, which can be exercised by related persons or entities with net revenues below EUR 45 million, and an even more simplified documentation system in the case of entities whose net revenues are below EUR 10 million.

The tax return disclosure is embodied in Form 232, which is the information return in respect of related-party transactions and transactions and situations linked to countries or territories categorized as tax havens.

It is required to be filed by corporate income tax taxpayers and non-resident income tax taxpayers who operate through a permanent establishment, and entities under the pass-through regime formed abroad and with a presence in Spain, which perform (i) related-party transactions exceeding certain quantitative thresholds or in cases in which the reduction for revenues from certain intangible assets is applicable; or (ii) transactions and situations linked to countries or territories categorized as tax havens.

Form 232 must be filed electronically, in the month following 10 months after the end of the tax period to which the information to be supplied relates. In other words, for taxpayers whose tax period ends on 31 December, the deadline for filing Form 232 is 30 November of the following year.

Finally, the country-by-country reporting obligation applies to all Spanish resident entities that are considered to be parent companies of a group and are not a subsidiary of another company when the combined net revenues of all the persons or entities belonging to the group, during the 12 months preceding the start of the tax period, amount to at least EUR 750 million, and, exceptionally, to subsidiaries or permanent establishments owned directly or indirectly by a non-Spanish resident entity that is not also a subsidiary of another entity under circumstances such as that there is no similar CbC reporting requirement with respect to the non-resident entity, among others.

This information must be submitted within the 12 months following the end of the tax period.

Local Jurisdiction Benchmarks

Spanish law and regulations do not make any reference to foreign comparables. However, the use of pan-European comparables is a common practice in cases where not enough Spanish comparables are available and benchmarked transactions are carried out in this geographic area.

In line with the recommendations of the OECD Guidelines, taxpayers usually perform new searches every three years, refreshing the financial information of the comparable entities on a yearly basis in cases where significant changes do not take place.

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

In Spain, taxpayers can apply for APAs or BAPAs before the Department of Financial and Tax Inspection of the Spanish Tax Agency.

Even if the taxpayer has the possibility (not obligation) to approach informally the Spanish competent authority on a pre-filing phase, the procedure starts with a formal application, for which no fees are due, that must contain a proposed price based on the arm's length principle, a description of the proposed method and an analysis justifying that the manner in which it is applied.

The Spanish competent authority will examine the proposal together with the documentation submitted, and may require the taxpayer to produce additional data, reports, background facts and documentary support, as well as further explanations or clarifications.

According to regulations, the procedure must be completed within a 6-month period, but, in practice, it takes at least from 18 to 24 months to complete the process.

An APA is valid for four tax periods subsequent to the date on which it is approved and may also apply to transactions in the current tax period at the date of approval. The APA can also be applicable to transactions in all earlier tax periods, insofar as the tax authorities' right to determine the tax debt by issuing an assessment is not statute barred. The period of validity of an approved APA can be extended, provided a request is filed not less than 6 months prior to the expiry of the initial term of the APA. If there is a significant change in the economic circumstances that existed when the APA was approved, it can be modified.

Transfer Pricing Audits

The Spanish Tax Authorities conduct tax audit at random and all companies are subject to audit for any open period. The ordinary statute of limitations period is four years.

The burden of proof is on the taxpayer, by way of the transfer pricing documentation that needs to be prepared according to the requirements of the regulations. In practice, this documentation is being requested and deeply scrutinized in almost every tax audit.

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The Burden of Proof in Transfer Pricing: Theory versus Practice

In Spain, the principle governing the burden of proof in transfer pricing disputes is clear in theory: while taxpayers must justify that their related-party transactions adhere to the arm's length principle, the Spanish Tax Authorities (STA) bear the responsibility of proving any deviation. Article 18 of the Corporate Income Tax Law (CIT Law) and the Transfer Pricing Regulations (Royal Decree 634/2015) establish these rules, requiring taxpayers to prepare and maintain robust transfer pricing documentation.

However, in practice, the distinction is far less rigid. The STA increasingly challenges intercompany transactions by questioning the taxpayer's economic rationale behind their operational set up, the transfer pricing methods or the way the benchmarks are conducted, rather than presenting its own detailed analysis. This is particularly evident in areas such as intangibles, intra-group financing, and restructurings, where tax auditors frequently expect companies to go beyond standard documentation and proactively defend their pricing policies.

Another typical area is the provision of intragroup services to Spanish entities, where their reality and usefulness are questioned by the STA, and the taxpayers are required to evidence that these activities have taken place in practice, and the benefits deriving from the services received, upon tax audit procedures which usually happen several years later, when the means of proof are not so easy to gather by the taxpayers.

