ESTONIA

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Overview

COBALT Estonia, Taxand Estonia

COBALT Estonia's Tax and Transfer Pricing practice group comprises four dedicated senior-level tax attorneys. The team advises clients across the full range of transfer pricing matters, with a particular focus on significant or high-profile cases where clients require legal certainty, careful risk mitigation or representation in a dispute with the tax authorities.

Our services include:

- advising on transfer pricing models, policies and intragroup agreements;
- preparing and reviewing transfer pricing documentation;
- assessing transfer pricing risks in significant transactions, restructurings and other complex situations;
- supporting clients during tax audits and negotiations with the tax authorities;
- representing clients in transfer pricing disputes and court proceedings; and
- assisting with mutual agreement procedures and the elimination of double taxation.

Transfer Pricing Framework

The Estonian transfer pricing rules are set out in the Income Tax Act ("ITA", Tulumaksuseadus). Under § 50 (4) of the **ITA**, where the price of a transaction between related persons differs from the value of similar transactions between unrelated persons, the difference is taxed under the relevant income tax provisions, unless the transaction qualifies as a fringe benefit. The same market-value principle applies to business transactions between a sole proprietor and a related person.

Related persons are defined in § 8 of the ITA and it is mainly defined through control or common economic interest. The definition is vague (undefined legal concept) and has been left to be substantiated by case law.

The OECD Transfer Pricing Guidelines ("**OECD TPG**") are not formally incorporated into Estonian legislation. However, the OECD TPG are used as an important interpretive reference in Estonian administrative practice. The Estonian Tax and Customs Board ("**ETCB**") has referred to the OECD TPG as reflecting the relevant international consensus in its guidance on reportable cross-border arrangements, and OECD principles inform both the application of the arm's length standard and the transfer pricing methods regulation in practice.

The detailed rules on transfer pricing methods are laid down in a regulation of the Minister of Finance (titled "**Methods for Determining the Value of Transactions Between Related Persons**"). This regulation expressly lists the five standard OECD methods (Comparable Uncontrolled Price ("CUP") method, the Resale Price method, the Cost Plus method, the Transactional Net Margin Method ("**TNMM**"), and the Profit Split method) and it permits other methods where none of the standard methods can produce a reliable result considering the circumstances.

It is important to note that Estonia operates a unique corporate income tax system under which resident companies do not pay income tax on retained profits on an accrual basis. Instead, corporate income tax is triggered only when profit is distributed – as dividends or in any other form – or when other specified taxable outflows arise (such as fringe benefits, gifts, or expenses not related to business). This distribution-based model does not, however, remove transfer pricing obligations. Where a transaction between related persons is not at arm's length, the difference between the transfer price and the market value is itself a taxable event, effectively treating the non-arm's-length value transfer as a form of deemed or hidden profit distribution rather than as a standard adjustment to annual taxable profit. In practice, this means that the ETCB does not recompute annual accrued taxable income in the manner typical of most other jurisdictions; instead, the transfer pricing adjustment triggers a tax charge on the specific non-arm's-length difference at the point of audit or assessment. The income tax rate applicable to corporate taxable outflows under § 50 is 22/78 (equivalent to a 22% rate grossed up to the pre-tax amount), as applicable from 2025.

Accepted Transfer Pricing Methodologies

The transfer pricing methods applicable in Estonia are set out in the Minister of Finance Regulation No. 53 of 10 November 2006, "Methods for Determining the Value of Transactions Between Related Persons", as amended. The regulation expressly lists the five standard OECD methods: the Comparable Uncontrolled Price ("CUP") method, the Resale Price method, the Cost Plus method, the Profit Split method, and the Transactional Net Margin Method ("TNMM"). Other methods may be used where the standard methods cannot produce a reliable result, but the taxpayer must justify the use of an alternative approach.

There is no strict statutory hierarchy of methods. Under § 11(2) of the regulation, the method giving the most reliable result must be selected, having regard to the characteristics of the controlled transaction, the reliability of available comparable data, and the degree of similarity of comparable transactions. However, the regulation expressly provides that the CUP method, where thorough comparable data are available, gives the most precise result (§ 11(1)), and § 12(4) confirms that it produces the most reliable outcome where an internal comparable exists — particularly for commodities, standard services, or the determination of interest rates on related-party loans. In practice, reliable CUP comparables are often difficult to identify in Estonia given the size of the market, and the TNMM and Cost Plus methods are therefore the most widely applied.

