



Overview

Centrum Türkiye

Centrum Türkiye is the network member firm of Taxand in Türkiye. Centrum specializes on tax, international tax, independent audit, management consultancy, internal control - internal audit and fractional CFO services as a strategic financial consultant from an end-to-end perspective.

After its establishment in 2015, Centrum has become one of Türkiye's fastest-growing strategic consulting companies within only 9 years. At present, the company serves more than 650 customers with 6 partners, and employs more than 85 staff at 4 separate offices in Istanbul, Ankara, Izmir and Bursa.

Being the first company in Türkiye to specialize in international tax consultancy and transfer pricing has provided Centrum with a unique place in the sector.

Centrum can provide the following transfer pricing services in two major areas.

- 1) Transfer pricing documentation services: Our transfer pricing documentation services are designed to meet all your documentation needs. We offer transfer pricing documentation solutions suitable for both Türkiye and all other countries where you operate. Documentation services include, Master File, Annual Transfer Pricing Report (Local file), Country-by-Country Reporting, benchmarking studies and transfer pricing form studies.
- 2) Transfer pricing consultancy services: In addition to our documentation services, we offer solutions to all your problems related to transfer pricing with our consultancy services. Consultancy services include, transfer pricing due diligence, transfer pricing Check-Up service, risk analysis services, transfer pricing restructuring services, transfer pricing policy studies, intragroup service analysis and benefit tests, transfer pricing review and settlement Services, APAs, Transfer pricing and customs valuation services.

Transfer Pricing Framework

Transfer pricing regulations are part of Corporate Income Tax Law numbered 5520 (Article 13 of the CITL) and applied since 2007. The transfer pricing legislation is prepared by taking into account international developments and particularly the OECD Transfer Pricing Guidelines.

According to the transfer pricing regulations in Türkiye, transactions between related parties must be carried out in line with the arm's length principle. Accordingly, "fair market values" should be considered during commercial and non-commercial transactions between related parties.

If a taxpayer enters into intercompany transactions with related parties, where the prices are not set in accordance with the arm's length principle, then related profits are deemed to be distributed in a disguised manner through transfer pricing. Such disguised profit distributions through

transfer pricing are not accepted as deductible from the corporate income tax basis.

To implement the transfer pricing rules, there must be a minimum 10 percent shareholding ratio in the existence of a direct or indirect shareholder relationship. (In cases where there is at least 10% voting or dividend rights directly or indirectly without any shareholding relation, parties shall still be treated as related parties).

Transfer Pricing General Communiqués No.1, No.2, No.3 and No.4 are the guidance on how to apply the transfer pricing methods, documentation requirements, Turkish APA programme and the other principles stated in Article 13 of the Turkish CIT Law.

Accepted Transfer Pricing Methodologies

When engaged in related party transactions, Turkish taxpayers should apply the best appropriate transfer pricing method, and their results should be in line with the arm's length result.

Acceptable transfer pricing methods include:

- ❖ Comparable uncontrolled price method ("CUP method"),
- ❖ Resale price method,
- ❖ Cost-plus method,
- ❖ Transactional net margin method,
- ❖ Profit split method.

If it is not possible to determine the arm's length price by using these methods, taxpayers may use other methods which are appropriate to the nature of the intercompany transactions.

Transfer Pricing Documentation Requirements

There are comprehensive transfer pricing documentation requirements in Türkiye.

- 1) Master file: Prepared by corporate income taxpayers that has 500 million Turkish Lira or more net sales and asset size in its balance sheet. It must be prepared until the end of the fiscal year following the relevant fiscal year. It must be submitted to Turkish Tax Authorities upon request.
- 2) Annual transfer pricing report (Local file): Prepared by corporate income taxpayers (no thresholds apply) that are registered with Istanbul Larger Taxpayers Tax Office for their cross-border and domestic transactions and for all other Taxpayers for cross-border transactions. Taxpayers in Free Trade Zones are also under the scope of annual transfer pricing report for their domestic transactions. It must be submitted to Turkish Tax Authorities upon request.