As a consequence of this implicit shifting of the burden of proof, taxpayers often find themselves in a defensive position, having to disprove assumptions made by the authorities - even in cases where those assumptions lack a strong economic basis, and the STA is technically required to substantiate their adjustments. The courts, in parallel, are showing an increasing focus on the quality and depth of taxpayer documentation, reinforcing the need for a proactive and well-documented approach.

Against this backdrop, companies operating in Spain should not take a reactive approach to transfer pricing compliance. Beyond meeting the formal Master File and Local File requirements, taxpayers must ensure that their economic grounds are solid, consistent, and audit-ready. In a tax environment where authorities are assertive in their challenges and courts are demanding greater substantiation, the real burden of proof often lies with the taxpayer—regardless of what the regulations suggest.

Transfer Pricing Penalties

The legislation provides for specific penalties on transfer pricing assessments if: (i) the taxpayer does not prepare the transfer pricing documentation or prepares it in an incomplete manner or with false data; or (ii) the arm's length value derived from the transfer pricing documentation does not correspond with the one declared by the taxpayer in its tax return.

Such penalties will be different depending on whether or not an adjustment is applicable.

If a valuation adjustment is applicable, the penalty will be equal to 15% of the difference between the agreed value and the market value.

In the absence of a valuation adjustment, the penalty will consist of a fixed fine of EUR 1,000 for each item of data and EUR 10,000 for each set of omitted or false data relating to each one of the documentation obligations established by the CIT Regulations for the group or for each entity in its capacity as a taxpayer. The maximum limit for this penalty is the lower of 10% of the aggregate amount of the transactions subject to CIT, personal income tax or non-resident income tax and performed in the tax period, or 1% of net revenues.

In this regard, properly preparing and maintaining transfer pricing documentation can help mitigate these risks and even prevent penalties altogether. Ensuring compliance not only safeguards against potential fines but also strengthens the taxpayer's position in case of a tax audit. Proactive documentation is key to avoiding tax adjustments and securing compliance with Spanish tax authorities.

Local Hot Topics and Recent Updates

Transfer pricing enforcement in Spain continues to intensify, with the Spanish Tax Authorities (STA) further developing their so-called "360º Strategy", an integrated approach aimed at tightening scrutiny over related-party transactions.

The 2025 Tax and Customs Control Plan builds on previous initiatives while introducing new priorities and technological enhancements. Cross-border controlled transactions remain a central focus due to their growing economic relevance and associated tax risks.

In this context, the STA are deepening their use of domestic data and information exchanged under international frameworks. Notably, the Plan anticipates increased use of coordinated inspections, including joint audits with foreign tax authorities under existing cooperation agreements, to enhance alignment and reduce cross-border mismatches.

As in prior years, key areas under scrutiny include corporate restructurings, the valuation of intangible assets, and intragroup transactions. Particular attention is being given to the deductibility of items with a material impact on the taxable base, such as royalties on intangibles, intragroup services, and financial arrangements involving related entities, especially where recurrent tax losses persist.

New in 2025 is the enhanced use of artificial intelligence (AI)-powered automated risk analysis, aimed at proactively detecting high-risk patterns in both domestic and international datasets.

There is also greater emphasis on validating functional profiles, especially where companies claim limited-risk status despite significant economic presence in manufacturing or distribution.

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Information on controlled transactions reported through Form 232 is gaining relevance as a key source for verifying policy consistency and identifying discrepancies.

Finally, taxpayers are expected to support their policies with robust functional analyses, clearly identifying functions, assets, and risks. Where applicable, financial accounts should be segmented to accurately reflect the arm's-length outcomes. All documentation must be ready by the voluntary corporate tax filing deadline, the point from which it may be formally required by the STA.

The "360º Strategy" reflects a holistic approach to transfer pricing enforcement, combining enhanced international coordination, advanced analytics, and reinforced expectations around transparency and contemporaneous documentation.

This evolving landscape underscores the importance of robust transfer pricing documentation. Companies must ensure their policies are grounded in economic substance and supported by practical evidence—such as contracts, internal communications, and functional analyses—to withstand increasing scrutiny from the STA.

Documentation threshold

Master file	Net turnover of the group > EUR 45 million
Local file	Related party transactions > EUR 250.000
CbCR	Group turnover > EUR 750 million

Submission deadline

Master file	At the disposal of the tax authorities from the end of the voluntary period for the declaration or settlement of taxes.
Local file	At the disposal of the tax authorities from the end of the voluntary period for the declaration or settlement of taxes.
CbCR	During the 12 months following the closing date of the financial year of the parent entity.

Penalty Provisions

Documentation – late filing provision	N/A
Tax return disclosure – late/incomplete/no filing	Fixed fine for each piece of information or set of information missing or incorrect, or a fine consisting on a percentage over the amount of the transactions, as the case may be.
CbCR – late/incomplete/no filing	Fixed fine for each piece of information or set of information missing or incorrect, or a fine consisting on a percentage over the amount of the transactions, as the case may be.

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