



Overview

LeitnerLeitner Serbia, Taxand Serbia

LeitnerLeitner Serbia is a tax advisory firm based in Serbia. Together with local experts, we offer tax consulting, auditing and accounting services to international and large local companies.

LeitnerLeitner Serbia offers a wide range of services in the field of transfer pricing, such as TP conceptual design, global documentation concepts, IP structuring and reorganizations, Group TP policy, benchmarking services, tax audit defence, litigation and arbitration proceedings etc.. That is, LeitnerLeitner Serbia provides full range of services of transfer pricing including Local TP file preparation, benchmarking analysis, TP risk assessment, preparation of intercompany agreement, advisory in specific intercompany transactions. Detailed service list is presented as follows:

- ❖ Preparation of transfer pricing reports; With compliance and reporting we cover preparing transfer pricing master file and local file documentation, from full-fledged to tailor made;
- ❖ Creation of benchmark analyzes and other data analyzes from relevant databases;
- ❖ Advising on the formation of prices in transactions with related parties; value chain optimization, business restructuring, full-service assistance in setting up the TP strategy and policy, as well as advising on the documentation and justification of intercompany transactions;
- ❖ Preparation of intercompany contracts; Establishing global intercompany financial arrangements and support for debt instruments;
- ❖ Transfer of intangible assets and intercompany services.

General : Transfer Pricing Framework

Transfer pricing in Serbia is covered by following legislation:

- ❖ Corporate Income Tax Law "CIT Law";
- ❖ Rulebook on transfer pricing and methods that are applied according to the arm's length principle in determinations of transaction prices between related parties "Rulebook";
- ❖ Rulebook on interest rates that are considered to be in accordance with the arm's length principle "Rulebook on interest rates".

The Ministry of Finance regulates transfer pricing area on the basis of documentation published by the OECD and other international organisations, so we may say that transfer pricing in Serbia is mostly aligned with the OECD Guidelines. However, in Serbian Rulebook on transfer pricing there are some specific differences in comparison to the OECD Guidelines.

Accepted Transfer Pricing Methodologies

Serbia is not an OECD member. However, Serbian transfer pricing provisions and documentation requirements are generally based on the BEPS Regulations, including OECD Guidelines.

In accordance with the CIT Law and the Rulebook, the taxpayer is obliged to select the most appropriate method for determining the arm's length prices for the analysis of transactions with related entities, i.e. the method that is the most appropriate bearing in mind circumstances of each individual transaction. The following methods can be applied:

- ❖ Comparable Uncontrolled Price Method;
- ❖ Resale Price Method
- ❖ Cost plus method;
- ❖ Transactional Net Margin Method;
- ❖ Profit Split Method;
- ❖ Any other method for determining the arm's length price, under condition that the application of the aforementioned methods is not possible, or that the other method is more appropriate than the aforementioned methods.

Serbia applies the 'the most appropriate method approach' for conducting transfer pricing analysis. Combinations of the several methods can be implemented. There is no hierarchy. However, if applicable, preference is given to traditional methods such as CUP, RP and CP.

Transfer Pricing Documentation Requirements

A Serbian entity which enters into transactions with the related parties is obliged to prepare transfer pricing report. In addition, if a Serbian entity enters in transactions with companies from tax havens, it is obliged to prepare transfer pricing report and provide evidence that these transactions are in line with the arm's length' principle.

Master file and local file as TP approach is not acceptable in Serbia. TP documentation in Serbia is a combination of these two, with mandatory content proclaimed by CIT Law, prepared in Serbian language only.

The content and the form of transfer pricing documentation is regulated by the Rulebook, stating that the documentation is submitted in the form of report or in the form of abbreviated report.

Full transfer pricing report is needed for following types of transactions:

- ❖ Financial transactions (such as loans and credits), regardless of their value. However, if a Serbian entity receives interest free loan from related party, transfer pricing analysis is not mandatory.



- ❖ Commercial transactions (sale/purchase of goods, services, property etc.) with related party, provided that total annual value of transactions with that party is higher than 8.000.000 RSD (approximately 68.000 EUR).