- 3) Transfer pricing information form: The name of the form is Transfer Pricing, Controlled Foreign Corporation and Thin Capitalization Form. It must be electronically submitted to the relevant tax office as an attachment to the annual electronic CIT return. The threshold as a total transaction volume is TL 30,000.
- 4) Country by Country reporting and notification: All multinational enterprises resident in Türkiye with total consolidated group revenue exceeding 750 million Euro should report their CBCR until the end of the twelfth month after the relevant fiscal year. CBCR is reported in xml schema format and is given electronically. The members of the multinational enterprise should also inform the Turkish tax authorities whether they are the ultimate parent or surrogate parent or which entity of the Group will be reporting the CBCR on behalf of the Group and its fiscal year. The notification should be provided electronically on an annual basis on Internet Tax Office until the end of June of the year after the reporting fiscal year.

As a general rule, Turkish tax authorities provide 15 days to file once they ask for the transfer pricing documentation. The transfer pricing documentation should be prepared in Turkish language.

Local Jurisdiction Benchmarks

There are no specific details related to benchmarking studies in the Turkish transfer pricing legislation. Using of foreign comparables is not prohibited. In practice, Pan- European comparables are used in the absence of local comparable data unless the tested party is located outside the European region.

Limited local comparables data are available in certain databases.

Turkish tax inspectors tend to compare the tested parties with secret/hidden comparables. They ask information from other taxpayers on profit rates or royalty rates on an anonymous basis and use those analysis in their tax inspection reports.

Focus on Financial Transactions

Turkish transfer pricing legislation does not include detailed guidance for intragroup financial transactions. General rules that are relevant for the transfer pricing treatment of financial transactions are the same as with all other intragroup transactions.

All financial transactions between related parties must satisfy the arm's length principle. This applies to intercompany loans, cash pooling, financial guarantees, treasury services, interest-free loans, shareholder financing, intercompany deposits and all other financing arrangements within the Group.

Turkey does not prescribe a safe harbour interest rate. Instead, the interest rate that is applicable between related parties should reflect the market conditions considering factors such as the borrower's creditworthiness, currency, loan maturity, loan amount, repayment schedule, market

interest rates, risks incurred (such as country risk) and securities exchanged.

The Comparable Uncontrolled Price (CUP) method is generally preferred where reliable comparables are available. The benchmarking of financial transactions should be made, although taxpayers commonly support pricing through comparable bank loans or their internal credit rating analyses. Bloomberg database is used in benchmark analysis.

The taxpayer must demonstrate and document (i.e. Local file) that arm's length pricing is applied for financial transactions.

Finally, transfer pricing rules operate alongside Turkey's thin capitalisation provisions, which is a separate legislation under Article 12 of the Corporate Income Tax Law, not allowing deductibility of the interest payment and it may be treated as deemed distributed profits.

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

Türkiye has in place a formal APA programme under which it is allowed to enter into unilateral, bilateral and multilateral APAs. There are no fees for the filing of an APA request. The scope of APAs is limited to cross-border related party transactions. APAs are entered into for a period of a maximum five years. The APA programme also includes a roll-back for bilateral APA requests in appropriate cases.

A roll-back of a bilateral APA is possible for those fiscal years that are still open under domestic statute of limitation (where the relevant facts and circumstances in the earlier tax years are the same).

Transfer Pricing Audits

Transfer pricing is a commonly inspected audit subject. In general, the risk of tax inspection is around 2-4% in Türkiye. However, a wave of investigations may start, if a specific industry or professional practice gets negative attention by public.

The Burden of Proof in Transfer Pricing: Theory versus Practice

Under Turkish Tax Law, transfer pricing practice is a tax security institution. It derives its source from the 'principle of reality in tax law'. Article 3/B of the Tax Procedure Law, paragraph 1, includes the provision that "the event that gives rise to tax and the real nature of the transactions related to this event are essential in taxation". The administration may take action against the taxpayer on the grounds that the transfer prices applied in exchange of goods, services and intangible rights between related parties is not in line with the arm's length principle. In this case, the administration claims that the taxpayer has distributed hidden profits through transfer pricing. Under such a claim, the administration has to pay the burden of proof to demonstrate that the prices set by the taxpayer are not at arm's length.