Transfer Pricing Documentation Requirements

Estonian resident companies and non-resident entities operating through a permanent establishment in Estonia are required, upon the request of the ETCB, to provide additional information on transactions with related persons, the activities of group companies, and the group structure. The documentation requirements are set out in the Minister of Finance Regulation No. 53 of 10 November 2006. The deadline for presenting the requested documentation to the ETCB is 60 days from the date of the request. Transfer pricing documentation is not filed proactively with the ETCB on a routine basis. Instead, the taxpayer is required to maintain the documentation and produce it upon request by the tax authority. The prepared documents must be sufficiently detailed to convince the ETCB that the taxpayer had reasonable grounds to believe that the transfer prices corresponded to market value. The level of detail and depth of the documentation must be proportionate to the complexity of the transaction and the pricing arrangements involved.

The documentation is divided into the following categories:

- **Master File**: group-level information relating to the international consolidated group, which may be prepared separately for each business area of the group;
- **Local File**: information about the Estonian resident legal person or the non-resident operating through a permanent establishment in Estonia and the transactions made by them; and
- **Country-by-Country Report ("CbCR")**: required where the revenue of the enterprise and its associated persons in the financial year preceding the transaction was EUR 750 million or more, as provided for in Chapter 22 of the Tax Information Exchange Act.

The Transfer Pricing documentation requirements apply to the following categories of taxpayers:

- resident credit institutions, insurance companies, and companies whose securities are listed on a stock exchange;
- any taxpayer where one party to the transaction is a person located in a non-cooperative jurisdiction for tax purposes;
- resident companies that, together with related persons, have 250 or more employees, or whose turnover in the financial year preceding the transaction, together with related persons, was EUR 50 million or more, or whose balance sheet total, together with related persons, was EUR 43 million or more; and
- non-residents operating in Estonia through a permanent establishment that, together with related persons, have 250 or more employees, or whose turnover in the financial year preceding the transaction, together with related persons, was EUR 50 million or more, or whose consolidated balance sheet total was EUR 43 million or more.

Taxpayers falling below these thresholds are not exempt from the arm's length principle itself, but the formal documentation obligation under the regulation does not apply to them. The proportionality principle nevertheless requires that, for all taxpayers subject to the documentation requirements, the level of detail be in line with the complexity of the transactions and pricing involved.

The obligation to file the CbC report in Estonia falls on the Estonian tax-resident group member that qualifies as the "reporting entity" under the Tax Information Exchange Act, which transposes the EU Directive framework. This can be: (i) the ultimate parent entity, where the top-level parent of the multinational group is tax-resident in Estonia; (ii) a surrogate parent entity, where the ultimate parent is located in a jurisdiction that does not require CbCR or does not exchange CbC data with Estonia, and the group has designated an Estonian entity to file on its behalf; or (iii) in fallback situations, any other Estonian tax-resident constituent entity that is required to file locally because neither the ultimate parent nor a surrogate has filed. In practice, most Estonian subsidiaries of foreign-parented groups will only need to file the CbCR notification (identifying the reporting entity and its jurisdiction), rather than the CbC report itself, unless one of the fallback situations applies.

An Estonian tax-resident member of a qualifying MNE group must file a notification identifying the group entity that submits the CbC report and that entity's country of residence. The notification must be submitted within six months as of the end of the financial year which is the reporting year of the group.

Local Jurisdiction Benchmarks

Benchmarking is not prescribed as a standalone legal obligation in the Minister of Finance Regulation No. 53. However, the regulation's framework is built around comparability analysis and arm's length ranges, which in practice means that a benchmarking study (or equivalent comparability support) is an important component of any transfer pricing documentation where one-sided methods such as the TNMM or the Cost Plus method are applied. The ETCB's transfer pricing guide, which is published as recommended guidance adapted from the OECD Transfer Pricing Guidelines, provides the main practical framework for conducting comparability analyses.

The regulation defines a comparable transaction as an uncontrolled transaction that can be used for comparison with the controlled transaction. This definition is broad enough to encompass both external comparables (transactions between independent parties identified through database searches) and internal comparables (comparable uncontrolled transactions entered into by the taxpayer itself with unrelated parties). Internal comparable uncontrolled prices are therefore accepted where they are factually reliable and sufficiently comparable.

The arm's length range is defined as the interquartile range (lower quartile to upper quartile) derived from the application of the same transfer pricing method to different sets of comparable data. If the transfer price falls within the interquartile range, it is considered to be at arm's length. If it falls outside the range, the ETCB may adjust the result into the range. Where the range is very wide, the analysis should be repeated using more specific data or alternative methods.