Transfer pricing report contains mandatory elements that are:

- ❖ Analysis of the group and the taxpayer
- ❖ Industry analysis
- ❖ Functional analysis
- ❖ Selection of transfer pricing method
- ❖ Conclusions reached
- ❖ Appendices

In case total annual value of commercial transactions with related party is lower than 8.000.000 RSD (approximately 68.000), taxpayer is obliged to present these transactions, but there is no obligation to further analyse them from transfer pricing perspective.

Abbreviated report should be submitted for all transactions with related entities and it should contain information regarding each transaction, particularly:

- ❖ transaction description
- ❖ transaction value
- ❖ related entity with whom transaction has been realized

Taxpayers are obliged to prepare and submit transfer pricing report every fiscal year. Analysis presented in the transfer pricing report have to be updated every year, in order to be based on the last publicly available information. The transfer pricing report is filed along with the tax return and the tax balance within 180 days from the end of fiscal period.

Serbia has also introduced Country by Country Reporting "CbCR" regulations which are effective for fiscal years starting on or after 1 January 2020. Namely, (only) those resident taxpayers who are considered to be the ultimate parent entities of international groups of related legal entities will be obliged to submit to the relevant tax authority the annual report on controlled transactions of the international group of related legal entities. An international group of related legal entities is a group of entities that are related by ownership or control in terms of IAS or IFRS, and whose total consolidated revenue, reported in the consolidated financial statements for the period preceding the reporting period, is at least EUR 750 million.

Local Jurisdiction Benchmarks

Benchmarking analysis must be prepared for each fiscal year i.e. a financial update is to be conducted every year. Comparable independent companies from Serbia have priority over foreign comparable entities. In case there are no comparable companies in Serbia, geographic search may be extended to similar markets (Balkan states, Eastern Europe, European Union etc.).

Focus on Financial Transactions - Serbia

Under Serbian law, intercompany financial transactions are governed by the transfer pricing provisions of the Corporate Income Tax Law (Articles 59–61c) and the accompanying Rulebook on Transfer Pricing, both resting on the arm's length principle. The tax authorities expect each financing arrangement to be accurately delineated through a functional analysis that sets out the functions performed, the risks assumed and the assets employed by each party, and that establishes the taxpayer's substantive economic position, that is, whether the terms correspond to those independent enterprises would have agreed under comparable circumstances. Intra-group loans and credits receive particular attention: unlike other related-party dealings, they may never be reported under the simplified transfer pricing form (abbreviated report), so full documentation and benchmarking are required irrespective of the transaction value.

For the pricing of intra-group debt, Article 61 of the Law offers taxpayers a binary choice. They may either apply the "safe-harbour" interest rates published annually by the Minister of Finance set by currency, by maturity (short- vs. long-term) and separately for banks and financial-leasing providers, or apply the general arm's length methods prescribed by the Law, supported by a full creditworthiness and benchmarking analysis. Whichever approach is chosen must be applied consistently to all loans granted to, or received from, related parties. The prescribed rates are equally relevant for withholding tax purposes and for treaty relief, as reduced treaty rates on interest paid to non-resident related parties apply only up to the arm's length amount.

Finally, this transfer pricing analysis operates alongside Serbia's thin capitalization rule (Article 62 of the Law), which restricts the deductibility of intra-group financing irrespective of arm's length pricing. Interest and related costs including loan arrangement fees and commissions on debt owed to a related party are deductible only up to the interest attributable to debt equal to four times the taxpayer's own equity (ten times for banks and financial-leasing providers), with the non-deductible excess added back to the tax base.

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

Not Applicable

Transfer Pricing Audits

Transfer pricing specific or targeted tax audits by the Serbian tax authorities are not conducted regularly. Once audited periods are not considered irrevocably closed. Usually, audits take place only once every three to five years, and they cover all taxes. Transfer pricing is likely to be within the scope of most tax audits related to corporate income tax.



The likelihood of transfer pricing methodology being challenged is medium. Currently, tax authorities have a limited level of practice with transfer pricing methodology. But, recently, the training of tax inspectors has been intensified and it is expected that they will soon start with regular control of transfer pricing reports.

The transactions that have the highest likelihood of undergoing audit are management and consulting services, while no specific industry has a special audit treatment in this regard. There is a more frequent audit of large taxpayers concerning transfer pricing than other taxpayers.