According to Turkish Transfer Pricing legislation, burden of proof first in line lies with the taxpayer. The taxpayer who acted in accordance with the transfer pricing documentation rules and formal duties, such as preparing their Annual Transfer Pricing Report (Local File), Master File, transfer pricing policies or the Transfer Pricing Form, or any other transfer pricing documentation of the relevant financial year shifts the burden of proof to the tax inspector. In that case, the administration must prove that the transfer price applied by the taxpayer is incorrect.

In practice, especially under a tax audit, shifting the burden of proof back to the taxpayer is fairly easy. If the tax inspector can prove that the transfer prices applied by the taxpayer are not in line with the commercial, economic and technical requirements, the burden of proof shifts back to the taxpayer. Under Turkish Tax Procedure Law Article 3/B f.3., "In the event that a situation that does not comply with economic, commercial and technical requirements or is not normal and unusual according to the nature of the event is alleged, the burden of proof belongs to the party claiming it." In such a case, the taxpayer is the one arguing that the transfer prices are normal and usual, therefore the burden of proof shifts back to the taxpayer and the taxpayer must support the transfer prices applied with additional proof of data and documents.

Considering that the burden of proof can be distributed back and forth between the tax administration and the taxpayer in a fairly easy way, it is well advised that Turkish taxpayers should prepare a qualified transfer pricing documentation including the entirety of documents that taxpayers are obliged to explain or declare under what conditions and how pricing in related transactions is carried out in accordance with arm's length principle. Apart from being a legal obligation, the main benefit of transfer pricing documentation is that it is a proactive defence tool that allows taxpayers to be prepared

in advance for studies that will bring a burden in terms of both time and cost in case of a tax audit and to show that a consistent transfer pricing policy has been implemented. It also minimizes the risk of an unfavourable shift of the burden of proof.

Transfer Pricing Penalties

There are no specific transfer pricing penalties regarding transfer pricing documentation. The provisions of Tax Procedural Law regarding irregularity penalties apply.

According to Article 13(8) of the CITL, if the transfer pricing documentation requirements are fulfilled timely and properly, tax penalties in case of a tax assessment due to the application of non-arm's length prices will be reduced by 50%.

Local Hot Topics and Recent Updates

Transfer pricing is a common subject of all tax investigations in Türkiye, claiming all sorts of payments to foreign entities are made as a disguised profit payment by way of transfer pricing, subject to dividend withholding tax of 15% (w/o a double tax treaty). Although Türkiye applies the OECD Transfer Pricing Guidelines to a general extent, Turkish tax inspectors still see transfer pricing as a way of abnormal benefits that can easily be received from the Turkish entity, directly affecting the taxable basis of the Turkish entity.

Tax inspectors write very long-formal tax assessment reports. The common matters they investigate are intragroup services received by the foreign HQs, high management fee or license fee payments to foreign entities, continuously loss-making companies for multiple years, etc. Due to tax amnesties applied in the past, there is a lack of strong case law. Therefore, transfer pricing criticism continues to be a well-known risk for the companies operating in Türkiye.



Documentation threshold

Master file	Turnover / Net Assets of 500 million Turkish Lira
Local file	No threshold
CbCR	Consolidated Group turnover of 750 million Euro

Submission deadline

Master file	Must be prepared until the CIT declaration due date (End of the 4th month following the fiscal year end).
Local file	Must be prepared until the CIT declaration due date (end of the 4th month following the fiscal year end).
CbCR	Submission within 12 months after end of reporting year.
CbCR notification	End of July before year end of the reporting year.

Penalty Provisions

Documentation – late filing provision	No specific penalty.
Tax return disclosure – late/incomplete/no filing	The provisions of Tax Procedural Law regarding irregularity penalties apply.
CbCR – late/incomplete/no filing	The provisions of Tax Procedural Law regarding irregularity penalties apply.



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