Estonian legislation and ETCB guidance do not prescribe a formal preference for Estonian, Baltic, or pan-European comparables. Given the small size of the Estonian economy and the limited number of local publicly available comparables, pan-European benchmark searches are widely used in practice and are generally accepted by the ETCB, provided the search strategy is well-documented and the comparables are sufficiently similar in terms of functional and risk profiles.

Focus on Financial Transactions

Estonia does not have a standalone transfer pricing regime specifically for intercompany financial transactions. Instead, related-party loans, cash pooling arrangements, guarantees, and other financial dealings are analysed under the general arm's length framework set out in § 50 (4) of the ITA and the Minister of Finance Regulation No. 53.

The regulation does, however, contain specific comparability guidance for financial transactions. When comparing related-party financial transactions with uncontrolled transactions, the regulation requires that account be taken of factors including the existence of collateral or security, the lender's ability to grant the loan compared with unrelated creditors, whether a formal loan agreement is in place, and the profitability, additional expenses, and risks of the transaction. In practice, the ETCB expects a proper delineation of the financial transaction, an assessment of the borrower's creditworthiness, verification of the business rationale from the borrower's perspective, and benchmarking of the interest rate and other financial terms against comparable uncontrolled transactions.

Estonia has not published transfer pricing safe harbour interest rates for related-party loans. There is no official ETCB-published margin or rate corridor that, if applied, would shield the transaction from further scrutiny.

Separately from the transfer pricing analysis, the deductibility of intercompany financing costs is subject to Estonia's interest limitation rules, which implement the EU Anti-Tax Avoidance Directive ("ATAD"). Under § 54^2 of the ITA, income tax is charged on the surplus borrowing costs of a resident company (other than a financial undertaking) to the extent that they exceed the higher of EUR 3,000,000 or 30% of the company's profit before depreciation (an EBITDA-equivalent measure). Given the particularity of Estonia's distribution-based corporate income tax system, in which a restriction on the deduction of interest cannot be established in the traditional sense, the surplus borrowing costs are instead taxed similarly to other costs not related to business. The calculation is performed on a cash basis, comparing cash borrowing costs with cash-based interest income. A group-ratio escape is also available: a resident company that is a member of a consolidated group may elect not to be taxed on excess borrowing costs if its equity-to-total-assets ratio is equal to or greater than the corresponding group ratio, subject to certain conditions.

One may want to keep in mind that under § 502 of the ITA, a resident company may be required to pay income tax on a loan granted to a shareholder, partner, or member of the company where the circumstances of the transaction indicate that it may constitute a hidden profit distribution. This rule can apply alongside the general arm's length transfer pricing provisions and is particularly relevant for intragroup financing structures.

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

Estonia does not have a formal domestic Advance Pricing Agreement ("APA") programme. The ETCB does not issue binding advance rulings on transfer pricing matters. Accordingly, it is not possible for a taxpayer to obtain a unilateral APA from the Estonian tax authority agreeing in advance on the transfer pricing methodology or pricing outcome for specified related-party transactions.

However, the resolution of transfer pricing disputes – including the avoidance of double taxation arising from transfer pricing adjustments – is available through the Mutual Agreement Procedure ("MAP") under Estonia's bilateral tax treaties and the EU Arbitration Convention. The ETCB has referred to the availability of MAP relief, including in respect of Advance Pricing Agreements (with retroactive effect), in its published guidance on the taxation of foreign income. A taxpayer seeking to resolve or prevent transfer pricing double taxation may submit a MAP request to the ETCB within the time limits prescribed by the applicable tax treaty or the EU Arbitration Convention.

Given the absence of a domestic APA programme, taxpayers operating in Estonia should ensure that their transfer pricing documentation is comprehensive and kept up to date, as the primary means of managing transfer pricing risk is through documentation and, where disputes arise, through the MAP process.

Transfer Pricing Audits

Estonia does not operate a dedicated transfer pricing audit programme. Instead, transfer pricing issues are examined by the ETCB as part of the general tax control and revision (revisjon) framework set out in the Taxation Act (Maksukorralduse seadus, "MKS"). This means that transfer pricing may be reviewed during a routine corporate tax audit or as part of a targeted revision initiated on the basis of risk indicators identified by the ETCB.