The Burden of Proof in Transfer Pricing: Theory versus Practice

As it is prescribed by the Article 9 of the Rulebook on transfer pricing and methods that are applied according to the arm's length principle in determinations of transaction prices between related parties (Rulebook):

The compliance of the taxpayer's prices in transactions with related parties with the prices, i.e. the range of prices determined by the application of methods for verifying the compliance of transfer prices with prices determined on the "arm's length" principle, shall be verified by the competent tax authority on the basis of the documentation submitted by the taxpayer in accordance with this Rulebook. Although the law suggests a balanced responsibility between tax authorities and taxpayers, tax audits sometimes shift most of the burden onto taxpayers:

- ❖ The competent tax authority may request additional documentation from the taxpayer in the event that it determines that the taxpayer's documentation is not sufficient to verify the compliance of transfer pricing with the prices determined on the "arm's length" principle. In this regard, the competent tax authority shall take into account the costs imposed on the taxpayer in terms of the preparation of additional documentation and the taxpayer's ability to provide additional documentation. The competent tax authority shall allow a reasonable period of time for the taxpayer to submit additional documentation.
- ❖ If, in the course of the control procedure, the competent tax authority determines that the transfer pricing documentation submitted by the taxpayer has not been prepared in a manner that provides an adequate basis for determining the compliance of the taxpayer's transfer pricing with the prices determined on the "arm's length" principle, the tax authority may, without sending a request for supplementing the documentation, proceed to the independent drafting, i.e. supplementing the transfer pricing documentation by applying the provisions of this Rulebook.
- ❖ If it is looked strictly from practice perspective: under OECD standards, the taxpayer provides documentation, and the burden then shifts to the tax authority to dispute it; in practice, Serbian authorities sometimes continue challenging valid documentation, driving taxpayers to

defend their positions repeatedly; also, the benchmarking data may be questioned or alternative methods may be imposed without sufficient explanation. Taxpayers remain responsible for justifying their reports, despite formal compliance.

- ❖ The burden of proof in Serbian transfer pricing sometimes impacts more demanding on taxpayers than intended. Legal clarification and court guidance are essential, but for now, proactive documentation and audit readiness are key. As a main recommendation Taxpayers should:
 - Maintain high-quality documentation;
 - Clearly justify benchmarking methods;
 - Use local advisors;
 - Prepare for audits in advance.

Transfer Pricing Penalties

For non-disclosure of transfer pricing transactions as well as documentation, penalties may range from RSD 100,000 up to RSD 2,000,000 (EUR 800 – EUR 16,500). Additional penalties of up to 30 percent of the understated tax liabilities may be determined by the Tax authorities based on their assessment of the transfer pricing. The additional penalties may not be less than RSD 200,000 (EUR 1,700).

Local Hot Topics and Recent Updates

Interest rates can be assessed using an interest rate prescribed as arm's length by the Ministry of Finance. Ministry of Finance publishes the Rulebook on interest rates every year, which are considered to be in line with the arm's length principle. Alternatively, taxpayers can determine arm's length interest rates on their own based on the separate benchmark analysis.

Although Serbia is not OECD member state, our country started implementing BEPS measures. The National Assembly ratified the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting. In addition, Serbia is a member of The OECD/G20 Inclusive Framework on BEPS, is expected to propose new taxation rules for digital economy. Therefore, transfer pricing regulation in Serbia will follow presented BEPS measures and initiatives.



Documentation threshold

Master file	Not Applicable
Local file	Not Applicable
CbCR	TEUR 750.000

Submission deadline

Master file	Not Applicable
Local file	180 days from the end of the business year
CbCR	12 months from the end of the business year

Penalty Provisions

Documentation – late filing provision	RSD 100,000 up to RSD 2,000,000 (EUR 800 – EUR 16,500)
Tax return disclosure – late/incomplete/no filing	RSD 100,000 up to RSD 2,000,000 (EUR 800 – EUR 16,500)
CbCR – late/incomplete/no filing	RSD 100,000 up to RSD 2,000,000 (EUR 800 – EUR 16,500)



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