A tax control or revision is typically initiated by written or electronic notice. During the process, the ETCB may request documents and information from the taxpayer, with a general deadline of 3 working days for providing the requested information (though in practice, longer deadlines are generally given for transfer pricing documentation, given the 60-day deadline for TP documentation requests discussed above). The taxpayer or its representative is required to provide oral or written information relevant to the tax proceedings and may be asked to attend the ETCB's offices to give explanations. On-site inspections (vaatlus) may also be carried out during the undertaking's working hours, with the proceedings and findings recorded in a protocol.

The ETCB has access to a growing range of data that may inform its risk assessment and audit selection, including:

- TSD Annex 6 reporting: transfer pricing differences between related-party transaction values and market values are reported monthly as part of the TSD income and social tax declaration, providing the ETCB with ongoing visibility over material transfer pricing adjustments;
- Country-by-Country Reports: CbCR data received through automatic exchange of information, although the Tax Information Exchange Act prohibits the ETCB from using CbC data as the sole or main basis for a transfer pricing adjustment;
- DAC6 cross-border arrangement reports: ETCB's DAC6 handbook includes a specific category for arrangements related to the determination of transfer prices, ensuring the ETCB receives information on certain cross-border TP-related structures.

While transfer pricing was previously examined somewhat randomly during routine tax audits, there has been a noticeable shift in recent years towards more targeted audit activity specifically directed at transfer pricing. For example, the ETCB has been observing changes in intragroup loan arrangements through TSD Annex 6 data and initiating audits on that basis. In other cases, the ETCB has selected entities performing specific functions in Estonia – such as contract manufacturing – and audited the documentation and pricing justification for their intragroup relationships and transactions.

In terms of subject matter, the areas that have attracted the most attention and given rise to the largest disputes are Estonian manufacturing entities (where the ETCB scrutinises whether the entity's remuneration appropriately reflects the functions performed and risks borne) and cash pooling arrangements, including notional cash pooling and other intragroup treasury activities. Taxpayers engaged in these types of transactions should ensure that their transfer pricing documentation clearly supports the arm's length nature of the pricing and that the functional analysis accurately reflects the substance of the Estonian entity's role within the group.

The Burden of Proof in Transfer Pricing: Theory versus Practice

Under Estonian tax procedure, the burden of proof in tax matters is governed by the Taxation Act (MKS). The key provision is MKS § 150, which establishes a clear allocation:

- Where a taxpayer challenges a tax amount determined in a tax notice or tax decision, the burden of proof lies with the taxpayer to demonstrate that the tax amount was determined incorrectly.
- However, where the taxpayer challenges the determined tax amount, the tax authority bears the burden of proof in respect of evidence that is held exclusively by the tax authority.

In practice, this means that once the ETCB has issued a tax decision imposing a transfer pricing adjustment, the formal burden shifts to the taxpayer to prove that the assessment is wrong. The ETCB must issue a reasoned case in its tax decision, but once that decision is issued, it is the taxpayer who must demonstrate that the adjustment was incorrect. This is a more demanding position for the taxpayer than in jurisdictions where the tax authority bears the full burden throughout the dispute. Estonian Supreme Court case law in general tax matters has confirmed that where the tax authority has reasonably and plausibly substantiated its position on the basis of a body of evidence, the taxpayer must then present evidence to prove otherwise. While these principles arise from general tax procedure cases rather than transfer-pricing-specific disputes, the same principles apply to transfer pricing audits.

At the same time, the taxpayer has a statutory duty to cooperate with the ETCB during tax proceedings, including the obligation to provide oral or written information, attend the ETCB's offices to give explanations, and produce documentation upon request. In the transfer pricing context, this cooperation obligation is reinforced by the specific documentation requirements under Regulation No. 53: the taxpayer must be able to demonstrate that it had reasonable grounds to believe the transfer prices corresponded to market value.

In practice, the formal allocation of the burden of proof to the ETCB is less protective than it may appear on paper. The ETCB's transfer pricing guide recognises that both the tax authority and the taxpayer must take into account the consequences of a transfer pricing adjustment for the other party to the transaction, including double taxation implications. However, taxpayers who fail to maintain adequate transfer pricing documentation or who cannot substantiate their pricing when challenged will find it significantly more difficult to defend their position. Where the taxpayer does not provide convincing documentation, the ETCB is in a stronger position to sustain its adjustment, and the practical burden of disproving the ETCB's case becomes considerably heavier for the taxpayer.

Transfer Pricing Penalties

Estonia does not have transfer-pricing-specific penalty provisions. Instead, the general tax penalty framework applies, which operates through several layers:

Failure to provide documentation or comply with ETCB requests. Under § 154 of the Taxation Act (MKS), failure to submit a tax declaration, document, or other item by the prescribed deadline, failure to comply with record-keeping requirements, or failure to carry out the ETCB's orders is punishable by a fine of up to EUR 3,200 for legal persons. In the transfer pricing context, this provision is relevant where a taxpayer fails to produce transfer pricing documentation within the 60-day deadline following an ETCB request.

Concealment of tax liability. Under MKS, intentionally failing to provide data to the tax authority, or providing false data, where this results in a reduction of a tax or withholding obligation or an unjustified increase in a refund claim, is punishable by a fine of up to EUR 32,000 for legal persons.

Penalty payments (sunniraha) for CbCR and reporting obligations. Where a reporting entity fails to comply with its obligations under the Tax Information Exchange Act (including CbCR notification and filing), the ETCB may set an additional deadline and issue a warning of a penalty payment under MKS. If the obligation is still not fulfilled by the deadline in the warning, the penalty payment becomes due. The total penalty payment for compelling compliance may not exceed EUR 3,300, of which the first instalment may not exceed EUR 1,300 and the second may not exceed EUR 2,000.

Interest on underpaid tax. Where a transfer pricing adjustment results in additional tax, interest accrues at a rate of 0.06% per day on the underpaid amount. In addition, this interest is taxable (non-deductible), increasing the effective rate by the corporate income tax at the rate of 22/78 due on the accrued interest amount. In practice, the daily interest rate represents a significant adverse consequence in itself, particularly for adjustments covering multiple years, and the ETCB typically does not impose additional penalties on top of the interest in tax and transfer pricing cases.

Personal liability of board members. Management board members can, in principle, be held personally liable for tax compliance failures. However, personal liability in practice requires serious circumstances such as non-recoverable tax debt, intentional non-compliance, or deliberate misreporting. To date, personal liability of board members has not been a feature of transfer pricing disputes in Estonia, though the legal possibility exists

Local Hot Topics and Recent Updates

Increased scrutiny of Estonian manufacturing entities

The ETCB has noticeably increased its focus on the transfer pricing of Estonian contract manufacturing and toll manufacturing entities operating within multinational groups. Audits in this area typically examine whether the entity's remuneration – often determined using the TNMM – appropriately reflects the functions performed, assets used, and risks assumed by the Estonian entity, or whether value is being allocated away from Estonia without sufficient economic justification. Taxpayers with manufacturing operations in Estonia should review their functional analyses and ensure that their transfer pricing documentation accurately captures the substance and contribution of the Estonian entity, including any intangible value creation, process know-how, or quality control functions that may go beyond a pure contract manufacturing characterisation.

Intragroup cash pooling under the spotlight

Cash pooling arrangements – including both physical and notional cash pooling – have emerged as another key area of ETCB interest. The ETCB has been challenging whether the terms of intragroup cash pooling arrangements, including interest rates credited or charged to Estonian participants, reflect arm's length conditions or should these be treated as concealed (and taxable) profit distributions instead. Attention is being paid to whether the overall arrangement is economically rational from the perspective of the Estonian participant. Given the ETCB's growing sophistication in this area and the availability of TSD Annex 6 data to identify financial transaction flows, multinational groups with Estonian entities participating in cash pooling structures should ensure that their transfer pricing documentation includes a thorough delineation of the arrangement, a clear analysis of the cash pool leader's functions and risks, and reliable benchmarking of the interest terms.

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Documentation threshold

Master file	More than EUR 50 million turnover, 250 employees, or EUR 43 million balance sheet total.
Local file	More than EUR 50 million turnover, 250 employees, or EUR 43 million balance sheet total.
CbCR	Consolidated group revenue of EUR 750 million or more.

Submission deadline

Master file	Upon ETCB request — 60 days from the date of the request
Local file	Upon ETCB request — 60 days from the date of the request
CbC	By 31 December of the calendar year following the financial year that is a reporting year; notification: within six months as of the end of the financial year which is the reporting year of the group

Penalty Provisions

Documentation – late filing provision	Fine of up to EUR 3,200 for legal persons. Penalty payment of up to EUR 3,300 may also be imposed to compel compliance.
Tax return disclosure – late/ incomplete/no filing	Fine of up to EUR 3,200 for legal persons. For intentional concealment of tax liability or provision of false data: fine of up to EUR 32,000 for legal persons.
CbC Report – late/incomplete/no filing	Penalty payment of up to EUR 3,300 to compel compliance

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